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HD **Shifting sands of a deal in Dubai**

BY Rick Feneley

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Two men imprisoned over a **property** deal are free but one question is still to be answered, writes Rick Feneley.

As happy endings go, it is fraught. The key players in this intrigue are safely back home in Australia, and yet the two **property** executives who lost their liberty in Dubai for almost five years - Matt Joyce and Marcus Lee - have not spoken to each other since 2010. Joyce and Lee, former colleagues on the colossal Dubai Waterfront development, are unlikely to break the ice any time soon, even now that the emirate's Court of Appeal has found both innocent of bribery charges.

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Joyce and his wife and children have returned to live on a $5.8 **million** cattle farm in Victoria, the **purchase** of which they settled in August 2009 while he and Lee were still behind bars in Dubai, seven months after their arrest on Australia Day that year.

But Joyce and another of his co-accused, his old Geelong Grammar schoolmate Angus Reed, are refusing to discuss the one lingering mystery in this saga, not reported until now. Joyce convinced the courts that he took none of an almost $13.7 **million** fee from a **property transaction** at the heart of an alleged fraud. And the clear evidence is that - after receiving half of that money and holding it in trust for a year in his Channel Islands bank account - he returned it to Reed's development **company** in Australia, Prudentia.

That, however, leaves unexplained Joyce and Reed's own email and document trail from 2007, which described in detail their confidential deal to split that money 50/50. One Reed email assured Joyce's bank in the tax haven of Jersey, the Standard Bank Offshore **Group**, that Joyce was entitled to half. If Joyce was never meant to get any of that money, as he has always insisted, why did they tell his bank otherwise?

Joyce and Reed had been accused of swindling another Australian development **company**, Sunland, into paying Prudentia this money as a "consultancy fee". In May last year - a tortuous four years and four months after his arrest - the Dubai Ruler's Court convicted Joyce and Reed of duping Sunland Middle East boss David Brown into believing that Prudentia had established development rights over a plot of land within Dubai Waterfront.

Joyce was managing director of Waterfront. A subsidiary of Dubai's government-owned master developer Nakheel, it was planning to build what was touted as the world's biggest development. Sunland would pay Nakheel about $63 **million** for the plot in question - the prosaically named D17 - but only after paying Prudentia the $13.7 **million** to "walk away".

Joyce was sentenced to 10 years' jail and a $US25 **million** fine for taking a bribe. Reed had left Dubai before Joyce's arrest but was tried in absentia, convicted of bribing Joyce and given the same sentence.

Joyce and Reed's network in Australia had mustered a huge diplomatic intervention that included a couple of Geelong Grammar old boys, former prime minister Malcolm Fraser and Prince Charles. Tony

Abbott stopped over in late October to plead with the Crown Prince of Abu Dhabi and Deputy Supreme Commander of the United Arab Emirates armed forces, Mohammed bin Zayed al-Nahyan.

On November 10, the Dubai Court of Appeal reversed Joyce's guilty verdict. Now the judges accepted that the millions paid into his account were never meant for him. A year later, after all, Joyce had returned $7,191,100 to Prudentia. He had been holding it in trust because Prudentia, with no banking facilities in Dubai, wanted a tax-effective way to park the money. The only money Joyce kept, the judges accepted, was $1.25 million that Prudentia still owed him for work he had done for the firm back in 2005.

The Emirati judges also rejected the evidence of the Dubai prosecution's star witness, Sunland's Brown. They deemed him to be unreliable, an assessment already made by Australian judges who had flayed the reputations of Brown and his boss, Sunland Group founder and executive chairman Soheil Abedian, when throwing out the Gold Coast-based developer's civil claim against Joyce, Reed and Prudentia.

But now Abedian has a curious wish. He hopes that Joyce will attempt to sue Sunland for millions. Only then, he says, will the documents that "vindicate" his company get a fair hearing.

Abedian, an Iranian raised in Austria, says with poetic flourish: "I pray every morning at the Catholic church, the Protestant church, at the synagogue and then at the mosque: 'Can you please convince Matt Joyce to sue Sunland before I die, so we can put him in the witness box?' "

At this stage, it is not Joyce but Lee who has indicated he may sue Sunland. Lee was Waterfront's director of commercial operations. He prepared the business case for Sunland's purchase of D17. Last May he was found innocent in the Dubai bribery case and in November he won again when the Court of Appeal rejected a prosecution appeal. Another Australian, former Nakheel lawyer Anthony Brearley, was also acquitted. Lee and Brearley never profited and never sought to, the court found.

While Lee and his wife Julie attempt to rebuild their lives in Sydney, their lawyers are considering a case against Sunland, arguing it left Lee to languish for more than three years before it recanted its claims against him. Sunland stresses that its 2012 exculpatory letter was noted in Lee's May acquittal.

"We have said it before and we will say it again," the Lees say in a statement. "We have simply been caught in the middle of a grubby dispute between a bunch of ... property developers. What makes this particularly disgusting is that Soheil Abedian, and others at Sunland, seem to have no problem collateralising us in their commercial pursuit of others."

On November 27, 2007, about $6,845,000 landed in the bank account of Joyce's family trust, Eightblue, in Jersey. It had been sent from Dubai as 22,052,890 United Arab Emirates dirhams - exactly half of the 44,105,780 dirhams that Sunland had paid the previous month to Prudentia.

Joyce, a former chief at Australand and St Hilliers in Australia, had moved to Dubai with wife Angela Higgins and their children the previous year to take the helm at Dubai Waterfront. In January 2006 he had also signed an agreement to act as a consultant for Prudentia, which would pay him a success fee for advice on property acquisitions and developments in the Middle East and Australasia. That agreement said the consultancy would terminate on April 1, 2006, or upon Joyce starting work full-time at Waterfront or related entities, whichever came first.

On the Gold Coast, Sunland had built Q1, at one point the world's tallest residential tower, and the Palazzo Versace. Now it was building their "sisters" in Dubai. And it wanted to secure more property. Brown went to Nakheel and in August 2007 was directed to D17. At 700 metres back from the beach, it wasn't quite a water-frontage. Brown claims he was told that if he was interested in buying the block from Nakheel, he would need to deal first with Reed, who was already planning a development on the site.

Just who directed Brown to Reed in the first instance would become a noted flaw in Sunland's evidence. Brown initially told Dubai's investigators it was Joyce, but he would later admit it was Nakheel director Jeff Austin. In the Victorian Supreme Court, Justice Clyde Croft found Sunland acted "in wilful disregard of known facts" and with a willingness to unjustifiably implicate Joyce.

Brown and Abedian say the lapse in memory about Austin is immaterial: Joyce was the link between Dubai Waterfront and Reed.

Joyce's original statement to Dubai investigators said he had known Reed since 2005. It did not mention Geelong Grammar and Brown says they never mentioned their old school ties.

While Brown knew Prudentia had not yet bought D17, Sunland and Prudentia began to negotiate on a potential joint venture. When that did not work out, Sunland offered to pay Prudentia to "walk away" from

D17. On September 26, 2007, it paid Prudentia subsidiary Hanley Investments the $13.7 million as a "consultancy fee".

On the face of it, this fee and the $63 million that Sunland then paid Nakheel for the site was a bargain. Sunland had expected a profit of $110 million under the joint venture with Prudentia, but now it anticipated $240 million. Sunland drew up plans to spend $1.46 billion building the Atrium, a sculpted glass tower of 71 storeys. The next year, an investment vehicle linked with Australian professional golfer Adam Scott, EWM, would agree to pay Sunland $85 million for a 40 per cent stake in the project.

Several money-trail documents tendered to the courts in Dubai and Australia have not been reported until now. In one, a letter dated November 1, 2007, KPMG gave Prudentia tax advice regarding its Hanley venture. It referred to an agreement between Hanley and a Dubai-based property consultant to allow Sunland to "take over their position in the Dubai property development negotiation ... for a total fee of approx $AUD15m". This money was "to be split equally" between Hanley and the consultant.

That document did not name Joyce as the consultant but email correspondence in the next days leaves no doubt, although Joyce used a personal email under the name James Matthews, with the address jcw.joy@gmail.com.

On November 5, Prudentia executive John Roysmith advised Reed that Hanley required an instruction from the consultant requesting the money, so there was evidence of a third-party claim on the funds. In an email to Reed and copied to Joyce, Roysmith said that, as per advice from KPMG, this letter from Joyce should say: "We refer to our agreement regarding the matter with Sunland Waterfront (BVI) Ltd for the property Plot D-17, Phase 1, Dubai Waterfront, Dubai UAE ... We now request that you remit our share of the transaction AED 22,052,890 being 50% of the fee total fee [sic] of AED 44,105,780."

The next day, November 6, Joyce responded suggesting a rewrite that dropped the reference to Sunland because "the party in question was not party to the arrangement referred to in the first para".

Reed had originally advised the bank on November 5 that the funds would be transferred shortly under the 2006 "January 06 agreement" but this did not mention Joyce's name and it did not meet Standard's disclosure requirements. The bank emailed Joyce on November 8 that more detail was needed. Joyce's reply enclosed a letter from Nakheel lawyer Anthony Brearley that confirmed Joyce was not in breach of his fiduciary duties by receiving funds from Prudentia under their agreement. But Joyce wrote: "I remain uncomfortable because the transactions that I established in March 06 were not concluded until after I commenced employment [with Dubai Waterfront]. Hence confidentiality is important to me in this circumstance." The next day, November 9, Reed wrote to the bank to confirm that the 22,052,890 dirhams would be transferred as the amount payable to Joyce, being "50 per cent of the net proceeds" of the arrangement "between the Prudentia Group (though Hanley Pte Ltd) and Joyce".

Fairfax Media put extensive questions to Joyce and Reed on Monday last week. Neither has answered. However, lawyers for Reed have contacted Fairfax Media and said that the questions displayed a misunderstanding of the transactions concerned, and contained inaccurate statements, or imputed meanings which were either misleading or contrary to0 the findings of the Victorian courts and the Dubai Court of Appeal.

"Our client has instructed us that he has no faith in Mr Feneley's objectivity as a journalist."

The Atrium never did get off the ground. The global financial crisis got in the way. Dubai's property bubble burst spectacularly and D17 remains nothing but a block of desert sand. Scott's EWM would withdraw - but would lose its down payment to Sunland of $10 million to $14 million.

Amid the collapse, Dubai prosecutors went hunting for foreign profiteers. On December 1, 2008, the lead fraud investigator from the Dubai Financial Audit Department, Mohammed Mustafa Hussein, called in Brown. "He told me, 'You shouldn't have had to pay that money,' " Brown recalls. Prudentia had no rights over D17, Mustafa had explained. That afternoon, Brown says, he saw Joyce and Lee at their office and he mentioned this meeting. But at this stage, Brown says, he believed Mustafa must have got it wrong.

The investigator had not yet mentioned the word "bribe" in relation to Sunland's payment, according to Brown, but it would emerge that this was the authorities' suspicion. Soon, however, they would regard Brown and Sunland as the victims. On Australia Day, 2009, Joyce and Lee were arrested. They would spend the next nine months in prison and remain under effective house until their final acquittals last November.

The Dubai Court of Appeal judgment did not refer to Joyce and Reed's correspondence with the Standard Bank, but it did accept that Joyce was merely holding the money for Prudentia. These documents were also lodged in the civil case in Australia but Sunland was unable to cross-examine on their contents. Justice Croft found that Sunland failed to establish that those internal communications, subsequent dealings or flows of money had any relevance to the case in question: did Joyce and Reed mislead or deceive Sunland? He ruled they did not. Sunland knew that Reed had no binding control over D17, the judge found, but was eager to pay Prudentia to walk away because of the profits to be made.

Lee had even told Brown that Nakheel was willing to sell the plot for 120 dirhams per square foot, rather than the 135 that Sunland paid once the Prudentia fee was added. That 15 dirhams difference became the basis of the fee to Prudentia. Brown and Abedian believe the Australian courts never comprehended how business is done in Dubai or its system of reservation agreements, whereby a party that has "reserved" a **property** will often sell land that it does not yet own. "Why," Brown says, "would you pay 135 a foot if you thought you could pay 120? If we really thought we could get that deal - without going through Prudentia - we would have taken it on day one."

On December 10, 2008, nine days after Brown's first meeting with the Dubai investigator, $7,191,000 was transferred from Joyce's Eightblue Trust account in Jersey to Reed's **company** Hanley in **Hong Kong**. Reed had requested the return of this money in a letter dated November 10. The money would soon return to Prudentia in Australia, where it would pay tax on the funds.

Realestate.com.au would record the **sale** date of Pardoo - the farm bought by Joyce and his family - as December 10, 2008. Joyce's team has pointed out that he did not settle on the **property** until the following August, long after he had returned Prudentia's money. It says the **sale** of two Woollahra properties and other family money paid for the farm, and it refutes any inference that D17 money went towards Pardoo. None is suggested.

Indeed, Joyce clearly returned the D17 money to Prudentia. The burning question remains, however. Why did he and Reed ever tell Joyce's bank that he was entitled to half of it?

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