

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/07/2013

Before:

THE HONOURABLE MR JUSTICE PETER SMITH

Between :

Mrs Daad Sharab

Claimant

- and -

**His Royal Highness Prince Al-Waleed Bin Talal Bin
Abdul-Aziz Al-Saud**

Defendant

Mr C Freedman QC & Mr A Robson (instructed by **TLT LLP**) for the **Claimant**
Mr C Pymont QC (instructed by **Hogan Lovells LLP**) for the **Defendant**

Hearing dates: 24, 25, 26 &, 27 June, 1, 2, 3 & 5 July 2013

Judgment

Peter Smith J:

INTRODUCTION

1. In this case the Claimant Daad Sharab (“Mrs Sharab”) claims the sum of \$10m plus interest she contends was an agreed commission payable on the sale of the Defendant’s Airbus (“the Airbus”) for a sum of \$120m to a Libyan entity for the use of Colonel Gaddafi, formerly the President of Libya. Further or in the alternative there is a claim for a contractual quantum meruit.

THE PARTIES

2. Mrs Sharab is a Jordanian national who was born in Saudi Arabia where she lived until she was 18 years old. She is an international business woman. She has a London residence comprising a flat in Welbeck Street where she ordinarily spends at least 3 months a year.
3. She runs her own consultancy business namely TAWCO (the Trans Arab World for Commercial Mediation) of which she is a director and the chairwoman. She provides commercial introductions between parties. She acts as an intermediary. She owns 100% of TAWCO a Jordanian company which has offices in Amman in Jordan.
4. The Defendant (“the Prince”) is one of the richest men in the world. The front cover of his autobiography published in 2005 refers to his being the 5th richest man in the

world. He has an estimated fortune of over \$20 billion with extensive and substantial business interests throughout the world including through his company Kingdom Holding Company hotels such as the Savoy in London, the George V in Paris and extensive shareholdings in businesses in the West.

5. The specific quality that Mrs Sharab brought to this transaction was her undoubted close connections with Colonel Gaddafi. She set out in her witness statement how these close connections developed and it was not disputed by the Prince.
6. The case is in respect of the sale of the Airbus which belonged to the Prince to Colonel Gaddafi. It was sold for \$120m and the Prince whilst acknowledging that Mrs Sharab did a lot of work in respect of achieving the sale (and indeed reviving it when it became difficult) has not paid her anything. This has led to the present litigation where Mrs Sharab claims \$10m as a fixed price or alternatively a reasonable sum under the contract for her services.

THE COMPETING CLAIMS

7. It is interesting to note the way in which the case was put by Mrs Sharab and how the Prince responded.
8. Mrs Sharab's present solicitors wrote a letter before action to the Prince on 17th October 2006. In that letter it was stated that the Prince agreed in the summer of 2002 that in consideration of Mrs Sharab facilitating all necessary introductions and assisting in the negotiations leading to the purchase by the Libyan Arab Foreign Investment Company (LAFICO) in September 2006 when the final payment of the total agreed purchase price of \$120m was paid that he would pay to Mrs Sharab \$10m. In view of the non payment the letter went on to inform the Prince that proceedings would be issued in London if the payment was not received in full by close of business 31st October 2006.
9. The Prince's solicitors Hogan & Hartson replied by a letter dated 19th October 2006. In the second paragraph it simply asserted that the Prince did not enter into an agreement as alleged in Mrs Sharab's lawyer's letter. It also stated that they understood that Mrs Sharab played no part in the ultimate sale of the aircraft in question and there is no basis for any sum due to her.
10. The third paragraph set out the stance that would be taken to challenge the jurisdiction of the claim. No payment was made and the proceedings ensued.

MRS SHARAB'S CLAIM AS PLEADED

11. After setting the background of the Prince and herself and his agent Mr Fouad Alaeddin ("Mr Alaeddin") a managing partner at the time in Ernst & Young based in that firm's Riyadh office in Saudi Arabia she made reference to the dealings she had with the Prince having been introduced to him by Mr Alaeddin in 1997. The last important one was her negotiating with LAFICO in relation to a hotel development for the Prince between November 1999 and February 2001. Her case was that the Prince agreed that she would receive a commission for so doing and she was paid in full the sum of \$500,000 on 27th February 2001 when the Prince endorsed a bankers draft in her favour.

THE PRESENT DISPUTED AGREEMENT

12. In paragraph 13 of her Amended Particulars of Claim she said there was an oral agreement made on 25th August 2001 between Mr Alaeddin and herself at the Ayoush Restaurant James Street London to sell one of the Prince's aircraft he having at that time a Boeing and the Airbus. She said it was already agreed that she would receive a fee of \$2m if she affected a sale of either of the aircraft. She said that separately it was agreed that she would try and secure Libya's investment in a project Touthca for which if successful she would receive a separate fee of \$1m. This was an agricultural project in one of the Prince's companies in Egypt which was being run by one of his companies the Kingdom Agricultural Company ("KADCO").
13. She says that agreement was made as a result of the Prince telephoning her in early August 2001 and stating he had an Airbus and a Boeing and he wished to sell one of them. He invited her to meet him in Cannes. As a result of that on or about 7th August 2001 she met the Prince on his yacht in Cannes where he repeated the fact that he wished to sell one or other of them as he said he had just ordered another aircraft. There is an issue about this aircraft as will appear in this judgment. She says that the Prince told her that one or other of the aircraft would need to be sold to a President or someone similar because of its specification and he suggested that Colonel Gaddafi was an obvious choice because he did not have an aircraft. Further he said he had heard that the Prime Minister of Lebanon had sent him a plane for viewing. She said that the Prince offered to pay her for so doing although the amount of commission was not discussed and he said that she should not start negotiating yet until such time as a new plane was ready and that was likely to be a considerable period of time.
14. Thereafter Mr Sharab pleaded that the Prince sent Mr Alaeddin to London on 25th August 2001 and the sole purpose of his visit was to finalise the terms upon which she would act and that led to the agreement she says.

PERFORMANCE UNDER THE AGREEMENT

15. Mrs Sharab pleaded that she did not hear anything from the Prince until he telephoned her in August 2002 and instructed her to proceed with the negotiations. Thereafter she arranged a meeting with Colonel Gaddafi on or about 21st January 2003 who expressed an interest in purchasing the Airbus rather than the Boeing but said he would need to see the aircraft before doing so. A couple of days later she telephoned the Prince from Libya explaining that he would need to send both aircraft to Libya for viewing.
16. Subsequently by arrangement on or about 10th April 2003 the Prince arrived in Libya with both aircraft where the Claimant had been waiting since 5th April 2003. Colonel Gaddafi picked the Airbus but insisted that it be left in Libya if he was to buy it as once it became known that he wished to do so there would otherwise be a risk that the aircraft would be interfered with outside Libya. He also asked the Prince to send Mrs Sharab and Mr Alaeddin to conduct the negotiations. Mrs Sharab says the Prince agreed to leave the Airbus in Libya while the price was negotiated by her with Mr Alaeddin.
17. The Prince then left Libya the same day in the Boeing. Mrs Sharab says that whilst his belongings were being transferred from the Airbus to the Boeing there was further

discussion between her and the Prince whilst they were in the Boeing. She says that the price was varied so that she would receive a margin of the sale price. She says that the Prince agreed the following:-

- 1) He reconfirmed the core of the agreement made with her by Mr Alaeddin in London.
- 2) That if the sale price was more than \$110m instead of the commission of \$2m she would receive the entirety of the excess over that figure.
- 3) She asked for it to be put in writing but he refused insisting his word should be enough.

SUCCESS

18. Mrs Sharab contends that she had meetings with Colonel Gaddafi and ultimately on or about 18th June 2003 succeeded in persuading him (on behalf of Libya) to buy the Prince's Airbus for \$120m and to commit \$20m to project Toushca. She says that she sought reconfirmation of her entitlement to \$10m something she had communicated to Mr Alaeddin. She says that on or around 15th July 2003 she and Mr Alaeddin called the Prince from the grounds of the Corinthia Bab Africa Hotel in Tripoli where they were staying using a satellite phone. Mr Alaeddin told the Prince that she had been successful in negotiating the deal but that she would only conclude it if he reconfirmed her commission was \$10m. The Prince Mrs Sharab says confirmed that with Mr Alaeddin. After the conversation with Mr Alaeddin ceased the phone was handed to her and the Prince said to her ***"Daad, go ahead, \$10m for you is ok"***.
19. That led to two agreements (agreements 1 and 2) executed on or about 19th July 2003 concluded by Mrs Sharab and Mr Alaeddin for two things. First there was an agreement between the Prince and LAFICO for the purchase of the Airbus in the sum of \$70m. Second there was an agreement between KADCO and the Libyan Agriculture Investment Company ("LAICO") in the sum of \$70m, \$20m of which was to be invested in project Toushca and \$50m of which was to be paid to the Prince for the balance of the money owed for the Airbus.
20. That second agreement was drafted without reference to the fact that a substantial part of the apparent investment in KADCO was payment for the Airbus.
21. In or about August 2003 the Prince telephoned Mrs Sharab and confirmed that he had received the first payment of \$70m. She asked him to pay her 50% of the commission but he refused telling her he would pay her full commission once he had received the full amount of \$120m.

SUBSEQUENT FAILURES

22. LAFICO failed to pay the second payment of \$50m under the agreement or any further sum. Efforts were made by the Prince, Mr Alaeddin and Mrs Sharab to persuade Libya to pay the balance due. In December 2003 the Prince telephoned Mrs Sharab and informed her he had still not received the \$50m and he asked her to visit Colonel Gaddafi to persuade him to pay the remaining monies which she did travelling on or about 18th December 2003. She delivered to him a hand written letter

dated 13th December 2003 from the Prince concerning the Airbus sale and the investment in project Toushca.

23. On 15th February 2004 there was a meeting with Mr Alaeddin, Mr Shadi the chairman of Afriqiyah Airways at which Mr Shadi notwithstanding his participation in the negotiations sought to maintain that the price of the Airbus was \$70m and the balance would not be paid.

REPOSSESSION OF THE AIRBUS

24. During the first week in March 2004 the Airbus was moved from Libya to Germany for maintenance. The title to the Airbus and the responsibility for its maintenance remained with the Prince and the transfer to Germany was by prior arrangement between the Prince and Libya. After the maintenance work was completed the Prince arranged for the Airbus to fly from Germany to Riyadh instead of returning it to Libya without either the agreement of the Libyans or informing them of his intentions.
25. Thereafter in 2004 there were discussions between Mrs Sharab and Colonel Gaddafi at various meetings in an attempt to resolve the matter. By April 2004 she telephoned the Prince and told him he must either return the aircraft to Libya or repay the first \$70m. He replied he would not return the aircraft until the remaining \$50m was paid. At the Prince's request she flew to Libya again on or about 13th April 2004 and emphasised to the persons involved in the transaction that they should pay the remaining money. However Colonel Gaddafi told her that he thought the Prince had taken the Airbus in bad faith and he no longer wanted it as it had been removed from Libya and had been sitting in an airport in Saudi Arabia without any security. He asked her to tell the Prince to return the first \$70m and cancel the deal. Thereafter in May 2004 the Prince sent a letter to Colonel Gaddafi confirming that he would cancel the agreement on the basis that the \$70m would be treated as compensation. Unsurprisingly that offer was not accepted.
26. The matter remained unresolved for another year until on or about 28th August 2005 when the Prince telephoned Mrs Sharab and asked her to come and meet him at the George V which he owned. Thereafter on or about 30th August 2005 she met the Prince in the lobby where he kept an informal office and he asked her for assistance in resolving the long outstanding problem. She advised him to go to Libya for Revolution Day and apologise to Colonel Gaddafi for taking the Airbus and he should then leave her and Mr Alaeddin to negotiate a settlement which she says the Prince agreed to. A meeting was arranged with Colonel Gaddafi and on 3rd September 2005. She flew to Paris with her daughter and they together with the Prince and Mr Alaeddin then flew to Libya.
27. There was a public meeting which was broadcast on Al-Jazeera television with a subsequent private meeting between the Prince and Colonel Gaddafi at which only Mrs Sharab, her daughter, Mr Alaeddin and the manager of the Colonel's private office were present (Mr Hijazi).
28. She says that the subject of the Airbus was discussed and Mr Hijazi became somewhat heated in the conversation with the Prince but that she effected a reconciliation the result of which was that Colonel Gaddafi announced that the plane would be bought finally and that the Prince said that he would leave Mrs Sharab and

Mr Alaeddin to finalise it arranging their collection 24 hours later. Thereupon he left Libya.

29. Mrs Sharab then had a further private meeting attended only by her and her daughter and Colonel Gaddafi in which he agreed with her how to resolve the dispute with the Airbus.

SETTLEMENT AGREEMENT

30. On 4th September 2005 Mrs Sharab and Mr Alaeddin had a meeting with the Libyan minister of Treasury, the chairman of LAFICO and the chairman of LAICO and Mr Hijazi. The discussions initially proceeded on the footing that the Airbus would not be purchased and the first payment of \$70m would be returned by the Prince with a small discount for use.
31. Ultimately an agreement was concluded that the two agreements would be cancelled and that the Airbus purchase would be completed and the remaining \$50m would be paid. Thus Colonel Gaddafi was not investing in the Toushca project. Thereafter the Prince sent an aircraft to Tripoli to collect Mrs Sharab and Mr Alaeddin and on that day the Prince telephoned Mrs Sharab in London and expressed his gratitude for her efforts and success he confirmed he would pay her the commission of \$10m and he would send the settlement agreement signed by him to her in order for her to take it to Libya and get it signed by the Libyan parties.

SIGNING OF THE AGREEMENT

32. The Prince signed his copy of the settlement agreement in Saudi Arabia on 10th September 2005 and he telephoned Mrs Sharab the next day and asked her to ensure the Libyans signed the settlement agreement as soon as possible explaining he was keen to close the deal. She said she would only do so if she got the \$10m commission as agreed. He confirmed this and stated it would be payable once the outstanding \$50m was paid.
33. After receiving the settlement agreement signed by the Prince Mrs Sharab telephoned him in Saudi Arabia and asked for confirmation that he wished to proceed and would pay the commission. He confirmed this but refused to put it in writing and a few days later she flew to Libya with the settlement agreement and spare parts list in order to obtain the signature of the Libyan parties.
34. There were various things which Mrs Sharab assisted in but ultimately by March 2006 the settlement agreement had still not been fully implemented. She had been holding the Prince's counterpart of the settlement agreement effectively in escrow but the Prince bypassed that and in March 2006 obtained a copy of the settlement agreement directly from Libya and made arrangements to receive payment of the \$50m outstanding. In September 2006 the Prince transferred the ownership of the Airbus to Libya and LAFICO transferred the \$50m to the Prince.
35. Therefore Mrs Sharab contends she has affected the successful introduction albeit over a lengthy period and she is now entitled to \$10m.
36. That is Mrs Sharab's version of events.

THE PRINCE'S DEFENCE

37. The Prince's Amended Defence is a laconic document. It leads no positive case and does not explain what his version of the events is in any significant way. One finds a similar opaqueness when his witness evidence is considered. His case gradually crept out during the course of the trial. For example the Prince's case as finally presented was that if there was any contract it was agreed on the yacht in Cannes. His case is that the agreement was made in Cannes and was that Mrs Sharab agreed to provide services for him but it was on the basis that any commission due to her would be payable at his discretion. This was clarified during the trial by him accepting that he would have to act reasonably in assessing the compensation. He has determined that she is entitled to no commission despite acknowledging that she made substantial contributions towards the initial opening of the doors to Colonel Gaddafi and the later reopening when the agreement got into difficulties.
38. However none of that is for me. Mrs Sharab has permission to bring proceedings in this court only in respect of an agreement which she can establish was made within this jurisdiction i.e. the agreement she pleads was struck in the Ayoush Restaurant. If the agreement was struck elsewhere there is no jurisdiction to hear it in these courts although Mr Pymont QC who appears for the Prince accepted in argument that it was part of my jurisdiction to decide whether there has been *any* such agreement. However I am not allowed to adjudicate on the terms of the agreement despite the fact the Prince repeatedly referred to the term of his discretion and also the fact that he was entitled to determine Mrs Sharab was entitled to no commission because she had *"stabbed him in the back"* when she went over to the Libyans.
39. The Prince (doubtless acting on advice) was determined not to submit to this jurisdiction unless he was forced to and equally was determined to say as little as possible about the overall merits.
40. Thus in responding to the plea of the meeting in Cannes the Prince accepted that the meeting took place but that he did not offer to pay Mrs Sharab as alleged and averred that he told her and she accepted that if she were to achieve a completed sale of one of the aircraft and an investment in project Touthca on terms acceptable to him he would consider making a payment to her but the making and the amount of any such payment were entirely matters for his discretion and would depend on his own assessment of her contribution to achieving such a sale.
41. What is hidden in that plea is the jurisdictional point that the Prince is saying that the contract if any was concluded in France and therefore out with the jurisdiction of this court.
42. He admitted the visit to Libya in April 2003 with the two jets and that Colonel Gaddafi had asked him to send Mrs Sharab and Mr Alaeddin to conduct the negotiations.
43. He admitted there were discussions on the Boeing as alleged in paragraph 19 of the Amended Particulars of Claim but denied there was any agreement as alleged by Mrs Sharab. He does not however say what was discussed.

44. He admitted that Mrs Sharab carried out negotiations for the sale of the Airbus but denied it was done in furtherance of the Agreement as pleaded. Nevertheless he did not put forward any positive alternative case to explain why she would do this. He admitted that agreements 1 and 2 were concluded but did not admit the precise role of Mrs Sharab and Mr Alaeddin.
45. The rest of the Amended Defence in respect of the implementation of the agreement and the subsequent settlement agreement follows the same level of lack of clarity.

CHALLENGES TO JURISDICTION

46. The Prince challenged the granting of permission given to Mrs Sharab by Lindsay J on 24th December 2007 and issued an application contending that the court had no jurisdiction to try the claim because it was not the appropriate forum to try it. That application was supported by a witness statement of Mr Baker the Prince's solicitor dated 10th March 2008. He had no information from the Prince in relation to matters set out in that witness statement; it was entirely from Mr Alaeddin. Neither the Prince nor Mr Alaeddin provided a witness statement. Mr Alaeddin did not give evidence at the trial before me although he apparently provided a witness statement for the Prince's side but it was never relied upon. Mrs Sharab's lawyers do not ask me to draw any adverse inference from Mr Alaeddin's absence. However it is fair to say that his absence makes the decision in this case one that is basically down to a contest between Mrs Sharab and the Prince as to the events which happened as there are no contemporary documents.
47. Mr Baker's evidence is based on the understandings given to his firm by Mr Alaeddin who was quite clearly unable or unwilling to provide any evidence to Mr Baker seriously to counter what Mrs Sharab said happened at the Ayoush Restaurant (see the weak evidence in paragraphs 10-15 of Mr Baker's first witness statement dated 10th March 2008) provided some scant evidence.
48. Mr Baker obtained from the Prince a statement that Mr Alaeddin was never his agent or personal representative and he had never given Mr Alaeddin authority to enter in to contracts on his behalf. Mr Baker submitted in paragraph 28 that the law governing the underlying sale was Libyan law and that the forum should be Libya. Doubtless the Prince was hoping that if that was successful Mrs Sharab's case would be metaphorically kicked into the judicial long grass of Libya.
49. The application came before Mr John Powell QC who delivered a detailed judgment on 31st July 2008. He went through all of the facts that were deposed to by Mrs Sharab in her witness statement and considered those in the light of the limited material put forward on behalf of the Prince.
50. He concluded that Mrs Sharab had demonstrated a good arguable case that Mr Alaeddin had the Prince's actual authority to make the contract and the contract was made and varied as maintained by her.
51. The Prince appealed. On 30th April 2009 the Court of Appeal dismissed his appeal. The Court of Appeal in so dismissing the Prince's appeal agreed that the Deputy Judge was right to find a good arguable case and that the evidence before the court as to what happened in Cannes prior to the meeting did not give rise to an agreement but

the meeting in London between Mrs Sharab and Mr Alaeddin was sufficient to create a binding contract and that Mrs Sharab had established a good arguable case that Mr Alaeddin had authority to act on behalf of the Prince in making the August 2001 agreement and further that it was a good arguable case that the August 2002 telephone conversation between her and the Prince can be relied upon as providing evidence of that authority and if necessary as a ratification of the earlier agreement. A Court of Appeal assessment of the Deputy Judge's judgment was that it was (subject to one point which is not relevant) sound (paragraph 59 of the judgment).

52. The House of Lords refused permission to appeal.
53. None of these observations bind me as trial Judge. I had the significant advantage of seeing the only 2 witnesses give evidence.

EVIDENCE BEFORE ME

54. Mrs Sharab provided 2 witness statements dated 24th September 2007 and 14th May 2012. The Prince provided 2 witness statements dated 1st September 2010 and 27th June 2013. In addition I had a Civil Evidence Act Notice in respect of a statement by Mr Rajab on behalf of Mrs Sharab but that added nothing at all.
55. The case therefore turned entirely on the credibility of Mrs Sharab as opposed to that of the Prince. Before the trial the Prince had applied to give his evidence by video link rather than coming to court. The shortcomings of video link evidence are well known. It was vital in my view for me as trial Judge assessing the credibility of these two witnesses to have the best evidence available for me. That would be the witnesses in the box confronted with the other side's case and such documents as there were so that I could see their reaction live in front of me. The reason why the Prince wanted to give evidence by video link was that he was fearful that Mrs Sharab might serve further proceedings on him.
56. This was because a claim to a general quantum meruit had been struck out by Sir William Blackburne before the trial on 20th December 2012. This prevented Mrs Sharab bringing a restitutionary claim in the proceedings but her claim for quantum meruit survived if the parties were found to have agreed a contract at the restaurant in Mayfair but made no agreement as to the remuneration. That would be on the basis that she would be entitled to reasonable remuneration for her services.
57. Mrs Sharab gave an undertaking not to serve the Prince whilst he was within this jurisdiction for the purpose of this trial. In the light of that undertaking he himself undertook to attend trial and I made no order on his application for video link evidence. He did attend the trial.
58. Both parties were cross examined extensively and vigorously for 2 days each.
59. On the question of the quantum meruit claim if it arose, I had the benefit of 2 expert reports one by Mr Said El-Turk dated 12th April 2013 on behalf of Mrs Sharab and one by Mr Greg Cope dated 11th April 2013 on behalf of the Prince.

WITNESS STATEMENTS

60. I have referred to the witness statements of the parties above.

TIMELINE OF EVENTS

61. I attach the Agreed Chronology in the case.

ANALYSIS OF EVIDENCE AND FINDINGS/CONCLUSIONS

62. Three aircraft feature in the case. First there was an agreement dated 30th October 1996 between Gulf Air Company (1) and Kingdom 11 USA Ltd whereby the latter agreed to purchase a Boeing 767-3P6ERMSN27255. The price paid was \$62m. This is the Prince's first Boeing.
63. Second is an agreement dated 25th March 2000 whereby the Prince purchased the Airbus MSN-151 for \$95m. The purchase was from the Sultan of Brunei. Of that purchase price \$15m was paid in cash and the balance (\$80m) was to be satisfied in the form of an issue of a 13.5% interest in the Trade Centre Company Ltd not later than the date of completion of the project. It provided that if the arrangement to transfer the shares did not materialise by the date of the full completion of the project then the Prince would pay the \$80m instead to the Brunei Investment Agency.
64. This is the Airbus which is the subject matter of the present claim. The evidence shows that it was an extremely luxuriously fitted out. Jets like this regularly include (I was told) a 9 hole golf course somewhere (as both experts confirmed T6/75-76 and T6/165; although they might have been indulging in a bit of leg pulling at my expense). The Prince gave evidence to the effect that he understood that the cost of the aircraft to Prince Jefri was \$250m. There was not real dispute as to that. The purchase in relative terms was a bargain. The Sultan of Brunei was selling it as part of a fire sale realising assets which his brother had acquired using monies which he had misappropriated.
65. The third agreement is one dated 14th June 2002. By this agreement the Prince agreed to purchase a Boeing 747-400 for \$47.6m for delivery on or about 16th September 2002 ("the new Boeing").
66. It was the acquisition of this third jet which was one of the reasons why the Prince wanted to sell either the early Boeing or the Airbus. There was some evidence to suggest that the Prince might have acquired the Airbus because it was good value in the hope that he might indeed sell it to Colonel Gaddafi. I say that because the lifting of the sanctions against Libya in 1999 led to a significant belief that Libya would then be opened up to all manner of business. In this context the hope would be to persuade Colonel Gaddafi to buy a jet that was commensurate with his status as a potentate in a Middle Eastern country.
67. After he made the decision to dispose of one of his jets the Prince wrote a number of letters to Colonel Gaddafi inviting him to consider buying a jet from him. Those letters did not receive any reply from Colonel Gaddafi and the Prince did not know why there was no reply.

68. By August 2001 the Prince decided to bring in Mrs Sharab to help him with a sale of a jet to Colonel Gaddafi.
69. There were several reasons for this. First there was the undoubted reputation of Mrs Sharab in the Middle East as being a successful business woman who had very strong links with Colonel Gaddafi. I was referred to a number of articles and photographs which show that to be the case. She had a special ability to open doors to get to Colonel Gaddafi. This is sometimes important because lower officials do not necessarily allow access to Colonel Gaddafi. This was not confined to Libya; it is a phenomenon found extensively in the Middle East. The result is that Colonel Gaddafi might not actually be aware of things that were happening. It is fair to say that Colonel Gaddafi equally might well have exploited that when it suited him and pretended that he did not know anything about events of which he was fully aware. Dealing with the likes of Colonel Gaddafi was a Byzantine and tortuous affair. That is not disputed. The ability of Mrs Sharab to get to Colonel Gaddafi was clearly a very valued asset and was successful quite clearly.
70. The Prince had used her connections in relation to several other transactions following the lifting of the sanctions in 1999. She set them out in her witness statement and none of this was disputed save in one respect. In paragraph 41 in relation to the obtaining of a plot of land for a hotel development for the Prince Mrs Sharab says that Mr Alaeddin his agent negotiated expressly with her that she would receive \$500k commission. She relied upon this as evidence to show that previously the Prince had agreed through his agent a fixed commission with her. The Prince's evidence on this was somewhat equivocal. In paragraph 6 of his witness statement he referred to the number of projects that Mrs Sharab worked with Mr Alaeddin for him in Libya. One was for a project to develop a Movenpick hotel in Tripoli and the acquisition of the site. This is where the \$500k commission was paid and the Prince said this in his witness statement ***"I did not discuss the Claimant's remuneration for her role with her directly but it was clear to the Claimant she would be rewarded in the event that the project was successfully established. I believe (emphasis added) that the Claimant was paid the sum of \$500k in recognition of her efforts...."***
71. He was extensively cross examined on this paragraph (T4/71-77 and 97-113).
72. His primary case about obtaining the commission/remuneration was that whatever the agreement it was always to be at his discretion. During the cross examination on paragraph 6 it was pointed out to the Prince that there was no discussion referred to about him paying the commission in respect of the hotel project at his discretion. His answer (T4/100) was that it was always by his discretion. He accepted that was not in paragraph 6 of his witness statement but said it was there by implication. He accepted he had no discussion with her at all and it was all left by implication. When he gave me a detailed explanation of this implication of his discretion Mr Freedman pointed out that none of that was in his witness statement and his only explanation for that was the traditional one of witnesses namely ***"blame the lawyers"***.
73. Mrs Sharab's evidence on this point was clear. I found the Prince's evidence confusing and the reality was that whilst he would not admit this it was a small hotel project for him and in the context of the business transactions he does \$500k is a modest amount. It also happened 14 years ago. Given all of that I can understand his recollection as being hazy. Mrs Sharab is not quite in the same position because these

transactions are far more personal to her. Having heard both of them I conclude that Mrs Sharab's evidence is to be preferred namely that she was to obtain a commission of \$500k when the agreement was entered into and that it was negotiated with Mr Alaeddin. I find that there was no evidence to support the Prince's suggestion that she was aware by implication that it would be subject to his discretion. He did not even say either in his evidence or on cross examination that on this case he had exercised his discretion and decided she should have \$500k. His only recollection of the \$500k was that he "**believed**" that she was paid that sum. None of this in my view is sustainable and for that reason I reject the Prince's evidence about the \$500k. This clearly establishes a previous transaction where Mrs Sharab was paid a fixed fee agreed in advance.

SALE OF AIRBUS/BOEING - MEETINGS

74. In August 2001 it is common agreement that the Prince telephoned Mrs Sharab to tell her he was in Cannes and wished to sell one of his aircraft and thus asked her to come to Cannes to meet with him. Mrs Sharab gives detailed evidence about what went on at that meeting. The purpose of the meeting was to engage her to intervene on behalf of the Prince with Colonel Gaddafi to try and sell one of his jets to him he having purchased one and wished to be able to sell one of his current jets when the new one was ready. He told her that the specification required it to be sold to a presidential person and suggested that Colonel Gaddafi was the obvious choice because he did not have an aircraft and had heard that the Prime Minister of Lebanon for example had sent a plane for viewing. Mrs Sharab said that she had a discussion during this conversation about commission in that the Prince told her he would pay commission but there was no discussion about how much commission she would be paid. She said that he instructed her not to start to negotiate the sale of the aircraft until the new plane was ready and that was likely to be a considerable period of time. She said that he would arrange to send Mr Alaeddin to agree a contract with her.
75. The Prince's evidence was set out in paragraph 15 of his witness statement. He denied having any discussion about commission and observed that on the previous dealings that his practice was not to agree an introducer's commission at the outset but to assess the appropriate level of compensation at the end of the transaction. I have rejected this already.
76. He accepted that he arranged a meeting between her and Mr Alaeddin but that was limited to devising a strategy as how to affect a sale to Colonel Gaddafi. They were both in agreement that there would be some delay implementing the attempts to sell a plane to Colonel Gaddafi. We now know from the late disclosure that the 747 was not acquired until June 2002 which makes the arrangements and lack of events between then and August 2002 perfectly understandable.
77. Once again Mrs Sharab in my view gave her evidence confidently and consistently with her witness statement.
78. By way of contrast the Prince started badly by having to correct the opening part of paragraph 12 when he said that he had "**recently entered into an agreement to acquire a new large aircraft.....**" as I have shown above he was out by one year. He therefore had to correct the evidence to say that he was beginning the negotiations

- then. In fact this provides further reinforcement for Mrs Sharab's understanding of the delay and the cross examination of her on this point (T2/76-78) was misconceived.
79. His evidence in his witness statement (paragraph 15) was to the effect that he had told her that any commission would be at his discretion and assessed by him.
80. This is a very important point and it was completely demolished by Mr Freedman in cross examination. He had no recollection outside his witness statement. On a number of occasions he asked to see what he had said in his witness statement. I can understand that when one is dealing with a complicated case where there are large amounts of factual details set out in a witness statement. However this case was limited to a small number of issues and it was surprising that the Prince was unable to give any evidence spontaneously without simply repeating what was said in his witness statement. He accepted he had no recollection beyond the witness statement (T4/117/15).
81. He retreated from his witness statement where he referred to an express discussion as to how he would reward her. When he was cross examined it became by implication again. He then thought there might have been a discussion between them but he was not sure when. The discussion was not detailed but would be casually over lunch when she asked "*how do you work, how do you operate*" so that she got an impression as to how he operated. Finally he said he did not remember anything about it (T4/123/8). It should be noted for those who read the transcripts that by the word "*yes*" he acknowledged to me that he had no memory of any of the conversation beyond being reminded of it in writing (T4/127). As I said at the time I cannot criticise anybody who has difficulty remembering events which took place 12 years ago and his only aide-memoir is a witness statement which itself was 9 years after the event. I do not accept that his memory is accurate and that inaccuracy was demonstrated by his inability to say precisely what was discussed. Mrs Sharab by contrast was very clear and as I have already observed she has a greater incentive to remember this event than the busy Prince with large numbers of business transactions and this was but one meeting which was never recorded or put down in writing and is not capable of being cross checked by any contemporaneous documents.
82. There is the point as to why he would not discuss the commission with her directly and would send Mr Alaeddin. The answer is to my mind clear; the Prince does not condescend to become involved in the detail; that is why he retains people like Mr Alaeddin. On his own evidence he did arrange for Mr Alaeddin to meet Mrs Sharab later to discuss the tactics of attracting Colonel Gaddafi and it is logical and natural in my view that he would also discuss the extent of the commission.
83. That is in line with my belief and finding as to what happened in respect of the Movenpick hotel. It is a natural follow up from the discussions that took place on the yacht which were clearly generalised. If he wanted to get into the detail of what would be the tactics to deal with Colonel Gaddafi he had the perfect opportunity to on the yacht in Cannes but it was a classic situation in my view of "*one does not hire a dog and bark oneself*".
84. I also accept Mr Freedman QC's observation in cross examination that the Prince made up the situation that he was waiting for Mrs Sharab to contact him as to when Colonel Gaddafi would be available rather than as she says that it was left for him to

contact her when he was ready in the light of his proposed acquisition of a new jet. That version he put forward in his evidence was said for the first time in the witness box and I reject it. Mr Freedman QC made it clear that he was suggesting the Prince was lying. The Prince denied that ***“I said to your Lordship that I don’t lie. That is the truth.I don’t lie at all under oath, and even not under oath your Lordship.....”*** (T4/149/18). This was one of a number of challenges the Prince threw down by stating that like George Washington he like never told an untruth. In my view the Prince’s evidence on this point was all confusion. He had no recollection as to what was said and his evidence was hopeless. This is hardly surprising; the events were a long time ago and as he acknowledged when he is on his yacht in Cannes he would have stacks of meetings for 4 or 5 hours a day. When I asked him whether he could remember any of those he could not remember any of the detail. Finally his suggestion that he had no follow up discussion with Mr Alaeddin after his meeting with Mrs Sharab is incredible. Even on his own version he would have discussed it because he would want to know what discussions took place about the strategy. He met Mr Alaeddin on a weekly basis. He advised the Prince for over 22 years and was clearly a trusted advisor and was given in my view a wide ranging authority.

MEETING IN LONDON

85. Mrs Sharab’s evidence is that there was a meeting with her and Mr Alaeddin at the Ayoush Restaurant James Street London. Whilst the Prince was not aware where the meeting would take place on his own evidence he had arranged to set up a meeting to discuss aspects of these proposed dealings between Mr Alaeddin and Mrs Sharab. Mrs Sharab says that Mr Alaeddin represented the Prince and that she would be entitled to a \$2m commission if she could procure the sale of one of the two jets to Colonel Gaddafi and a further \$1m commission if she could secure an investment in project Toushca. She said that no prices were discussed at that stage and that she considered it a firm offer which she accepted. Once again her evidence was compelling. Once again in my view it is perfectly logical that she and Mr Alaeddin are meeting to discuss these matters. She was thereafter merely to await the transaction being activated by the Prince.
86. The Prince has of course no direct testimony to give in relation to the meeting and all he says is that Mr Alaeddin was not authorised to agree a level of commission. I reject that evidence. The earlier transaction concerning the Movenpick hotel shows that he did have such an authority and I find it inconceivable that he would not have agreed those figures and that he would not have subsequently reported them back to the Prince if he had no authorisation. He had weekly meetings with the Prince. If he did not like what Mr Alaeddin had agreed he could simply repudiate it because at that stage of course nothing was being done about earning the commission. Further in so acting I find that Mr Alaeddin was merely doing things as he had done in the previous arrangements that Mrs Sharab was involved in on behalf of the Prince.
87. On that basis Mr Alaeddin had the actual authority on behalf of the Prince. There was a short debate about whether or not he would have had apparent authority. He would certainly in my view have been held out by the Prince as being authorised; that is on the finding that I made that the finalisation of the terms of the commission was to be agreed between him and Mrs Sharab. Mr Pymont QC on behalf of the Prince objected that was not pleaded. This does not really matter because the evidence to be seen is

what the Prince is saying as regards what Mr Alaeddin is to do. A plea of apparent authority is not necessary given the way in which Mrs Sharab puts her case which I find is the true position.

AUGUST 2002

88. It is accepted that by August 2002 the Prince had decided to proceed with the sale of one of his aircraft and he contacted Mrs Sharab for her to proceed to implement that which was agreed the previous year. She says in her witness statement that she was unable to arrange a meeting with Colonel Gaddafi for some months because of his existing schedule but on 21st January 2003 she went to Libya spoke to Colonel Gaddafi who said that he would need to see both aircraft. This was a difficult task especially as approximately 5 or 6 aircraft were being offered to him at that time. She reported back to the Prince and he arranged to go to Libya on or about 10th April 2003 with both aircraft. He met Mrs Sharab there who had been in Libya since about 5th April 2003 awaiting his arrival. The Prince met Colonel Gaddafi and there was a discussion about the aircraft ultimately Colonel Gaddafi saying he was interested in purchasing the Airbus rather than the Boeing for safety reasons as it had 4 engines and the Boeing only had 2.
89. A further significant point was that having selected the Airbus Colonel Gaddafi was insistent that it remained on Libyan territory until the matter was concluded. This was said to be for safety reasons because he was concerned that people might interfere with the aircraft before it was delivered. This was one of many concerns Colonel Gaddafi had for example Mrs Sharab said he did not touch papers with original ink on in case they had poison in them.

DISCUSSION ON THE BOEING

90. Mrs Sharab's case is that all of the Prince's personal possessions were on the Airbus and they had to be transferred to the Boeing as he was leaving the Airbus behind. That took time and she and the Prince sat in the Boeing for a couple of hours while that operation was carried out. During that period there were more discussions about the deal. She says that the Prince told her that the Airbus cost him \$90m. She contends that there was a discussion between the Prince and herself whereby the commission was changed so that she would receive a margin of sale price. She says the Prince told her that if she could sell the aircraft for between \$100m and \$110m he would pay me \$2m commission but if she was able to negotiate a price above \$110m she could keep everything above that \$110m. She says he also confirmed the \$1m for the Tushca project.
91. There is an immediate difficulty about that. If she achieved a price of \$109m she would be paid \$2m commission. If she achieved £111m her commission would drop down to \$1m. There is therefore a gap between \$110m and \$112m in her calculations. She answered that in cross examination by saying the commission was to be whichever was the higher. That was not of course in her witness statement and on the facts had not arisen. I reject Mr Pymont QC's suggestion that that is supportive of there being no agreement as she contends. In my view it is a point which can be easily missed when you are looking at a transaction in the round in relatively relaxed surroundings.

92. The Prince denies discussing any of the commission that would be payable as alleged by Mrs Sharab. His evidence was very brief on that (see paragraph 25 of his witness statement). He was asked to provide details in a request for further information. But answer 7 [A/5/52] he said it was a matter of evidence. Once again the consideration of the meeting by the Prince in his evidence was extremely sparse.
93. Unsurprisingly the Prince was extensively cross examined on this part as this is the important uplift agreement from Mrs Sharab's point of view (T5/55-81).
94. The Prince's evidence in paragraph 25 of his witness statement was brief. Most of it is based on assumption that he would never agree to the matters put forward by Mrs Sharab.
95. He did not even give any details of the discussion that took place about the price that would be sought for the Airbus. In other words his evidence said nothing about what was discussed at that meeting which Mrs Sharab said took place during 2 hours when they were together on the Boeing. Her evidence was clearly set out in her witness statement and (as with all her evidence having seen her) she remained firm and consistent as to what she said was her case. The Prince's all had to be drawn out in cross examination.
96. The Prince was extensively cross examined on this paragraph and paragraph 24 (T5/55-81).
97. In his Amended Defence (paragraph 17) he stated that nothing was discussed on this occasion that altered the basis upon which the parties agreed to proceed.
98. Predictably a request for clarification of that paragraph was sought which was rebuffed on the basis that it was a request for evidence. The evidence when it came did not address what was discussed either as regards content. The Prince was unable to explain why his witness statement was so brief. For example in paragraph 24 of his witness statement he said that there was a discussion about the sale price that he wished to achieve but he does not identify what was the price he was wishing to achieve or any part of that discussion which he accepted in cross examination lasted possibly 1 hour. He was asked about the fact that Mrs Sharab said she was told the purchase price was \$90m (not the correct figure of \$95m). He said that was possible but he didn't recall (T5/60/21). He was unable to say what was the maximum price he was seeking, ultimately "*thinking*" it was \$120m. He denied he had agreed commission with her at that meeting as she alleged. He said ultimately the discussion was \$120m but was unable to explain why that was not in his witness statement.
99. Further I find his observations about her supposed body language and mental status incredible. In my view the Prince just made that up as he was giving evidence. It is significant that it did not feature in his evidence by witness statement nor in his pleading. His evidence wavered from there being no discussion to a discussion that Mrs Sharab tried to start but he stopped it. It was said to be short because of his requirement of \$120m which was not referred to in his witness statements and was contrary to earlier evidence that he couldn't recall exactly what was the price he wanted for the Airbus.

100. As with many parts of the Prince's evidence it was confusing and unreliable. Having heard Mrs Sharab the contrast between her evidence and the Prince could not be more stark. I simply do not accept what little he said about the discussion that took place on the Boeing. I accept Mrs Sharab's evidence entirely. It is clear that the Prince wanted to incentivise her at that vital stage of just having persuaded Colonel Gaddafi to consider the Airbus by agreeing the terms as she said. I accept her evidence that the Prince did not really believe that he would get more than \$110m for the Airbus (a profit of \$15m). This is especially so because of the competition and the difficulties of dealing with Colonel Gaddafi which Mrs Sharab had plainly ameliorated. The Prince accepted on a number of occasions that she had provided help yet of course his claim in this case is that she is not entitled to anything at all. I will deal with his reasons for denying her entitlement as he sees it further in this judgment.
101. It seems to me that obtaining \$110m for an aircraft that had only been purchased a few years earlier for \$95m is a good profit. I do not accept Mrs Sharab's arguments about the doubts about the true cash price paid to the Sultan of Brunei by the Prince. I do not accept that the Prince was evasive on that but I do accept that the Prince was evasive on a number of other significant aspects (see below) which further undermines any credibility I can give to his evidence when contrasted with the firm evidence of Mrs Sharab.
102. At the end of the day I simply found his evidence confusing and too unreliable and Mrs Sharab's was more credible on any dispute of fact between them .
103. The Prince left Libya on the Boeing on the same day leaving Mrs Sharab and Mr Alaeddin to conclude the negotiations. These were very difficult negotiations as Mrs Sharab sets out in her witness statement (which was unchallenged to a degree by the Prince). It is clear that whilst Mr Alaeddin might have been negotiating the technical matters Mrs Sharab's presence was invaluable because she had the special relationship with Colonel Gaddafi. I reject the suggestion by the Prince made in his evidence on several occasions that he had any kind of direct relationship with Colonel Gaddafi. It was Mrs Sharab who opened the door initially and as shall be seen later in this judgment she negotiated extensively the price and intervened again after the sale agreement ran into the sand. Ultimately by about 18th June 2003 after a number of visits to Libya Mrs Sharab negotiated a price of \$120m and in addition a commitment of \$20m to project Touthca. The actual details of the agreement took another month or so to render into a binding contractual document. During this period of negotiation the Prince wrote a letter to Colonel Gaddafi dated 18th May 2003. This letter deserves very careful consideration because it provides a very strong piece of evidence undermining the credibility of the Prince.

LETTER DATED 18/5/2003

104. Mrs Sharab had made a fleeting reference to this letter in paragraph 58 of her witness statement. She was not cross examined on the contents of the letter by Mr Pymont QC. The Prince did not refer to the letter in his witness statement at all. The letter contains a number of untruths. The second bullet point says ***“The aircraft price of \$135m represents what the aircraft cost us. This includes the various extras and modifications that were made to the aircraft since we bought it. This amount is borrowed from a bank in Switzerland and the bank is waiting for payment to it this***

being in accordance with the agreement concluded with your Excellency....” The letter is signed by the Prince.

105. It was an attempt to persuade Colonel Gaddafi to pay \$135m on the basis that the Prince would only receive what he had laid out on the aircraft and the extras.
106. We have seen that the purchase price was \$95m (even on the basis of rejection of the Claimant’s criticisms of the \$80m part of that price). The aircraft had not had any money spent on it by the Prince during the period of his acquisition.
107. Once again unsurprisingly he was cross examined on this letter (T5/29-38).
108. When the extract was put to him his first response was:-

“Q. We can see from there that there were no substantial sums spent on modifications to the aircraft whilst that was owned by you; correct? So if we then go back to the letter in bundle D1 that we were looking at in D1 at tab 45, it follows from that that when you said that "The aircraft price of \$135 million represented what the aircraft cost us, including extras and modifications that were made to the aircraft since we bought it", that was untrue, wasn't it?

A. We bought it at 95, your Lordship and the objective was to maximise our sale price. So when you said 135, you had to give some justifications. So, yes. And actually, not only that, we have done zero modifications on it, not only minor modifications, we have done no modifications whatsoever.

Q. So it was not true when you said it cost \$135 million, including modifications?

A. When I sell the plane, I have the right to sell it at any price I want.

Q. What you don't have the right to do is to lie about the original cost of the aeroplane --

A. I didn't lie.

Q. -- to the prospective purchaser. You don't have that right, do you?

A. It is my business to put any price I want. It is my plane, I have the right to sell it for any price I want.

Q. You are a man who jealously guards his reputation, so much so it is right, isn't it, that you have issued proceedings about your reputation against Forbes in this country?

A. *Sure, sure.*

Q. *That is because you jealously guard your reputation?*

A. *Yes.*

Q. *Is it the case that you regard it as something that is available to you, if you wish to do it, to lie about the original cost of an aircraft in order to get a better price from the buyer?*

A. *We didn't lie, we just put justifications for the increase in price.*

Q. *What is the justification of saying that it cost \$135 million, if in fact it cost \$95 million?*

A. *I could have bought it for \$10, I have the right to sell it for whatever price I need to sell it for.*

Q. *What is the justification -- I will ask the question again -- of saying that it cost \$135 million, if in fact it cost \$95 million?*

A. *I mean, what I buy it for is my discretion. The important thing is not this. The value of this plane was not 135, or 159, this plane costs Prince Jefri who was corrupt at that time, \$250 million plus so at \$135 million, that is a still a bargain for the Libyans.*

Q. *You see, it might be said that it is corrupt to say to a buyer that you have paid \$135 million for an aeroplane when you know that you only paid \$95 million. How do you react to that suggestion that that is corrupt?*

A. *I react by saying the value of this plane is \$250 million, that is what the -- that is what Brunei began with, by saying that is the value of the plane, and we were able to bargain them down to \$95 million, because they were very eager to invest in Saudi Arabia and to invest in the Kingdom Centre that we have over there, which is a high-rise tower that was completed a few years ago, and the ownership of the Brunei became confirmed just a few months ago.*

Q. *You are avoiding the question deliberately, aren't you?*

A. *I'm not. Please, you ask and I will reply openly.*

Q. The question is: how do you justify saying that an aircraft cost you \$135 million, when you know it cost you \$95 million?

A. Okay, you have to compare not 95 to 135, but 135 to 250, which is the real value of the plane.

Q. That is not what your letter says, the letter doesn't talk about the real value, the letter is very specific, it says: "The aircraft's price of \$135 million represents what the aircraft cost us."

A. Because the counterparty would not really care much about how much I paid for it, they care much about what is the real value of this whole thing, how much it cost.

Q. If that is the case, why did you bother saying how much the aircraft had cost you?

A. That is a tactic used with the Libyans.

Q. Do you mean it is a lie used with the Libyans?

A. It is not a lie. It is a tactic. It is not a lie. You can call it a lie; I call it a tactic.

MR JUSTICE PETER SMITH: Sorry, this aircraft was never offered for less than 135 million. You then say "The aircraft's price of \$135 million, represents what the aircraft cost us". But it didn't, it cost you 95.

A. Correct.

MR JUSTICE PETER SMITH: So when you say it cost 135, that is untrue.

A. If you tell him 95, he is going to say "Why am I paying 95?"

MR JUSTICE PETER SMITH: Of course.

A. He is going to say "I pay 95 only", because they wanted to pay the same price that I bought it for, while the value is \$250 million, your Lordship.

MR JUSTICE PETER SMITH: You are quite right, but the value is something that you didn't state. You didn't tell him "You are going to get a bargain, if you pay me 135, because the aircraft is worth 250 million", what you actually do is you

tell him a lie, you tell him the aircraft has cost you 135 when it didn't.

A. It Libyans would not have understand what this value mean. They only understand how much you paid for it. They are not sophisticated like UK-based people.

MR JUSTICE PETER SMITH: If I sold this pen to you and I said, although it looks an ordinary pen, it is actually filled with platinum inside and is worth a million dollars, but I will give it to you as a special price of 750,000', and you pay the 750,000 on the basis of my statement that it is filled with platinum. If you then open it and you find it is full of ink and only worth 50 cents, you would be very upset, wouldn't you?

A. Not if I have done my homework and my due diligence. If I have done my due diligence, I would not be upset.

MR JUSTICE PETER SMITH: Sometimes, when you buy something, you rely upon what people tell you they're selling. In an area where people are honest with each other, you take a man at his word.

A. But, your Lordship, the value of this plane was 250 million, and Prince Jefri paid for that \$250 million, and I know exactly the design of it.

MR JUSTICE PETER SMITH: Prince Jefri could probably afford to take that hit, because he wasn't spending his own money. We know all of that. But I come back to this fundamental question: if I tell you something, and you rely on what I say as being the truth of the situation and it turns out that it is not truthful, you would be very upset about it, would you not?

A. But not if I have done my due diligence. You can put any value you want on it. If I have done my homework and my due diligence and I take responsibility for that -- and they have done their homework also, the Libyans, and they said "That's good. That's a price we accept", at 120, eventually, obviously, not 135.

MR JUSTICE PETER SMITH: I think, Your Highness, when you speak to your lawyers after this case, you might be disappointed and you might want to consider the way that you enter into contracts, if that is the way you go, because you cannot, as a seller, say things which are untrue to induce a contract and expect the contract to survive.

A. This is not a normal -- you are dealing with the Libyans, who are really -- you know, it was -- it was not very straightforward and they were deliberately not honouring their commitments. I understand what you are saying, your Lordship. I understand this very well. But to the Libyans, when they come and they renege, and they come and say "We are going to go down from 120 to 70", and when they say "We will cancel everything", you know, they just reneged. And Saleh El Ghouh and Fouad Alaeddin were authorised just to go and to do whatever they can to finalise this deal and, eventually, we got the 50, and they got the plane.

MR JUSTICE PETER SMITH: Just because they behave badly, it doesn't justify you behaving badly, does it? You have your reputation that you want to maintain and you don't go their levels, you don't stoop to them. What you should do is you play honest. What you say to him is "Yes, we paid 95, but the plane was worth 250. Therefore, it is not unreasonable, whatever price I paid, to charge you 135. You are still getting a bargain, because that is \$115 million below what it is worth", and then all the cards are on the table and you are playing honest broker. But what you tell him, untruthfully, is that the plane cost you 135, when it actually cost you 40 million less than that and it is untrue.

A. But it is none of his business, your Lordship, to know how much I paid for it.

MR JUSTICE PETER SMITH: Then why did you tell him?

A. Because they wanted the justification for the value of the plane and, if you tell them the value, they don't understand the value, because they say it has been depreciated, it has been used by Prince Jefri and used by the Sultan of Brunei, and they would say "No, 251 back to -- from the 251 to whatever you want to pay for it".

MR FREEDMAN: You have heard the line of questions from his Lordship and you've heard my questions.

A. I do.

Did you do anything wrong when you wrote "The aircraft's price of \$135 represents what the aircraft cost us"?

A. In normal circumstances, this would not happen, this does not happen.

Q. Did you do anything wrong? Do you recognise that you didn't tell the truth?

A. In normal circumstances, this shouldn't happen, for sure.

Q. Do you recognise that you didn't tell the truth?

A. You have to see the -- what led to that.

Q. Do you recognise that you didn't tell the truth?

A. We recognised that we were dealing with a rogue state and we had to act in kind.

Q. Did you recognise that you weren't telling the truth?

A. We were not understanding -- we were just strengthening our bargaining position with them right now at that time.

Q. Does the truth then depend on context always?

A. No, we are always truthful, but this is a very unique situation and unique case whereby the Libyans were involved and they are not straight. So Saleh El Ghoul and Fouad Alaeddin were authorised to do whatever they could to finalise it.

Q. And it wasn't truthful to say that extras and modifications had been made to the aircraft since you bought it, because, as you said, there were zero modifications?

A. I told you, not my modifications. We have done zero modifications.

Q. Zero modifications.

A. I'm confirming that to you: not minor; zero modifications were done. The main reason for buying the plane was it needed no modifications whatsoever, so I'm confirming that.

Q. The second sentence was a lie as well?

A. You call it a lie; I call it a tactic used by Saleh El Ghoul and Fouad Alaeddin.

109. There is no doubt that the Prince knew he had paid \$95m only for the Airbus and he knew that zero modifications had been carried out on the plane. He knew therefore that the letter was saying things that were not true. He justified this as being the way

in which you have to deal with the Libyans in effect because they are slippery and indulge in matters like that. I am not here (nor would it be appropriate) for me to comment on the commercial morality or business ethics of the way in which apparently Middle Eastern potentates do business between them. That is not the point. The point is that this letter demonstrates that the Prince was willing to participate in sending documents which he knew contained untruthful material.

110. This will be demonstrated in other documents to which I shall refer to in the judgment. It is a further factor that I bear in mind in assessing whether or not I can rely upon the Prince's evidence. It is in my view a further piece of evidence (i.e. the willingness) to participate in untruthful statements and documents (despite his challenge to the contrary set out in T5/148/18) ***"I don't lie at all under oath, and even not under oath your Lordship..."*** This was a voluntary additional nailing of his colours to ***"the trusty sword of truth"*** at T4/149 as being truthful in everything he said. Mr Freedman QC took up the challenge of the gauntlet that the Prince had thrown down and comprehensively demonstrated that the Prince's assertion was not correct in everything he said or wrote. It will be seen from the next exchange that I gave him the possibility of accepting that as the events were 10 years ago he had a fuzzy memory about it. I remind myself what I said about the assessment of evidence in ***EPI Environmental Technologies Ltd Inc v Symphony Plastic Technologies Plc [2004] EWHC 2945 (Ch)*** at paragraph 74.
111. It was put strongly to me on behalf of Mrs Sharab that this and other examples (see below) showed that the Prince lied and that should lead inexorably to a conclusion that he is telling untruths now in the witness box.
112. I do not think it is necessary for me to go that far. Having seen the Prince in the witness box and the evidence he gave I found his evidence completely unsatisfactory. His memory had clearly gone as regards the detail of any of these transactions. His attempts to bolster that defect in the witness box were frankly pathetic and he demonstrated great amounts of confusion.
113. Equally his justification of this and other letters namely dealing with the tricky Libyans shows that he is prepared to be involved in things that are said that are untruthful when it is necessary. When I put those factors together the only inevitable conclusion is that I am unable to accept any evidence on the part of the Prince unless it is independently corroborated. None of his evidence is corroborated in respect of the matters that are the disputed areas in this litigation. It follows from that that I will unhesitatingly accept everything that Mrs Sharab says about the relationship between her and the Prince in relation to this transaction in preference to that of the Prince.
114. To demonstrate the difficulties I had with the Prince's evidence I am taking the unusual step of appending the transcript parts identified by the Claimant in respect of his evidence to this judgment.
115. I should also observe that these untruthful statements were only uncovered after contested disclosure applications in respect of the purchase of the Airbus and the purchase of the Boeing 747. Originally disclosure was resisted on the grounds of relevance.

116. The Prince himself accepted that Mrs Sharab was likely to have a better understanding than him because she has somewhat fewer meetings and that he was therefore not in a position to challenge what she said (T4/96/18). He also conceded that his recollection was not good at all and he could not answer questions without looking at his witness statement to see what was said there (T4/135/2/3).

FINALISATION OF THE SALE AGREEMENT

117. The evidence of Mrs Sharab is that on 15th July 2003 she and Mr Alaeddin called the Prince from the gardens of the Corinthia Bab Hotel in Tripoli where they were staying using a satellite phone. She said that she told Mr Alaeddin that she would only proceed with affecting the deal if her total commission was confirmed at \$10m as previously agreed with the Prince because she had succeeded in agreeing a sale price with the Libyans of \$10m over \$110m. Mr Alaeddin spoke with the Prince first and informed him that she had negotiated a sale for that price and \$20m for the investment in project Touthca and he repeated what she said to him. When he finished talking he passed the phone to me and the Prince said **“Daad, go ahead \$10m for you is ok”**. Mr Alaeddin confirmed **“ok \$10m for Daad”**.
118. The Prince started badly again in his evidence. In paragraph 28 he said he could not recall precisely how he learnt that Mrs Sharab and Mr Alaeddin had reached an agreement in principle with Colonel Gaddafi but accepted that there **“would have been”** a telephone conversation but he could not recall the specific telephone conversation. He said that he categorically denied that he ever offered to pay nor confirmed he would pay the level of commission alleged and gives various reasons in paragraph 29. None of those matters is relevant or credible in my view. In particular the suggestion that at all times he could have negotiated with Colonel Gaddafi direct is unreal. I simply do not accept that. Mrs Sharab was the door opener and without her I do not believe for one minute the Prince would have got anywhere near being in a position to negotiate the sale of the Airbus to Colonel Gaddafi and he knew that full well.
119. In cross examination (T5/91) he was suddenly able to remember details of the conversation via the satellite phone. He later remembered that Mr Alaeddin brought up the commission in the discussion (T5/91) (a new recollection not revealed before). Once again I unhesitatingly prefer the evidence of Mrs Sharab to that of the Prince and reject this late “recall”.
120. There were two agreements executed on 19th July 2003 which had been negotiated by Mrs Sharab and Mr Alaeddin. The first one (“Agreement 1”) was made between the Prince (1) and LAFICO (2) for the purchase of the Airbus in the sum of \$70m and the second agreement (“Agreement 2”) made between the Prince’s company KADCO (1) and the Libyan Agricultural Investment Company (“LAICO”) in which the sum of \$70.7m would be paid in respect of the aircraft of which \$20.7m was for the project and \$50m was the balance of the monies owed on the Airbus.
121. \$70m was paid in August 2003. Mrs Sharab asked for 50% of her commission when the Prince received the \$70m however he refused and said that the commission would only be paid when the balance of the purchase monies was received.

122. The Prince in his witness statement (paragraph 31) had no recollection of this request. However he was “*confident*” that Mrs Sharab’s allegations were untrue because he would never be involved in any details such as a bank account.
123. In cross examination (T5/93) the Prince recalled that there had been a discussion about the commission although he did not recall her asking for 50%. He said for the first time that he told her when she raised the issue of commission that he would exercise his discretion of what to give her. That was not in his original witness statement and it was in my view a mantra like repetition of discretion which the Prince felt he had to say on every opportunity whereas I find there was no such discussion on any occasion. His memory again is unreliable at the very least and he might have convinced himself of the truthfulness of his own evidence when it is plainly unreliable and incorrect or he might be lying. Either way I cannot accept his evidence. Once again I prefer Mrs Sharab’s evidence and find that there was such a conversation as she said that he put her off paying until he received the full \$120m.

THE WHEELS COME OFF THE TRANSACTION

124. Colonel Gaddafi did not pay the balance. It was due on 31st July 2003. The Prince and Mrs Sharab wrote letters to Colonel Gaddafi to no avail.
125. The reasons why this was occurring remain obscure. It was suggested that the official responsible for releasing the monies (Mr Shadi) looked at Agreement 1 (he not being aware of what had gone on) and expressed the view that the amount of money payable was \$70m which is what the agreement said. Separately it was suggested that the Colonel’s cousin was holding up releasing the monies because he wanted to receive a payment to permit the release. Finally it was suggested that the Libyans had become aware of the price the Prince had paid for the Airbus or believed it was not worth \$120m. That latter point is obscure. In some correspondence there is reference to the Libyans having advice as to the worth of the Airbus before and after the agreement. It was all very secondary and obscure and I make no finding as to what precisely the Libyans had received in relation to advice about the worth of the aircraft and when they had received it.
126. What is crystal clear however is that none of the delay was down to Mrs Sharab. Indeed she worked hard to try and remedy the situation travelling several times to Libya with Mr Alaeddin at the request of the Prince.

SNATCH BACK OF AIRBUS

127. In March 2004 the Airbus was moved from Libya to Frankfurt in Germany for maintenance. At this time the title and responsibility for maintenance technically remained with the Prince and the transfer to Germany was by prior arrangement between the Prince and the Libyans. When the maintenance work was completed the Prince arranged with the pilot for it to be flown to Riyadh not to Libya. This was done without the agreement of the Libyans and without the Prince informing the Libyans of his intentions.
128. There was a vigorous debate between Mr Pymont QC and myself about the legitimacy of this action on the part of the Prince. It is plain that whatever the legalities the Prince was frustrated at the lack of payment and probably entitled so to be under the

terms of the Agreement (subject of course to what is said in the letter dated 18th May 2003).

129. The Prince believed this snatching of the Airbus was successful in that he persuaded Colonel Gaddafi to negotiate with him. The Prince believed he was in a position of strength because he had the Airbus and \$70m. I am not actually convinced of the strength of his position. The last thing I would have thought the Prince would want to do would be to take on the unpredictable Colonel Gaddafi by acting in the way he did. He might be able to use the aircraft but I doubt whether any person or organisation (of a sovereign nature the only potential buyers) would purchase the Airbus while the present dispute was outstanding. True he had received the \$70m but he was \$50m out of pocket at that stage. I believe that the Prince thought the taking of the aircraft by him would put him in a strong position and that Colonel Gaddafi would promptly negotiate.
130. That might well be the position in “*ordinary*” commercial disputes or possibly even “*ordinary*” disputes between Middle Eastern Potentates. However the one predictable thing that could be said about Colonel Gaddafi is that he was unpredictable. It was reported back to the Prince that the Colonel was extremely upset about the taking of the plane whatever the rights or wrongs. That to my mind led him to do nothing. He could afford to leave the position as it was with the matter unresolved. The Prince’s ploy achieved nothing between March 2004 and August 2005, a total of nearly 17 months. Although the Prince repeated in the witness box what he said in his witness statement namely that this was one of the “*two crucial steps in forcing a resolution of the issues...*” (paragraph 51 of his witness statement) I simply reject that. Facts speak for themselves. I cannot believe that it can be argued with any credibility that the snatching of the Airbus did anything other than prolong the dispute. This is further reinforced by how the matter was resolved. In that context I also reject the Prince’s other so called crucial step as being significant namely the settlement he reached personally with Colonel Gaddafi in Tripoli on 1st September 2005.

MEETING AT GEORGE V

131. Mrs Sharab in her witness statement (paragraph 96) sets out that she was telephoned by the Prince which she was in London and asked to meet him in the George V in Paris which is owned by the Prince through one of his various companies. The meeting took place in the lobby of the hotel where apparently the Prince had a private area which was his de facto office. She says it was a discussion that took place between the Prince and herself with nobody else present and lasted for about an hour. She said that he wanted the position closed as quickly as possible and then she would receive her commission. Mrs Sharab said that she told him it was his fault and he was making the problems and recommended that he go to Libya for the Revolution Day Celebrations which last for one week from 1st September and apologise to Colonel Gaddafi for taking the plane. She suggested that he should do no more than this and then leave her and Mr Alaeddin to negotiate a solution. She said that the Prince agreed to do so and gave her a free hand to negotiate a settlement.
132. The Prince did arrange to go to Libya and Mrs Sharab and her daughter flew from London to Charles de Gaulle then transferred to Le Bourget airport where they boarded the Prince’s plane to fly onto Libya. Mrs Sharab was surprised it was a

rented plane. This was despite the fact that at the airport was the original Boeing and the Airbus plus the new Boeing 747. Although the Prince told her that his family were using his private plane in fact that was not true. The Prince acknowledged in his evidence before me that the reason he did not want to use one of his own jets was that he was fearful Colonel Gaddafi would impound it at Tripoli. This is not the normal form of negotiations in commercial disputes but it demonstrates how unpredictable Colonel Gaddafi was, how weak the Prince's position had become despite his snatching of the Airbus and how necessary Mrs Sharab was in trying to mend the collapse in the relations between Colonel Gaddafi and the Prince. In fact Mrs Sharab said that as a matter of private proper hospitality she believed that Colonel would not have insulted a guest by acting that way. I am not sure that is correct necessarily. After all later in her contacts with Colonel Gaddafi when he asked her to come to Libya he had her arrested and she was kept in confinement for 20 months.

MEETING WITH COLONEL GADDAFI

133. The first point to note on the meeting is as set out above it was arranged by Mrs Sharab after the Prince's ploy of snatching the Airbus had not achieved anything in 17 months. It is plain that the Prince turned to Mrs Sharab because the situation had reached a Mexican standoff. I do not suppose for one minute it was helped with his "*compromise*" suggestions whereby he kept the Airbus *and* \$70m part payment as compensation for losses that he said he had incurred. I will deal with those losses further in this judgment but the polite word for the losses is "*speculative*". I would not have expected them to have fooled Colonel Gaddafi and his team for one minute. That of course was another Prince ploy which is available when he is dealing with Libya.
134. I was shown a 47 second DVD clip of the start of this meeting when Mrs Sharab introduced various persons to Colonel Gaddafi. One cannot conclude too much about this but she was clearly warmly welcomed by Colonel Gaddafi and then went on to introduce the various people (including the Prince) to him. Her demeanour was in marked contrast to that of the Prince who in my view looked very sheepish at the start. That reflected the difficulty of the meeting which itself is exemplified by the fact that the Prince was unwilling to take one of his own planes to this meeting in fear that Colonel Gaddafi might retaliate. That shows the lack of a true relationship between him and Colonel Gaddafi if he could seriously think that. The suggestion that he made in evidence that he was able to broker a deal at any time because of his links with Colonel Gaddafi is plainly ridiculous.
135. According to Mrs Sharab's evidence after the initial greetings there was further discussion in her presence and her daughter's presence, Mr Alaeddin's and Mr Hijazi the manager of the President's private office with Colonel Gaddafi. Initially there was no discussion according to her evidence about the aircraft only politics and the revolution and Colonel Gaddafi's argument with the Prince's uncle. Mr Hijazi opened the subject of the Airbus in front of Colonel Gaddafi and the Prince and attacked the latter for keeping the \$70m. She expressed the view that this would be an unusual stance to be taken in the presence of Colonel Gaddafi and must have been pre arranged in order for Colonel Gaddafi not to have to express his anger personally.
136. After that Colonel Gaddafi and the Prince talked privately outside the tent. Her evidence is that after they returned she had discussions with Colonel Gaddafi who did

not want the aircraft anymore and would only give it away as a gift. She suggested that the outstanding \$50m would be paid. The Prince departed saying that he would leave “*Daad*” and Mr Alaeddin to meet with the office manager and others to finish the outstanding matter. The Prince then left. After that Mrs Sharab had further private discussions with Colonel Gaddafi who intimated that he would order his office to solve the matter and that she should come to the office at 9am the following morning.

137. Her evidence is that the next day (4th September 2005) she together with Mr Alaeddin attended the office at 9am but there appears to have been a vigorous discussion with Mr Alaeddin and those representing Colonel Gaddafi. There were further discussions which became more heated and she left the meeting and called Colonel Gaddafi and informed him of what was going on and he told her to take the necessary steps to conclude a deal in accordance with the discussions she had had with him the day before. She returned to the meeting and said that they had met Colonel Gaddafi the day before and that he had approved the purchase of the Airbus on the terms that he agreed with her. Mr Hijazi suddenly confirmed that and it took only a short time thereafter to conclude a new agreement in accordance with those terms (the “Settlement Agreement”) whereby Agreements 1 and 2 were cancelled, the purchase of the Airbus would be completed and the \$50m due in respect would be paid and that the Libyans would be released from the \$20m investment in the Touthca project. The agreement was to be subject to English law and any disputes which could not be resolved were to be dealt with by arbitration in London (this being the suggestion of Mr Alaeddin providing the best method of protection for the Prince).
138. The Prince’s evidence on this vital meeting is again brief (paragraph 44 of his witness statement). He denies he apologised to Colonel Gaddafi and simply repeats the terms set out above by Mrs Sharab except that he says he agreed those with Colonel Gaddafi leaving Libya the same day with Mrs Sharab and Mr Alaeddin being responsible for drafting the agreement.
139. Only the Prince is able to give evidence of what took place between him and Colonel Gaddafi. It does not follow that I have to accept what he says and I do not. It is not significant to the overall picture. What is significant is that it was Mrs Sharab’s efforts and hers alone that enabled this meeting to take place. It must have been very demeaning for the Prince to realise that despite all his wealth and power he could not produce a result with Colonel Gaddafi. The reason for that is plain; Colonel Gaddafi was equally strong willed and would not react in a way that the Prince might predict him so to do. Mrs Sharab brokered the meeting. Given Colonel Gaddafi’s attitude I find it difficult to accept that Colonel Gaddafi would simply turn around in a short conversation with the Prince and agree to pay the \$50m. There must in my view have been something more to motivate him to agree that. The release of the \$20m obligation to project the Touthca investment is a small possibility but it seems to me that Colonel Gaddafi is the type of person who would be more moved had he received an apology. The only thing in my view that could have created a change of mind is if the Prince had actually apologised. However even if he did not apologise he would not be in the tent with Colonel Gaddafi without Mrs Sharab’s efforts.
140. I therefore conclude that contrary to the Prince’s suggestion in paragraph 51 of his witness statement the meeting between him and Colonel Gaddafi whilst it took place could only have done so because of the large effort put in by Mrs Sharab.

141. Thus far she has been the major broker in the sale in the first place and the restoration created by the Settlement Agreement in the second place.
142. I accept the Claimant's criticism of the Prince's evidence in paragraph 102 of her closing. The Prince on the one hand acknowledged that Mrs Sharab had a role but continually attempted to reduce it. In fact it is in my view impossible to exaggerate her importance in the deal. The Prince's failure to recognise that I accept completely undermines his credibility as a witness and is a further piece of material which I am entitled to rely upon to show that I prefer Mrs Sharab's evidence because the Prince's is so unreliable. I agree that the five examples given in that paragraph support Mrs Sharab's case. Ultimately the Prince acknowledged in cross examination that his great coup in removing the Airbus to Riyadh was counterproductive ***"when I took possession of the plane, things went sour with the Libyans completely..."*** (T5/86). That is the end of the Prince's contention as to the effect of the snatch back in paragraph 51 of his witness statement.

SETTLEMENT AGREEMENT PUT IN WRITING

143. This was achieved by Mrs Sharab and Mr Alaeddin after the Prince left. I have no doubt that Mr Alaeddin had a role in that. On 4th September 2005 Mrs Sharab was telephoned by the Prince who expressed his gratitude for her efforts and success. This was admitted by the Prince in his Amended Defence.
144. Subsequently Mrs Sharab flew to Libya with the Settlement Agreement and a spare parts list which was signed by the Libyans on 21st September 2005.
145. She had obtained the counterpart copy of the Settlement Agreement signed by the Libyans after she had taken the one with the Prince's signature on to them. There were problems between that date and April 2006 which delayed matters. The position is not clear and in my view nothing turns on it. It is quite clear that Mrs Sharab was becoming concerned as to her position and as her letter dated 6th November 2005 to LAFICO shows she was holding on to the counter part Settlement Agreement due to the Prince until outstanding matters were resolved. There were clearly difficulties over the maintenance contract in particular the fact that the Airbus had some American parts in it which might cause difficulty for Colonel Gaddafi who was still not free to deal with the United States but she still was providing efforts to overcome these difficulties (see for example her letter of 1st March 2006). However it was quite clear she was concerned about her personal relationship with the Libyans by this time and she clearly thought that the Prince was delaying matters.
146. Ultimately she wrote to the Prince on 20th April 2006 (D2/130/420). In that she set out that the Prince was insisting on keeping the money and the aircraft and was refusing to settle matters. That is a clear reference to the difficulties over the maintenance contract. She also said this ***"in a personal capacity, I inform you that I will stand by the Libyan side because my attempts to finalise this matter with you have only yielded failure and disinterest. Further I consider that they are in the right I do not know to what or to where this matter will end, with your insistence on your position which is not supported by strong authority or conclusive legal position....."*** This is the so called ***"stab in the back letter"*** which the Prince relies upon to justify his decision not to pay anything to Mrs Sharab despite her undoubted significant efforts as set out earlier in this judgment.

147. What Mrs Sharab did not know was that a month earlier the Prince had obtained a fresh counterpart of the Settlement Agreement signed by the Libyans direct thus circumventing the one that she was holding on to as a bargaining chip. Having secured that document the letter of credit was negotiated and finalised on 31st August 2006. That itself had taken considerable time as the letter of credit was originally opened on 27th April 2006. Mrs Sharab was not aware of this.

REQUEST FOR FEES

148. From September 2006 Mrs Sharab says she telephoned the Prince's offices about 14 times but was not able to speak to the Prince. Clearly he had no further use for her having finally completed the sale of the Airbus. She also sent him faxes on 19th September 2006, 2nd October 2006 and 12th December 2006 asking him to pay the commission. She did not mention the figure of \$10m. The Prince never replied to any of those letters but in cross examination fastened on the fact that she did not make reference to the \$10m as evidence to show that she made it up afterwards (T5/195-201). Mrs Sharab had been cross examined briefly on the correspondence which confirmed (as is apparent from reading it) that there was no mention made of \$10m commission as a figure. This reflects what is said in paragraph 46 of his witness statement that he recalled after the Settlement Agreement was signed she regularly referred to a commission due to her but this was always a "*generic*" reference and never to a specific figure.
149. However in cross examination the Prince acknowledged for the first time that he knew precisely what sum Mrs Sharab was seeking because Mr Alaeddin had referred him to it when he attempted to mediate between the Prince and Mrs Sharab (T5/197 et seq). His evidence of what confirmation he received from Mr Alaeddin was hazy. He clearly had no clear recollection of it at all (T5/203). This was part of a stance to give the impression that the Prince was only aware of the \$10m sum when he received the letter before action from Mrs Sharab's solicitors dated 17th October 2006. That letter had a number of errors which Mrs Sharab acknowledged in cross examination; the date of the agreement was wrong and there was no mention made of the discussion in Libya in April 2003.
150. However the Prince's lawyers' response is illuminating in what it does not say.
151. It provides no positive case. It denies that the Prince entered into the agreement that is alleged by Mrs Sharab and alleges that she had no part in the ultimate sale of the aircraft and that there was no basis for sums due to her and finally that he is not resident in the jurisdiction and there is no basis for litigation within this jurisdiction.
152. The reason for this coyness is difficult to understand. If it was his case that the agreement was at his discretion he could have said so but he did not. Equally he did not reply to any of Mrs Sharab's letters when he could easily have done so and said precisely the same thing. That in my view is telling. It is a further piece of evidence which helps me decide that the case is not as put now by the Prince. It would have been the simplest of things (when everything was fresh in 2006) to have asserted what he now says. He was unable to explain why his case was not put out clearly.
153. Further he knew all the time via Mr Aleaddin the fee that Mrs Sharab was seeking.

CLARIFICATION OF DEFENCE

154. Two important themes came out of the Prince's evidence. First there was the repeated emphasis that any payment that was due to Mrs Sharab was at his discretion. Second there was the statement in his evidence that Mrs Sharab "***stabbed me in the back***". This in the Prince's eyes disintitiled her to any sum however much meritorious the efforts she had done. In his defence paragraph 12 (c) the Prince admitted that there was a meeting on the yacht in Cannes and that any payment was made was to be made at his discretion. In cross examination he accepted that this would be subject to a requirement that he would calculate it reasonably.
155. There is no reference in the Defence to any question of Mrs Sharab's entitlement not being available to her because she had stabbed him in the back. Nor is it clearly discernable in the Defence that what the Prince is saying is that any contractual arrangements that there were were made in Cannes not the UK. The purpose of that was to emphasise that whilst it was open to me to conclude whether there was ***an agreement*** in Cannes it was not open to me to investigate the terms of such an agreement because I had no jurisdiction so to do.
156. That is not to be found clearly in my view in the Prince's opening not in his evidence nor in his closing.
157. I have already dealt with the ambiguities and contradictions of the Prince's evidence as to what was discussed in Cannes. His evidence does not support his plea.
158. The position of the Prince was only clearly made out during argument between Mr Pymont and myself in closing. I refer to T7/74-86. From that exchange the Prince's case is honed down to the following. First there was an agreement in Cannes and nowhere else. Second he did not agree to pay her a fixed commission the agreement was that he would have a discretion (subject to the reasonableness) as to what commission he would pay her. That contract cannot be adjudicated on in this jurisdiction although the existence of the contract and its terms can be to enable me to decide where and upon what terms the parties agreed a contract. The breach of that contract the Prince says must be litigated in France.
159. If the agreement is made at the Ayoush restaurant then it is a contract in the UK and subject to the jurisdiction of the English Court. If Mrs Sharab's evidence is believed the agreement is for a fixed fee as varied (if that is believed) by the agreement on the jet in Libya. The question of reasonableness will not apply unless I find that there was an agreement as alleged by Mrs Sharab but do not accept her evidence that the fees were agreed. In that eventuality the English contract will be subject to an implied term that she is entitled to a reasonable fee for her services.
160. Both Counsel accept that that will be a very difficult line to follow because Mrs Sharab's credibility is severely damaged if not ruined by my rejection of her primary case as to the amount. It will be very difficult to reject that evidence but conclude that was nevertheless some form of agreement.
161. Under the English contract the question of "***being stabbed in the back***" is not put forward as a Defence. That was despite the fact that being stabbed in the back was described by the Prince as being the most important aspect in the Arab world. Despite

that importance it was not in his solicitor's reply, it was not in his Defence, it was not in his witness statement and it was not alluded to in the written closing submissions on his behalf. Despite all of that it was clearly important to the Prince because he mentioned it on numerous occasions in cross examination. Mr Pymont QC accepts however that that is not a basis for a Defence if I find there is an English contract. If it is for a French contract I cannot adjudicate on it.

162. The Prince and his lawyers have clearly tiptoed along a delicate line. As part of that tiptoeing whether by solicitor's letter, pleading, witness statements or submissions there has not been much put forward as a positive case.
163. If I conclude that the contract was made in the United Kingdom for a fixed price and that Mrs Sharab has substantially performed it then the stabbing in the back even if established is no Defence. The analysis would be that the stabbing in the back must be some kind of repudiatory breach which the Prince accepted and thereby relieved him from his obligation to pay anything to Mrs Sharab. That has nowhere been put forward by the Prince. It is difficult to see how that could properly be the case. If she has accrued the right to the commission that is a debt due to her. The Prince therefore even if she committed this repudiatory breach after the contracts had been entered into and the actions alleged occurred could only abate the commission thereby incurred if the Prince had suffered some loss which he could set off against the sum that was due to her. It is like the position where a vendor of land receives part of the purchase price (not the deposit) and then discharges the contract by reason of a repudiatory breach committed by the purchaser i.e. he fails to complete for example. On that analysis absent a provision which entitles him to retain the part paid purchase price he must return it less any damages that he has allegedly suffered. The ability to pocket a part paid purchase price when a purchaser fails to complete is a popular misconception.
164. Drawing all these threads together I find that no clear conclusion can be drawn in favour of either party over the correspondence post September 2006 except that I find that the Prince's failure to put a positive case is because he did not believe he had a positive case. As I have said that is supportive evidence to lead me to reject his Defence to Mrs Sharab's claim. It is not the main point however. The main point of this case is determined on the credibility of Mrs Sharab in evidence subject to two days cross examination and the credibility of the Prince subject to the same length of cross examination. Anything else is peripheral as there are no documents for example of a contemporaneous nature which allude to either side's case.

UNRELIABLE EVIDENCE

165. I approach both parties' evidence on the basis that allowances must be made for errors that occur in evidence and cross examination because this is in respect of events which are up to 12 years old. There are no contemporaneous documents to enable either party to refresh any memory.
166. I accept that it is impossible to conclude that there was an agreement made at the Ayoush restaurant that was binding that made no reference to the amount of commission. If I reject Mrs Sharab's evidence as to the \$2m commission I cannot see that I can accept her evidence that there was an agreement on that date. The purpose of the expert evidence is to determine what would be a reasonable level of

commission absent the express agreement. On my conclusions of the evidence it does not arise but for the sake of completeness I will deal with the expert evidence.

167. In paragraph 5 of his closing the Prince reiterates that he always acknowledged that there was an arrangement made between him and Mrs Sharab on the yacht in Cannes whereby he would pay her a reasonable sum in effect if she was to achieve a completed sale. This is not correct and his solicitor's first letter said the opposite. He told me he would still be prepared to abide by that arrangement (T5/194) and he accepted the discretion had to be exercised reasonably (T5/213). I do not understand why he has not done that. It is not a question of jurisdiction. The failure on his part to pay that sum I accept is only justiciable in France. Even then it would only be justiciable if I determined that is where the agreement was made.
168. I do not so determine. I am quite satisfied that the final agreement was made in the Ayoush restaurant after the initial preliminary discussions on the yacht in Cannes. I also find that agreement was varied as Mrs Sharab contends on the Boeing in Libya when the \$10m fee was agreed. In so doing I am preferring her evidence to that of the Prince.
169. I should refer to two matters concerning Mrs Sharab's evidence which concern me. First in his witness statement (paragraph 48) the Prince insinuated that Mrs Sharab was receiving secret commissions from the Libyans. There was no evidence for that whatsoever and the allegation was not put to her. It is somewhat dishonourable on the part of the Prince to make such an allegation supported by a statement of truth and then in effect implicitly abandon it.
170. Second during exchanges between Mr Pymont QC and myself concerning the Prince's letter dated 18th May 2003 (see above) which he sent to Colonel Gaddafi Mr Pymont suggested that if I find that the letter was written in a misleading or even fraudulent way then I should also implicate Mrs Sharab (T7/105/23). He never put that to Mrs Sharab. In fact Mr Pymont QC seemed to think he did not have to. The short answer to that is as I said at the start of the trial if a witness is going to be criticised in closing it is only fair to that witness to be given the opportunity to be confronted with that and provide an answer. It is also only fair to the Judge because the Judge wants to assess how the witness reacts before him when challenged on the basis of dishonesty or making misrepresentations. It is not acceptable for Counsel not to put those points and expressly or by implication criticise a witness. It would have been perfectly feasible for Mr Pymont to have questioned Mrs Sharab on the basis that ***"you say the Prince has been dishonest in respect of this letter but you too must have been dishonest because you were a party to that"***. That he never did. I therefore reject his criticisms because they were not put and I disregard them. It is particularly important in this case because whilst it is quite clear that the Prince actually knew what price he paid for the Airbus and actually knew what money he spent on improving it (none) Mrs Sharab has no direct knowledge of either of those matters. She is entirely dependant on what the Prince tells her. It does not follow therefore in any event that even if the Prince made representations or even was dishonest that Mrs Sharab knew about it. That demonstrates the curse of the failure to put questions in cross examination.
171. There is a further failing in respect of Mrs Sharab's expert Mr El-Turk. In paragraph 66 of his closing Mr Pymont said:-

“to the extent that the Court is inclined to pay any regard to the evidence of Mr El-Turk it is submitted that he was a partisan witness who sought to give evidence as to fact and to argue the case in favour to Mrs Sharab”.

172. Apart from an allegation of fraud it is difficult to see a more serious allegation that can be made against an expert bearing in mind his duty to the Court and the serious consequences that can now potentially visit upon experts. It was never put. It is quite inappropriate for Counsel to make such a serious criticism of a witness in his closing when that witness has not been given an opportunity to respond to that in live evidence in front of the Judge. I repeat that if a witness is to be criticised in a closing fairness and justice require that criticism to have been explored in the live evidence. I reject that criticism as being both inappropriate and in any event incorrect. There was nothing in Mr El-Turk’s evidence (see below) which in my view suggested he was partisan.
173. I found Mrs Sharab to be an impressive witness. Her recollection of the various events was clear and she remained unshaken by the cross examination. The Prince’s was somewhat different. The Claimant in her closing appended extracts from the cross examination of the Prince to show his evidence was unreliable. I append that cross examination. It accords with my analysis of the Prince’s evidence. I found his evidence confusing, regularly changing on occasions and unreliable.

PRINCE IN DIFFICULTY

174. In addition to the letter of 18th May 2003 the Prince had further difficulties.
175. On 2nd May 2004 he wrote to Colonel Gaddafi (D2/69) and said that he had had to buy the 747 instead of the Airbus and that he could not have bought the 747 if the Libyans had not agreed to purchase the Airbus. It is now apparent on late disclosure during the course of the trial that the 747 was purchased by an agreement dated June 2002 and completed in September 2002 about a year prior to the sale of the Airbus to the Libyans.
176. Further in claims to justify holding on to the \$70m in the context of intended cancellation of the contract the Prince told the Libyans that he had incurred expenses on the Boeing 747 project i.e. \$8.7m. In a later calculation he said the amount was \$22m. He dealt with this in an unsatisfactory way in cross examination (T5/167/3-10). It was not true and he must have known it at the time. He instructed his employees in effect to invent anything to justify retaining the \$70m. This too was *“tactics”* a legitimate course of conduct when dealing with Libyans.
177. Mrs Sharab in her closing submits that these were untruths and were deliberate lies. She gives a number of reasons for this first that they are *“too whopping”* to be mistakes. Second there was clear motive for both of them. In the letter of 18th May 2003 the motive was to obtain a higher price by a false representation relevant to the apparent value of the aircraft. In the claim for consequential losses the reference to the Boeing 747 were made up so as to obtain more money. Both of these it is submitted demonstrate that when he says he does not lie on oath or at all he is telling a further untruth.

178. There was a further difficulty for the Prince in respect of his discussions with Mr Alaeddin. Mr Alaeddin submitted an invoice for his services to date dated 19th May 2004 (D2/72). The amount claimed was \$465,500. The Prince's hand written notes are instructive:-

“On this matter there is no agreement whatsoever!! We can neither accept nor tolerate these bills that have no basis – just because there are indications that F/FA’s efforts have failed with Libyans; this should not be translated into a hit and run situation – this bill is with no basis and is rejected immediately”.

179. In cross examination he accepted there had been an agreement but the note was a pressure mechanism (T4/172-175). He not only accepted that but accepted in cross examination that the bill had actually been paid (although he could not remember when). Further no explanation was provided as to the basis on which Mr Alaeddin was to be remunerated after May 2004. It is clear that he did a considerable amount of work after that date yet no invoices have been produced. It is simply unbelievable that there are no invoices. (See T4/177).
180. There is a further hand written note by the Prince on the letter: – “as for my arrangement with the lady in Amman, Jordan, I will stand by that. No more, no less!!” The Prince in cross examination suggested that this was a reference to a discretionary payment. I reject that. It does not explain the phrase “***No more, no less.***” I conclude that that can only refer to a fixed sum see T4/179-T4/182. I stress again that this is only a secondary piece of evidence to support my primary conclusion based on the relative performances of Mrs Sharab and the Prince in the witness box. I have already observed that the matters complained of by Mr Sharab in her closing were only uncovered as a result of disputed disclosure applications.
181. He was extensively cross examined on these matters and his answers were basically that these kind of activities were acceptable when one deals with Libyans. He virtually admitted that he had said things that were untruthful in the letters.
182. I conclude that contrary to the Prince's assertion in his evidence when he threw down the gauntlet about him telling the truth outside court that that itself was not true. These letters show that when the occasion demanded it the Prince was prepared to write things in letters that he knew were untrue.
183. It is not necessary for me to determine that he was telling lies in the witness box. He came close to admitting it as the extract of his cross examination on the 18th May 2002 letter above shows. His reluctance to accept reality and in effect putting his veracity on the line with his statement then being shown not to be entirely correct is a significant factor which supports my impression of his evidence as a whole. As a witness he is unreliable as to the events that occurred. There are a number of reasons for this.
184. First he has in reality no clear recollection of what happened so long ago. This is in complete contrast to Mrs Sharab. The reason for that is because the Prince does lots of deals and this was but one of them. For Mrs Sharab this was undoubtedly a very important deal for her and it is therefore likely that she would remember things far

more clearly than he did. Second his evidence changed over a number of times and third as he is a man who is clearly prepared to write false letters it shows that I cannot accept his assertion that he never tells lies in contracts and written documents. All of those lead inexorably and inevitably to support a conclusion that his evidence is completely unreliable. It reinforces the poor impression he gave in the witness box in contrast to Mrs Sharab.

185. He accepted this:-

“Judge: [Mrs Sharab] might remember things more clearly, perhaps because she has somewhat fewer meetings than you have during the year and therefore you are not in a position to challenge what she says.

“A: I accept that, Your Lordship” (T4/95).

He also accepted that he really had no idea what happened 13 or 10 years down the line [T4/95]. Finally he accepted (T4/135) when I raised a concern about the fact that he was unable to answer questions about what happened without looking at his witness statement. His answer was *“Yes. My recollection and telling is not good at all. I am sorry.”*

CONCLUSION.

186. The main part of the dispute turns on whether I accept Mrs Sharab’s evidence or that of the Prince. For the reasons that I have set out extensively above I have overwhelmingly concluded having seen them both give evidence and being cross examined that I prefer Mrs Sharab’s case. I have set out above extensively my conclusions in the disputed areas of evidence.

BACK STABBING

187. Finally I should deal with the contention that the Prince made for the first time when he was cross examined that Mrs Sharab had back stabbed him. The basis for that is the letter above dated 20th April 2006 which is completely misinterpreted. It is plain when taken in context that what was going on was that Mrs Sharab was pointing out bluntly to the Prince that in regard to the final failure to complete it was his fault not the Libyans. That was based on her understanding that the Libyans wanted to be sure that they were going to be in a position to maintain the aircraft after they had purchased it. I see no reason why the problems about that could not have been rectified fairly rapidly. It is not back stabbing for an agent to point out bluntly to the principal what they see as a problem. It is the kind of thing that a good agent would do. It is no use to a principal to have an agent who lackey-like simply agrees with everything the principal says. In effect the Prince is criticising Mrs Sharab for her speaking bluntly to him. That in my view is not back stabbing. This is reinforced by the fact that it was only raised for the first time in oral evidence. I reject it. I do not believe Mrs Sharab back stabbed the Prince as alleged or at all. It is clear that she was becoming fairly desperate but that is hardly surprising giving the length of time that the matter had taken and (I suspect) the large amount of commission which was riding on it. Colonel Gaddafi and the Prince could take a more leisurely approach to

all of this because whilst these figures are large they are not excessively large so as to cause either Colonel Gaddafi or the Prince difficulties.

188. I therefore determine that she is entitled to the \$10m commission which she claims.

EXPERT EVIDENCE

189. Both experts gave evidence well and impressively. I have already rejected the suggestion that Mr El Turk was partisan. He was certainly laconic (which is not actually a criticism). I found him compelling as a witness as regards the transaction in question.

190. Equally I found Mr Cope compelling in relation to his expert evidence.

191. The difficulty of Mr Cope however was that his evidence did not relate to the kind of transaction under consideration. Persuading a person as volatile as Colonel Gaddafi or even trying to get to see Colonel Gaddafi and then negotiate the sale of a prestigious jet to him is not run of the mill business. Mr Cope acknowledged that in cross examination. Mr Cope has no experience of these transactions at all. His evidence is only of use if one is dealing with an ordinary sale of a jet by way of a normal business operation. His evidence therefore with respect to him misses the point entirely. By contrast Mr El-Turk's evidence was in relation to such activity. He gave several examples of his own activity in these kind of transactions and his evidence in that regard was not significantly challenged.

192. I therefore accept Mr El-Turk's evidence. He gave evidence in his report of a number of transactions where he obtained significant fees far in excess of the type of the fees Mr Cope was talking about.

193. During cross examination Mr Pymont QC asked him whether he would object to producing the documentation in respect to those transactions. This kind of *"informal"* disclosure application put to witnesses when they are being cross examined is unacceptable. First the witness is in the box and is under pressure. Second he undoubtedly will feel the pressure of a need to comply because he would not wish to look obstructive in the eyes of the judge. Third there may be any number of reasons as to why those relevant documents might not be produced such as third party confidentiality. The witness does not have any opportunity to have advice in that regard.

194. Further in this case the Prince's solicitors received the expert report in April 2013. They raised a number of questions but they did not ask for these documents. Mr El-Turk left the witness box but was unable to produce the documents in time.

195. There is no basis therefore for criticising him for not producing the documents and no basis for challenging his evidence as to the level of commission that he obtained.

196. He identified a number of factors which would lead to the commission. I accept that the profit that is due to be made is not relevant (see Para 6.7 of his report) but otherwise I accept his report and in particular Para 6.13. This transaction was unique, the seller was unique, the buyer was certainly unique and Mrs Sharab's ability to influence the buyer was a very key point. None of that was challenged in cross

examination. I should say that there is no clear evidence as I have already said to suggest that the Airbus was bought for considerably less than \$95m. The Airbus appears to be worth between \$40-\$50m if it was a normal Airbus for commercial use. The fit out costs can be considerable. I have no idea how much it costs to put a 9 hole golf course inside a jet but I cannot imagine it is cheap nor would the Jacuzzi and the very specialised internal special furnishings shown in the pictures produced to me of the Libyan rebels besporting themselves in the Airbus after they captured it (assuming the various bullet holes can be repaired).

197. I have already set out the large amount of expertise that Mrs Sharab brought to this contract which is unique and the considerable efforts she took in negotiating it and attempting to finalise it after it all fell apart initially. I agree with Mr El-Turk that the circumstances of the transaction were unique and that Mrs Sharab would therefore be entitled to claim a large commission. Mr El-Turk in Para 7.9 of his report suggests that the commission could be 10% of the purchase price. That was about \$12m. He suggests a higher figure if the profit was greater but as I have said I have no evidence to show that the Airbus cost less than 95 million dollars. His minimum figure is 7.5%. Taking into account his evidence and the uniqueness of the contract and the performance of Mrs Sharab I would conclude if this arose that it would be reasonable for her to be paid \$10m. That is to say 8.33%.

Claim No: HC07C03194

**IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BETWEEN**

MRS DAAD SHARAB

Claimant

-and-

**HIS ROYAL HIGHNESS PRINCE AL-WALEED BIN TALAL BIN ABDUL-AZIZ AL
SAUD**

Defendant

draft CLAIMANT'S CHRONOLOGY

"C": The Claimant

"D": The Defendant

"FA": Mr Alaeddin

"AH": Mr Al-Huwaij

Notes:

- (1) Dates and events are taken from C's First Witness Statement. Some are disputed.**

(2) Where C describes a date as being "on or about" or "around" a certain date, the date specified in the witness statement is the date that is entered below.

(3) Where a date range is identified but no specific date is given, a "?" appears below.

(4) This document is a summary of events and does not supersede the pleadings.

(5) [The underlined comments and struck through deletions are those made on the Defendant's behalf.]

DATE	EVENT	WITNESS STATEMENT REF	TRIAL BUNDLE REF
March 1988	C attended conference in Libya organised by an Arab women's charity committee and she was introduced to Gaddafi. Subsequently, met him and had further discussions with him.	C w/s (1) [17-18]	
From 1988	C introduced clients to LAFICO (Libyan Foreign Investment Office). Including Lonrho plc.	C w/s (1) [19-20]	
	Action against Mr Salfiti in which C obtained judgment. Judgment upheld by CA 12.12.96		[D1/2/1]
1995-1998	C lived in Saudi Arabia. C introduced to D's business affairs by FA.	C w/s (1) [27]	
1997	FA asked C to do feasibility studies for Union Bank for Savings and Investment, then owned by D.	C w/s (1) [29]	
March/April 1999	Letters from D to Gaddafi to interest him in projects before involvement of C.	C w/s (1) [33-39]	[D1/3/24] [D1/4/27]
29.09.99	C arranged for a visit of D to Gaddafi which took place on 29.9.99 in Libya near Sert. C did not accompany D because last minute change of plan diverted D from Tripoli (where she was	C w/s (1) [33-36]	

	waiting to meet him) to Sert.		
30.09.99	C and D met for the first time in Tripoli, visiting various potential tourism sites. They then flew to airport near Benghazi in plane of prince with FA and visited a potential tourist area.	C w/s (1) [37]	
From Sept 99	About 9/10 meetings of D with Gaddafi concerning projects, and C involved on his behalf present at each of them.	C w/s (1) [39]	
Nov 99 – Feb 01	Negotiations of C with LAFICO re hotel development for construction of Four Seasons/Movenpick in Tripoli.	C w/s (1) [40]	
21.11.99	<u>Letter</u> FA to AH of LAFICO.	C w/s (1) [40]	[D1/7/33]
26.4.00	Transfer of USD13,464,464.00 against 10% contribution in ME Hotels Company. To FA.		[D1/18/66]
27.2.01	Payment of USD 500,000 from D to C	C w/s (1) [41]	[D1/26/91]
15.04.2001	Letter from D to Gaddafi referring to a meeting of President Mubarak to Libya and referring to Libya’s agreement to contribute to the Touscha project. It is also stated that: “we have entrusted Mr Brother Fuad Aalaudin with the task of following up this matter with the Libyan Arab Company for Foreign Investments”.		[D1/34/111]
Start 08.01	D called C and said that he was in Cannes and wished to sell one of his aircraft and he asked C to come to Cannes to meet him. Wanted her to arrange a meeting with AH re tourism/Toushca.	C w/s (1)[46]	
7.8.01 - 8.08.01	C went to Cannes and discussed with D seeking to sell one of his aircrafts aircraft. There would be a commission for arranging a deal to the President, but he would send FA to agree a contract with her. D denies sending FA specifically to agree a contract with C. <u>D also denies offering or agreeing to pay any specific commission for her potential assistance, but rather that they would work on the same basis as their previous dealings</u>	C w/s (1)[47-48] D w/s [15-18]	

	<u>which was that any commission payable would be based on their previous arrangement whereby the extent and value of C's contribution is assessed at the end of the transaction.</u>		
8.8.01 – 15.8.01	C in London	C w/s (1)[48]	
15.8.01 onwards	C in Cannes. On 15.8.01, AH met D. FA in Cannes.	C w/s (1)[49]	
22.8.01	Tunisian and Egyptian delegations met with D. C in attendance. She has arranged this.	C w/s (1)[49]	
23.08.01	Return of C to London	C w/s (1)[50]	
25.08.01	FA met with C to discuss proposed sale of aircraft to Libya. Agreement – commission USD 2 million re sale of an aircraft and USD 1 million re securing investment in Project Touthca. D denies that he had given FA <u>any</u> instructions in relation to the discussions that FA could have with C– <u>and certainly no authority for FA to contract with C.</u>	C w/s (1)[51] (Amended PoC paras 13-15) D w/s [18-19] (Amended Defence paras 11 – 13)	
End Aug 2002	Call D to C in London asking her to proceed with negotiations for <u>planesale of one of the aircraft.</u>	C w/s (1)[52]	
21.01.03	C saw Gaddafi who said that he would need to see both aircraft. C persuaded Gaddafi to view the planes.	C w/s (1)[53]	
23.01.03	C call to D (in Algeria) that 2 <u>aircraftsaircraft</u> would need to be sent to Libya to be viewed.	C w/s (1)[54]	
10.4.03	D to Libya with both Boeing and Airbus. <u>D and left-Gaddafi discussed both aircraft, after which Gaddafi decided to purchase the Airbus there.–. For security reasons expressed by Gaddafi, D agreed to leave Airbus in Libya pending the sale negotiations.</u> C there since 5.4.03 waiting for arrival of D. Gaddafi asked for D to send C (for rapport with Libyans) and FA (for financial aspects of the deal) for negotiations.	C w/s (1)[55-56] D w/s [23-25]	
10.04.03	Discussion on the Boeing in Libya between C and D in which C agreed commission additional to that agreed	C w/s (1)[58-59] (Amended PoC paras 19-20)	

	<p>thus far i.e. she should have amounts over USD 110m. Up to USD 110m, it would be USD 2m commission. Touseca remained USD 1m for investment of USD 20 million.</p> <p>D denies the content of the discussion. D denies that he agreed to pay C commission equivalent to the amount by which the sale of the Airbus exceeded US\$10m and instead states that any commission payable would be based on their previous arrangement whereby the extent and value of C's contribution is assessed at the end of the transaction.</p> <p>C remained in Libya for a week to arrange information and meetings for FA.</p>			D w/s [25] (Amended Defence para 17)
April – June 2003	Negotiations – Libyans wanted to pay USD 90 million and C wanted USD 120 million.	C w/s (1)[62]		
Jan 03-July 03	6 visits by C to Libya to negotiate price. 5 of trips, she paid her own way. 3 times FA there for about 3-4 days. She was there for about 2 weeks on each occasion.	C w/s (1)[68]		
17/18.05.03	Letter of D to Gaddafi stating that aircraft never offered for a price of less than USD 135 million, this being what it cost him including modifications. C and FA fly to Libya. Letter hand-delivered by C.	C w/s (1)[69-70]	[D1/45/148]	
18.6.03	Agreement in principle of Gaddafi to pay USD 120 million for aircraft and USD 20 million for Touseca.	C w/s (1)[63]		
15.07.03	FA and C called D from Corinthia Bab Africa Hotel. Discussion whereby D confirms to C C's commission. D denies confirming level of commission.	C w/s (1)[64] D w/s [29]		
17.07.03 (drafted) and 19.07.03 (made)	2 agreements made: a. Agreement 1 – KADCO and LAFICO purchase of aircraft for USD 70 million; b. Agreement 2 – KADCO and LAICO (Libyan Agricultural Investment Company) in sum of	C w/s (1)[65-67]		

	<p>USD 70.7 million of which 20.7 million to be invested into Touthca and 50 million balance re aircraft.</p> <p>2 agreements because Gaddafi did not want it to be known how much he was paying for aircraft i.e. more than other Middle Eastern leaders</p>		
Mid-August 2003	<p>After first payment of USD 70 million made, C sought first half of commission. D refused, and said only when all received. Discussion between C and D about payment of commission; C asks that money be paid into one of her accounts held in London. C informed by D that she should send him the details of the account once he had received the remainder of the purchase price.</p> <p>D denies the content of the conversation: <u>at this stage the transaction was yet to complete and D claims that he would never have discussed something like C's account details in any event.</u></p>	<p>C w/s (1)[72] (Amended PoC para 30)</p> <p>D w/s [31] (Amended Defence para 24)</p>	
August 2003 – December 2003	<p>Attempts to obtain payment of outstanding monies from Libyans in correspondence of D to Gaddafi passed on personally by C. <u>D left without Airbus and without the full purchase price.</u></p>	C w/s (1)[73]	
22.8.03	<p>Letter D to Gaddafi re: how this affects the reputation of Libya especially among foreign lending banks. Letter delivered personally by C.</p>	C w/s (1)[73]	[D1/50/171]
28.8.03	<p>Letter FA to Gaddafi. Letter delivered personally by C.</p>	C w/s (1)[73]	[D1/51/174]
9.09.03	<p>Letter D to Gaddafi: summary of events since Jan 2003; banks informed. Letter delivered personally by C.</p>	C w/s (1)[73]	[D1/54/184]
8.10.03	<p>Letter FA to Gaddafi. Refers to meeting which he had on 11.9.03 with Gaddafi. Ready to come to Tripoli for a meeting on 11.10.03. Letter delivered personally by C.</p>	C w/s (1)[73]	[D1/55/186]
19.10.03	<p>Letter from C to Gaddafi. C stated that she had been contacted by FA who had in turn spoken with D. D wants Gaddafi to intervene.</p>	C w/s (1)[73]	[D1/56/192]
December 03	<p>Request by D to C to visit Libya again re outstanding monies</p>	C w/s (1) [75]	

13.12.03	Letter D to Gaddafi. D sent FA and C to explain the matter and deliver a personal letter, but nothing occurred.	C w/s (1)[76]	[D1/59/204]
18.12.03	C went to Libya, met Gaddafi on 19.12.03 and stayed for a month and delivered letter of 13.12.03	C w/s (1) [76]	
15.2.04	FA went to Libya and met with Sabri Shadi of Afriqiyah Airways requesting payment. At same time, C in meeting with Gaddafi. <u>Sabri Shadi informs FA that no further payment of the outstanding US\$50m would be forthcoming. D also becomes aware at this point of attempts to extract additional payments from D by Mr Al-Dam, the cousin of Gaddafi, in order to smooth the transaction.</u>	C w/s (1)[77] <u>D w/s [34-36]</u>	
Early March 2004	Airbus moved to Germany for maintenance by agreement . When completed, D took plane <u>instructed his pilot to take the Aircraft</u> to Riyadh instead of returning it to Libya. D told C that this was for re-registration since he was still the owner.	C w/s (1) [78-] <u>D w/s [37]</u> <u>C w/s (1) [80]</u>	
10.3.04	C wrote to Gaddafi asking him to pay the balance. <u>C states in the same letter that Libyans brought in experts who had valued the Airbus at US\$120m.</u>	C w/s (1) [81]	[D1/63/ 128224- <u>225</u>]
March 2004	Libyan decision not to proceed with Toushca project.	C w/s (1) [83-84]	
7.4.04	D to Gaddafi – aircraft will be kept in Riyadh. Letter delivered personally by C.	C w/s (1) [82]	[D1/65/240]
13.04.04	C flew to Libya to encourage payment of remaining money. Gaddafi very upset about plane being taken, <u>Hehe</u> said that he wanted to cancel the whole deal.	C w/s (1) [86-87]	
2.5.04	D sent a letter to Gaddafi offering to cancel the <u>two</u> agreements and to take the USD 70 million as compensation. Rejected.	C w/s (1) [89]	[D2/68/246]
10.5.04	Death of brother of C in Libya	C w/s (1) [91]	
<u>19.5.04</u>	<u>Invoice from Ernst & Young to D in the sum of US\$465,000 in respect of FA's involvement in the Airbus sale.</u>	<u>D w/s [39]</u>	<u>[D2/72/262-263]</u>
27.6.04	Letter from LAFICO to D requiring the aircraft	C w/s (1) [95]	[D2/75/268]
30.6.04	Draft letter sent by D to C to consider sending	C w/s (1) [95]	[D2/76/270]

5.7.04	Letter from LAFICO to D requiring the aircraft or the purchase moneys	C w/s (1) [95]	[D2/79/276]
28.8.05	D phoned to ask C to come to George V in Paris	C w/s (1)[96]	
30.8.05	Meeting at George V of C and D	C w/s (1)[96-98]	
3.9.05	C travels to Paris and meets D to fly on to Libya. C, D and FA meet MG. Discussion between D and Gaddafi, and C and Gaddafi. <u>Private discussion between D and Gaddafi takes place and agreement is reached with regards to the Airbus.</u>	C w/s (1)[100-104] <u>D w/s [44]</u>	
4.9.05	C and FA meet Libyan officials. After unsuccessful initial discussions, C and Mr Hijazi telephone MG. Settlement Agreement then reached. C returns to London. D phones C expressing gratitude. D confirms to C that he would pay the commission of USD 10m. D denies <u>content of this conversation- discussions in relation to commission payment.</u>	C w/s (1)[108] C w/s (1)[113] (PoC para 61) D w/s [46] (Amended Defence para 41)	
10.9.05	D signs Settlement Agreement	C w/s (1)[114]	[D2/115/381] (unsigned)
11.9.05	D telephones C asking her to ensure Libyans sign the Settlement Agreement asap. D again confirms payment of USD 10m. D denies content of this conversation.	C w/s (1)[115] (Amended PoC para 64) D w/s [46] (Amended Defence para 44)	
12.9.05	Signed Settlement Agreement delivered to C in London. C telephones D and asks for confirmation that she will be paid US\$10m commission. D confirms. D denies content of conversation.	C w/s (1)[117] (Amended PoC para 67) D w/s [46] (Answer 25 of Further Information)	
17.9.05	D faxes to C the spare parts list for the Airbus. C then flies to Libya with Prince's signed Settlement Agreement.	C w/s (1)[118]	[D2/111/356]

18.9.05	C meets with LAFICO, who say that Letter of Credit will be opened only if D gives written confirmation that he will transfer the plane and its title to them.	C w/s (1)[119]	
19.9.05	D telephones C to say that he needs to contact Airbus re transfer of title	C w/s (1)[120]	
21.9.05	Libyans sign Settlement Agreement and spare parts list	C w/s (1)[121]	
25.9.05	Correspondence whereby C liaises with D and LAFICO	C w/s (1)[122]	[D2/116/387]
27.9.05	Correspondence whereby C liaises with D and LAFICO	C w/s (1)[122]	[D2/117/391]
9.10.05	Correspondence whereby C liaises with D and LAFICO	C w/s (1)[122]	[D2/118/393]
17.10.05	Correspondence whereby C liaises with D and LAFICO	C w/s (1)[122]	[D2/119/396]
27.10.05	Correspondence whereby C liaises with D and LAFICO	C w/s (1)[122]	[D2/121/404]
6.11.05	Correspondence whereby C liaises with D and LAFICO	C w/s (1)[122]	[D2/122/407]
27.4.06	Letter of Credit opened	C w/s (1)[123]	[D2/131/425]
28.6.06	Letter to D from C. Confirms C's involvement	C w/s (1)[123]	[D2/134/433]
25.1.06	Letters trying to complete the deal	C w/s (1)[125]	[D2/124/411]
29.1.06	Letters trying to complete the deal	C w/s (1)[125]	[D2/125/412]
1.3.06	Letters trying to complete the deal	C w/s (1)[125]	[D2/128/415]
20.4.06	Letter from C to D, trying to conclude the deal. <u>C states that she is officially entrusted by the highest Libyan authorities and that she will stand by the Libyan side.</u>	C w/s (1)[126] <u>D w/s [48]</u>	[D2/130/420- <u>421]</u>
?3.06	D obtains a copy of Settlement Agreement from Libyans without C's knowledge. D arranges to receive payment of US\$50m.	C w/s (1)[128]	
31.8.06	Letter of Credit negotiated. D transfers the Airbus to Libya.	C w/s (1)[129]	
31.8.06	Letter of Credit: release	C w/s (1)[129]	[D2/140/443]
19.9.06	Fax from C to D requesting payment	C w/s (1)[131]	[D2/143/448]
2.10.06	Fax from C to D requesting payment	C w/s (1)[131]	[D2/144/451]

12.12.06	Fax from C to D requesting payment	C w/s (1)[131]	[D2/147/456]
17.10.06	Letter before action sent to D	C w/s (1)[132]	[D2/145/454]
19.10.06	Response from Hogan & Hartson denying any liability	C w/s (1)[132]	[D2/146/455]
27.11.07	Claim Form issued		[A/1/1]

**IN THE HIGH COURT OF
JUSTICE
CHANCERY DIVISION
BEFORE
BETWEEN:**

Claim No.HC07C03194

MRS DAAD SHARAB

Claimant

- and -

HIS ROYAL HIGHNESS PRINCE ALWALEED BIN TALAL BIN ABDULAZIZ ALSAUD

Defendant

APPENDIX B TO C'S CLOSING SUBMISSIONS

References to Transcripts in Closing Submission

- **Para 26 – [T2 / 123/8]**
8 President of Libya. I know how his brain working.
 Page 123
- **Para 34 - T2/40/23 to T2/41/6**

23 Fouad, I said they said it was \$20 million. Then Fouad
24 went to the Prince to his suite and came back down and
25 he said, "We'll pay you half a million. Get this land."

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1 MR JUSTICE PETER SMITH: Who said that, the Prince?
2 A. Fouad.
3 MR PYMONT: So Mr Alaeddin didn't agree it specifically --
4 sorry, he didn't agree it in his discretion. He agreed
5 it having gone to see the Prince to take instructions
6 first as to whether it was agreed.

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• **Para 37 - T4/97/19 – T4/99/9**

19 Q. "I did not discuss the claimant's remuneration for her
20 role with her directly, but it was clear to the claimant
21 that she would be rewarded in the event that the project
22 was successfully established."
23 What you were saying before lunchtime was in fact
24 you did discuss it directly with her.
25 What I suggest to you is that it was correct in your

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1 statement to this extent: the person who discussed
2 remuneration was Mr Alaeddin and not you. Could that be
3 correct?
4 A. I don't recall.
5 Q. But it is -- you say you don't recall. You then go on
6 to say:
7 "But it was clear to the claimant that she would be
8 rewarded in the event that the project was successfully
9 established."

10 It is a bit difficult, isn't it, for you to say that
11 if you were not the person having direct discussions
12 with her?
13 A. She knew that if this project is done, I will reward her
14 something to my discretion.
15 Q. If the discussions were not direct between you and her,
16 you cannot say that for sure, can you?
17 A. So what are you implying?
18 Q. I suggest to you that such discussions that did take
19 place took place through your representative
20 Mr Alaeddin?
21 A. Fouad was never authorised to do such things.
22 Q. If it be the case that your witness statement is correct
23 and that you did not discuss remuneration with her
24 directly, who do you say did discuss remuneration with
25 her?

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1 A. I say:
2 "I did not discuss the claimant's remuneration for
3 the role with her directly, but it was clear to the
4 claimant that she would be rewarded in the event that
5 the project was successfully established."
6 I did not say Fouad Alaeddin. I mean, when I talk
7 to her I tell her, if these things do happen, you will
8 be rewarded, so the implication for her that something
9 will happen if the deal is consummated.

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• **Para 37 - T4/101/10 to T4/102/25**

10 MR JUSTICE PETER SMITH: When you say she accepted it, are

11 you saying she accepted that in direct conversation with
12 you, are you saying that in direct conversation with
13 you, face-to-face, just as I'm talking to you now, you
14 said to her, "You realise that I will do it on my normal
15 basis, that I'm going to ask you to do this work and
16 I will decide how much you are going to get after the
17 work has been done", are you saying that you said that
18 to her and she agreed it?

19 A. The statement is:

20 "I did not discuss the claimant's remuneration with
21 her directly."

22 But the implication to her is that she knew
23 something is going have to happen.

24 MR JUSTICE PETER SMITH: I don't see where the implication
25 is from your conversation when you say what you didn't

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1 discuss, as opposed to what you are now trying to tell
2 me you did discuss.

3 A. Also, if there was something formal, I would have had
4 a contract signed. I would have negotiated a formal
5 contract with her and say, that is it, that is the law
6 of the land, we sign it, seal it, stamp it, and if we
7 get it, you will be rewarded, based on what I do
8 usually. But sometimes, when it is my discretion,
9 I say, "I will pay nothing. When the deal takes place,
10 I will pay you or I don't pay."

11 MR JUSTICE PETER SMITH: Did you say this to her?

12 A. I don't recall exactly.

13 MR JUSTICE PETER SMITH: In your witness statement you say
14 you didn't have any conversation with her.

15 A. Yes, but the implication to her is that, that she will

16 be rewarded, and she understood this.

17 MR JUSTICE PETER SMITH: Where does she get the implication

18 from if she didn't discuss it with you?

19 A. She knows how I operate. I told her there are two ways,

20 either you have a contract, and you sign it, seal it and

21 stamp it and it becomes the law, or -- she knows how

22 I operate.

23 MR JUSTICE PETER SMITH: How does she know, she has never

24 dealt with you before?

25 A. No, but by that time she began interacting with me.

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• **Para 40 - T4/103/5 to T4/106/9.**

5 MR JUSTICE PETER SMITH: How does she know that you either

6 sign a contract or it becomes your discretion, how does

7 she know that? You don't tell her, because you tell us

8 that you didn't discuss it.

9 A. Yes.

10 MR JUSTICE PETER SMITH: How does she know it?

11 A. She knows how I operate.

12 MR JUSTICE PETER SMITH: How does she know that?

13 A. Because we did talk to her and interact with her a lot

14 after the first meeting with Gaddafi.

15 MR JUSTICE PETER SMITH: If I had a meeting with you about

16 selling my pen, would I know that you did it that way?

17 The answer is I wouldn't unless you told me or somebody

18 else told me on your behalf. You have eliminated

19 Mr Alaeddin, you said certainly not. I'm trying to

20 understand how she would know that you dealt with her

21 either signing a contract, or, if no contract, your

22 discretion. I need to know how you claim she knows it.

23 A. Well, I can only tell you that the implication to her is
24 that, you know, she never asked, for example, for me to
25 sign a contract, she never asked that, because she knows

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1 I never like to sign a contract in such matters, because
2 it is not really a very formal matter and this thing
3 with Gaddafi was very fluid and still at the early
4 stages and we know how he operates, so this was not
5 a very formal contract, at all, with her, it was really
6 very much kept to my discretion and she, maybe she
7 doesn't get it explicitly from me, but she got the
8 impression that, you know, on these things that is how
9 I operate, either there is a contract and I abide by it,
10 or it is kept to my discretion and I fulfil whatever
11 I believe is right at that time.

12 MR FREEDMAN: None of that is in paragraph 6, is it?

13 A. No.

14 Q. It is not, is it?

15 A. It is not, no.

16 Q. Why not?

17 A. For what, please can you explain?

18 Q. You have just given a long answer to his Lordship's
19 question. I said:

20 "None of that is in paragraph 6?"

21 You agree. I'm asking you why isn't it in
22 paragraph 6?

23 A. Maybe it was missed by my lawyers.

24 Q. Blame the lawyers?

25 A. No, I'm not blaming but maybe it was missed.

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- 1 Q. This was a statement that was very carefully prepared,
2 wasn't it?
- 3 A. Possibly.
- 4 Q. You know it was. You signed it at page 53.
- 5 A. I saw it.
- 6 Q. Yes?
- 7 A. Yes, I saw it.
- 8 Q. And you read it before you signed it, didn't you?
- 9 A. Mm-hmm.
- 10 Q. Yes?
- 11 A. Yes.
- 12 Q. And you knew how important it was, because you knew that
13 this would be the first part of your evidence in this
14 trial, didn't you?
- 15 A. Yes, but I do say:
16 "It was clear to the claimant."
17 Clear means by implication.
- 18 Q. So I'm asking you, in the course of this very careful
19 preparation of this witness statement, why was none of
20 that answer that you gave to his Lordship included in
21 paragraph 6 of your witness statement?
- 22 A. Can you elaborate, please, on that?
- 23 Q. I will not elaborate, I will just ask the question
24 again.
- 25 A. Yes, sir, please.

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- 1 Q. Why in the course of this very carefully prepared

2 statement was none of the answer that you just gave to
3 the court included in paragraph 6 of your witness
4 statement?

5 A. I think it -- I do say here very clearly "it was clear
6 to the claimant". I didn't say I talked to her,
7 I didn't talk to her, it is clear, the implication is
8 clear. I say "it is clear to the claimant", so by
9 implication she should get to know that.

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• **Para 44 - T4 / 2 / 7 – 12.**

7 A. Yes, there is one correction, I think on page 42 -- is
8 that page 42? It is related to the fact that I said
9 here that there was an agreement to acquire the new
10 large aircraft. Well, it was not an agreement, it was
11 actually a discussion that begun. The arrangements
12 begun, not an agreement. That is the only correction.

Page 2

• **Para 50 - T4/117/12 to T4/128/2**

12 Q. Without your statement, do you recall that that is
13 correct, first of all, that you said that you would pay
14 a commission?

15 A. I don't recall, I have to see my statement.

16 Q. We will come on to the statement in a moment. You don't
17 recall whether you said that you would pay a commission?

18 A. I know that -- I have to look at the statement, much
19 better.

20 Q. We will come on to the statement in a moment. I'm just
21 interested what you recall --

22 A. I don't recall it right now.

23 Q. -- without reference to the statement.

24 A. But I know that the implication was that something,
25 based on my discretion, would be given to her.

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1 Q. So you don't recall whether you said that you would pay
2 a commission. Do you recall that there was no
3 discussion about the amount of a commission?

4 A. The amount for sure, never discussed the amount, because
5 this was kept to my discretion completely.

6 Q. You said that the implication was something would be
7 based on your discretion. Now, when we use the term
8 "implication", we mean that something was not expressed,
9 it was implied. Is that what you are saying?

10 A. I think that the impression she got from me is that if
11 this deal happens, you know, something may be given to
12 her. I don't deny that, yes.

13 Q. But your evidence to the court is that the implication
14 was that something, based on your discretion, would be
15 given to her. That is your evidence to the court, isn't
16 it? Are you agreeing with me?

17 A. That what is it says, yes. I mean, I was giving the
18 impression that if this thing materialises, then it is
19 me who decides how much you will get.

20 Q. There is a world of difference between an implication
21 and something being said, isn't there?

22 A. Sure.

23 Q. And you did not say to her that whether or not she would
24 be paid would depend upon your discretion?

25 A. If it was otherwise, I would have had a contract with

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1 her whereby it becomes binding. The fact that there was
2 no contract on such an amount that she claims, then for
3 sure it has to be kept to my discretion.

4 Q. So you agree with me that what you are saying is that it
5 was an implication, but it wasn't said expressly, that
6 it all depended on your discretion?

7 A. It was all based on my discretion, because if her claim
8 for the amount she was seeking was correct, for sure
9 this would have had a contract from my side.

10 Q. That is your case about the implication, that it was
11 based on your discretion. I'm only putting to you that
12 it was an implication, it wasn't expressed, and I think
13 we agree about that, don't we; correct?

14 A. On what?

15 Q. That you are saying it is just an implication, it wasn't
16 expressed?

17 A. Well, I think we have to go back to what the record
18 says.

19 Q. We will come to the record in a moment, but at the
20 moment you agree with me, don't you, that what you are
21 saying is that it was based on an implication that it
22 was the discretion, not that it was expressed?

23 A. No, I think she knew that something will be coming to
24 her if this deal is finalised, she knew that, but she
25 also knew that is based on my discretion completely.

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1 Q. Because of the implication?

2 A. You are trying to insert implication. Why are you
3 trying to insert that word into my mouth?

4 MR JUSTICE PETER SMITH: Because that word came from you
5 first, that is why. If your case is that she knew that
6 she would obtain a fee on this project at your
7 discretion, how does she know it?

8 A. I think there was discussion between us.

9 MR JUSTICE PETER SMITH: You think there was discussion
10 between you?

11 A. I'm not sure, but I think there was --

12 MR JUSTICE PETER SMITH: Be very careful Your Highness,
13 because so far you have said consistently that there was
14 no discussion between you on this.

15 A. No, only on the plane.

16 MR JUSTICE PETER SMITH: No, your case throughout has been
17 that you never discussed it, and in your witness
18 statement that we have been looking at and this, in your
19 answer to Mr Freedman, you have been very careful to say
20 that she would know about it by implication.

21 A. Yes, but --

22 MR JUSTICE PETER SMITH: I want to know, because what you
23 are not saying is that it was expressly agreed between
24 you and her?

25 A. Definitely not expressly. She was told, if anything was

1 going to have to happen, it is going to be my discretion
2 to give her any amount and certain time.

3 MR JUSTICE PETER SMITH: I have already asked you this line
4 in relation to the hotel.

5 How does she know by implication that it is only
6 a matter of your discretion?

7 A. Because she knows how I operate, because I, you know --

8 MR JUSTICE PETER SMITH: How does she know?

9 A. Because we talked a lot, we talked a lot, your Lordship,
10 about how I conduct my business in Saudi Arabia and the
11 world, and she knows usually I have contracts signed
12 whereby it is binding on both parties. The fact that no
13 binding contract was signed between me and her by
14 implication goes to my discretion.

15 MR JUSTICE PETER SMITH: So are you now saying there was
16 a detailed discussion between you and her on the yacht
17 about how you normally did business; is that what you
18 are telling us?

19 A. Not detailed. I mean, when she comes casually to have
20 lunch with me, with Fouad Alaeddin, she asked, "How do
21 you work, how do you operate?" We were good friends and
22 we talked casually about how I operate, how I function.
23 You know, we are available in 140 countries in the
24 world. So she got an impression about how I operate and
25 how I function, through me or through Fouad, so it

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1 was -- so we were good friends and she, I believe at
2 that time she had lunch with me on the boat also. So
3 she knows, she began knowing me and how I operate, and

4 when I say by implication, when there is a contract for
5 millions of dollars, as she is claiming, for sure this
6 has to be in a signed contract, it cannot be just an
7 assumption from her that I committed X million dollars.

8 For me to commit such an amount, I have to make this in
9 writing, I can't just have it verbally like this.

10 MR FREEDMAN: A moment ago you said that you don't remember

11 any discussion in relation to commission on that yacht?

12 A. I'm telling you, when you call her and tell her, "Please
13 see what you can do with Gaddafi", for sure she is not
14 going to do it for free. That is what I mean by
15 implication for me is that something may happen in the
16 future for sure, but remember we were still at a very
17 early stage at that time.

18 Q. When I put to you that you had said that you would pay
19 a commission, you said that you did not recall any
20 discussion about the payment of a commission on the
21 yacht?

22 A. I still say, nothing explicit. I didn't tell her, for
23 example, "If you sell it for this, you get that." This
24 never happened for sure, definitely, because at that
25 time there was no discussion about which plane, let

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1 alone the price for each plane, because you have two
2 different distinct planes.

3 Q. I wasn't putting that to you, I was putting to you that
4 you said you would pay a commission but there was no
5 discussion about the amount of the commission, and your

6 evidence to his Lordship was that you do not recall any
7 discussion about commission at all?

8 A. Yes, I don't.

9 Q. And you are relying on some implication that it was
10 somehow implied that it depended on your discretion.
11 What you wanted me to do was you wanted me to look
12 through your witness statement with you, and we will go
13 to your witness statement now. It is page 44. It is
14 bundle B1, the small bundle, tab 3, page 44.

15 A. Yes.

16 Q. We will go through paragraph 15 together:

17 "At my request the claimant came to meet me on board
18 my yacht in Cannes, where I regularly conduct business
19 meetings. The meeting took place on or around
20 7 August 2001. During our meeting we discussed my plans
21 to sell one of my aircraft and how the claimant might be
22 able to assist in proposing a sale to Colonel Gaddafi.
23 We also discussed whether the claimant might be able to
24 assist in raising investment from the Libyan Foreign
25 Investment Office (LAFICO) for Project Touscha. I did

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1 not offer or agree to pay the claimant any specific
2 commission for her potential assistance with either of
3 these projects. From our previous dealings the claimant
4 was aware that my practice in matters such as this was
5 not to agree an introducer's commission at the outset
6 but to assess the appropriate level of compensation at
7 the end of the transaction on the basis of the

8 individual's contribution to the particular project.
9 This was the basis upon which she had assisted me on the
10 projects referred to above, where no specific payment
11 terms were agreed in advance. I told the claimant that
12 if a sale was achieved, any payment to her would be made
13 at my discretion, based on my assessment of her
14 contribution to each project. The claimant said she was
15 happy to proceed on this basis."

16 Now, that paragraph 15 is, I suggest to you,
17 completely different from what you have just been
18 telling the court.

19 First of all, you say there that there was
20 a discussion of the payment that she might receive in
21 respect of this project, whereas in your evidence to the
22 court you had no recollection of that having occurred.

23 Which is correct?

24 A. I say:

25 "I did not offer or agree to pay the claimant any

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1 specific commission for the potential assistance."

2 By implication, she knew something would happen to
3 her, something would be given to her. It is consistent.

4 Q. Which is correct: is it correct what you told the court,
5 that you have no recollection of any discussion about
6 payment to her, or is it correct that there was
7 a discussion about payment to her in the terms set out
8 in paragraph 15 of your witness statement?

9 A. 15 stands.

10 Q. So why did you then say to the court that you had no
11 recollection of any discussion about commission?

12 A. Because when I read it now I recall what happened.

13 Q. Why was it when we were considering the matter without
14 referring to paragraph 15, that you did not recall that
15 there was a discussion about commission?

16 A. I mean, this is very clear. It says:

17 "I did not offer to agree to pay the claimant any
18 specific commission for the potential assistance for
19 involvement in the project."

20 It is very clear.

21 MR JUSTICE PETER SMITH: Mr Freedman's point is that a few
22 minutes ago you said you had no recollection of there
23 being any discussion. That was before you read the
24 paragraph. Your evidence without seeing any documents
25 is "I can't remember". Then you look at a document and

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1 you say, "I can now remember, it was as per
2 paragraph 15".

3 How do I address that when you only appear to
4 remember what was said because it has been written down?

5 A. Because, your Lordship --

6 MR JUSTICE PETER SMITH: It was written down, of course,
7 when was it, seven years after the event, wasn't it?

8 MR FREEDMAN: Nine years after the event.

9 MR JUSTICE PETER SMITH: A few minutes ago you couldn't
10 remember without being reminded. It is a very important

11 point. It is possibly the most crucial conversation in
12 the whole piece of litigation.

13 A. Yes, and I stand by what the statement says here.

14 Before I didn't recall, but it is very clear when I met
15 her, no specific commission was proposed to her at all,
16 however, the implication to her is that if this thing is
17 consummated and finalised, yes, she may be getting
18 something. That is the implication, it is very clear
19 for her, and I don't deny that at all.

20 MR JUSTICE PETER SMITH: Paragraph 15 has nothing to do with
21 implication. The last sentence of paragraph 15 you say:

22 "There was an express discussion that she was made
23 aware it would be at my discretion."

24 A. "If a sale was achieved, any payment for her would be
25 made at my discretion, based on an assessment of her

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1 contribution to each project."

2 MR JUSTICE PETER SMITH: You are saying there was an express
3 conversation to that effect, whereas earlier you said it
4 was maybe implication, but you cannot recall. When we
5 come to assess evidence, we like to know whether the
6 witness has a true remembrance of what is said as
7 opposed to remembrance that can only be prompted by
8 looking at a document.

9 As I see your evidence on this, you can correct me
10 if I am wrong, you appear to have no memory of this
11 conversation beyond being reminded of it in writing; is
12 that correct?

13 A. Very correct, your Lordship, yes. But definitely after
14 looking at this right now, it is correct and stands,
15 this thing was kept to my discretion. I am very sorry
16 about my memory.

17 MR JUSTICE PETER SMITH: Never apologise for memory. I'm
18 here to find out and the events are many, many years
19 ago.

20 A. Thank you, thank you, your Lordship.

21 MR FREEDMAN: So really without your script, you are
22 nothing?

23 A. Sorry?

24 Q. Without your script, you are nothing?

25 A. No, I'm something, but you remember that this plane is

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1 a drop in the sea of what I do every day, it is not
2 something I do full-time.

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- **Para 51 – (T4) Line 22 onwards of page 120 to page 121, line 2**

22 MR JUSTICE PETER SMITH: I want to know, because what you
23 are not saying is that it was expressly agreed between
24 you and her?
25 A. Definitely not expressly. She was told, if anything was

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1 going to have to happen, it is going to be my discretion
2 to give her any amount and certain time.

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- **Para 56 - See T4/135/2-3**

2 A. Yes. My recollection, I'm telling you, is not good at
3 all. I'm sorry.

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• **Para 61 (3) - T4 / 147 to T4 / 149**

1 both planes could go to Libya. Period. Nothing else.

2 Q. I suggest to you that you are making up this evidence
3 about waiting on Mrs Sharab for when the planes can go
4 to Libya, and the reason why I suggest that is by
5 reference to your own witness statement. Let's go
6 through it together. First of all paragraph 17:

7 "I asked Mr Alaeddin to discuss further with the
8 claimant how she might approach the possible sale of the
9 aircraft [the possible sale] and the possible investment
10 by Libya in Project Touscha, and how the claimant might
11 assist each project."

12 Then you refer at paragraph 18 to your understanding
13 about Mr Alaeddin going to London, but you weren't aware
14 of that meeting. You then claim that you had not given
15 Mr Alaeddin instructions in relation to the meeting and
16 didn't instruct him or authorise him about the
17 commissions.

18 Then you say:

19 "In the circumstances of a transaction
20 [paragraph 20] that was not even due to commence for
21 another year and in the absence of any instructions to
22 do so I would be surprised if Mr Alaeddin discussed any
23 specific commissions with the claimant."

24 Then you say that it is no doubt the case that the
25 claimant and Mr Alaeddin for that matter would have

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1 understood the circumstances in which there would be
2 a commission.

3 At paragraph 22 you say:

4 "By August 2002 I was ready to proceed with the sale
5 of one of my aircraft and called the claimant to ask her
6 to proceed."

7 So what I'm suggesting to you is that you have just
8 made up this evidence that you were looking to the
9 claimant as to when you could proceed with the sale. In
10 fact, as per your witness statement, it depended upon
11 you as to when you wished to proceed with any possible
12 sale?

13 A. I was already a seller. I was just trying to find
14 a buyer, if he was willing to buy or not.

15 MR JUSTICE PETER SMITH: That is not an answer to the
16 question. Mr Freedman, in the gentlest possible way, is
17 putting to you that the answer that you gave, that you
18 are waiting to hear when you could take the planes to
19 Colonel Gaddafi is a lie, that you have just made up.

20 That is what you are saying, isn't it?

21 MR FREEDMAN: It is.

22 MR JUSTICE PETER SMITH: He is saying that because it is not
23 in your witness statement and because it is inconsistent
24 with your witness statement.

25 A. But, your Lordship, when the meeting took place in

1 Cannes we planted the seed of how we can send both
2 planes to Gaddafi, because at that time there was
3 discussion about which plane. I said both planes could

4 go there because I had two planes and one of them could
5 be sold. We were waiting one thing only, when the
6 planes can go to Libya, the planes, so really we can
7 proceed with phase two and phase three.

8 MR JUSTICE PETER SMITH: I understand that, but
9 Mr Freedman's next question, if I don't put it, is that
10 you have just told the lie again for the second time.
11 He says the idea that you were waiting for the call is
12 a lie that you have just made up, and I would like to
13 know what your answer to that is?

14 A. I say to your Lordship that I don't lie. This is the
15 truth. We were waiting for an appointment from Gaddafi
16 to take the planes there to see which one he wanted to
17 take. I don't lie at all under oath, and even not under
18 oath, your Lordship.

19 MR JUSTICE PETER SMITH: If you say you don't lie why can
20 you not exclude the possibility that, talking about
21 events ten years ago, you have a fuzzy memory about it?

22 A. About which memory exactly?

23 MR JUSTICE PETER SMITH: About the whole thing. This is
24 almost 10 years to the day.

25 A. I know one thing. The implication is that Fouad was

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• **Para 61 (3) - T4 / 144 / 3 to T4 / 145 / 14**

3 A. Because there was one subject matter only: When the
4 planes can go to Libya. That is the only thing we were
5 waiting for. There is nothing else. Nothing else to
6 talk about.

7 MR JUSTICE PETER SMITH: That wouldn't come out of that
8 discussion. How can you have a discussion with
9 Mrs Sharab about when the planes can go to Libya? That

10 is not under her control, is it?

11 A. No, we called her to talk to Colonel Gaddafi, to set the
12 time, a day or a month, or whatever, to have the plane
13 go to Libya, and that is what I was waiting on Fouad for
14 this thing to happen.

15 MR JUSTICE PETER SMITH: She left the meeting in August at
16 Cannes with Mr Alaeddin to go and contact her, and you
17 have just agreed that after that she would then wait for
18 you to contact her whether to proceed.

19 A. No.

20 MR JUSTICE PETER SMITH: That is what you said clearly.

21 That was your answer two minutes ago.

22 A. No, we were waiting for her to tell us when the plane
23 can go, your Lordship, to Libya.

24 MR JUSTICE PETER SMITH: That is not what you said.

25 A. That is what I meant for sure. We were waiting for her

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1 to tell us when the plane can go to Libya.

2 MR JUSTICE PETER SMITH: That is the exact opposite to what
3 you have said.

4 A. That is very strange because --

5 MR JUSTICE PETER SMITH: Your first answer was she was
6 waiting for you to contact her; and your second answer
7 is you were waiting for her to contact you. Which was
8 it?

9 A. Neither, your Lordship. We were waiting for her to have
10 Gaddafi to set the times for both planes to go to Libya.
11 We were waiting for her to tell us when the planes can
12 go to Libya, because if he didn't see both planes there

13 would be no deal whatsoever. I had to have the planes
14 go to Libya. Sorry your Lordship on that.

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• **Para 61 (3) - T4 / 149 lines 14-18**

14 A. I say to your Lordship that I don't lie. This is the
15 truth. We were waiting for an appointment from Gaddafi
16 to take the planes there to see which one he wanted to
17 take. I don't lie at all under oath, and even not under
18 oath, your Lordship.

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• **Para 63 - T5 / 20 / 4-25**

4 A. Our position was -- to Saleh El Ghouh and Fouad Alaeddin
5 is to go to the Libyans, after their efforts failed, to
6 do whatever it takes to finalise this deal and clearly
7 I will confirm that what your Lordship said is correct
8 that they maybe twisted some of the truth with them, to
9 get this thing finalised with them because they reneged
10 and they tried to keep the plane and don't pay the rest
11 of the amount.

12 MR JUSTICE PETER SMITH: I'm not criticising what you did,
13 I just want to know whether you did it knowingly and it
14 appears to me that you must have known --

15 A. Yes.

16 MR JUSTICE PETER SMITH: -- that some of the calculations in
17 this letter were untrue, but you allowed it to be sent
18 because that was the only way in which you could put
19 pressure on Gaddafi to deal.

20 A. Let me confirm to you that Saleh El Ghouh and
21 Fouad Alaeddin were authorised to do whatever it takes
22 to finish it, and I can confirm that some of these

23 things I was aware of, that they said that they are
24 going to use tactics with them, similar tactics they
25 used with us.

Page 20

• **Para 64 - T5 / 35 / 11 – T5 / 36 / 4**

1 MR JUSTICE PETER SMITH: I think, Your Highness, when you
12 speak to your lawyers after this case, you might be
13 disappointed and you might want to consider the way that
14 you enter into contracts, if that is the way you go,
15 because you cannot, as a seller, say things which are
16 untrue to induce a contract and expect the contract to
17 survive.

18 A. This is not a normal -- you are dealing with the
19 Libyans, who are really -- you know, it was -- it was
20 not very straightforward and they were deliberately not
21 honouring their commitments. I understand what you are
22 saying, your Lordship. I understand this very well.
23 But to the Libyans, when they come and they renege, and
24 they come and say "We are going to go down from 120 to
25 70", and when they say "We will cancel everything", you

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1 know, they just reneged. And Saleh El Ghoul and
2 Fouad Alaeddin were authorised just to go and to do
3 whatever they can to finalise this deal and, eventually,
4 we got the 50, and they got the plane.

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• **Para 73 (a) - T5/59/8 to T5/60/12**

8 Q. What did you say about the price?

9 A. We were trying to get the maximum amount that we can get
10 from him.

11 MR JUSTICE PETER SMITH: It would be a short conversation
12 then, wouldn't it?
13 A. Sorry?
14 MR JUSTICE PETER SMITH: It would be a very short
15 conversation, the conversation on that basis is "Get the
16 best price".
17 A. Obviously, your Lordship, we have to see -- we have to
18 discuss -- I mean, we just came back from Gaddafi, the
19 meeting was positive, he decided he wanted to buy one of
20 the planes. The key question right now is the price,
21 the contract, the time of delivery. All these matters
22 were very crucial right now to decide on the next step.
23 MR JUSTICE PETER SMITH: What did you discuss about the
24 price then? You don't tell me that, do you? Did you
25 tell her to get 135, 120?

Page 59

1 A. I don't recall exactly.
2 MR JUSTICE PETER SMITH: 95?
3 A. No, no.
4 MR JUSTICE PETER SMITH: Did you think 95 was the bottom
5 figure that you might go to?
6 A. No, no, I think it was 120 or 135. I don't recall
7 exactly, but I think these two figures we brought up,
8 I think, 120 or 135. But I think the price was put
9 there.
10 MR JUSTICE PETER SMITH: There is a big difference between
11 120 and 135.
12 A. I think it was 120, I think.

Page 60

- **Para 73 (a) - T5/60/23 to T5/61/14.**

23 Q. She says that what you were looking for was to be able
24 to sell the aircraft between \$100,000,000 and
25 \$110,000,000?

Page 60

1 A. I don't think so, because if I was at 95, why would
2 I sell it at 110? I mean, I wanted to get the maximum
3 price. I think 120 was the price.

4 Q. It is a very good price to get between 100 million and
5 110 million, even if you have paid 90 million or
6 95 million. That is a very good price because it has
7 depreciated for three years.

8 A. It depends who is the seller. Not me.

9 Q. Do you remember, whether she said to you -- whether you
10 said to her that you wanted to get between \$100 million
11 and \$110 million?

12 A. No, I think 120, and she was happy with that, because,
13 I mean, her job is to go and to convince Gaddafi to buy
14 it at 120.

Page 61

- **Para 75 - T5/73/19 to T5/79/8:**

19 take that. The question I want answering is whether you
20 say there was no discussion on the Boeing about her
21 commission?

22 A. My emphasis --

23 MR JUSTICE PETER SMITH: No discussion at all? That is the
24 question I want answering.

25 A. She maybe wanted to allude to it, but I never let her

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1 talk about it.

2 MR JUSTICE PETER SMITH: You are telling me, on oath, there
3 was no discussion between you and her on the Boeing
4 about her commission?

5 A. No. She could have wanted to get into that, but
6 I stopped her, I said "I will talk about nothing but
7 price now, only the price", I was very adamant about
8 that:

9 MR FREEDMAN: You stopped her. How far did she get?

10 A. I'm saying, if she talked about it, I did not give her
11 any room to talk about it, because I told her "One
12 emphasis right now: a contract and \$120. If you get
13 that, I will see what I can do". It is exactly like the
14 Movenpick Hotel.

15 Q. That wasn't your response --

16 A. There was no contract. I gave her an amount I thought
17 was right.

18 Q. That wasn't your response, what you said was -- my Lord
19 asked:

20 "You are telling me, on oath, that there was no
21 discussion between you and her on the Boeing about her
22 commission?"

23 A. There wasn't.

24 Q. And you said "No, she could have wanted to get into that
25 but I stopped her"?

Page 74

1 A. No, no, no, please don't put my words. She could have
2 wanted to get into that, but I never gave her a chance
3 at all, with Fouad Alaeddin's presence.

4 Q. What you said was that you stopped her and what I want

5 to know is, how did you stop her? What did she say

6 before you stopped her?

7 A. I said she may have wanted to talk about it, but I gave

8 her no room for that.

9 Q. How did you know she may have wanted to talk about it?

10 A. When you talked about price, clearly her objective was

11 to take commission. It was very clear that she wanted

12 to take commission. But at that time, I was adamant

13 I don't want to talk about commissions. And to prove my

14 point, your Lordship, if she really had the \$10 million

15 in her mind, why in her three letters to me she never

16 mentioned that amount?

17 MR JUSTICE PETER SMITH: We will come on to the letters, but

18 of course, what people write in letters doesn't

19 necessarily reflect what they agree orally. What people

20 write in letters doesn't necessarily reflect what they

21 truly believe. We have seen that this morning.

22 I'm more concerned about the discussion and, as

23 I understand your answer, as Mr Freedman has pointed

24 out, to my question, "Was there any discussion?", I read

25 your answer as saying, she started to have a discussion

Page 75

1 but you stopped her.

2 A. No.

3 MR JUSTICE PETER SMITH: Is that your evidence?

4 A. No, what I'm saying, that she could -- if I gave her the

5 chance, she would have loved it.

6 MR JUSTICE PETER SMITH: I don't want "would have" or "could

7 have", that is speculation. I want to know, from your

8 own memory, what you actually recall, all the things
9 you -- you were with her on the plane for an hour and
10 all your evidence says is that there was a short
11 discussion about the level of price you wanted. That is
12 all you say in your evidence.

13 Now, I want to know whether you say there was any
14 discussion between her and you about her commission on
15 the plane?

16 A. My statement is very clear, it says:

17 "I simply could not have confirmed to Alaeddin or
18 the claimant that I have agreed to a commission of
19 \$10 million, indeed or any commission."

20 MR JUSTICE PETER SMITH: That is speculative reconstruction.

21 I want to know from your memory. I don't mean
22 paragraph 29.1. What does your memory tell me about
23 what discussion there was?

24 A. My memory says the following: that I gave her no room
25 whatsoever to really get into that, although her body

Page 76

1 language and her mental status wanted to get into that.
2 But I was adamant. I say "At this stage, please, we
3 talk about \$120 million. I need to get that", because
4 I can't talk about commission or fees for her, because
5 I need to get Gaddafi to say "Yes, 120". He never
6 accepted that when I met him, he only said I will take
7 the A340 and we will talk. So I said "Fine". It was
8 breakthrough to be able to sell the plane. So at that
9 time, I didn't discuss the commission or the
10 consequences, because he may have rejected my offer

11 completely, he may have come and said "\$50 million", and
12 then I have to withdraw the plane.

13 MR JUSTICE PETER SMITH: I can only go so far,
14 Your Highness, in allowing you to not answer the
15 question and, if you don't answer the question, I shall
16 conclude that you are not answering the question because
17 you are unwilling to tell me the truth. It is very
18 important. This is the key meeting from the claimant's
19 point of evidence when the present claim for commission
20 was finalised. It is the most important meeting in her
21 evidence after the agreement in the restaurant. And you
22 tell me nothing in your witness statement about the
23 discussions about commission.

24 I want to know whether that was because there was no
25 discussion or some discussion. What is the answer to

Page 77

1 that?

2 A. No discussion, because I did not give any chance to
3 deviate from the \$120 million. Clearly, I know very
4 well she would have loved to discuss that subject. But
5 my objective at the time, your Lordship, was to get the
6 commitment of \$120 million with Gaddafi so she was not
7 given the chance.

8 MR JUSTICE PETER SMITH: The transcript will recall what I'm
9 summarising to be your answer. You are telling me that
10 there was no discussion at all about her commission. Is
11 that what you are telling me on oath?

12 A. Yes.

13 MR JUSTICE PETER SMITH: No discussion at all?

14 A. No discussion. That is my recollection. But I know

15 that if I gave her the chance, she would have loved to

16 talk about it.

17 MR JUSTICE PETER SMITH: Once you say that, you open the

18 door to give an impression that there was an attempt to

19 have a discussion, but it was short-lived.

20 A. Your Lordship --

21 MR JUSTICE PETER SMITH: What is the body language? Did she

22 lean forward and say "Give me the money"?

23 A. I will give you an example, she said "I was successful,

24 I was able to get to Gaddafi, we can keep the plane here

25 right now", and all these implications means "I deserve

Page 78

1 something", but I just evaded that completely, because

2 I don't want to talk about commission at that time. The

3 body language says, you know, "I was able to get to

4 Gaddafi to meet him, he took the 340, that is a good

5 achievement, you know, it was successful", all these are

6 implications that she wants a commission. It is very

7 clear. And I never said no. She had done a good job.

8 The question --

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• **Para 75 (a) - T5/73/19 to T5/74/14**

19 take that. The question I want answering is whether you

20 say there was no discussion on the Boeing about her

21 commission?

22 A. My emphasis --

23 MR JUSTICE PETER SMITH: No discussion at all? That is the

24 question I want answering.

25 A. She maybe wanted to allude to it, but I never let her

Page 73

1 talk about it.

2 MR JUSTICE PETER SMITH: You are telling me, on oath, there

3 was no discussion between you and her on the Boeing

4 about her commission?

5 A. No. She could have wanted to get into that, but

6 I stopped her, I said "I will talk about nothing but

7 price now, only the price", I was very adamant about

8 that:

9 MR FREEDMAN: You stopped her. How far did she get?

10 A. I'm saying, if she talked about it, I did not give her

11 any room to talk about it, because I told her "One

12 emphasis right now: a contract and \$120. If you get

13 that, I will see what I can do". It is exactly like the

14 Movenpick Hotel.

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- **Para 75 (a) - T5/79/4 to T5/79/8**

4 Gaddafi to meet him, he took the 340, that is a good

5 achievement, you know, it was successful", all these are

6 implications that she wants a commission. It is very

7 clear. And I never said no. She had done a good job.

8 The question --

Page 79

- **Para 75 (a) - T5/79/19 – T5/80/13.**

19 MR FREEDMAN: So far you have told us about lots of things

20 she said, but none of that is body language, is it?

21 A. What is that?

22 Q. I said so far you have told us lots of things that she

23 said, but none of that is body language, is it?

24 A. Objective at that time was to get \$120 million, only.

25 Q. You said her body language and her mental status wanted

Page 79

1 to get on to that?

2 A. Sure, common sense.

3 Q. You don't know what her mental status is; do you?

4 A. That is my own analysis. I could be wrong.

5 Q. Your body language reference is just plainly ridiculous,

6 isn't it.

7 A. Your own point of view, I respect. I don't accept.

8 Q. All right. You were there, what was the body language?

9 A. I told.

10 Q. You told us things that she said, not body language?

11 A. Yes, for example, "When you do this" -- for example,

12 "I have done a good job. I'm with you, Prince" and all

13 these things are implications of what was next for me.

Page 80

• **Para 75 (b) - T5/78/17-19.**

17 MR JUSTICE PETER SMITH: Once you say that, you open the

18 door to give an impression that there was an attempt to

19 have a discussion, but it was short-lived.

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• **Para 75 (c) - T5/78/23 – T5/79/8.**

23 A. I will give you an example, she said "I was successful,

24 I was able to get to Gaddafi, we can keep the plane here

25 right now", and all these implications means "I deserve

Page 78

1 something", but I just evaded that completely, because

2 I don't want to talk about commission at that time. The

3 body language says, you know, "I was able to get to

4 Gaddafi to meet him, he took the 340, that is a good
5 achievement, you know, it was successful", all these are
6 implications that she wants a commission. It is very
7 clear. And I never said no. She had done a good job.
8 The question --

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• **Para 78 (6) (b) - T6/59/10-16**

10 A. I don't know what the Prince paid or not paid. I know
11 that the value of this aircraft, which through all the
12 people who deals with these aircraft, including Airbus
13 Industrie, was in the range of like 40 million. At the
14 moment, at the moment, this aircraft, this aircraft,
15 they are doing investigation because it has two bullets
16 in it, and if --

Page 59

• **Para 78 (6) (b) - T6/60/12-17**

12 A. My evidence was the valuation of the people who
13 manufactured the aircraft, which is Airbus Industrie,
14 plus three different people who deals with aircraft
15 internationally, all of them they came up with such
16 a price for the aircraft in that particular year, which
17 is in the range of 40 million.

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• **Para 84 - T5/104/17-22**

17 first item. Number two, I told her -- she assured me
18 that if we go to Libya, these things could be on track.
19 So I told her, "If they can be on track, then fine", and
20 at that time there was discussion that, "If this thing
21 is consummated, then, again, I will pay you something
22 based on your work".

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- **Para 84 - T5/95/11 to T5/111/6.**

11 Q. If we then move on to what happened at the Georges V on

12 30 August of 2005 now.

13 A. Which page?

14 Q. If you go to the witness statement of Mrs Sharab at

15 page 26. So tab 1, page 26?

16 A. Page 1.

17 Q. Tab 1, page 26?

18 A. That is Mrs Daad's statement.

19 Q. Yes.

20 A. Yes.

21 Q. I want to show you a part of that statement. She is

22 referring to what happened at the meeting at the

23 Georges V?

24 A. Yes.

25 Q. She says at paragraph 98 that the meeting lasted for

Page 95

1 about an hour, and during the meeting you said you were

2 fed up and asked for assistance:

3 "... and he stated that he wanted the matter closed

4 as quickly as possible and I could then have my

5 commission."

6 Then it goes on to what she says about it.

7 A. What she says thereafter.

8 Q. We will come back to that in a moment. At the moment

9 I'm interested in the statement that you said she could

10 have her commission. If you go to your evidence in

11 response, we can find that behind tab 3 at page 51.

12 A. Yes. Which page, please.

13 Q. Page 51?

14 A. Yes.

15 Q. At paragraph 43 you say:

16 "I met with Mrs Sharab at the Georges V in Paris
17 where I often conduct business meetings on
18 30 August 2005. We subsequently travelled to Libya to
19 meet with Colonel Gaddafi."

20 So you say nothing about the fact that you said to
21 her that she could then have her commission. Do I take
22 it from that that you agree that what you said at the
23 Georges V was that she could then have her commission
24 once the matter was closed?

25 A. No. I mean, she said -- she mentioned commission,

Page 96

1 I didn't mention commission in my statement. At that
2 time, I'm telling you, we had the price there, so the
3 last thing we are likely to discuss is commission,
4 frankly speaking.

5 Q. You don't contradict it in your statement. That's the
6 point I am making. You see it in her statement and you
7 are responding to her statement and you don't contradict
8 the fact that you said to her that she could then have
9 her commission once the matter was closed. That is the
10 point I'm making.

11 A. I saw what she said here, but to me really at time the
12 most important thing was to get this back on track, to
13 get the \$50 million paid.

14 Q. Yours was very carefully prepared statement
15 contradicting all matters of importance. Why didn't you

16 contradict her statement that you had said that she
17 could have her commission when the deal closed?
18 A. I think you have to ask my lawyers.
19 MR JUSTICE PETER SMITH: We cannot, I'm afraid.
20 MR FREEDMAN: It is your statement, not the lawyers'
21 statement.
22 MR JUSTICE PETER SMITH: We would like to but we cannot.
23 A. Frankly speaking, I recall looking at this, but I don't
24 know why this was not put there. But at that time,
25 your Lordship, the main objective was to go to Libya to

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1 get Gaddafi to give the \$50 million. Really at that
2 time this could have gone in any direction.
3 MR FREEDMAN: I suggest to you that the reason why it wasn't
4 contradicted is because it is true?
5 A. You know, I always said I will pay her commission.
6 I never said that. The question is how much the amount.
7 I never said that. I completely agreed with his
8 Lordship's statement a minute ago.
9 Q. But you weren't saying "If at the close of the deal
10 I exercise my discretion in your favour I will pay you
11 a commission"; you said "When the deal is closed I will
12 pay you the commission"?
13 A. At that time we had crisis. The last thing we are
14 talking about is commission. If there is no deal there
15 is no competition. And there is no discretion for me to
16 give her anything.
17 MR JUSTICE PETER SMITH: In your witness statement, go back
18 again to paragraph 43 on page 51, you tell me absolutely

19 nothing about the conversation that took place at the
20 Georges V, do you?
21 A. No.
22 MR JUSTICE PETER SMITH: Any detail about what was said at
23 all?
24 A. I do say it was a considerable inconvenience for me to
25 interrupt my schedule and plan to go to Libya.

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1 MR JUSTICE PETER SMITH: That is not a recounting of what
2 was discussed. Where do you tell me -- as far as I can
3 see, all you say about the Georges V meeting is:
4 "I met with Mrs Sharab in Paris at the George V
5 Hotel where I often conduct business. We subsequently
6 travelled to Libya."
7 Where do you tell me anything about that
8 conversation in your evidence?
9 A. At the time it is very clear that we had a problem with
10 Libya. Our main objective is to get this thing back on
11 track.
12 MR JUSTICE PETER SMITH: Remember your witness statement is
13 your evidence in this case in response to what she says.
14 If you look at paragraph 98 of her witness statement,
15 back at page 26, you see there she talks about closing
16 the deal and then she says that you said that she could
17 then have her commission.
18 She says she told you it was all your fault it was
19 going wrong. She says that she recommended that you
20 should go Libya and apologise to the President. She
21 says you agreed to do so and gave her a free hand to

22 negotiate a settlement.

23 She says all of that was discussed at the meeting at

24 the Georges V?

25 A. Yes.

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1 MR JUSTICE PETER SMITH: And you do not contradict any of

2 that evidence in your witness statement, do you?

3 A. No, I do -- can I read from this, your Lordship, I say:

4 "I have explained about ... I had and continued to

5 have a good relationship ... contrary to what the

6 claimant has alleged in her witness statement I did not

7 apologise to Gaddafi for not returning the Airbus to

8 Tripoli after scheduled maintenance."

9 MR JUSTICE PETER SMITH: We will come on to the meeting and

10 what might have been said between you and the President

11 in the tent. I'm more concerned at this stage about the

12 evidence of what happened at the Georges V. She has set

13 out a lot of detail about what was discussed and you say

14 nothing, nothing at all, do you?

15 A. I say one thing: I want my \$50 million.

16 MR JUSTICE PETER SMITH: Where is that in your witness

17 statement?

18 A. Maybe it is not here, but that -- that -- I don't know.

19

20 MR JUSTICE PETER SMITH: You don't even say that, do you?

21 A. Fine.

22 MR JUSTICE PETER SMITH: It is not fine. It doesn't help me

23 and it doesn't help you if I don't understand what your

24 case is. I'm trying to understand what the discussions

25 were at the Georges V and in your witness statement

Page 100

1 which is now, what, three years old, which you had an
2 opportunity to read, to correct, if you wanted, to
3 supplement, if you wanted, before you went into the
4 witness-box, despite all of that, you are now telling me
5 for the first time and telling Mr Freedman for first
6 time, I understand your answer to be that you said to
7 her "I want my 50 million", is that what you are telling
8 me?

9 A. I say here:

10 "Our objective was to go to Libya and get the
11 contract back on track."

12 That is the only thing that I had in mind.

13 MR JUSTICE PETER SMITH: I understand the objective, but I
14 want to know what was said and you say nothing about
15 what was said at all, do you?

16 A. But if it was not written, it doesn't mean we didn't say
17 it. We discussed about when to go to Libya and what to
18 say to Gaddafi and how to be sure to get the \$50 million
19 back to me.

20 MR JUSTICE PETER SMITH: I would have thought, Your
21 Highness, that when she says on oath that she told you
22 it was your fault and that you should go and apologise,
23 and that you agreed to do that -- because that requires
24 a lot from you, doesn't it? It requires you to go to
25 Colonel Gaddafi and say "Sorry, it is all my fault "and

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1 that you agreed to do that.

2 A. That is not what happened, your Lordship. I contradict
3 that.

4 MR JUSTICE PETER SMITH: You do not disagree with that
5 statement in your evidence, do you?

6 A. But if I don't disagree, it doesn't mean I agree with
7 it. When I went to Gaddafi he is the man who apologised
8 and he said "I should sack my cousin".

9 MR JUSTICE PETER SMITH: I'm not even sure she was
10 cross-examined on this paragraph. Was she?

11 MR FREEDMAN: I don't think she was.

12 MR JUSTICE PETER SMITH: I don't think a contrary story was
13 put in cross-examination. I have no notes and I usually
14 put notes when people are cross-examined. I don't
15 believe your counsel cross-examined her on this
16 paragraph.

17 It is important, and I can't understate the
18 importance, that if evidence is disputed, the contrary
19 must be put.

20 Now so far as I'm concerned you don't dispute it in
21 the witness statement and it wasn't put to her.

22 That means that unless you give evidence now and you
23 explain why you are giving it now and I accept it, so
24 far as I'm concerned what happened at the Georges V is
25 as she says. That is the only evidence I have.

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1 A. Okay. Could I state my position on what happened at
2 Georges V?

3 MR JUSTICE PETER SMITH: You can do. You can say it now and
4 Mr Freedman will no doubt have something to say about it

5 when he hears what you say for the first time what
6 happened at the Georges V. You tell me what happened at
7 the Georges V.

8 A. At the Georges V, the main objective was to prepare for
9 our trip to go to Libya to meet up with Gaddafi and,
10 sure enough, we went there with a leased plane. We are
11 not going with my plane, because we were concerned
12 that -- we were not sure about he may confiscate the
13 plane or not, so we went in a leased plane and, when
14 I met him, I met him privately and I met him in the
15 presence of her. I think Fouad Alaeddin may have been
16 there also. I don't remember well, but I think Fouad
17 was there also, and he had some of his people and he
18 said -- you know, he ended up apologising to him. He
19 said "What took place is wrong. My people should not
20 have done that", and he actually began cursing his
21 cousin, Ahmad Gaddaf. At that time he said, "We are
22 going to pay you everything and we are going back on
23 track". That is what happened in Libya with him.
24 MR JUSTICE PETER SMITH: We are going to get to Libya, but
25 your long answer there does not tell me anything about

Page 103

1 what was said at Georges V again. I will give you one
2 more chance, Your Highness, to tell me what you say was
3 said at the Georges V. Not what was done afterwards;
4 what was said then.

5 A. At the Georges V?

6 MR JUSTICE PETER SMITH: Yes.

7 A. When we met with Daad, we said "What is the plan when we

8 go to Libya?". She did say, you know, that at that time
9 she was not very happy, the fact that I took the plane,
10 you know, but I told her that I had no other choice but
11 to take the plane, because she believed that this thing
12 disrupted her plan, but I told her, "I had only
13 \$70 million and no plane. What recourse do I have on
14 them?", because they could tell me, that is it, they
15 were renegeing. So I tried to convince her that I took
16 the plane to safeguard my interest. So that was the
17 first item. Number two, I told her -- she assured me
18 that if we go to Libya, these things could be on track.
19 So I told her, "If they can be on track, then fine", and
20 at that time there was discussion that, "If this thing
21 is consummated, then, again, I will pay you something
22 based on your work".

23 MR JUSTICE PETER SMITH: You mean in your discretion?

24 A. Your Lordship, I always believe that she deserves to get
25 something. The dispute here is my discretion or the

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1 \$10 million she is talking about.

2 MR JUSTICE PETER SMITH: I don't want your belief, but your
3 conversation. Did you, at the meeting, say to her "Of
4 course, Mrs Sharab, you realise that I will pay you
5 something when I recognise your work, it is entirely at
6 my discretion"? Did you actually use those words at the
7 Georges V?

8 A. I don't recall that exactly, but, you know, it is not
9 impossible. I don't recall it, to be honest. I have to
10 give you the truth exactly. Because my position was

11 I was not even sure that at that trip I will be able to
12 reach an agreement with him. Because we were very
13 concerned, by the way, there was still a lot of tension
14 between us. You know, we didn't go in my plane, we
15 leased a small plane from a company --
16 MR JUSTICE PETER SMITH: You didn't want to lose another
17 plane, did you.

18 A. Yes. I was scared he will confiscate it, to be honest
19 with you. So we were still very tense and things were
20 not harmonious.

21 MR JUSTICE PETER SMITH: Is that the entirety of what you
22 now tell us, for the first time, happened, you say, at
23 the Georges V?

24 A. Yes, to the best of my recollection.

25 MR JUSTICE PETER SMITH: Mr Freedman will want to take that

Page 105

1 up with you. I have probably asked enough questions,
2 for my purpose, for the moment.
3 MR FREEDMAN: I am going to deal slightly out of turn, but
4 it is more important, while we are focusing on the
5 Georges V, to deal with it now.

6 You accept, don't you, that the request that she go
7 to the Georges V came from you?

8 A. You know, I don't recall how it happened, but for sure
9 I met her at the Georges V. I don't recall if I called
10 her or she called me, because we were always
11 communicating during the Libyan crisis.

12 Q. You know very well that you called her and sought her
13 out and sought her help?

- 14 A. It is a possibility. I don't deny it, but I can't
15 confirm because I don't recall the exact call between me
16 and her.
- 17 Q. She didn't offer to come to Paris, you asked her to go
18 to Paris.
- 19 A. No, but she would like to come, for sure, please, she
20 wanted to finish this deal also.
- 21 Q. Do you deny that she was sought out by you?
- 22 A. No. What is the question?
- 23 Q. Do you deny that the reason why she went to Paris was
24 because you requested her to come to Paris?
- 25 A. I told you, I don't recall exactly what triggered the

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- 1 meeting between us.
- 2 Q. So you don't know if that is correct or not correct, but
3 you don't deny it; is that what you are saying?
- 4 A. I don't recall meeting in the Georges V and leaving
5 together actually.
- 6 Q. I'm not talking about that. I'm talking about why she
7 came to the Georges V. She came because you asked her?
- 8 A. She came for one purpose: to finalise the deal and to be
9 sure the payment comes back to her.
- 10 Q. The circumstances were as follows: notwithstanding the
11 fact that you had taken the aircraft or arranged for the
12 aircraft to be taken from Germany to Riyadh in
13 about March 2004, that is 17 months earlier, you were
14 unable to get a resolution of your problem with the
15 Libyans by then, weren't you?
- 16 A. Fouad Alaeddin went there a few times with her, I think,

17 alone, but with no conclusion, because Al-Dam was
18 adamant about taking commission.
19 Q. I don't really want to waste too much time if there is
20 not an issue between us, particularly in view of your
21 commitments, but I want you to agree, if it is correct
22 that as at 30 August 2005, despite you having got the
23 aircraft 17 months earlier to Riyadh, you had not
24 resolved the problem with the Libyans; is that correct?
25 A. For sure correct, yes.

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1 Q. The reason why you sought her to come to Paris was
2 because you sought her assistance at that point to try
3 to resolve the problem with Libya?
4 A. You have to add to that that Fouad went a few times to
5 Libya and Saleh El Ghouli went a few times to Libya.
6 MR JUSTICE PETER SMITH: It didn't work, you still have not
7 got your 50 million. That is Mr Freedman's point.
8 A. No, but, your Lordship, the foundation began getting
9 prepared. Still it was not finalised, and the fact of
10 the matter, I was worried to go with my plane, because
11 sure it was not finalised yet. It was only finalised
12 when I met him personally.
13 MR FREEDMAN: It is not a question of finalisation, it is
14 a question of you being at your wits' end by 30 August
15 2005. You sought her out because you wanted her to
16 resolve the problem.
17 A. And still it was not resolved.
18 Q. That is why you requested her presence in Paris and that
19 is what the discussion was about?

- 20 A. I don't understand, why do you try always to eliminate
21 Fouad Alaeddin from the equation?
22 Q. You said that you were fed up and you asked for her
23 assistance in sorting out this long-outstanding problem,
24 didn't you?
25 A. Definitely I was fed up. We were all fed up.

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- 1 Q. You asked for her assistance to sort out this
2 long-outstanding problem, didn't you?
3 A. Her support was needed with the others.
4 Q. You said you wanted the matter closed as quickly as
5 possible and she could then have her commission, didn't
6 you?
7 A. This thing would not have been resolved unless two
8 things had happened: I took the plane from Germany; and
9 my going to Libya, meeting Gaddafi personally.
10 Q. Would you confine your answers to the questions?
11 I'm asking you specifically about what took place on
12 30 August. I'm suggesting to you that you said to her
13 that you wanted the matter closed as quickly as possible
14 and she could then have her commission?
15 A. Based on my discretion that is a possibility.
16 Q. Not based on her discretion.
17 A. My discretion.
18 Q. You just said she could have her commission?
19 A. My discretion.
20 Q. Do you have a recollection as to what you said about her
21 commission?
22 A. No.

23 Q. Do you think she would have said "That is fine. I'll go
24 along and do anything you like, if there is
25 a possibility that I may, at the exercise of your

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1 discretion, have a commission"?

2 A. She could have withdrawn and say "I don't do the deal".

3 No one stopped her.

4 Q. I suggest that it was against the background of your
5 confirmation that she would get her commission that she
6 then proceeded further to help you?

7 A. No one is disputing the fact of commission; the question
8 is the amount of commission.

9 MR JUSTICE PETER SMITH: Rephrase the question.

10 Mr Freedman says that you agreed for her to carry on
11 on the basis that she would get the commission as she
12 says was agreed by you in the Boeing, namely, the
13 10 million.

14 That is the question Mr Freedman is putting to you.

15 A. Your Lordship, the \$10 million was never approved by me,
16 never discussed. I always said "I pay what you
17 I believe is right". I'm very sure about that.

18 MR FREEDMAN: She told you that you were at fault, that you
19 had been making problems and that you should go and
20 apologise to Colonel Gaddafi.

21 A. She said that, but obviously it was incorrect.

22 Q. But you agree that she said that, don't you?

23 A. I don't recall exactly, but she did fault me, she did
24 fault me. I don't care about the --

25 Q. Do you agree that I've summarised the gist of what she

Page 110

- 1 said?
- 2 A. That is what the statement says.
- 3 Q. Do you agree with it?
- 4 A. She wanted me to be in a weak position and she wanted me
- 5 to go there and apologise, because she believed that
- 6 Gaddafi will accept to have a deal with me.

Page 111

- **Para 100 - T4/172/21 – T4/175/4**
- 21 Q. So it was irrational on your part to suggest, as you do
- 22 in the note, that absent a successful transaction there
- 23 should be no payment?
- 24 A. It was an arm twisting process.
- 25 MR JUSTICE PETER SMITH: Whose arm is twisting whom?

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- 1 A. I was twisting his arm. Basically, I tell him, you
- 2 know, you go, work and although the money was owed to
- 3 him for sure, because he did do work, if the deal was
- 4 consummated, I can't put the blame on him, obviously, so
- 5 I don't want to put maximum pressure on him right now to
- 6 go there and have this money suspended, because he is
- 7 the type of guy, if you don't pay him, he nags and he
- 8 goes up to you day by day, and that was relatively
- 9 speaking a big amount for him.
- 10 MR FREEDMAN: It follows, does it, that when you said, on
- 11 this matter there is no agreement whatsoever, that was
- 12 a lie; you knew there was an agreement?
- 13 A. There was an agreement -- I'm telling you, this was

14 a pressure mechanism on him because he got a copy of

15 that and he didn't like it, obviously.

16 Q. Leave aside why you lied, it was a lie, wasn't it?

17 A. It was not a lie, it was a pressure mechanism.

18 Q. It was a lie, because you knew that you had an agreement

19 with the accountants that they would be entitled to

20 charge their hourly rate?

21 A. Your interpretation is a lie; my interpretation is arm

22 twisting.

23 MR JUSTICE PETER SMITH: Let me have a look at my

24 interpretation with the lie. There was an agreement to

25 be paid, to pay them on an hourly basis; yes or no?

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1 A. For this thing there was no agreement, he only charged

2 me by the hour. So there is no written agreement for

3 him to proceed on this one.

4 MR JUSTICE PETER SMITH: There was no written agreement for

5 him to do anything; he was a consultant and he did his

6 hours, and whatever you asked him to do, pay you hourly?

7 A. Yes, and he used to charge me on this and on other deals

8 the same price.

9 MR JUSTICE PETER SMITH: He did all of this work and,

10 subject to proving he had done it all, he would be

11 expected to be able to charge you on an hourly basis for

12 the work he did on the plane?

13 A. Correct.

14 MR JUSTICE PETER SMITH: So when you say in your note, which

15 he sees, there was no agreement whatsoever, that is

16 untrue, because there would be an implicit, or implied

17 agreement, to use your words, that if he did the work on
18 it and he proved he did the work on it, you would pay
19 him an hourly rate?

20 A. Yes, correct. And this invoice was paid to him
21 eventually.

22 MR JUSTICE PETER SMITH: So although it is arm twisting, it
23 is arm twisting to put him under pressure, but you are
24 writing something that is untrue, aren't you?

25 A. No, because at this time I had talked to him that there

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1 was no agreement on that matter, but I want to put
2 maximum pressure on him right now, so this matter was
3 settled and it was paid to him in full.
4 MR JUSTICE PETER SMITH: Okay.

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- **Para 100 - T4/175/5 – 13**

5 MR FREEDMAN: Going on in the note:

6 "We can neither accept nor tolerate these bills that
7 have no basis."

8 On your evidence they did have a basis, ie the
9 hourly rate and the disbursements?

10 A. Correct.

11 Q. Therefore it was wrong to say that the bills had no
12 basis, wasn't it?

13 A. No, that is why they were paid eventually.

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- **Para 100 - T4/177/11 to T4/178/21.**

11 Q. I suggest to you that there must have been charges or
12 invoices from Ernst & Young to you in relation to these

- 13 services. Where are they?
- 14 A. That is the only bill we have from him.
- 15 Q. What searches have you undertaken for these bills?
- 16 A. We have looked all over the place, and we found other
- 17 bills that are not relevant to this whole thing.
- 18 Q. There must have been other bills in relation to those
- 19 services. Are you saying that you have lost them or
- 20 what?
- 21 A. No, to this particular case this is the only bill
- 22 I have, we found.
- 23 MR JUSTICE PETER SMITH: He has not charged you for any work
- 24 that he has done after 2004?
- 25 A. No, no.

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- 1 MR JUSTICE PETER SMITH: That is what you are telling me?
- 2 A. No, he did not.
- 3 MR FREEDMAN: How would you respond if you were in the room
- 4 and you were invited to respond after I had said at the
- 5 end of this case to his Lordship that that evidence is
- 6 unbelievable. How would you respond?
- 7 A. I would -- this matter became very personal for Fouad.
- 8 Fouad took it upon himself to work day and night to
- 9 consummate and finalise this deal. He took it very much
- 10 personally, because he was very upset from the Libyans,
- 11 from the corruption of Gaddafi Al-Dam, from the
- 12 corruption of the people under Gaddafi, so he took it
- 13 upon himself to finish it as a challenge and he did so,
- 14 because he is very honourable.
- 15 Q. And I suggest to you, just as there must have been

16 invoices in respect of the period after May 2004, so
17 there may have been invoices in respect of the period
18 before September 2002, including the meeting at Ayoush?
19 A. As in relation for this transaction, this is the only
20 bill we have from Fouad Alaeddin's company at the time,
21 Ernst & Young.

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• **Para 101 - T4/179/24 to T4/182/5.**

24 Q. What I suggest you mean by that is that when the
25 aircraft has been sold, she will receive the

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1 \$10 million, no more and no less?
2 A. That is very wrong because I talk about the agreement
3 with Ernst & Young, but I talk with her on the
4 arrangement. There is a big difference between an
5 agreement and an arrangement. Arrangement means
6 something that is up to my discretion. When I say no
7 more or less, that means that is it, I will not discuss
8 anything further. That is the literal translation of
9 the Arabic [Arabic word].
10 Q. But you are not simply saying there is an arrangement,
11 you are saying that you will stand by it?
12 A. Sure.
13 Q. Stand by it means that if there is a completed sale, you
14 will pay?
15 A. Sure. Based on my discretion, you will pay. I'm not
16 reneging on that at all.
17 Q. Nothing about discretion. When you reach that moment,
18 you will pay her that which is agreed, no more and no
19 less?

20 A. Based on my discretion.

21 Q. Not based on your discretion, you are standing by the
22 arrangement. In other words, as you agreed a moment
23 ago, when it got to completion you would pay her, no
24 more and no less?

25 A. Actually, in her letters to me she never even mentioned

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1 \$10 million. She was always alluding to the
2 arrangement, which means your discretion, Prince. In
3 all the letters she never mentioned 10 at all.

4 Q. But no more no less must have in mind a fixed sum?

5 A. Not necessarily.

6 Q. No more and no less than that fixed sum?

7 A. Not necessarily, you are linking the no more and no less
8 to an amount. I'm linking it to no more and no less
9 discussions, that's it, close the subject.

10 Q. No more and no less cannot refer to a variable figure or
11 something that you would make up at your discretion; it
12 is something that is fixed, isn't it?

13 A. Not necessarily.

14 Q. What do you mean not necessarily?

15 A. Not necessarily, that is your interpretation. My
16 interpretation is no more and no less discussions, that
17 is it, close the subject.

18 Q. Do you agree with me that that is the logical
19 interpretation, no more and no less is by reference to
20 a fixed sum?

21 A. I agree that you could interpret it this way, yes, but
22 that is not my interpretation. But I also know very

23 well that even her, in her letters, she never mentioned
24 the figure 10 at all. She kept it for my discretion
25 because she knew that I would decide what is the fair

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1 amount. Clearly this whole thing disappeared completely
2 when she switched sides and she said in her letter to
3 me, "I am now on Gaddafi's side, no more on your side",
4 and that is when I decided enough is enough. Whatever
5 I had in my mind now is going to become zero.

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- **Para 102 - T5/55/10-12**

10 Q. You accept, don't you, that after you left the Airbus,
11 you had a discussion in your Boeing with Mrs Sharab?
12 A. And Fouad Alaeddin, yes.

Page 55

- **Para 103 - T5/197/3 to T5/201/3**

3 "You don't have an obligation; it is just matter of
4 discretion"?
5 A. Because she is circling around the \$10 million figure
6 which I never uttered, I never acknowledged and I never
7 accepted.
8 Q. How do you know she is circling around the \$10 million
9 figure?
10 A. She knows that and I know that. That is why she didn't
11 mention the number here.
12 Q. Now did you know that she was circling around the \$10
13 million figure?
14 A. That is what she was seeking.
15 Q. The reason why you know that is because you know that
16 you entered into an obligation with her that would end

- 17 up with you having to pay \$10 million?
- 18 A. If I accepted that I would have paid it and she would
- 19 have wrote it in this letter and the other letter.
- 20 Q. You are not answering the question. Why didn't you
- 21 respond saying there was no obligation; it was just
- 22 a discretion?
- 23 A. Because we were completely far away from her position
- 24 and from my position.
- 25 Q. How did you know that?

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- 1 A. Because she was thinking of \$10 million.
- 2 Q. How did you know that?
- 3 A. She said that to Fouad many times. She did say that to
- 4 Fouad.
- 5 Q. You understood what she meant by "the obligation"?
- 6 A. He was calling me, Fouad, and telling me that is what
- 7 she wants.
- 8 Q. That was on 15 July from the Corinthia Bab Hotel?
- 9 A. No, that is not true. Fouad used to come to me later on
- 10 and said she wants the money. I said, okay fine, I will
- 11 pay her what I agreed in my discretion. He said, "No,
- 12 she wants 10", and I said "I'm not going to pay her 10".
- 13 MR JUSTICE PETER SMITH: Can you say that a bit slower,
- 14 please. That is quite an important response.
- 15 A. Fouad in my meetings said, "She wants her money".
- 16 I said "I'm willing to pay her based on my discretion".
- 17 And he said she wants what she believes is her right,
- 18 \$10 million. I said "No, you know and I know," and
- 19 Fouad accepted my term, that is why I want him to be

20 a witness but obviously he declined last minute, and
21 I said "I will pay her my discretion", and he said "No,
22 she wants \$10 million", and I said "No".
23 MR JUSTICE PETER SMITH: Those were important conversations,
24 were they not? Are any of those in your witness
25 statement?

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1 A. No, not to me, but that is what Fouad told me verbally.
2 MR JUSTICE PETER SMITH: Because until you said that
3 I didn't know how you knew she wanted \$10 million.
4 A. That is what Fouad told me.
5 MR JUSTICE PETER SMITH: Before this letter.
6 A. I did not respond to her. So she used to call Fouad and
7 he used to come to me.
8 MR JUSTICE PETER SMITH: As at 19 September 2006, this is
9 a couple of weeks before you finally get the money, her
10 case is that on a number occasions she said to you, "My
11 fees are 10 million" and you agreed it. But you do not
12 accept that in any conversation she had with you she
13 mentioned the figure of 10 million and you deny that the
14 agreement as made in the Boeing was 10 million.
15 So up until this litigation there is nothing that
16 I have seen where she says, "I want 10 million".
17 Even this letter, which you have rightly pointed out
18 in response and you have raised the question, "If it was
19 10 million why didn't she say it", but that letter
20 doesn't refer to 10 million.
21 For the first time you are telling Mr Freedman --
22 I think it is the first time, isn't it?

- 23 MR FREEDMAN: Correct.
- 24 MR JUSTICE PETER SMITH: -- that you found out she wanted
- 25 10 million from Mr Alaeddin; is that right?

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- 1 A. She told Fouad because Fouad was trying to mediate
- 2 between us and he used to come to me.
- 3 MR JUSTICE PETER SMITH: When did she do that?
- 4 A. At a later stage.
- 5 MR JUSTICE PETER SMITH: You mean after this date?
- 6 A. Yes, after all these letters were done also. And I
- 7 never answered her. No, no, no, Fouad told me about the
- 8 10 million before this letter was sent to me.
- 9 MR JUSTICE PETER SMITH: Before the letter?
- 10 A. Yes. That is why I said no, my agreement with her I pay
- 11 her my discretion, and I told Fouad "You were present at
- 12 the meeting".
- 13 MR JUSTICE PETER SMITH: He has said "before" and "after" in
- 14 different answers.
- 15 MR FREEDMAN: Yes, "before" and "after".
- 16 MR JUSTICE PETER SMITH: None of this is in your witness
- 17 statement, not a jot of it.
- 18 A. No, but I mean --
- 19 MR JUSTICE PETER SMITH: You don't tell me in your witness
- 20 statement how you found out she wanted 10 million.
- 21 I thought the case as put to her was that the first time
- 22 she mentioned 10 million was when the solicitors wrote.
- 23 A. But at the end clearly, when I never accepted
- 24 \$10 million that Fouad told me about, she obviously
- 25 became desperate and began sending me all these letters.

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1 I told Fouad "You were in the plane with me when I told
2 her at that time we will discuss nothing but the contact
3 with the Libyans".

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- **Para 103 (2) - T5/198/3-4**

3 A. She said that to Fouad many times. She did say that to
4 Fouad.

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- **Para 103 (3) - T5/198/15-22**

15 A. Fouad in my meetings said, "She wants her money".
16 I said "I'm willing to pay her based on my discretion".
17 And he said she wants what she believes is her right,
18 \$10 million. I said "No, you know and I know," and
19 Fouad accepted my term, that is why I want him to be
20 a witness but obviously he declined last minute, and
21 I said "I will pay her my discretion", and he said "No,
22 she wants \$10 million", and I said "No".

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- **Para 103 (3) - T5/200/6-8**

6 A. Yes, after all these letters were done also. And I
7 never answered her. No, no, no, Fouad told me about the
8 10 million before this letter was sent to me.

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- **Para 103 (3) - T5/200/10-12**

10 A. Yes. That is why I said no, my agreement with her I pay
11 her my discretion, and I told Fouad "You were present at
12 the meeting".

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- **Para 103 (3) - T5/201/1-3**

1 I told Fouad "You were in the plane with me when I told

2 her at that time we will discuss nothing but the contact
3 with the Libyans".

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• **Para 120 (1) - T4/5/5-8 and see also lines 21 – 25.**

5 Do you accept that in April 2003 she made
6 arrangements for you to go to Libya and to visit
7 Colonel Gaddafi?
8 A. That is correct.

21 Why in that paragraph do you not say that Mrs Sharab
22 made the arrangements for your visit to Libya; why do
23 you say simply "arrangements for my visit were made"?
24 A. Because to me there is not much difference. They are
25 the same.

Page 5

• **Para 120 (2) - T4/17/21-22**

21 A. The lead was Fouad Alaeddin, because Daad for sure, she
22 cannot draft any contracts.

Page 17

• **Para 120 (2) -T4/37/15 to T4/39/20.**

15 Q. At paragraph 19, four lines from the bottom of the page,
16 it says this:
17 "Save that it is denied that any of the matters
18 alleged were done in furtherance of the agreement,
19 paragraph 23 is admitted."
20 So you were not admitting, you were denying it was
21 in furtherance of the agreement, but you were admitting
22 that Mrs Sharab was the principal negotiator in relation
23 to these negotiations. Why is it that when I asked you
24 the question five times, you refused, you were not

25 prepared to agree that she was the principal negotiator

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1 but in your defence you say that she was?

2 A. Yes, I told you it depends what is the definition of
3 "the lead". I never said she is not principal. She was
4 part of the team and Fouad Alaeddin played a big role,
5 so you are trying to minimise the impact of Fouad and
6 maximise her role. They both played a big role in this
7 whole thing.

8 Q. You didn't have that difficulty when you were agreeing
9 to the terms of the amended defence, did you?

10 A. What do you mean?

11 Q. You didn't have any difficulty in agreeing, when you
12 approved the defence, to the fact that Mrs Sharab was
13 principal negotiator?

14 A. Well, you know, I told you, it depends what is the
15 definition of "principal negotiator".

16 MR JUSTICE PETER SMITH: Why not say that in the defence,
17 then, that you are not sure what is meant by the
18 expression "principal negotiator"? The paragraph seems
19 to me to be clear, in the sense that it is saying the
20 claimant was the principal negotiator and therefore she
21 would agree a big picture price, but Mr Alaeddin's role
22 was to negotiate the detailed financial aspects of the
23 deal, so he is the number cruncher, is what I would say,
24 of the deal, and you do not disagree with that; in fact,
25 you accept that in your answer.

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1 A. Yes, they both played a role, no doubt about that. She
2 had access to Gaddafi and that is why I called her to
3 open the door to Gaddafi, when I met her in Cannes
4 because I really didn't want to go to Gaddafi on that
5 particular matter because I had so many other big things
6 going with him right now at that time, so I only wanted
7 to go through her and Faouad Alaeddin to talk about the
8 airplane issue.

9 I'm not underestimating her role, but don't
10 exaggerate her role also, because I also had access to
11 Gaddafi personally.

12 MR FREEDMAN: Can I suggest the reason why you didn't agree
13 with me on the five occasions when I asked you if she
14 was principal negotiator is because you actually do want
15 to understate her role to this court?

16 A. I don't want to understate her role at all, but also
17 I don't want to exaggerate her role beyond reason, and
18 as you see, as things developed, her role almost, not
19 diminished, evaporated and disappeared at a later stage.
20 You will see that as we progress in the discussion.

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• **Para 120 (3) - T4/65/25 – T4/68/13.**

25 Q. Paragraph 61:

Page 65

1 "Later still, on or about 4 September 2005, the
2 defendant telephoned the claimant in London and
3 expressed his gratitude for her efforts and success."

4 You accept that that is true, don't you?

5 A. I'm not denying that, yes, it is possible.

6 Q. It goes --

7 A. Yes, yes.

8 Q. It was a bit stronger than that, because if you go to

9 behind tab 3 --

10 A. The same bundle?

11 Q. The same bundle behind tab 3 at page 29.

12 A. 29, yes. Yes.

13 Q. At paragraph 41 you say:

14 "The first and third sentences of paragraph 61 are

15 admitted."

16 So when you served your defence you didn't just say

17 it was possible, you said:

18 "This is correct".

19 A. Fine, I'm not saying no.

20 Q. What has happened since then that now it is only

21 possible but then it was correct?

22 A. I think the word -- to me they are interchangeable.

23 Q. You know they are not interchangeable. One of them

24 involves you accepting that that happened, and the other

25 is you are saying, "I don't know whether it happened or

1 not, I'm not in a position to deny it."

2 A. No, I'm always saying that she played a role, but you
3 are trying to exaggerate it and I'm trying to give it
4 reality.

5 Q. I think you understand the difference between, don't
6 you, on the one hand accepting that something happened,
7 and on the other hand simply saying, "It is possible
8 that it happened, I don't know whether it did or
9 didn't"?

10 A. No, I'm saying she played a role. You are trying to
11 exaggerate it and I'm trying to be realistic.

12 MR JUSTICE PETER SMITH: You are not, with respect, Your
13 Highness, because when you say it is possible, you are
14 not even admitting that the conversation took place as
15 she said.

16 A. Your Lordship, I definitely say I had many calls with
17 her. I don't recall that call exactly happening, but
18 for sure I was in contact with her and I was pleased
19 with her involvement.

20 MR JUSTICE PETER SMITH: Your defence admits the
21 conversation took place.

22 A. I'm not denying it.

23 MR JUSTICE PETER SMITH: There is a difference between not
24 denying it and admitting it. It all goes to a matter of
25 proof. If you admit that the conversation took place as

1 she says then there is no investigation of it. If you
2 are saying it might or it is possible then Mr Freedman
3 has to ask more questions. Which is your answer?

4 A. I don't recall an exact conversation, but for sure, for
5 me to call her after the trip to Gaddafi happened, which
6 was somehow successful, I would say yes.

7 MR JUSTICE PETER SMITH: Can I say that your answer to
8 Mr Freedman's questions is you do not recall the precise
9 date of the conversation, but you accept that around
10 this time you telephoned her and congratulated her on
11 what she did?

12 A. For sure, yes.

13 Thank you, your Lordship, for clarifying the matter.

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- **Para 120 (4) - T4/15/20-24**

20 Q. And do you agree that he wanted the negotiations to take
21 place with Mrs Sharab and Mr Alaeddin?

22 A. He didn't really bring up this situation at all, but the
23 professional contact between me and him was
24 Fouad Alaeddin.

Page 15

- **Para 120 (4) - T4/18/2-18**

2 MR JUSTICE PETER SMITH: That is not the question. The
3 question is whether you accept that Colonel Gaddafi
4 asked her to be part of your negotiating team. That is
5 the question that Mr Freedman is asking, because you
6 said earlier that he didn't ask that.

7 A. I don't recall, frankly --

8 MR JUSTICE PETER SMITH: Mr Freedman is pointing out that
9 you admit in your defence that he did ask it. Neither
10 of those two statements can stand side by side. One
11 must be wrong. Which one is wrong?

12 A. I tell you. The contact between me and him was

13 Fouad Alaeddin. For sure I do acknowledge that during
14 certain periods Gaddafi used to use her, and I didn't
15 mind that at all, and I did utilise her services to
16 support, because she access to him directly, although
17 the relationship with all juniors under Gaddafi, as
18 I discovered later, were really very negative.

Page 18

• **Para 120 (4) - T4/22/6 – T4/23/11.**

6 MR JUSTICE PETER SMITH: He [that is Colonel Gaddafi] also
7 asked the defendant [that is you] to send the claimant
8 and Mr Alaeddin to conduct the negotiations."

9 That is what the claimant says.

10 If you go your defence, paragraph 18 I think it is
11 again.

12 A. 18 of what?

13 MR JUSTICE PETER SMITH: Of the next tab, which is your
14 defence. Sorry, paragraph 16 on page 26.

15 A. Yes.

16 MR JUSTICE PETER SMITH: You admit that paragraph.

17 A. Fine, if that is the case, we accept it.

18 MR JUSTICE PETER SMITH: You cannot just say "well fine"

19 because in response to an earlier question from

20 Mr Freedman, you denied that the President had asked her
21 to be brought into the negotiations.

22 A. Because, remember, your Lordship, I don't remember all
23 the facts, this has been a long time ago, but ...

24 MR JUSTICE PETER SMITH: I understand that, and I understand
25 that you wouldn't remember all the facts, I wouldn't

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1 expect anybody to remember these events with
2 particularity, but it is therefore perhaps important for
3 you in the way in which you give your evidence to say
4 when you don't recall, as opposed to saying things which
5 Mr Freedman has demonstrated are contrary to what has
6 been said on your behalf before.

7 A. Right, clear.

8 MR JUSTICE PETER SMITH: So if we come back to it, do you
9 now accept that Colonel Gaddafi asked her to participate
10 in the negotiations?

11 A. If that is -- yes, if the statement says that, yes.

Page 23

- **Para 120 (5) - T4/41/22 to T4/44/3**

22 You were acknowledging that you wrote various
23 letters to Colonel Gaddafi and you acknowledged that you
24 asked Mr Alaeddin to follow this up with his Libyan
25 contacts. Why did you not acknowledge that which we

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1 read at paragraph 73, namely that all of these letters
2 were sent to you -- to Mrs Sharab by you for her to
3 deliver by hand to President Gaddafi?

4 A. Delivering the letter was one third of the story. The
5 other two-thirds of the story was really -- is that the
6 process was not at that time managed by Gaddafi. He had
7 his juniors involved, like the head of intelligence,
8 like his chief of staff, like the head of airlines, and
9 also those people had a very bad relation with her
10 personally.

11 Q. Is the reason why you brushed her out of that part of

12 the story because you want to minimise her role in this
13 matter?

14 A. No, I told you, at that time when the \$50 million was
15 not paid it was very clear that those junior to Gaddafi
16 had really tried to be obstructive and not to implement
17 the rest of the agreement, and mainly it was his cousin
18 that was supposed to transfer the \$50 million, and she
19 had no access to him at all.

20 MR JUSTICE PETER SMITH: Just a minute. I understand that
21 issue. Mr Freedman is undoubtedly going to take you to
22 that issue later in his cross-examination. At the
23 moment he is concentrating on the fact that you wrote
24 a number of letters and Mrs Sharab wrote a letter and
25 you knew they were all hand delivered.

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1 A. Yes.

2 MR JUSTICE PETER SMITH: I would have thought that the
3 reason that you give her the letters to deliver is that
4 you can then be confident because of her links with the
5 President that the letters will be seen by the President
6 and you would hope that the President would act on them.

7 A. That is correct. That is correct.

8 MR FREEDMAN: Why do you not acknowledge expressly her role
9 in relation to that when replying to her paragraph 73?

10 A. Because at that time when the \$50 million was not paid
11 it was very clear that obstacle is not coming from
12 Gaddafi personally, it was those junior to him creating
13 obstacles because they wanted to have bribes and
14 commissions which I was against completely.

15 Q. Do you accept that you handed those letters to
16 Mrs Sharab or that you made sure that she had those
17 letters and asked her to deliver them personally to the
18 President?

19 A. Yes. Letters were given to her for sure, because she
20 had good access to Gaddafi, yes.

21 Q. Why didn't you say so in her witness statement?

22 A. Because frankly speaking the impact of these letters
23 were really of no importance at all, because Gaddafi
24 used to transfer these letters to his juniors, and the
25 juniors did not really act on it at all because they had

Page 43

1 personal reasons and they had personal objectives which
2 I was against, such as paying commissions and bribes
3 which I did not really accept.

Page 44

- **Para 120 (5) - T4/49/4**

4 A. But I did send many letters to Gaddafi.

Page 49

- **Para 120 (5) - T4/59/7 to T4/61/7**

7 side.

8 MR JUSTICE PETER SMITH: When we look at the contract, it
9 didn't say 120, did it, the contract actually said 70
10 for the plane?

11 A. The first contract, yes.

12 MR JUSTICE PETER SMITH: 70 for the plane.

13 A. Yes.

14 MR JUSTICE PETER SMITH: It didn't say 120, so it is not

15 a no-brainer because somebody who doesn't know what is
16 actually happening would look at the contract and say
17 you have been paid in full for the plane, wouldn't they?

18 A. Yes, but she --

19 MR JUSTICE PETER SMITH: If I saw the document, the document
20 was shown to me for the first time, and I was asked to
21 advise you, I would say, "Your Highness, the contract
22 which you signed entitles you only to 70 million, and
23 you have had it", and you would have to explain to me as
24 a complete stranger that there is a lot more to it. So
25 it is not a no-brainer. The other side can exploit it

Page 59

1 if they wish, can't they?

2 A. Those who were involved in the process, such as her,
3 Fouad Alaeddin and the seniors in the Libyan government
4 and Gaddafi knew it was 120 very well.

5 MR JUSTICE PETER SMITH: Yes, but when we look at it, we
6 will see that Mr Al-Dam, who actually had the money, was
7 not in the same position.

8 A. Same position as what, your Lordship?

9 MR JUSTICE PETER SMITH: He didn't know what the true deal
10 was and he was using the fact that the contract said 70,
11 wasn't he, to say, "Give me a bit of money and it will
12 go through"?

13 A. The fact they paid \$50 million eventually proves that
14 the contract was 120, your Lordship.

15 MR JUSTICE PETER SMITH: We will discuss how the 50 million
16 came to be paid later.

17 MR FREEDMAN: For the moment what I want to ask you again is

18 this: I want to suggest to you that she was putting on
19 the line her close relationship with Libya and with
20 Colonel Gaddafi in order fearlessly to represent your
21 interests, wasn't she?
22 A. Based on that letter, yes.
23 Q. Do you then remove or withdraw what you said that it
24 wouldn't take a genius to write a letter like that; in
25 fact, it did take some amount of courage and conviction

Page 60

1 on her behalf?
2 A. There is a big difference between having courage and
3 being a genius. It is a fact of the matter that she
4 knew that 120 had to be paid, and she also knew that the
5 plane is under my name and if this thing didn't
6 materialise, the payment of the \$50 million, I would
7 just take the plane back.

Page 61

- **Para 121 - T5/86/24-25.**

24 diminished substantially. When I took possession of the
25 plane, things went sour with the Libyans completely.

Page 86

- **Para 140 - T6/130/20-24.**

20 MR JUSTICE PETER SMITH: How many other transactions do you
21 have when your client is frightened to turn up to the
22 seller's country in his own jet because he thinks it
23 might be seized?
24 A. It is very unusual.

Page 130

- **Para 142 - T6/168/16.**

16 A. I think two adults can agree to anything, so I clearly

Page 168

- **Para 143 (a) - T6/130/14-17**

14 Can we just pinpoint certain of the factors. The

15 second factor, "The parties involved", I can write next

16 to that Gaddafi, can I not?

17 A. It would be a factor to consider for sure, yes. In this

Page 130

- **Para 143 (b) - T6/132/7-10**

7 A. And it is certainly an unusual situation, it is an

8 unusual asset and, yes, there would have been a very

9 limited market for the aircraft, that is undoubted.

10 MR FREEDMAN: That is undoubted.

Page 132

- **Para 143 (c) - T6/132/17-19**

17 a popular type and it is in a configuration that makes

18 it very unusual, even within that niche. So it would

19 have been a very limited market for the aircraft.

Page 132

- **Para 143 (d) – T6/134/4- 8**

4 MR FREEDMAN: Next of your items at page 48 are the

5 countries involved. There is only one country really

6 involved and that is Libya. So that is not very

7 promising, is it?

8 A. Again it adds to the difficulty of the transaction.

Page 134

- **Para 143 (e) – T6/134/9-12**

9 Q. And part of the difficulty of the transaction would be

10 the length of time it would take to complete because the
11 more difficult the transaction, the more the potential
12 for lengthy delays?

Page 134

• **Para 143 (f) – T6/135/9:**

9 A. It could be a factor, yes, as I have stated.

Page 135

• **Para 143 (g) – T6/135/10-13**

10 Q. And political sensitivities, you only have to say the
11 words "Libya and Gaddafi" and you immediately think of
12 political sensitivities, don't you?

13 A. Yes, but there are many other countries like that.

Page 135

• **Para 143 (h) - T6/136/2-15**

2 If it were the case that there were a number of
3 other people who were trying to interest Colonel Gaddafi
4 in the sale of an aeroplane at the time, would that be
5 a relevant factor to fixing a reasonable fee?

6 A. I wouldn't know if that was the case.

7 Q. But say it was the case.

8 A. You have to assume that at any time, any buyer is being
9 approached by other sellers.

10 Q. Say it was stronger than that and there came a point
11 when Mrs Sharab from attending Libya in January of 2003
12 had found out that there were five or six others who
13 were trying to sell specific aircraft to
14 Colonel Gaddafi, so it was a competition.

15 A. Yes.

Page 136

- **Para 143 (i) – T6/137/11-18**

11 Q. Isn't the most important factor of all that you have
12 mentioned, the one at page 43, in that paragraph four
13 lines from the bottom:
14 "Every case is assessed on its merits."
15 A. Absolutely. That is why I also say we don't have a rate
16 card, we do exactly that. We look at a project and take
17 a whole range of factors into account before deciding
18 what would be a reasonable fee.

Page 137

- **Para 143 (j) - T6/142/5-8:**

5 MR JUSTICE PETER SMITH: And you probably could count on
6 probably no more than two hands potential buyers I would
7 have thought?
8 A. I would agree.

Page 142

- **Para 143 (k) - T6/144/3-6**

3 Do you agree with that?
4 A. I don't know where he has drawn that from, but he is
5 probably right, but I've not analysed the market at that
6 time.

Page 144

- **Para 143 (l) - T6/157/19-24**

19 agree with. If you go to page 57 you talk there about
20 what you do agree with, and you talk about at the end of
21 that that there is no set or specific figure for the
22 amount of commission or percentage in each case it is
23 negotiated?
24 A. I think that is clear from my evidence.

Page 157

- **Para 143 (m) - T6/158/16 -25**

16 Q. What you are not doing is you are not challenging there

17 that Mr El Turk does enter into deals with the

18 commissions of the kinds that he describes in his

19 evidence?

20 A. Well I don't think it was my position to challenge his

21 evidence, it is his evidence against mine. So I'm

22 saying that my evidence is that we are not seeing the

23 sorts of fees that he is.

24 Q. What I suggest to you is that you are coming at the

25 matter from different places and from different