

# SS4

Second Defendant's Supporting Document

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B E T W E E N

TO All The Enhance

Claimant

- and -

Ok let's go

Respondent

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- before -

Mr. Andrew G Moran (Sole Arbitrator)

SS4

Friday, 13 Sep 2024

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1 Test test.

2 Good morning. This is day 3, testing micronumber 1.

3 Testing mic number 2.

4 Testing mic number 3.

5 Testing mic number 4, testing mic number 5, testing

6 mic number 6.

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17 (10.00 ^ am)

18

19 Mr Raymond Kenneth Chevreau

20 SOLE ARBITRATOR: Good morning. This is day 3 of the

21 evidentiary hearing in ICC case 26620.

22 Mr Chevreau, welcome back this morning.

23 I trust that you have not had any discussions with

24 anyone about the case? Do you confirm?

25 WITNESS: Correct, yes.

1 SOLE ARBITRATOR: Thank you. I just wish to remind you that  
2 you remain under oath.

3 WITNESS: I understand.

4 SOLE ARBITRATOR: Thank you very much.

5 Does claimant counsel have anything on housekeeping  
6 before we re commence?

7 MR SULEMAN: No, we don't, thank you.

8 SOLE ARBITRATOR: Mr Howells?

9 MR HOWELLS: No, just a brief forewarning, Mr Suleman and  
10 I had a chat this morning, we think the time keeping  
11 we've been reporting to you may be slightly out.  
12 We'ring if to time with that tonight and we'll update  
13 you tomorrow morning.

14 SOLE ARBITRATOR: Out in what sense?

15 MR HOWELLS: We've been accounting for the amount of time  
16 that I think each of us, generally ^^ not for the amount  
17 of time that you've been speaking.

18 SOLE ARBITRATOR: I assume that you've been excluding my  
19 time.

20 MR HOWELLS: That's what we need to do, just to make sure  
21 that we're up to date for total lownesses overall and we  
22 will sort of share your time between us, as it were.

23 SOLE ARBITRATOR: Thank you very much.

24 MR HOWELLS: Can I remind Mr Chevreau to keep his voice up,  
25 as yesterday.

1 SOLE ARBITRATOR: Mr Chevreau, we will all try to speak up  
2 and I would request, if you could do the same, just so  
3 that the transcript is accurate.  
4 WITNESS: Okay, thank you. I'll try my best.  
5 SOLE ARBITRATOR: Okay, thank you very much.  
6  
7 Cross-examination by Mr Suleman (don'ted)  
8 MR SULEMAN: Good morning, Mr Chevreau?  
9 A. Good morning.  
10 Q. Could I please take you to your second witness  
11 statement, D6, page 11, please, paragraph 2.23.2.  
12 Mr Chevreau, you are there setting out your concerns  
13 with the AutoCAD that Hadeed were using. Do you explain  
14 exactly what your concerns were with the AutoCAD?  
15 A. Between the team on site, only one of the computers  
16 provided by the contractor contained a copy of AutoCAD  
17 software, which as you know is the soft copy versions  
18 for creating, editing and looking at the drawings for  
19 the project.  
20 Whilst the copy that was provided, it was not  
21 a licensed version and I had difficulty persuading my  
22 company that we should continue to use it as it wasn't  
23 a licensed copy.  
24 Q. You set out there your concerns. You say there was  
25 a risk of infringing international property rights. Are

1 you able to elaborate on those concerns? What were the  
2 intellectual property rights were you concerned would be infringed?  
3 A. Fittons in their policy statements, do not use fake  
4 copies of software.  
5 Q. Why could you think this was a fake copy of the software?  
6 A. Because the password that was embodied in the software  
7 was a crack code ^.  
8 Q. There was in fact no real issue with the AutoCAD. It  
9 was your usable that was a problem, wasn't it? You  
10 didn't know how to use AutoCAD.  
11 A. Software worked, but on a regular basis, crashed,  
12 because it was a fake and had to be rebooted by the  
13 contractor's I. The personnel using a crack code ^. So  
14 it was fairly obviously, it was a fake.  
15 Q. Could we then turn to paragraph 2.59 of the same witness  
16 statement, please.  
17 Mr Chevreau, you say that you don't recall anyone  
18 from Hadeed asserting that it was not being paid on  
19 time?  
20 A. Yes.  
21 Q. Is that your recollection?  
22 A. Yes.  
23 Q. Could we have a look at G357, please. Mr Chevreau, you  
24 can look at the document to remind yourself what it says  
25 there. This is 23 January 2018, Hadeed

1 writing to you raising concerns about not being  
2 paid or  
3 on time?  
4 A. If I may describe a little bit. This particular letter  
5 is a they payment. They are complaining about a delay  
6 of payments to the subcontractor's direct payments. My  
7 assumption in the previous question was that you were  
8 referring to monthly payment applications. I'm sorry if  
9 there was a confusion.  
10 The delay of payments that this particular letter  
11 refers to is to the payments directly at the request of  
12 Hadeed, to subcontractors. This was part of the  
13 payment request from Hadeed to Altaaqa, in that they  
14 assist in paying subcontractors that was started in the  
15 year of 2017. I believe around about May -- April  
16 or May. It does not relate to the normal monthly  
17 application payments.  
18 We can see put down that page, it says:  
19 "Our progress invoices are also not certified."  
20 ^doc?  
21 A. I assume this is referring to the monthly payments.  
22 Monthly payments stopped cash -- did not stop. Monthly  
23 payments accrued valuations ^, up until invoice  
24 18, as  
25 I believe. The direct subcontractors' payments were in

1 excess of the value of the payment applications as part  
2 of the work done and materials on site.  
3 However, the payment applications were always  
4 approved by Fittons, to the valuation of our belief, and  
5 forwarded to Altaaqa.

6 If Altaaqa accounts process valued the payments to  
7 subcontractors and it was found that those valuations  
8 exceeded the monthly payment applications, then cash  
9 payments or settlement of the subcontractor's payment  
10 would be an offset against the monthly Hadeed payment  
11 request.

12 Q. My question to you is this. In your witness statement,  
13 when you say you don't recall anyone from Hadeed raising  
14 any concerns about being paid on time, this is clearly  
15 Hadeed raising concerns. I understand you don't agree  
16 with their concerns?

17 A. Yes.

18 Q. They're raising concerns about being paid on time?

19 A. Yes, but as I said, I don't recall anybody -- I don't  
20 recall anybody complaining about the payment  
21 applications. This is referring to subcontractors'  
22 payments, which is not a contractual requirement.

23 Q. Sorry, of course please carry on?

24 A. And it was a system of assisting Hadeed with their  
25 cashflow problems.



1 Q. Could we turn, then, to G237, please.

2 This is again Hadeed writing to you, 8 April 2017.

3 A. Yes.

4 Q. They're referring there specifically to clause 61, and

5 raising concerns that payment was due, for example, the

6 first one, 26 March and 31 March. By this point, it had

7 been certified, in fact, in February?

8 A. Yes.

9 Q. This is Hadeed raising concerns about payment being made

10 on time, is it not?

11 A. This is correct. This is -- not a complaint, but

12 a request. And we answered this particular document and

13 gave the reasons why invoices 19 and 20 were being

14 withheld, not by Fittons, they were being withheld by

15 the client. And there is submitted evidence as to the

16 reason why.

17 If we can refer to the submitted evidence, I think

18 it will clarify the situation.

19 Q. Finally, G248, please.

20 In fact, could we go back to the previous one, just

21 for a moment.

22 Mr Chevreau, I just want to understand this. You've

23 certified this; yes?

24 A. Sorry?

25 Q. You've certified, it said certified date ^doc)?

1 A. Yes.

2 Q. Was it usual for Altaaqa to delay payment or refuse  
3 payment after you had certified?

4 A. No, it was not unusual -- (overspeaking) -- ^^ it was  
5 not usual, sorry.

6 Q. Why did that happen here? Why have payments been  
7 certified then not been paid?

8 A. If we can to back -- this is not a Fittons delay. It's  
9 a delay by the client and I believe we have, in the  
10 evidence, the reason for that, and it's submitted. Am  
11 I allowed to get a reminder?

12 Q. I think you can be re-directed in due course.

13 What I want to understand is from your perspective,  
14 was it usual -- we've got two examples there on the  
15 screen where you've certified payment and Altaaqa then  
16 don't make payment?

17 A. If it was held up for any reason, it was highly unusual.  
18 This particular client I've not been involved with  
19 previously in my employment history, with a claim that  
20 is very, very concerned about delay in any payments ^ to  
21 any supplier.

22 Q. Could we then turn to G248.

23 This is again Hadeed writing to you, saying that  
24 they're waiting for your approval or comments. That's  
25 right, isn't it?

1 A. Again, sorry?

2 Q. They're waiting, they're raising concerns, they're

3 saying we've submitted our payment and then

4 re-submitted, in fact, submitted this on 12 March,

5 re-submitted 26 March?

6 A. Re submittals were usually because of errors in

7 submitting the documents and contained either

8 calculations, Ms Information or was lacking in that had

9 to be provided as part of the submittal process ^^

10 amounts being claimed, material inspections or material submittals relevant to the

11 particular payment request.

12 I cannot, at this point, put my finger on this

13 particular one, but I'm sure if we go to the evidence

14 submitted, it will be there.

15 Q. You can see that Hadeed's position is that they're still

16 waiting four your approval/comments. They say they were

17 waiting for your approval or your comments at this

18 point.

19 A. I have to refer -- refresh my memory on this particular

20 one, but I'm sure that the delay of certification would

21 be in respect of missing documentation in their payment

22 application. Most of their payment applications from 1

23 through to 38, usually required at least

24 one, two or three are submittals by

25 the applicant ^ and the worst case was eight.

1 So if we can refer to the evidence submitted for  
2 this particular instance, it would probably clarify the  
3 situation.

4 Q. Could you explain the process, the payment process once  
5 Hadeed made a payment application, what exactly would  
6 you or Fittons do with the application?

7 A. Can we show -- is it possible we can show a payment  
8 application?

9 Q. I'm not sure if -- we can see if we can find an example.  
10 But if you could, for the time being, ^^ talk it ^^ on  
11 your desk. What do you do with it?

12 A. Okay. The payment application would be sent to Fittons  
13 office. It would then be reviewed, usually by me, to  
14 make sure it confirmed -- sorry, conformed to the  
15 requirements. That payment application took basically  
16 two forms. There was an Excel sheet -- sheets referring  
17 to every single building. That payment sheet would be  
18 broken down into the same format that the BOQ has  
19 ie materials, work done, hours allocated and percentage  
20 of contract valuation, up to date of every single month,  
21 which was cumulative and all of the information was  
22 within the Excel sheet.

23 Along with that was a further sheet that was the  
24 agreed format to be forwarded to Altaaqa for their  
25 approval and payment. The consistency of the documents

1 were checked, line by line, building by building, and  
2 checked against the BOQ for the valuations agreed in the  
3 contract to the 32.2 million full contract value.  
4 Cumulatively, they were deducted from the cumulative  
5 value of the contract every single month and the  
6 percentages of work done, materials on site, valuations  
7 of material on site, were part of that document.  
8 I would go through, myself and the staff would go through, and check that the work done was always  
9 backed up by either the WIR, work inspection record,  
10 which was attached -- should have been attached to the  
11 documents, and/or any material inspection requests for  
12 value agree and payment.  
13 That then was signed by me and forwarded -- in  
14 agreed, either re-submitted by Altaaqa or, let's just  
15 shorten the process, just for argument's sake. After  
16 valuation, approved valuation of the final document, it  
17 was then sent to the accounts department of Altaaqa for  
18 payment.  
19 Q. In fact, we do have an example. You wanted to have an  
20 example on screen, N47.  
21 We can see it's dated 31 July 2016. You have  
22 approved it, 4 September?  
23 A. Actually --  
24 Q. Approximately two months later?  
25 A. Actually, I answered all of these questions to the

1 request from Mr Olwagen. This is the -- sorry, I've  
2 lost the screen.  
3 This is the document, as part of the payment  
4 application, is the final version that goes to Altaaqa  
5 for payment. This is not the workings of each  
6 application.  
7 As I've explained in answer to Mr Olwagen, this was  
8 not delayed. This particular one I can't say without  
9 looking at all of it, but I believe this was not the  
10 final document. Sorry, this is the final document, but  
11 previous to this, there could have been three more  
12 applications, and this is only the final one, final on 4 September 2016, was not the last application -- sorry,  
13 was not their initial application.  
14 Q. And we can see --  
15 □20240918□0012A. And there could have been and probably was that's two  
16 more before it. So this was September 4, 2016, was the  
17 final approved document that we had been going  
18 through in line with -- in accordance with Altaaqa's QS  
19 and project manager on site.  
20 Q. And we can see on the next page there, contractor's  
21 payment request on the second page of that document?  
22 A. Yes, agreed. This would have been the final agreed  
23 payment.  
24 Q. Your approach to this, if a payment application was made  
25 that you thought was not satisfactory, your approach was

1 to simply reject it, send it back to Hadeed and say: do  
2 better?  
3 A. No, it wasn't to reject it. My first step was to go to  
4 the project manager and quantity surveyor of Hadeed and  
5 ask them to come and sit with me and I I went through  
6 each one of their errors or missed information. I did  
7 not reject the first payments. I always gave the  
8 opportunity to the contractor to revise and re-submit.  
9 Q. Could we have a look at your witness statement,  
10 paragraph 2.58.5, please.  
11 This is your understanding of clause 60(1) of the  
12 contract?  
13 A. Sorry, which clause?  
14 Q. Clause 60(1).  
15 I'm sorry, I can't --  
16 Q. We're looking at your witness statement,  
17 paragraph 2.58.5.  
18 A. Yeah.  
19 Q. You set out there, you required to -- the engineer is  
20 required to review and approve within 14 working days of  
21 receiving an application and then you say where the  
22 statement is not correct, it is then re-submitted and  
23 there is another 14 days for a further review." ^doc?  
24 A. Yes.  
25 Q. Do you understand this to be the process set out in

1 clause 60(1) of the contract?

2 A. Yes.

3 Q. Could we please have a look at clause 60(1), the

4 contract C1, page 40. Could you talk us through your

5 understanding of that clause?

6 A. Excuse me while I read it.

7 Q. Of course. (Pause).

8 I believe this statement is as we have discussed and

9 it was how the process was carried out.

10 Q. Well, we can see there, the 14 days, should working days

11 from the date of the statement was submitted?

12 A. Yes.

13 Q. That's correct. In your witness statement, when you say

14 that you have a further 14 days --

15 A. If it was re-submitted, there would be a further 14 day,

16 that's my understanding? Where within clause 60(1) do

17 you take that ^ interpretation?

18 A. Well, this is the contractor within seven days agreed,

19 should submit before the end -- after the month end.

20 The 14 days was for me to review it and either reject it

21 or request a re-submittal. I did not reject them on

22 face value during the first period and they then were

23 given the opportunity to re-submit and sit

24 with me again to go through it and approve it, and send

25 it forward, which I believe was assisting them rather



1 than delaying by outright rejection.

2 I'm sorry. Does that answer your question?

3 Q. I'm not shire it does. What I want to be clear on is

4 that your understanding is that when there's a payment

5 application made?

6 A. Yes.

7 Q. You can send it back and say: not rejected, but say more

8 information is needed?

9 A. I didn't send it back. I requested the PM -- yes,

10 without being pedantic, yes, I sent it back. But it

11 wasn't as simple as that. I requested the QS, who put

12 the invoices together, along with his project manager,

13 come and sit with me, and I would point out where

14 I thought -- I believed it was in error. We would agree

15 the point, they would re-submit the invoice.

16 Q. The final sentence of that paragraph, the first

17 paragraph, clause 60(1) where it says:

18 "The engineer shall of correcting ^^ attach the same

19 to the engineer's interim payment certificate." ^doc.

20 Why weren't you doing this?

21 A. I'm sorry, which paragraph are you referring to?

22 Q. The first paragraph of clause 60(1)?

23 A. Yes.

24 Q. The first paragraph, last sentence?

25 A. I believe we were working with the contractor to make

1 the payment requests as speedily as possible. I had the right to outright reject it and send it back,  
2 and therefore wait again for a reapplication. I did not  
3 do that.

4 Q. Your understanding is you did not have an obligation to  
5 attach it to the engineer's interim payment certificate;  
6 is that right? I'm reading the last sentence in that  
7 paragraph, the first paragraph.

8 A. Review and approval period by the engineer of the  
9 monthly statement shall be within 14 working days."

10 ^doc.

11 It was. The first application that came in was  
12 reviewed and referred to Hadeed within 14 days.

13 Q. What do you understand an interim payment certificate to  
14 be?

15 A. My understanding is that we had to review within 14  
16 days, the payment application, which we did.

17 Q. That was not my question, Mr Chevreau. What do you  
18 understand an interim payment certificate to be?

19 A. I can't hear you, I'm sorry.

20 Q. What did you think was an engineer's interim payment  
21 certificate?

22 A. It was a monthly application carried out, submitted by  
23 the contractor, Hadeed.

24 Q. The engineer's interim payment certificate?

25 A. That's something different.

1 Q. What is -- my question is what did you think that was?

2 A. I'm sorry I require you clarify the question.

3 Q. You understand -- I'm sure you do, because you address

4 this clause, clause 60(1)?

5 A. Yes.

6 Q. You address at some length in your witness statement.

7 So you understand your obligations under clause 60(1);

8 yes?

9 A. Yes, to ensure that the payment was made in a reasonable

10 period of time.

11 Q. But there's more to it than just that, isn't there?

12 You're required -- the last sentence in the first

13 paragraph says you shall issue an engineer's interim

14 payment certificate?

15 A. Yes.

16 Q. What is an engineer's interim payment certificate?

17 A. Can we bring back the document?

18 Q. N4, yes.

19 A. Yes.

20 A. The next document.

21 Q. The first page, was it, I think of that document.

22 A. Think. This is the interim payment certificate.

23 Q. Your understanding is that your signature there when it

24 says payment approved, that is the interim payment

25 certificate?

- 1 A. Yes.
- 2 Go down that particular document. It is a specific
- 3 document. If you move dune to the next page.
- 4 There. That's the interim payment certificate that
- 5 goes
- 6 to Altaaqa. They don't necessarily -- if everything is
- 7 correct, see the working documents and the Excel sheet
- 8 ^ . They receive that particular sheet.
- 9 Q. This document that we're looking at on the payment, who
- 10 prepared that document?
- 11 A. I'm sorry.
- 12 Q. Who prepared this document that we're looking at on the
- 13 screen?
- 14 A. Hadeed.
- 15 Q. Hadeed prepared this?
- 16 A. Yes.
- 17 Q. How is this the interim payment certificate? How is
- 18 this your interim payment certificate?
- 19 A. It's not mine. It's theirs.
- 20 Q. Could we return, then, to clause 60(1). This is tab C1,
- 21 please.
- 22 I want to understand that you realise what an
- 23 engineer's interim payment certificate is. What do you
- 24 thinks that? Is that simply Hadeed's?
- 25 A. It's Hadeed's final document that is actually passed to,

1 through me to Altaaqa.

2 Q. What, if anyone ^^ has anyone explained your obligations

3 under this clause to you? Have you been trained or

4 informed of precisely

5 your obligations?

6 A. Yes.

7 Q. Under this contract? You have. By whom?

8 A. By whom?

9 Q. Yes.

10 A. I've gone through the contract documents with the

11 client.

12 Q. Altaaqa? Altaaqa told you what you had to do under the

13 contract?

14 A. No, they didn't teach me, they showed me the contract

15 clauses and I read up and familiarised myself in the

16 proceedings ^.

17 Q. Did they explain to you what an engineer's interim

18 payment certificate was?

19 A. Yes.

20 Q. They did? What was their explanation? I want to

21 understand. Altaaqa explained to you what they believed

22 that was?

23 A. It's the interim payment request by the main contractor,

24 Hadeed. It's the request from Hadeed for an interim

25 payment certificate to be paid by the client on approval

1 of all the relative documents by the consultant. And  
2 that's the monthly payment that they received throughout  
3 the contract until termination.  
4 Q. As we're on the contract, could we also have a look at  
5 clause 14(9). This is page 13, please, C1.  
6 Clause 14(9). Mr Chevreau, could you explain your  
7 understanding of this clause?  
8 A. If the contractor did not put any payment application  
9 within the month and within the month and the seven days  
10 ^, if they failed to submit anything, I had the  
11 right to put my valuation.  
12 Q. There's an important term here. Do you have a right or  
13 do you have an obligation to do so?  
14 A. I have a right.  
15 Could I take you to the word "shall", where it says "the  
16 engineer shall"?  
17 A. Yes.  
18 Q. It was your obligation, was it not, to carry out the  
19 evaluation?  
20 A. Fine.  
21 Q. It's very important, isn't it, because if Hadeed did not  
22 submit any application at all?  
23 A. But that clause was -- sorry, let me get my wording  
24 correct.  
25 Hadeed did not fail to submit any monthly payments,

- 1 so this particular clause doesn't come into effect. It
- 2 never occurred.
- 3 Q. So your understanding of the process was that if Hadeed
- 4 do not submit an application at all?
- 5 A. Yes.
- 6 Q. Then you have an obligation to carry out your
- 7 obligation?
- 8 A. Yes.
- 9 Q. But if Hadeed submit a payment ^^?
- 10 A. Did not have any need to --
- 11 Q. If you thought there was insufficient, incomplete
- 12 application, as you say on some occasions you
- 13 said
- 14 wasn't any information ^^?
- 15 A. Correct.
- 16 Q. You no longer had an obligation ^^ in which you would
- 17 you have done Hadeed submitted nothing at all?
- 18 A. Correct.
- 19 Q. Has that been how you've always carried out your --
- 20 A. Sorry.
- 21 Q. Is this how you've always processed payments in your
- 22 role as an engineer on projects?
- 23 A. I'm sorry. I'm not quite clear of where you're heading
- 24 with this question.
- 25 Q. What I want to be clear is that you understand the

1 payment process?

2 A. I never stated that we would not follow the contract.

3 We had no need to follow this particular clause, because

4 it never occurred.

5 Q. What I'm trying to understand -- and I'm going to make

6 this as clear as I can. It's very clear from reading of

7 the contract that you had an obligation to carry

8 out your own evaluation, whether Hadeed failed to

9 submit an application at all or submit an application

10 that's incomplete?

11 A. Yes, I have an obligation, I agree. It did not occur

12 throughout the duration of the contract. The specific

13 reference of that clause did not occur. We always had

14 application by Hadeed for payment, monthly payment, not

15 referring to payments to subcontractors, which were not

16 part of this contract, I'm referring to ^ the monthly

17 payment applications received from Hadeed. We never did

18 not receive a monthly application during the required

19 period.

20 Q. Do you understand the about a security of the question

21 that if Hadeed submit nothing at all, you've got an ^^ if

22 they

23 submit something but it's not very good, it's not

24 complete, you no longer have an obligation to carry out

25 your own evaluation. You can do nothing at all?



1 A. Correct. I didn't -- I referred and assisted them in  
2 putting their payment application, where I thought it  
3 was -- where it was in error. It had been submitted ^.  
4 So that's the difference -- my understanding is that  
5 that particular clause is a different scenario. That's  
6 if they never put anything forward, I had an obligation  
7 to the client to put my valuation.  
8 Q. Again, I want to return to who told you that this is the  
9 case. Who told you that the contract operates in this  
10 way, whereby if Hadeed don't submit an application, you  
11 have to carry out your own evaluation F they submit  
12 something, you no longer have an obligation to carry out  
13 your own evaluation. Was that your interpretation or  
14 did someone tell ^^?  
15 A. Nobody taught me to read the actual contract. I read  
16 the contract as part of a normal process of a consultant  
17 engineer, and I applied the contract terms and  
18 conditions to the contract. I'm not aware, if you don't  
19 mind me saying, of anything, any instituted that does  
20 a prior teaching method of individual contracts  
21 per  
22 building permit requirements. I don't believe there is  
23 such an institute that consultants attend.  
24 Q. What's happening here, Mr Chevreau, is that you simply  
25 don't understand your contractual obligations. You were

1 required to carry out your own evaluation.

2 A. Yes, but it never occurred.

3 Q. No, what I'm saying to you is that you had to carry out

4 your own evaluation regardless of whether or not Hadeed

5 submit a payment application.

6 A. No, that's not correct. As I interpret that clause,

7 that clause states that the contractor fails to submit

8 any application for payment in any month. As you

9 said,

10 the engineer shall". The engineer did not -- was not

11 required, because circumstances did not occur in

12 compliance with that 14(9) statement. It never occurred

13 on this site. Therefore, I never made my own -- I never

14 made my own evaluation.

15 Q. Could we return to clause 60(1). It's within the same

16 C1 document, please. This is at page C1, page 40.

17 This is the process we've looked at this a moment

18 ago. Where within this clause do you suggest

19 that you have the right to return or the way you phrase

20 it, ask for Hadeed to give more information, without

21 having to carry out your own evaluation? Where you can

22 effectively you could ^^ leave it in limb to, you could

23 keep sending it back?

24 A. It does not state, as you remind, it does not state it

25 in that methodology. It does not say I have to, neither

1 does it say I should not. But in my opinion,  
2 this clause is quite clear and in efforts to assist  
3 Hadeed in speedy payment, we went through a process of  
4 sitting face to face with their quantity surveyor and  
5 pro site project manager, to evaluate their payment  
6 application.  
7 Q. There is, as you rightly say, there's nothing there  
8 within that clause that suggests you can send it back,  
9 if Hadeed make a payment application, you can't just  
10 send it back?  
11 A. No.  
12 Q. There's nothing there that allows you to do that?  
13 A. No. I can reject it, if it's incorrect.  
14 Q. On what basis?  
15 A. If it doesn't -- if the valuations are not correct, if  
16 the document, back-up documents are not attached or the  
17 back-up documents are incorrect, I can reject it. It's  
18 not correct.  
19 Q. Where within clause 60(1) can you reject the payment  
20 application or anywhere else in the contract?  
21 A. Rates and prices in such monthly payments shall be those  
22 in the price bill of quantities insofar as such rates  
23 and prices in the opinion of the engineer's  
24 representative are applicable. If the said bills of  
25 questions shall not in the opinion of the engineer

1 contain any rates or prices applicable to some or any  
2 part of the work executed and there has not been a rate  
3 or price fixed at the time when the statement is  
4 prepared, then temporary rate our  
5 prices shall be  
6 assigned thereto by the engineer." ^doc.  
7 I believe that that statement, neither the temporary  
8 rate or prices a signed under paragraph 3 of the  
9 sub-clause nor the quantities mentioned in the  
10 statements under paragraph 1 of this sub-clause shall be  
11 binding on the employer or on the contractor." ^doc.  
12 So my referring to the monthly payments, if they  
13 were incorrect, I would -- I could have rejected them  
14 outright and returned them straightaway. I did not.  
15 I sat with the contractor's quantity surveyor, who put  
16 the documents together, and the project manager, who  
17 approved those documents for submittal to Altaaqa.  
18 Q. I want to go to what you've just read, the third  
19 paragraph?  
20 Yes.  
21 Q. The last sentence:  
22 "After the comma:  
23 "Temporary rates and prices shall be assigned there  
24 to by the engineer." ^doc.  
25 Did you do that?

- 1 A. Yes, I did, in the referral of the documents back to the
- 2 QS. I pointed out where they were in error.
- 3 Q. But what this is requiring you to do, what is set out
- 4 here is for you to carry out your own valuation?
- 5 A. I can't carry out my own valuation on that document, as
- 6 per clause 14.9, because it's been submitted (14(9) ^.
- 7 Q. I'm going to leave this after this question. I want to
- 8 be very clear that your understanding was that if Hadeed, under clause 60(1) made a payment application,
- 9 you believe it gives you the right to reject it without
- 10 carrying out your own valuation?
- 11 A. I could have rejected it. I'm sorry if I've
- 12 misinterpreted your question.
- 13 Q. No, not at all.
- 14 A. Shall I carry on?
- 15 Q. Yes, please.
- 16 A. My understanding of this is the two clauses. If I was
- 17 not to receive in any month, a payment application,
- 18 I would have entered my on valuation of the work done
- 19 during that month. I did not have to, because the
- 20 payment application was always received.
- 21 In that case, it was my duty to review that payment
- 22 application and pass it forward for payment. If it was
- 23 not Fitton paid and required ^ I could have rejected it
- 24 outright, with documentation stating where I -- why and
- 25 where I had rejected it.

1 Q. Carry on.

2 A. We took a more helpful view of reviewing the application

3 with the QS and the below object manager at the time, where there were inconsistencies with that

4 payment application and advised them to re-submit,

5 without

6 rejecting it.

7 Q. And your position is that where an application made that

8 you thought wasn't complete or needed more information,

9 that did not trigger your obligation to issue an interim

10 payment certificate with your own valuation?

11 A. I repeat, my position is that I believe we did the best

12 thing for Hadeed to ensure that they had cashflow.

13 I did not reject them outright and send them back with

14 a rejection. I actually sat with, on every single

15 occasion, the payment applications, with the QS who was

16 the guy that put the documents together, and with the

17 project manager.

18 Q. Mr Chevreau, you couldn't re because there was nothing

19 wrong with the payment applications?

20 A. I'm sorry, I don't agree with that. There were always

21 things wrong with their payment

22

23 applications. From payment application number 1, where

24 you can see the cost of the original cost was

25 some

1 600,000 ^ and it was later re Tuesdayed, in agreement  
2 with both the QS and the project manager, to less than  
3 50 per cent of their first initial application.  
4 Q. What you're doing Mr Chevreau I'ming if to put to you  
5 that it was very clear that ^^ outright reject without  
6 carrying out your own valuation?  
7 A. Yes.  
8 Q. By sending it back to Hadeed, you're effectively leaving  
9 them in limbo, where there's no way for them to move  
10 forward?  
11 A. I'm sorry, I don't believe they're left in limbo,  
12 because on the day ^^ of receiving it, I would go  
13 through it, I would then call their project manager and  
14 the QS into my office and we would sit down and go  
15 through each individual application.  
16 Q. What Hadeed say, you're suggesting you are doing this to  
17 be helpful to Hadeed?  
18 A. Yes.  
19 Q. Hadeed say they simply want you to comply with your  
20 contractual obligations and to process the payment  
21 application, carrying out your own evaluation if you're  
22 not happy with the one put forward by Hadeed?  
23 A. The process had been carried out.  
24 Q. Did you understand Mr Chevreau for this to be a FIDIC  
25 contract?

- 1 A. This is similar to a FIDIC Red Book. There are
- 2 alterations, omissions in this contract, it is not an
- 3 entire fide dik red book.
- 4 Q. Could we please have a look at G563.
- 5 I'll return to this document for further questions
- 6 later, but if we look at what's on the document there.
- 7 This is a letter signed off by you. You're
- 8
- 9 saying not applicable refer to the FIDIC contract
- 10 documents." ^doc?
- 11 A. Sorry, where?
- 12 Q. In red?
- 13 A. Yes.
- 14 Q. Under point 4?
- 15 A. Yes.
- 16 Q. You thought this was a FIDIC contract, didn't you?
- 17 A. It's a FIDIC contract with derived and agreed by both
- 18 parties, some clauses to be omitted or changed.
- 19 Q. It's not what you say there, is it?
- 20 A. Sorry?
- 21 Q. That's not what you say on the screen?
- 22 But I disagree with you. I'm not clear where you're
- 23 saying that ...
- 24 Q. In fact, that's not what you said yesterday --
- 25 A. I was saying the signed FIDIC document. I am saying the



1 signed FIDIC document is not as a full FIDIC document.

2 There have been exclusions to the FIDIC document.

3 Q. Again, yesterday, you also referred to it as a FIDIC

4 contract?

5 A. I am referring to a FIDIC contract.

6 Q. Could we have a look at the final page --

7 A. A FIDIC contract is an all encompassing. If I've taken

8 a particular clause out of that FIDIC document, and has

9 been both agreed, then it's not a 100 per cent FIDIC

10 contract, it has been changed to suit the client and the

11 contractor, both parties.

12 Q. If we have a look at what's on the screen --

13 A. For instance, shall I --

14 Q. Yes, please explain.

15 A. Clause 52 has been removed out of this FIDIC contract

16 and agreed by both parties, at their signing. Nothing

17 to do with me, I was Fittons, we weren't involved ^ with

18 the signing of the FIDIC contract.

19 Clause 52 ^^ was removed from this particular contract

20 and that's the clause that refers to overhead and profit requirement.

21 It was agreed by both parties as I understand it should

22 have been removed ^, helps my comments here.

23 Q. In fact, if we could return to that, then. I think who

24 you're saying is the indirect cost promulgation costs

25 you not not ^^ you're say thank you believe that was

1 a clause that's excluded?

2 A. Didn't exist, no.

3 Q. That's of course --

4 A. I'm sorry.

5 Q. The same document. All I'm trying to understand is what

6 you're trying to say here, because your explanation is

7 that you believed a clause had been removed from

8

9 a standard FIDIC contract and that related to overheads?

10 A. Yes.

11 Q. When you say here not applicable refer to the FIDIC

12 contract documents." ^doc.

13 You were referring to your understanding was there

14 some provision that's removed?

15 A. No, I'm referring to a fact that clause 52 is not

16 included in the signed contract between Altaaqa and

17 Hadeed. It's not there.

18 Q. Again, I'm going to ask you what I've asked you several

19 times. When you are carrying out your interpretation,

20 when you say here refer not applicable refer to the

21 contract documents?

22 Yes.

23 Q. Who has explained to you how to interpret these

24 contractual provisions on overheads, for example?

25 A. I'm a consultant engineer. That's my job.

1 Q. You were qualified to interpret the contractual

2 documents we're concerned with here? Is that your

3 position?

4 A. I have enough experience. What do you mean -- if you're

5 referring to qualifications, I'm not a lawyer.

6 Q. That's what I'm trying to understand. When you are

7 writing here not applicable refer to the contract

8 documents?

9 A. I read the documents and apply them as the documents

10 state, the terms and conditions of interpreting the

11 contract documents to the works on site and the

12 requirements or non-requirements. The claim on

13 Mr Dabbas' EOTs, that they have the right to overhead

14 and profit. So I refer to the documents and I cannot

15 find any clause in those documents saying that they have

16 a right to that.

17 Q. Mr Chevreau, you're completely misapplying these

18 contractual provisions, because you don't understand

19 them.

20 A. I dispute your comment there. I think I do understand

21 them.

22 □20240918□0033Q. Could we turn to the final page of that document. This

23 is perhaps the more stark example of you funds mentally

24 misunderstanding these documents. You say:

25 "Arbitration request rejected." ^doc?

1 A. Yes.

2 Q. Where does the contract give you the right to reject an  
3 arbitration request?

4 A. As I explained in my witness statement, I didn't mean  
5 I override the rights of the contractor, I meant

6 I didn't believe that they had sufficient evidentiary substance to obtain an arbitration. I'm not  
7 overruling  
8 the law.

9 Q. Who told you to say this? This document?

10 A. Sorry?

11 Q. Did Altaaqa tell you to say this?

12 A. No. This is my own statement.

13 Q. Plainly when you said arbitration request rejected", you  
14 didn't -- you're in essence saying Altaaqa are not  
15 willing to go to arbitration, there's no merits to the  
16 claim.

17 A. I did not receive instruction from Altaaqa to make that  
18 statement. That is my own statement, which I accept is  
19 in error, and which actually the point that we're all  
20 here anyway proves that that statement is  
21 non-consequential.

22 Nobody doubts that. What I'm trying to understand is  
23 your role at Fittons as the engineers on the project,  
24 involves you having a good understanding of the  
25 contractual provisions?

1 A. Yes.

2 Q. You say nobody has trained you on how to interpret your  
3 contractual obligations?

4 A. I don't receive any formal training for this particular  
5 FIDIC in respect to reviewing the contract. It is my  
6 experience with many, many other projects of carrying  
7 out a contract in this way, reading the actual contract  
8 documents, understanding them, reading the specifications, reading the drawings and reading all  
9 documents related to executing this project.

10 Q. What we can see throughout this project is that you  
11 are -- your actions are based on what you're in the  
12 habit of doing throughout the course of your career  
13 rather than the contractual provisions that apply here?

14 A. No, that's not correct. I don't have a habit of doing  
15 anything from one contract to another. All contracts  
16 are different and all contracts are approached in  
17 a different way. Not all contracts are FIDIC.

18 Q. We can leave that there for the time being.  
19 If we could please turn to H93. I'm sure this is  
20 going to be a document everyone is very familiar with by  
21 now.

22 We're back to the minutes, Mr Chevreau. If we  
23 scroll a little further down in the notes, the second  
24 page, you're present, of course, as usual.

25 Mr Chevreau, we went at length through various

1 minutes of meeting yesterday. Do you understand how to  
2 interpret minutes?  
3 A. I'm sorry?  
4 Q. Do I understand how to interpret minutes when you read  
5 the inmany, do you understand how they're written out?  
6 A. Yes.  
7 Q. You do? Yesterday at various times, you were struggling  
8 to follow the order in which the minutes were setting  
9 out the chronological order in which many minutes were  
10 setting out?  
11 A. Yes.  
12 Q. Why were you struggling to follow? I can take you  
13 through these minutes again if you wish me to do so.  
14 What was causing your difficulty in following the  
15 minutes when you were taken through those yesterday?  
16 A. Nothing is causing me difficulty reading those minutes.  
17 Q. Could we please have a look at 3.1 within that document.  
18 This is Hadeed requesting that the commercial issue  
19 of the variation orders be held out until the project  
20 closeout?  
21 Yes.  
22 Q. Total variations would be calculated both positive and  
23 negative ^doc). You understood this to mean Hadeed  
24 saying also deal with variation orders at the project  
25 closeout, at the end?

- 1 A. Yes.
- 2 Q. Altaaqa agreed to that?
- 3 A. Yes.
- 4 Q. They agreed to carry it out at the end of the process.
- 5 You will be aware and forgive me, Mr Chevreau,
- 6 I know we're not approaching this in chronological order -- that there was a settlement meeting?
- 7 A. Yes.
- 8 Q. In July 2019, 9 July?
- 9 A. Yes.
- 10 Q. 2019. Do you explain who was present at the meeting?
- 11 A. Samer dab, Mr Nasser El Ali, Mr Shepherd, the then CEO
- 12 of Altaaqa global Dubai, Mr Osama, the OCS clients
- 13 representative, the project manager at the
- 14 time
- 15 of Hadeed, the QS at the time of Hadeed, myself,
- 16 I believe Tan Guoyi, my two site -- I believe my two
- 17 site engineers were also there. That would be the
- 18 electrical engineer, the mechanical engineer.
- 19 But at the -- on that document, all attendees are
- 20 written, so I may not have mentioned everybody that was
- 21 actually there. Mr Farrag was was there.
- 22 Q. Sorry, which document ^?
- 23 A. The meeting. The site meeting to, as you just stated,
- 24 the site meeting to discuss the VO.
- 25 Q. I want to be clear which meeting we're talking about

- 1 here. Are you able to give the date of the meeting?
- 2 A. Sorry?
- 3 Q. Can you give us the date for that meeting?
- 4 A. I believe it was in something around, possibly 2018
- 5 or -- there were three specific meetings requested by
- 6 Hadeed and I believe without seeing the document,
- 7 I can't give you an exact date now. If we look at the
- 8 evidence of that particular document that you're
- 9 referring to.
- 10 Q. What was discussed at that meeting?
- 11 A. All the VOs were discussed, where there was any bone of
- 12 contention of the valuation and/or the exact
- 13 status
- 14 of that VO. There were VOs that were approved, there
- 15 were VOs that were approved but valuations disputed by
- 16 the two parties. The subject of that particular meeting
- 17 was to finalise and agree between the two parties, the
- 18 valuations.
- 19 Q. Could we please have a look at G583.
- 20 We can see there the various figures for retention,
- 21 gross contract value including variations, et cetera.
- 22 Mr Chevreau, what we don't see there is any provision
- 23 for Altaaqa's liquidated damages, when you write
- 24 liquidated damages?
- 25 A. I'm sorry, I'm not familiar or been involved with those



1 sort of questions that you mention now. Those need to  
2 be asked of Mr Farrag was Shamsi, who's the ^ the CFO.  
3 My involvement was discussing the individual VOs, not  
4 the accountant amortisation or interest claims. I had  
5 no involvement with that.

6 This particular document is the interim statement of  
7 account, including more than VOs. The meeting that  
8 I believe you're referring to was not in agreeing the  
9 interim statement of account, but was outstanding issues  
10 with the VO only.

11 Q. If we go to your first witness statement, please,  
12 paragraph 5.5.

13 This is, I believe, this is the meeting you are  
14 referring to on 9 July 2019. You put it under quotation  
15 mark, settlement meeting, it was essentially  
16 a discussion between the parties ^.

17 You were present throughout this meeting?

18 A. Yes.

19 Q. Of course, you're representing Fittons as the engineer  
20 on the project at that meeting. You are representing  
21 Fittons, you're there as the engineer?

22 Yes.

23 Q. Can you explain to us compassion hi what was discussed  
24 at that meeting, beyond the variations, what else was  
25 discussed at that meeting?

1 A. It was discussions into the final account to be agreed

2 between Hadeed and Altaaqa Global.

3 Q. Was there any discussion on, for instance, Altaaqa's

4 right to liquidated damages at that meeting?

5 A. No.

6 Q. Did you understand that Altaaqa may stipulate seek

7 liquidated damages after?

8 A. Yes, I understood that.

9 Q. That's because you understood that the culmination of

10 that meeting was a provisional -- an interim statement

11 of account and that final figures would be agreed after

12 at the end of the project?

13 A. No, I understood that this particular meeting, the bank

14 guarantees were discussed, various dates of the project

15 completion or targeted were discussed, and the majority

16 of the accountancy detail was carried out between

17 Mr Shamsi, the CEO Mr Shepperd and they did not directly

18 involve me in those discussions. I was there when they

19 were being discussed, but I was not directly asked any

20 particular questions about it.

21 Q. Were liquidated damages mentioned at this meeting?

22 □20240918□0040A. Sorry?

23 Q. As far as you recall, were liquidated damages mentioned

24 at that meeting?

25 A. I don't recall.

1 Q. You don't recall being mentioned?

2 A. We have to ^^ look at the actual -- I believe there are  
3 minutes of that meeting.

4 Q. You believe there are minutes of that meeting?

5 A. I think there are.

6 Q. Did you understand that Altaaqa were reserving their  
7 right to make further claims beyond what was being  
8 agreed at that meeting or did you think Altaaqa were not  
9 going to make any further claims aside from what's there  
10 agreed?

11 A. I don't recall whether -- -- (overspeaking) -- ^^?

12 A. I couldn't substantiate that statement.

13 Q. Did you -- let me put it as bluntly as this. Did you  
14 think that was -- the document that was going to come  
15 out of that meeting was the end of the matter in that it  
16 was a final statement of account?

17 A. No, I didn't believe it was the final.

18 Q. What did you think remained open?

19 A. I thought that was an interim meeting to discuss the  
20 final documents to be put together. Because I believe  
21 there were some several weeks passed after this  
22 particular meeting for both parties to re-look  
23 at. But  
24 these further meetings were between Hadeed and the CFO  
25 and managing director of Altaaqa.

1 Q. This was over the following few weeks after that  
2 meeting?

3 A. Number of weeks. The discussions I believe were to give Altaaqa and Hadeed further time  
4 to review their -- both of their statements during that  
5 meeting.

6 Q. Thank you. You may not be privy to this. The  
7 conversations that then followed over the subsequent  
8 weeks as you understood, they were to discuss further  
9 figures and people's positions on those?

10 A. It wasn't --

11 Q. You weren't privy?

12 A. I wasn't involved in other meetings. Neither am  
13 I certain how many meetings there were.

14 Q. All you can say is in that meeting, you understand that  
15 that wasn't a final -- they were not drawing ult final  
16 figures. That's all you can say. Nothing  
17 beyond that?

18 A. It was my interpretation of what was being -- I heard  
19 that there were going to be other meetings discussing  
20 the ISA.

21 Q. Thank you. If we could please have a look at G583. We  
22 can see, Mr Chevreau, at the very top of that document  
23 it says interim statement of account. If I'm correct,  
24 this reflects your understanding that this was interim  
25 and that there were going to be further discussions and

1 a final statement of account at a later point following  
2 further meetings?

3 A. It looks to me like, as the title implies, that it's an  
4 interim. I did not draft this document, so I can't be  
5 sure of the intent. But this, as I refer to in my  
6 witness statement, is Mr Shamsi's.

7 Q. Mr Shamsi drafted this document?

8 A. I assume so or somebody from the Altaaqa accounts.  
9 I did not draft this document. I provided input where  
10 I was asked. I was asked regarding the variations.

11 Q. It says there, if we look at the paragraph at the second  
12 half of the page, the above amount is the interim bans  
13 at account statement. Any additional variation  
14 orders will be agreed between the parties." ^doc.  
15 It was your understanding, was it not, that this was  
16 an interim statement?

17 A. Yes.

18 Q. And that there were going to be further discussions on  
19 the variation orders?

20 A. That's what it says so, yes.

21 That accords with your understanding of what you  
22 discussed at the meeting on 9 July?

23 A. No, this wasn't mentioned. This document wasn't  
24 mentioned in the meeting regarding VOs. The meeting  
25 with -- I think we're discussing was purely for VOs.

1 Nothing else was discussed.

2 Q. What I want to understand is what was agreed on the VOs?

3 A. Variation order?

4 Q. Yes, what was -- it was your understanding, correct me

5 if I'm wrong, that the discussion of the variation

6 orders was as we've discussed, it was interim

7 and then at that meeting on 9 July, there were going to

8 be further --

9 A. That particular meeting was to put a final figure on the

10 VOs and the discrepancies in understanding of the VOs

11 and to finalise. And the reason that Mr Shepherd was

12 there was to adjudicate and make the decisions final in

13 discussions with Mr Sameer.

14 Q. If we look at G583, the document in front, where it says

15 additional variation orders would be agreed between the

16 parties." ^doc.

17 That's leaving open further discussion on the

18 variation orders, is it not?

19 A. It did not put this document together ^. I cannot

20 comment on its intended statement. I did not put it

21 together. I only saw this particular document in full

22 as we have it now, later on. My involvement with the

23 statement -- with the VOs as you first asked, that

24 particular meeting was to deal with the VOs any

25 disagreements of validity or valuation between the two

1 parties and the intent of the meeting was to finalise  
2 the VO submissions, where I was either -- it was agreed  
3 or not agreed and to come up with a solution even if  
4 they were not agreed.  
5 The reason there being Mr Ship he had the authority  
6 to do that ^. And my understanding of that meeting when  
7 we came out of that meeting, there were no further  
8 issues in the VO valuation or validities. It was  
9 a final meeting to rubber stamp that  
10 particular  
11 area.  
12 Q. But I thought you said if I understand correction  
13 I will, you said this was interim and the documents we  
14 have on screen it says it's interim. John John it says  
15 it's an interim statement of account ^^ . That  
16 there would be in  
17 due course a final statement of account, would there  
18 not? That's ordinarily how these things are done,  
19 there's an interim statement and a final statement?  
20 A. This ^^ a lot more than VOs. And I did not put this.  
21 VOs are there, but I'm not saying -- the wording there,  
22 it doesn't indicate anything directly to VOs.  
23 The purpose of the meeting, which was the original  
24 question, was to finalise all issues with VOs. It's  
25 not

1 an interim statement.

2 Q. But what we can see there -- I want to understand what

3 you thought and I appreciate you say you haven't seen

4 this document?

5 A. No, I didn't say that. I said I've only recently seen

6 this document.

7 Q. Only recently?

8 A. I wasn't -- I didn't have anything to do with producing

9 this document. This is an accountancy document, not

10 technical. I was involved in the VO process meeting to

11 finalise the valuation of the VOs.

12 Q. Was there a copy of this document at the meeting? This

13 document we have on the screen, was there a copy of

14 this?

15 A. No.

16 Q. There wasn't?

17 A. Not that I recall. There couldn't have been, because we

18 didn't have a final variation fee -- value.

19 Q. You didn't have -- I appreciate who you're saying. You

20 didn't have the final figures at that point, so you

21 believe at some point between 9 July when you sat down

22 and 10 July ^^ you believe Mr Shamsi --

23 A. We sat down to discuss the VOs, all of the VOs were

24 brought to the table by Hadeed as example. All of them

25 were -- one by one, the folders were opened, they were



1 discussed in front of all parties and a final  
2 determination of value and validity were agreed between  
3 Mr Shepherd, Mr Farrag was ^ and Mr Sameer and Mr Nasser  
4 and when we walked out of that meeting, I believe the  
5 subject was then closed regarding the valuation of all VO's.  
6 Q. Could we have a look at your second witness statement,  
7 please, it's D6, page 45, paragraph 4.41. These are the  
8 minutes of meetings we've already had a look at. You  
9 set out there the commercial issue ^reading...) held  
10 until project closeout ^doc) and that the total view  
11 will be calculated at closeout?  
12 A. Yes.  
13 Q. In your witness statement, you're suggesting that that  
14 was the reserve, that that was going to be dealt with at  
15 the end, at the project closeout?  
16 A. That was as requested by Hadeed and it was agreed that  
17 they would do it at the end, but we were now at the end.  
18 Q. You believe that was the end of the July discussions  
19 were the end of the project ^?  
20 A. They were talking together about the end process and the  
21 VO was -- meeting was requested by Hadeed and the  
22 Altaaqa senior management agreed to have that meeting.  
23 I don't think it's any relevant at the present ^ that's  
24 a fact that statement there is a fact and it was  
25 implemented at the request of Hadeed, they apparently

1 requested -- required a change in that stance and they  
2 wanted the final valuation of the VOs to be carried out,  
3 which Altaaqa agreed to.

4 Q. I'm going to leave the 9 July meeting after this  
5 question. At the 9 July meeting, Mr Dabbas made it  
6 clear that he was provisionally looking at these figures  
7 and that there was going to be a final statement of  
8 account in due course where the variation orders would  
9 be looked at?

10 A. Between both parties they agreed that ^^ that meeting  
11 would be the final position.

12 Q. But that is not -- we can go over the transcript later  
13 Mr Chevreau when I at the initial outset asked you  
14 whether the figures were final or there would be further  
15 meetings, you said you expected over the subsequent  
16 weeks there were going to be further discussions. Your  
17 account now, Mr Chevreau, conveniently rather ties in  
18 with Altaaqa's case.

19 A. I'm sorry. I do not understand that statement to be  
20 correct.

21 Q. When you referred at the outset, I asked you about that  
22 meeting and you said that actually over the subsequent  
23 weeks you ^^ further meetings?

24 A. I didn't refer to the VOs. I referred to the interim  
25 statement as I understand it ^ would have been there

1 were further discussions between Altaaqa accounts and  
2 Hadeed contracting accountants. I was not party to  
3 that. I'm referring only to the meeting.  
4 Q. You mentioned these meetings, who told you about those  
5 meetings the one that is took place after 9 July ^^?  
6 A. I understood it from discussions with Altaaqa.  
7 Q. In that meeting you understood that they said they were  
8 going to have further meetings?  
9 A. No, not in that meeting.  
10 Q. You understood it after?  
11 A. I understood that there were further discussions going  
12 on they was not party to ^.  
13 Q. What I want to know is how -- the what point, who told  
14 you there were further negotiations?  
15 A. I don't recall the exact date.  
16 Q. But it was somebody at Altaaqa who told you there were  
17 further negotiations?  
18 A. I was told by Altaaqa and I was told by Hadeed. I was  
19 told by the project manager that things were still going  
20 on regarding the final account. I was told by both  
21 parties.  
22 Q. Approximately when were you told that? We're dealing  
23 with -- the meeting is 9 July. Approximately when were  
24 you told that there were on going discussions over the  
25 figures?

1 A. Maybe a week after, two weeks after.

2 Q. Your evidence is 9 July meeting took place may be a week

3 owe two after you had discussions with both sides and

4 they say there were ongoing discussions over

5 the figures ^^?

6 A. I don't think discussions is the right word. It was

7 a simple passing comment from the Hadeed project manager

8 and Altaaqa personnel.

9 MR SULEMAN: Now would be a convenient time for a break.

10 SOLE ARBITRATOR: Thank you. Mr Chevreau, we're going to

11 take a 15-minute break. It is now 11.25, so we'll meet

12 back here at 11-point who. You remain sequestered as

13 a witness, but feel free to walk around. Thank you.

14 (11.25 am)

15 (A short break)

16 (11.41 am)

17 WITNESS: Can I move this table a little bit forward? If

18 I can move closer to my friend --

19 MR SULEMAN: Yes, I will also try to speak up.

20 (11.42 am)

21 MR SULEMAN: Mr Chevreau, could I please take you to your

22 second witness statement, paragraph 2.23. This is D6,

23 page 11, please.

24 You say there -- and I'm looking particularly at

25 23.1, the section where you start by saying Hadeed never

- 1 had a CAD draftsman at site." ^doc?
- 2 A. Correct.
- 3 Q. As far as you're aware, that never happened.
- 4 Could I, as one example, I'm not going to take you
- 5 through all of them, but as one example, take you to
- 6 J1200, please.
- 7 We can see there who's present on the site,
- 8 draftsman, how many, one. Why didn't you notice his
- 9 presence on the site?
- 10 (Pause)?
- 11 A. I don't know which particular day they're talking about
- 12 here, but there was never a permanent draftsman at site.
- 13 Q. Your witness statement says that there was never
- 14 a draftsman on site?
- 15 A. Is. We can clearly see there one there?
- 16 A. Correct, that's my witness statement.
- 17 Q. Yes --
- 18 A. In that case, then I dispute that document.
- 19 Q. You dispute the document?
- 20 A. It's not my document.
- 21 Q. I see.
- 22 A. These are provided by Hadeed.
- 23 Q. Because as far as you can recall, there wasn't one
- 24 there?
- 25 As far as I recall, there was never one there.

1 Q. I see. Can we scroll further down that document and see  
2 who was in fact absent on the site further down the  
3 document. A bet further down on the second page ^  
4 consultant available, Mr Chevreau, you are the one who's  
5 not --  
6 A. Sorry?  
7 Q. You are the one who's absent from the site. Draftsman  
8 is there, you're not there, and that's why you didn't  
9 see him.  
10 A. That document is incorrect. I was always at site, apart  
11 from a six daybreak.  
12 Q. What were those two individuals, factra Dean and Al shad  
13 ^?  
14 A. Fakhruddin is the electrical engineer, or shad is the  
15 mechanical engineer ^doc name).  
16 Q. It's a detailed document. We can see precisely who's  
17 present if we go back to the first page and in fact the  
18 fact that factra did and or shad's name is there,  
19 Mr Chevreau, you were not there on that ^^ accurate and  
20 detailed account of who's present?  
21 A. Well, my position is I was there, this document is  
22 incorrect.  
23 Q. Your position is you were there, the draftsman who's  
24 noted there wasn't there?  
25 A. I dispute there was ever a permanent draftsman on site.

1 We can have a look at other examples where you are  
2 there, in fact. J1194, please.  
3 Again, the draftsman is there, and in fact, if we go  
4 on page 2 of that document, you are also there?  
5 A. Yes, I'm recorded as being there.  
6 Q. You're recorded as being there, the draftsman is  
7 recorded as being there. Is the recording of you being  
8 there accurate as far as you recall? You don't take any  
9 issue with that, you were there?  
10 A. I don't particularly put much merit to this particular  
11 document as to who was there and who was not there.  
12 Q. Is there any particular reason? It's a very detailed  
13 document with precise layout of who's present, including  
14 you are there, tan I believe is ^^?  
15 A. This document was not provided on a daily basis. It  
16 doesn't record Mr Nasser as being there.  
17 Q. Was he there on that day?  
18 A. I don't know. I repeat, again, this document was not  
19 provided on a daily basis.  
20 Q. Did you keep your own records?  
21 A. I don't put much veracity in it.  
22 Q. Did you keep your own record of who was present on every  
23 single day?  
24 A. No, because that should have been recorded by the  
25 security. It wasn't our job to keep a daily log -

1 log -- (overspeaking) -- ^^ we did occasionally do  
2 a headcount and it was usually incorrect. The headcount  
3 never matched the supposedly site attendance.  
4 Q. The only account we have, contemporaneous account we  
5 have of who's present are these daily construction  
6 reports of the it's your memory recall and the daily  
7 construction reports?  
8 A. Not every day of construction, it doesn't recall every  
9 single day of who was there on the site, no.  
10 Q. If we go back to the first page, as I said, I'm not  
11 going to take you through every single item there. Is  
12 there anything in particular you dispute about those  
13 figures? They're very precise figures setting out  
14 precisely who's there. This is 10 June 2018. Is there  
15 any reason you dispute the accuracy of those figures?  
16 A. Yes, they shouldn't be taken on face value, because when  
17 we did head counts, they very rarely matched up with the  
18 so-called people on site.  
19 Q. That's because you simply don't trust heed Hadeed's  
20 recording; is that right?  
21 A. Factra din was on site every single day of the contract,  
22 as well as or shad. We sometimes had visits from other  
23 engineers that we had, Mr Rob ^^ I've never seen  
24 on  
25 these particular documents that were occasionally thrown



1 around, that his record, it neither records -- I don't  
2 think you will find if you went through every particular  
3 one of these, any record of Mr Dabbas or Mr Al el live  
4 being on site. I don't believe these were accurate and  
5 I have no way of knowing where we go -- it's shown there  
6 as head office support. I have no -- had no way  
7 of knowing whether those people are actually doing work  
8 on this for this particular site.

9 Q. As the engineer on the project, your first  
10 reaction when I took you to this daily reports is  
11 dismiss them, ^^ if you look at this subjectively and  
12 impartially, you have no real basis to say -- when  
13 I took you, for example, to the presence of draftsman,  
14 why would you immediately miss these reports and their  
15 accuracy?

16 A. Because I don't have any transmittal documents to say  
17 that we received them or not. We're obviously here  
18 trying to put together a good picture of the site.  
19 I don't have a daily construction report transmittal  
20 documents to say it was given to us. So I can't  
21 100 per cent comment on the validity of this document.

22 Q. The reason you're immediately dismissing anything I put  
23 in front of you that's from Hadeed is because you've  
24 developed during ^^ animosity towards Hadeed?

25 A. That is an incorrect statement.

1 Q. You are clearly not in any way impartial or independent  
2 when looking at any of the documents I'm putting before  
3 you?

4 A. I dispute your comment and I do not accept it.

5 Q. As I said, I'm not going to propose to tick you through  
6 every single daily report, because they are all on the  
7 record. I'm sure in due course, people can carry out an  
8 assessment. Do you stand by your  
9 witness  
10 statement where you state that the draftsman was never on site?

11 A. My recollection is there was no position on site of  
12 a permanent --

13 Q. Let's be very clear about your evidence. We can go back  
14 to your witness statement, this is D6, page 11.

15 A. It's my interpretation that there --

16 Q. D6, please.

17 A. There should be a CAD drawing, a CAD operator on site.  
18 There was no position on-site work desk, workstation,  
19 printer, plotter for a CAD operator to have operated.

20 Q. Let's have a look. I want to be very clear, because you  
21 won't have an opportunity to amend your statement after  
22 today, I won't dispute that that document says there was  
23 one on site.

24 Q. But your evidence, because as I said, we adopt have the  
25 time to take you through absolutely every daily report?

1 A. Right.

2 Q. Your witness statement where you say Hadeed never had

3 a CAD draftsman at site, is it your position that there

4 wasn't a permanent position, there was no CAD draftsman

5 every day at site, or are you saying what

6 you

7 say in your witness statement, that there was never

8 a CAD draftsman at site? What is your evidence on this?

9 A. In this document is taken as read, obviously I can't say

10 that there was none on site, because it states there was

11 one here.

12 I have no recollection of a CAD drawing being on

13 site. Indeed, when we asked for CAD drawings to be

14 reprinted, they were unable to do that. They could only

15 offer photocopy PDF A3 sizes, which was always

16 a bone of

17 contention that they were too small to read.

18 Q. I'm not going to ask you any further, but you stand by

19 your current position, because you say you're at site?

20 A. Yes.

21 Q. When you're at the site, you had never point throughout

22 the project saw a draftsman on site?

23 A. No, I'm not aware of any name. I'm usually aware of all

24 the names of the guys on site, apart from every single

25 site labourer. But the people that were in the office,

- 1 I few them personally ^.
- 2 Q. Roughly -- and I period this is going to be a very rough
- 3 estimate. There's a suggestion by Hadeed that you were
- 4 in fact absent frequently from site?
- 5 A. Yes, I've seen Mr Dabbas' statement, which is totally
- 6 untrue.
- 7 Q. Roughly, how many days would you say you were absent?
- 8 A. I was off, absent from the site for approximately six
- 9 days when I took local leave.
- 10 Q. During what period, six days from?
- 11 A. During the period of 2019, when I was not on the site
- 12 for a period of six days.
- 13 Q. In 209 you were off the site for six days?
- 14 A. Yeah, for six days.
- 15 Q. In 2019. How about in 2018? Again, approximately,
- 16 I don't know if you've kept a record?
- 17 A. Maybe four days.
- 18 Q. Four days in the entire 2018?
- 19 A. Yes.
- 20 Q. That includes annual leave?
- 21 A. It doesn't include -- I'm not talking about annual
- 22 holidays, for instance, Eid, of course I was off site,
- 23 everybody was off site.
- 24 Hole days as in Christmas, you mean Christmas, new year,
- 25 et cetera. Housekeeping annual leave, holidays you

- 1 took?
- 2 A. I never took, I had an annual leave entitlement from
- 3 Fittons of a month.
- 4 Q. Did you take that?
- 5 A. No.
- 6 Q. Why not?
- 7 A. Didn't have time with the project ^^.
- 8 Q. During -- actually, before we move on to 2017, 2018,
- 9 were you off site for health reasons?
- 10 A. No.
- 11 Q. Never?
- 12 A. I was sick a couple of times, but always fortunate for
- 13 me, happened over the weekend ^ unfortunate ^. I had no
- 14 major health issues during the contract period.
- 15 Q. In 2017, how many days were you off the site?
- 16 A. I don't think I was.
- 17 Q. At all?
- 18 A. I don't recall being off at all, apart from annual or
- 19 public holidays.
- 20 Q. Does that include weekends? Does that include the
- 21 weekends?
- 22 A. No, it doesn't.
- 23 Q. Not including the weekends, five days a week, you're
- 24 always on the site?
- 25 A. Six days a week.

- 1 Q. Six days a week?
- 2 A. Yes.
- 3 Q. Excluding?
- 4 A. Sorry.
- 5 Q. Excludessing which day?
- 6 A. Friday.
- 7 Q. Excluding Friday, you're there on every other day of the
- 8 week?
- 9 A. Yes.
- 10 Q. Six days a week, during the entire course of 2017,
- 11 during the entire course of 2017?
- 12 A. Yes.
- 13 Q. You were on site six days a week?
- 14 A. Yes.
- 15 Q. You did not take any holiday?
- 16 A. No.
- 17 Q. You were not at any point unwell and missed any day?
- 18 A. No. My health issues started after the contract and
- 19 Hadeed had been removed from the site ^.
- 20 Q. 2016, how many days were you off the site?
- 21 A. I wasn't.
- 22 Q. At all, again?
- 23 A. I was always there during the working requirements.
- 24 No holidays?
- 25 A. No.

- 1 Q. At all?
- 2 A. At all.
- 3 Q. No sick leave at all?
- 4 A. Sorry?
- 5 Q. No sick leave, you were not unwell?
- 6 A. No, I wasn't.
- 7 Q. At all?
- 8 A. No.
- 9 Q. 2015?
- 10 A. No.
- 11 Q. Again, no?
- 12 A. No.
- 13 Q. You were on site every single day?
- 14 A. Apart from -- when the contractor was on site, I was on
- 15 site.
- 16 Q. This includes we're in 2015 now, so this of course
- 17 includes before you were appointed as the engineer, you
- 18 were still on site every day?
- 19 A. I was still on site, because --
- 20 Q. Every single day?
- 21 A. Yes, because we were employed by Altaaqa.
- 22 Q. So your evidence is that during the entire course of the
- 23 project, you were not off?
- 24 A. Correct.
- 25 Q. Other than as I recall I record six days in 2018, four

- 1 days in 2018 ^?
- 2 A. Correct.
- 3 Q. During the course from 2015 to 2019?
- 4 A. I didn't have any vacation.
- 5 Q. You took a total of 10 days?
- 6 A. Yes.
- 7 Q. Off?
- 8 A. Correct, that's correct.
- 9 Q. Could I take you to your first witness statement.
- 10 Paragraph 3.10, please.
- 11 The final sentence. The only times that way
- 12 ^reading...) illness or leave." ^doc?
- 13 A. Yes.
- 14 Q. But you're now saying that you were in fact during the
- 15 entire duration of the contract, you were never off due
- 16 to ill health?
- 17 A. No.
- 18 Q. Yes?
- 19 A. I wasn't off site due to ill health at any time during
- 20 the contract period.
- 21 Q. Why did you say there that then the only times you were
- 22 not present was due to ill health or leave?
- 23 A. I'm talking about substantial illnesses, which I think
- 24 was what Mr Dabbas was implying.
- 25 Q. No, what I'm trying to understand is as I reads your



1 sentence there, you're suggesting the only times you  
2 were not there was when it was due to ill health  
3 or  
4 leave, but in fact you're now saying the only time  
5 you're not there was due to leave, 10 days during the  
6 course of the five-year period?  
7 A. No, as I said to you, I had a cough occasionally, but  
8 I wasn't off work during the working periods.  
9 Q. Mr Chevreau, it's quite an incredible account for you to  
10 suggest from 2015 to 2019 you took 10 days of holiday,  
11 you were never sick during the working day, you never  
12 took any holiday?  
13 A. Yes.  
14 Q. You never travelled abroad. I never missed any ^.  
15 Q. You were never abroad?  
16 A. No.  
17 Q. Do you appreciate that sounds incredible, that sounds  
18 remarkable?  
19 A. Not particularly.  
20 Q. Bordering on implausible?  
21 A. Not particularly.  
22 Q. If -- again, as I said, we're not going to take you  
23 through the daily construction reports, if the daily  
24 construction reports show regular absence, what's your  
25 position on that? The reports are wrong?

- 1 A. The construction reports are incorrect.
- 2 Q. If I take you to any document that suggests that you
- 3 were not at the site when someone was looking for you,
- 4 that would be wrong?
- 5 A. No, please take me to those documents, I'll try to
- 6 explain.
- 7 Q. Okay. Give me a moment, please.
- 8 If I could take you to G425, please.
- 9 If we scroll down. Sorry, forgive me, slightly
- 10 above.
- 11 This was an attempt to take those documents to the
- 12 site office. I'm giving you one example. I'm not going
- 13 to take you through everything, but you were not there?
- 14 A. I recall this particular email being sent and I wasn't
- 15 on site. It doesn't say I was absent for any illness or
- 16 anything. I wasn't on site. I was in the Altaaqa
- 17 offices meeting with Mr Faraz was at this particular
- 18 time ^.
- 19 Q. At that particular window, you happen not to be there,
- 20 when they went to the site on that day at that
- 21 particular moment, you were not there, but your were
- 22 there on that day?
- 23 A. I was on site. I wasn't on site at that particular hour
- 24 that those documents were thrived and I remember this
- 25 very detail, because --

1 Q. You have quite an incredible memory, Mr Chevreau. You

2 remember on 14 July 2018 -- (overspeaking) -- ^^?

3 A. I remember buzz it was one of the EOTs and I was across

4 in the Jebel Ali Free Zone meeting with Mr Far at that

5 particular time and I came back ^ and I discussed this

6 email with the project manager.

7 Q. If I take you to any other document, you'll say at that

8 particular hour, I was also not there, but I was there generally during the course of the day?

9 A. I don't know, I can't answer what you haven't asked me.

10 I do remember this particular, but this statement is

11 also incorrect. The documents were allowed to be

12 forwarded to us as Fittons, everyone if I wasn't there,

13 and that statement is incorrect.

14 Q. Why would they -- again, I'm suggesting that you've

15 looked at an email, it's from Hadeed and you immediately

16 suggest it's incorrect. Why would they say that?

17 A. Why ^^ they want to give those letters ^ and they've

18 then had to those letters to that email. Why would they

19 say that they've been refused to be accepted?

20 What do Hadeed gain from this?

21 A. Because it was quite normal for them to try to twist

22 this sort of thing. We had an arrangement for receiving

23 documents all before 1 o'clock in the afternoon, not

24 after 1 o'clock, because if we received documents after

25 1 o'clock, and it was quite common for them to try to

1 submit documents around 3 o'clock, we had lost a full  
2 day of reviewing them. So we said and agreed with  
3 Altaaqa: please do not send any documents after  
4 1 o'clock in the afternoon, because this now sets the  
5 clock going on our 14 face and therefore, we've lost  
6 already three-quarters of a day by the time you have  
7 submitted them.  
8 Q. Forgive me, carry on.  
9 A. So this particular one erect because it was a financial  
10 claim and EOT. The financial claim were always  
11 received. So that is clearly not the case ^^  
12 on  
13 site, not the full day, I was off site meeting with  
14 Altaaqa in their -- not site offices, Jebel Ali Free  
15 Zone offices. That particular one.  
16 Q. Before I move from your presence on the site, because  
17 you know Hadeed's position on this, this you were  
18 regularly absent from the site.  
19 A. All the time.  
20 Q. And your position is you took 10 days of leave in the  
21 course of --  
22 A. Yes, my health deteriorated in 2020, 2021, 2022, badly.  
23 I had a heart pacemaker fitted.  
24 Q. Regardless of your health, you suggest that you were not  
25 202409180066 out of the country at any point? I'm sure if needed,

1 you could provide evidence of that, that you were not  
2 out of the country, because there would of course be passport stamps?

3 A. Please provide it. I don't --

4 Q. Of course we can't provide them, but you can confirm  
5 under oath that there's nothing on your passport that  
6 would suggest you being out of the country at any point  
7 from 20?

8 A. I wasn't out of --

9 Q. 2019?

10 A. I wasn't ^^ I took six days off in 2018, I believe.

11 Q. You didn't have think, as others do, any winter cold,  
12 throughs, anything of any sort, any viruses ^,  
13 a cold  
14 a flew or anything else during that period of time that  
15 would have prevented you from being at the site, not  
16 related to your health personally, but just anything at  
17 all during that period of time?

18 A. My sister keyed.

19 Q. You didn't take leave for that ^?

20 A. Sorry.

21 Q. You didn't take leave for that or is that one of the  
22 10-days?

23 A. That's part of the --

24 Q. The 10 days?

25 Yes.

- 1 Q. How many days is that?
- 2 A. I was sick --
- 3 Q. How many of the 10 days, forgive me. I appreciate the
- 4 sensitive subject, I'm not going to push the point. But
- 5 I'm trying to understand how you've arrived at 10 days
- 6 for a four year period?
- 7 A. How do I?
- 8 Q. Arrive at the 10-day period you took 10 days off in four
- 9 years?
- 10 A. I was six days absent from the site. Normal working ^^.
- 11 Q. I'm not going to push that point any further. I think
- 12 we can deal with that in submissions.
- 13 Mr Chevreau, could we then turn to exhibit G563,
- 14 please.
- 15 This is a document we looked at earlier. Can
- 16 I understand, Mr Chevreau, that the decision to approve or reject variations, that's ^^ the engineer, is
- 17 it not?
- 18 A. Yes.
- 19 Q. You understand that.
- 20 Point 1, when you say all variations as per Altaaqa
- 21 approval. Subject closed." ^doc.
- 22 Why are Altaaqa deciding what to approve which
- 23 variations --
- 24 A. They ^^ they're not approving them, they're looking at
- 25 my -- they're looking at my review of the variations,

1 they take my review of the variations and approve. If  
2 they agree with the approval, because they're paying the  
3 money, the process goes forward. The approvals require  
4 the signature of the valuations by either Altaaqa or the  
5 client's representative. The variation approval starts  
6 normally with Hadeed application for a VO on  
7 a particular form. I review it  
8 for the merit as I see it. The client's representative  
9 would review it and  
10 decide if he agreed with my interpretation and  
11 approval. It required two signatures.

12 Q. That's not what you say there. What you say there very  
13 clearly is it seems that Altaaqa the ones deciding and  
14 effectively, you're just the conduit through which they  
15 express their views. They tell you they're rejecting or  
16 approval ^^ saying subject closed?

17 A. Of course the variations require the client's approval.  
18 They're paying the money. But my approval is in  
19 judgment of my review, whether I believe it's valid.  
20 But to actually approve it requires the  
21 client's  
22 consent, not my approval.

23 Q. Could we now turn to your second witness statement,  
24 paragraph 1.11, please.

25 My question, I think you don't address it precisely

1 there, but this is a question surrounding the manpower  
2 on site. There were issues with manpower, as  
3 you understand, and I'm going to suggest to you, because  
4 the subcontractors were not being paid. That's right,  
5 isn't it?

6 A. Sorry?

7 Q. The subcontractors were not being paid and that's why  
8 there were manpower issues at the site?

9 A. Yes.

10 Q. Why weren't the subcontractors being paid?

11 A. Why?

12 Q. Why were they not being paid?

13 A. They were not being paid by the main contractor, who  
14 they were subcontracted to. They were not subcontracted  
15 to Altaaqa. They were subcontracted to Hadeed.

16 Q. Did you know that at some point in 2017, are you aware  
17 that there was an arrangement whereby Altaaqa would pay  
18 the subcontractors?

19 A. No, I think that's a misunderstanding.

20 Q. What was your understanding?

21 A. The subcontractors' payments was an agreement between  
22 Hadeed and Altaaqa during the 2017 started during the ^  
23 2017 period, when it was known to us that there were  
24 payment to the labour supply who were contracted

25



1 Hadeed.

2 Q. Altaaqa -- I just want to be very clear. As you

3 understood, there's an arrangement whereby Altaaqa would

4 thereby directly pay the subcontractors?

5 A. At the request.

6 Q. At the request of Hadeed?

7 A. At the request of Hadeed, and it was a non-contractual

8 arrangement. It was not part of the contract.

9 Q. On what basis do you say that, it was non-contractual?

10 A. There is no substance in the contract saying Hadeed --

11 Altaaqa pay anybody, except Hadeed. They are the main

12 contractor.

13 Q. You're not the legal representative of Altaaqa. Why do

14 you make those submissions? Why do you say that there

15 was a non-binding contract?

16 A. Why did I say --

17 Q. Why do you say exactly what you just said, there was

18 a non-binding contract between Altaaqa and Hadeed?

19 A. It wasn't a contract. -- (overspeaking) -- ^^.

20 Q. My point is why ^^ I didn't ask you whether it was

21 a binding contract. Why do you feel compelled to de

22 ^^ -- (overspeaking) -- ^^?

23 A. I'm stating the truth, if that an arrangement was

24 requested by Hadeed to pay on their behalf their

25 subcontractors.

1 Were there, as you're aware, were there any delays with  
2 paying subcontractors by Altaaqa where Hadeed had  
3 requested payment and the subcontractors had not  
4 been  
5 paid?  
6 A. Altaaqa made payments as fast as they could direct to  
7 the subcontractors at the request of Hadeed. If I may,  
8 I'll just expand on that.  
9 Altaaqa is a global company with procurement, very  
10 strict procurement issues. Each payment has to be done  
11 against a vendor item. They were not geared up to do  
12 daily requests for payments at a speed because of the  
13 size of the company, at a speed that Hadeed wanted.  
14 They would make payment requests requesting the  
15 cheque be ready that evening or that day and be given to  
16 the subcontractor. As fast as Altaaqa could make the  
17 payments, they did, but it was certainly not on an  
18 hourly basis or of the amounts not big amounts, the  
19 small amounts, they did not operate a petty cash system.  
20 Every payment has to go against a vendor item on  
21 their database for suppliers. So they had to raise  
22 a vendor item and go through the approval of that vendor  
23 item, through their financial system, before they could  
24 raise a cheque.  
25 Those cheques depended on the valuation at the

1 payment levels, I'm led to believe. This can be  
2 a question that you -- the exact procedure, this can be  
3 a question you address to Altaaqa directly. I'm telling  
4 you what I know the process was, because Fittons  
5 themselves were part of the payment receipt payments ^  
6 for our fee. So I'm aware that, for instance, if  
7 Mr James shepherd was away ^, we were delayed maybe two  
8 days whilst he came back to sign a cheque or to  
9 authorise a bank statement, depending on the valuation  
10 of our -- but the payment request to subcontractor was  
11 very rarely instant, but it was within the timeframe  
12 that I could say is a timely manner from the point of  
13 application to their subcontractor being receive the  
14 payment.  
15 Normally, they were quite happy, because Altaaqa had  
16 underwritten the payment requests.  
17 Q. You were aware, were you, of the details of the  
18 processes that Altaaqa were going through when deciding  
19 on payments to subcontractors?  
20 A. Yes, I was aware of them, because we were part of the  
21 process. We had to check various validities of the  
22 requests.  
23 Q. Were you part of the -- did you know, for example,  
24 whether they were carrying out a know your client, KYC,  
25 process?

- 1 No, I didn't know whether final payment was made.
- 2 Q. Did you know -- my question is did you know, for
- 3 example, whether Altaaqa were carrying out a know your
- 4 client, KYC, process?
- 5 A. We pro processed 540 payment applications by Hadeed for
- 6 direct payments to subcontractors.
- 7 Q. Mr Chevreau, my question is were you aware of the
- 8 process that Altaaqa were going through when making
- 9 payments? For example, do you know whether or not KYC
- 10 was an issue, now your client ^? Do you understand what
- 11 know your client process is?
- 12 A. Yes, I know the client's business spread and I --
- 13 Q. Sorry, I'm asking about the KYC cheques, do you know
- 14 what a KYC check is ^.
- 15 A. No. In detail, I do not know the process.
- 16 Q. In brief, what would you understand a KYC check to be?
- 17 A. It would be an application to the accounts department,
- 18 the accounts department would check whether or not the
- 19 requested check was to a vendor who was on their vendor
- 20 list.
- 21 If they were on the vendor list, they would go
- 22 through the process which would have been upwards
- 23 through the management depending on the size and the
- 24 valuation of the cheque. I don't know the process or
- 25 the actual value of individual signatories.

- 1 Could I take you, please, to G309.
- 2 In particular, the first attachment. Forgive me,
- 3 before we go to the attachment, can you explain who tan
- 4 is? I believe we touched on this yesterday. Tan and
- 5 tan's position?
- 6 A. Yes.
- 7 Q. Who is tan?
- 8 A. Tan's position is project manager.
- 9 Q. Tan is project manager?
- 10 A. Yes. As part of a team, where we have several people
- 11 involved, as part -- Fittons' team on site, her
- 12 designation was project manager. My designation was
- 13 operations director. I was her boss on site.
- 14 Q. As a project manager?
- 15 A. As?
- 16 Q. As a project manager, you were her boss?
- 17 A. She was the project manager, she reported to me on site.
- 18 Q. What I want to understand is because much of the
- 19 documents ^^ sent to tan variation orders are being
- 20 signed off or stamped by tan. In what capacity is
- 21 tan signing
- 22 those documents?
- 23 A. As the project manager.
- 24 Q. As a project manager?
- 25 A. Yes.

- 1 Not as your representative as an engineer?
- 2 A. I was her boss, she reported to me.
- 3 Q. This is important --
- 4 A. All site engineers, everybody involved on that
- 5 particular project, reported directly to me.
- 6 Q. Could we turn to C1, page 5, please.
- 7 Mr Chevreau, because again I'm not going to take you
- 8 through all the documents. There's a lot of documents,
- 9 variation orders, approval, et cetera, which are signed
- 10 off and stamped which tan. ^ ^dict) in what
- 11 capacity -- and I'm saying throughout the entire course
- 12 of the project, up to 2019N what capacity from 2016 to
- 13 2019, in what capacity is tan signing those? This is
- 14 Tan Guoyi?
- 15 A. Yes.
- 16 Q. Tan Guoyi?
- 17 A. Yes.
- 18 Q. In what capacity is Tan Guoyi signing those documents?
- 19 A. As the project manager.
- 20 Q. That is Altaaqa's representative, Altaaqa's project
- 21 manager?
- 22 A. No.
- 23 Q. Whose project manager?
- 24 A. Fittons.
- 25 Q. Fittons' project manager?

1 Yes.

2 Q. In what capacity are Fittons acting?

3 A. Sorry.

4 Q. In what capacity are Fittons acting?

5 A. I believe it went through this in detail yesterday ^.

6 Q. We haven't covered -- we need to be clear. What I want

7 yesterday we went to 2015, what I want to understand is

8 2016 to 2019, in Xiao capacity are Fittons acting when

9 signing all those documents?

10 A. Fittons -- after the building permit was received and

11 the change of consultant document was as we saw

12 yesterday, Fittons was now appointed as

13 consultant.

14 Q. Looking at the screen, we've got a definition of

15 engineer, we have got a definition of engineer's

16 representative. Does tan fall into either

17 of

18 those? Does tan, Tan Guoyi fall into either of those

19 two? Engineer or engineer's representative? You can

20 look at the definitions on the screen. This is the C1,

21 the contract document. Does Tan Guoyi fall

22 into either of those. During 2016 to 2019.

23 A. Yes, she's the project manager. Her designation is

24 project --

25 Q. My question is very clear, Mr Chevreau.

1 A. Sorry.

2 Q. Does Tan Guoyi fall into the definition under (c)

3 engineer or (d) engineer's representative?

4 A. She falls into the role as consultant. She is part of

5 the consultant team of Fittons and she -- her

6 designation is project manager.

7 Q. Is it your position -- it's a "yes" or "no" question --

8 that Tan Guoyi does not fall under engineer or

9 engineer's representative, from 2016 to 2019?

10 A. She falls under the broad statement of engineer.

11 Q. Engineer?

12 A. And project manager. Her designation on the project is

13 project manager. There is no -- there is no specific

14 engineer.

15 Q. I understand Fittons are the engineer and she's an

16 employee of Fittons?

17 A. Yes.

18 Q. Which is why I wanted to be clear on was whether she

19 thought -- you thought she fell under (c) engineer and

20 that is unde Fittons, an employee --

21 A. A senior person on site, my resignation ^^ for this

22 particular project is the engineer.

23 Q. Your position we understand. I think that's clear.

24 Ms Guoyi's position -- and this isn't to question --

25 I think what I'm trying to understand is that documents



1 are being signed by Ms Guoyi throughout the course of  
2 2016 to 2019. What I want to know is her  
3 authority to be signing documents?  
4 A. She's project manager of Fittons on this particular  
5 site.  
6 Q. Would it be accurate to say that she falls under (c)  
7 where it says engineer, we know at this period, that's  
8 Fittons, so she would fall under (c) in the definitions  
9 we're now looking at?  
10 A. Yes, because that statement means KAOS architects and  
11 engineer, it does not mean that. That statement there,  
12 it should be (a) to (z) engineer means (a) to (v).  
13 It  
14 doesn't mean KAOS because KAOS have no authority correct  
15 A2Z.  
16 Q. Yes, we went through that yesterday, we're beyond 2015  
17 now. We're looking at 201, when we -- I don't believe  
18 it's many ^^ 3 January or 7 January, depending on how  
19 you look at the appointment letter, at least by that  
20 date, January 2016 onwards, Fittons are the engineers?  
21 A. Yes.  
22 Q. I don't believe that's in dispute. What I'm trying the  
23 understand -- as I said, I've only so we're very clear  
24 about Ms Guoyi's authority to sign documents.  
25 What was your understanding at least?

- 1 A. She's authorised to sign the documents as project
- 2 manager of Fittons who after the building service --
- 3 building permit had been issued, and the change of
- 4 consultant had been recognised by DWC.
- 5 Q. You accept, during the course of 2016 to 2019, we're at
- 6 a point where Fittons are the engineers under the
- 7 contract?
- 8 A. Yes, consultant engineers.
- 9 Q. Consultant engineers?
- 10 A. Yes.
- 11 Q. During that time, 2016 to 2019, the contract itself
- 12 doesn't provide for a role for project manager?
- 13 A. Not really.
- 14 Q. I just want a "yes" or "no" answer, because I think this
- 15 is important. And this is not a trick question.
- 16 Tan Guoyi falls under -- she's an employee of Fittons?
- 17 A. Yes.
- 18 Q. Fittons are the engineers?
- 19 A. Yes.
- 20 Q. On the record, and there are this falls under the
- 21 definition of (c); is that right? That's right?
- 22 A. Correct.
- 23 Q. Thank you. Could we now return to that email, please.
- 24 It's G309, please.
- 25 The first attachment, please.

1 This is the pending payments for the various  
2 subcontractors?  
3 A. Yes.  
4 Q. Why are those payments pending at that point?  
5 A. Sorry?  
6 Q. Why are those payments pending? What's the hold up?  
7 A. Sorry, why does it say payment pending ^.  
8 Q. At the top, the green part, pending payments and  
9 we've got the dates that that period covers.  
10 (Pause).  
11 A. I can't comment on this document. It's not one of ours.  
12 I can only assume that this is some record that Hadeed  
13 are keeping. The heading says payment pending.  
14 It doesn't say whether they've applied for it payments  
15 to be paid which anybody or it's part of their contract  
16 documentation internal.  
17 Q. This is a document you have seen before. You have seen  
18 this document before.  
19 A. I could have done, but to me that one just looks like --  
20 it doesn't say that it's in any sort of delay, it just  
21 states that it's pending. I don't know whether or not  
22 that individuals suppliers have been part of a request by  
23 Hadeed to pay them. It's not clear what it means.  
24 Q. What we can see from the timeframes that this concerns,  
25 this was at a time when Altaaqa stopped making payments

1 to Hadeeds?

2 A. Payments to Hadeed were never stopped. I don't

3 understand your question.

4 Q. As far as you know, when was the last time Altaaqa made

5 a payment to Hadeed?

6 A. Altaaqa never stopped making a payment to Hadeed.

7 Q. Altaaqa continued making payments to Hadeed during the

8 entire course of the project; is that your

9 understanding?

10 A. My response is correct. Altaaqa never withheld any

11 payments to Hadeed.

12 Q. I'll take you to the exhibits in a moment. The point at

13 which an arrangement was reached whereby Altaaqa would

14 pay Hadeed's subcontractors directly, you say it's

15 a non-binding arrangement -- is it your

16 understanding

17 that Altaaqa were paying the subcontractors directly and

18 paying Hadeed separately in terms of the payment

19 certificates?

20 A. Let me think ^^ so as not to confuse anybody.

21 The payments to subcontractors were made and the

22 balance was deducted from, let's say, Hadeed's account.

23 So let's just make an assumption that the payment

24 applications to Hadeed, the monthly payment applications

25 to Hadeed, were 100,000. The subcontractors' a

1 accumulated costs suddenly exceeded the payment amount  
2 of 100,000 and became 110,000. Hadeed would be 10,000 ^  
3 in debt to Altaaqa because their due payments were  
4 exceeded by their request to pay subcontractors.  
5 So at any one time, they could have received money  
6 from the payment applications, if the payment  
7 application exceeded the value amount that was owed to  
8 Altaaqa by subcontractors' payments exceeding or being  
9 in credit. There was never any non-payment issues, only  
10 what was seemed to be misunderstood by Altaaqa -- sorry,  
11 Hadeed in their payment requests for subcontractors.  
12 If it exceeded the balance that they were owed from  
13 the monthly payment, they would not have received any  
14 cash.  
15 Q. Do you recall when the arrangement, the arrangement of  
16 Altaaqa to pay the subcontractors directly, when that  
17 was agreed between the parties?  
18 A. I believe either April or May 2017.  
19 Q. We can take in fact you have directed this in your first  
20 witness statement, D4, paragraph 3.56. ^ we can  
21 see June July 2017 you say they reached an agreement, you say what they filled to  
22 mention was that it was a mutually agreed  
23  
24 arrangement. Both parties had agreed to this  
25 arrangement?

1 A. Yes, and if you read any application for the  
2 subcontractors to be paid, it states that Hadeed  
3 understand that the payments will be deducted from the  
4 Hadeed account.

5 Q. We can see in your subsequent paragraph, you say they  
6 kept submitting payment applications, properly assessed  
7 passed on to Altaaqa for payment. You're aware whether  
8 Altaaqa made any further payments ^^ did Altaaqa  
9 make any further payments?

10 A. Sorry. Again?

11 Q. Did Altaaqa after February 2017, make any further  
12 payments?

13 A. 500.

14 Q. 500 further payments?

15 A. Total payments were 500 to Altaaqa -- Hadeed's  
16 subcontractors.

17 Q. Did Altaaqa make any payments directly to Hadeed  
18 after February 2017?

19 A. No, only the ones that were requested by Hadeed, they  
20 made no payments directly to any subcontractors by  
21  
22 themselves, unless they were engaged to do work outside  
23 of the scope of Hadeed. A total amount of direct  
24 payments on behalf of Hadeed was some 494, I believe,  
25 around the 500 mark.

1 Q. As far as you recall, the last direct payment -- is it  
2 right that the last direct payment from Altaaqa to  
3 Hadeed was in February 2017? Not to the subcontractor,  
4 direct Altaaqa to Hadeed was February 2017. You mean in  
5 the normal circumstances, the poly payments?

6 Q. My question is was February 2017 the last time Altaaqa  
7 made direct payments to Hadeed?

8 A. No.

9 Q. When was -- as you recall, when was the last time  
10 Altaaqa made direct payments to Hadeed?

11 A. The last approved payment application was number 38.

12 Q. I'm sure we can find that. Is it your understanding  
13 that since November 2016, any payment  
14 applications which you were approving were being paid by  
15 Altaaqa?

16 A. Yes.

17 Q. That's what you thought was happening?

18 A. Yes.

19 Q. Why did you think that?

20 A. Sorry?

21 Q. Why did you think that? What ^^ on what basis did you  
22 believe they were being paid?

23 A. I had no reason to think they were not being paid. They  
24 were being paid. I believe there is misinterpretation  
25 that the subcontractors' payments were completely

1 separate to the contract.

2 Q. My question -- it's important. My question is about

3 direct payments. We're aware that there were payments

4 to subcontractors at various points.

5 A. The process --

6 Q. You thought there were direct payments being made by

7 Altaaqa to Hadeed beyond February 2017?

8 A. There were valuations approved to the Hadeed payments ^

9 right up until the end of the project, the last one that

10 I finally approved was payment application number 38.

11 Q. We understand that. I want to be very clear. We

12 understand you say you've approved payment applications?

13 A. Yes.

14 Q. As best you know, Altaaqa you believe were continuing to

15 make direct payments to Hadeed after February 2017?

16 A. The process as I just explained, -- may I carry on?

17 SOLE ARBITRATOR: Please.

18 A. The subcontractors' payments, if they exceeded the

19 credit balance in Hadeed's account, there would not have

20 been any -- let me put it as a cash transaction to

21 Hadeed, because the valuation of the subcontractors'

22 payments exceeded the amount of the normal payment

23 applications.

24 I think that's the misinterpretation of Mr Dabbas.

25 MR SULEMAN: I understand. If I may put it this way,



1 Honouring is that you would approving payments ^ and the  
2 amount Hadeed were paying to subcontractors was more  
3 than the payments that were approved?

4 A. Yes.

5 Q. And that's why Hadeed were not paid directly?

6 A. Yes.

7 Q. But then that takes me to my question were Hadeed paid  
8 directly, I your Honour your answer is no, because they  
9 were not owed any money, is that your  
10 position?

11 A. Yes, sorry.

12 Q. I just want to be clear. So to be very clear, there  
13 weren't think, as far as you know, there weren't any  
14 direct payments from Altaaqa to Hadeed  
15 after February 2017, because there was no money owed you  
16 say ^^?

17 A. Because of the valuations, as you state, subcontractors,  
18 there was no credit between the two. Hadeed had  
19 received payments of let's say 18, 22 million up to that  
20 point and now because they were paying Altaaqa were  
21 paying ^ Hadeed's subcontractors, that valuation led to  
22 a negative account as far as Altaaqa were aware.

23 They

24 continued to pay, but now Hadeed were no longer in

25 a credit stance. The approvals of those payments up to

1 payment 38 in 2019, were negative.

2 Q. Could we then turn to the document you were looking at

3 a moment ago. This is 309, email, in particular

4 the

5 attachment to that email. This is an email with this

6 attach. We were just looking at this

7

8 document. The email itself we can see is from Hadeed to

9 Fittons and various Fittons employees including

10 yourself, Mr Chevreau.

11 The attachment, if we look at the first attachment,

12 the PDF file, these are outstanding payments prior to

13 you say June/July 2017 when arrangement was made for

14 Altaaqa the pay subcontractors directly.

15 At this point, between December

16 and May -- December 2017 and May 2017, Altaaqa have

17 stopped paying Hadeed, haven't they?

18 A. This is not the real state. This document, if we go

19 back to the email, that email

20 is sent from the accounts department.

21 Q. We can see if we scroll further down, the email in fact

22 we can see?

23 A. No, this is the project manager of Hadeed.

24 Q. Yes.

25 A. I believe the interpretation of this is RAM is saying,

1 he's disputing, I believe, that 189,800 has been paid to  
2 the particular labour supply.  
3 If we can go back up to the Hadeed document.  
4 Q. The PDF?  
5 A. Yeah.  
6 Q. Discovery employment it's highlighted ^?  
7 A. I'm not sure.  
8 Q. That sum ^doc)?  
9 A. I'm not sure what this document is. According to that,  
10 it's looking like these are the, as you state,  
11 outstanding amounts. But I don't think that  
12 gives an  
13 explanation of what Mr Ram is trying to get through.  
14 I don't understand who its trying to say.  
15 Q. Whose reviewing, because we can see this correspondence  
16 between Fittons and Hadeed. Who's reviewing these  
17 documents? When this information is requested and it's  
18 provided, there's an attachment with this PDF, who's  
19 responsible for reviewing and actioning these  
20 outstanding payments?  
21 A. Well, we all are, the Fittons group depending on what  
22 they were relative to. This one was reviewed by  
23 probably tan. I don't understand what your point is, as  
24 the difficulty in understanding the process here.  
25 May

1 be I'm not explaining it correctly.

2 Q. What we're trying to understand is at this point, this

3 email is sent in July 27 ^^ Hadeed are emailing Fittons

4 the engineers?

5 A. Yes.

6 Q. Setting out that those payments are still pending from

7 that window, in that period?

8 A. Yes. I don't --

9 Q. Fittons -- what I want to be clear, because I appreciate

10 it might not have been you personally, but you are

11 copied into this email and you are the person primarily

12 responsible --

13 A. Just go back to Mr Ram's email again, please.

14 To his email, please, original, the first email,

15 where he shows the -- here.

16 I'm suggesting what he's saying here is the LPO

17 amount of 189,800, but as per invoices all amount paid

18 to discovery employment. It is confirmed from account

19 department as attached." ^doc.

20 So can we go back to the PDF?

21 Discovery employment manpower supply is there,

22

23 19,800, item number 3 -- sorry, 4. Item number 3 is

24 a different employee contractor. Item number 4 is

25 Discovery Employment, which is 19,800. I'm still

1 not

2 quite clear ^ from ram's email what he's requesting.

3 Q. Isn't if issue here precisely what I said yesterday,

4 that Fittons were simply not on top of what's going on,

5 they couldn't understand the documents that were being

6 sent. They were not following the process?

7 A. No, I strongly deny that. I don't agree with that.

8 Q. Fight Hadeed I took you to the emails at the beginning

9 of the session this morning ^^, Hadeed chadses for

10 payment saying where are the payments?

11 A. I don't know if he is chasing the payment. Can we read

12 this statement again? His email.

13 Q. We can take you to further exhibits in a moment?

14 SOLE ARBITRATOR: Sorry, just one second, do you mean you

15 would like to look at the email again?

16 A. No, I'm fine.

17 SOLE ARBITRATOR: Okay.

18 MR SULEMAN: But that is the email and I suggest that that

19 is chasing payment. The spreadsheet that I took you to

20 very clearly says pending payments. It's Hadeed again

21 saying to you these are the payments that are

22 outstanding in that period of time.

23 A. No. Can we just remain on the RAM for a moment, please?

24 Please note that this is the LPO amount but as per

25 invoices all amount paid ..." ^doc.

- 1 It's confirmed. Then what is he complaining about?
- 2 I don't understand.
- 3 Q. We can see further down that email. If we scroll down,
- 4 it's an email from your colleague Ms Guoyi. She's
- 5 asking, she's saying there's an outstanding amount. The
- 6 list is showing an outstanding amount?
- 7 A. No. Tan is replying to him. That document is showing
- 8 a payment, but it's not clear what ram means. If it's
- 9 paid, what's the issue? What's his issue, if it's paid?
- 10 It's his document, but it's saying it's unpaid. I'm not
- 11 clear what Mr Ram --
- 12 Q. It's not for me to give evidence. I just want to be
- 13 clear, because you're copied into this email. Your
- 14 understanding of the situation at the time was what
- 15 exactly? I'll move on after I ask you this?
- 16 A. Okay.
- 17 Q. What was your understand of what was happening in the
- 18 email correspondence on which you were copied?
- 19 A. I don't understand from reading this, what his claim
- 20 was. He's saying that document was made by Hadeed,
- 21 where they're saying it's an outstanding payment. As
- 22 I understand it, he's confirming that it was paid.
- 23 Q. That was your understanding at the time?
- 24 A. That's my understanding. It's being there identified as
- 25 unpaid, yet his comment that it's paid. Then what's the

1 issue?

2 Q. Was this, again, a problem of you not understanding the

3 issues, you were failing to comprehend the proper

4 processes here? You're not able to Na gate the

5

6 documents and the emails that are attached ^^?

7 A. ^^ and I dispute your interpretation of it.

8 Q. Could I take you -- this is I think perhaps we can stop

9 for lunch after this. Could I take you to paragraph 2.74.4 of your second witness statement,

10 please. This is a D6, page 29.

11 The suggestion is that you don't know how to

12 navigate the Primavera programme?

13 A. That's his statement, yes.

14 Q. Yes. Can you explain how you use that programme, your

15 understanding of how the programme works?

16 A. I understand how the programme works.

17 Q. But can you explain that process? Can you explain how

18 you use that programme?

19 A. ^ Primavera is to map out the logics of how the progress

20 of the programme is interpreting the site requirements,

21 in that it follows -- let me call it an A, B, C. You

22 have to do A before you review B. There are statements

23 within the programming itself that call for

24 cyst tall path. These are critical things

25 during the, during during the site process that the

1 Primavera attempts to put on a logical path. You can't  
2 build a wall unless there's a floor built already to  
3 stand the wall on.  
4 It's a very simple process, but it's critical to any  
5 project to have a logical path to follow and that is the  
6 Primavera --  
7 Q. If the programme shows completion dates that two months  
8 longer than the contract, how does the engineer then  
9 approve the programme?  
10 A. If the initial programme shows that it's two months  
11 longer than the contract, there's a big problem. The  
12 project is not manpowered and it should be proved by  
13 the actual issuance of the Primavera. The Primavera  
14 is supposed  
15 to  
16 be a definitive guideline of A to Z. The project starts  
17 at A and finishes at Z. There should not be  
18 a prolongation of that programme at the initial outset.  
19 MR SULEMAN: This would be a good time to break for lunch.  
20 SOLE ARBITRATOR: Thank you very much. If I could ^ask)  
21 you, how much longer you anticipate.  
22 MR SULEMAN: Maximum half an hour, possibly less than that.  
23 SOLE ARBITRATOR: Mr Howells, your re-direct, any sense of  
24 what it will take, with no commitment.  
25 MR HOWELLS: I'm thinking about it, but I think only got two



1 questions so far.

2 SOLE ARBITRATOR: All right. It is almost 1 o'clock. Shall

3 we resume at 2 o'clock?

4 Mr Chevreau, again, you remain sequestered, please

5 have a good lunch and we'll see you back here at

6 2 o'clock.

7 WITNESS: Thank you.

8 MR SULEMAN: Could we please record the timings.

9 SOLE ARBITRATOR: Yes, let us look at the timings,

10 absolutely.

11 MR SULEMAN: Same, two hours, 38 minutes.

12 SOLE ARBITRATOR: Two hours 38.

13 MR HOWELLS: With the provisos that 2 hours 38 of Mr Suleman

14 speaking. What we'll do this evening is I'm going to

15 produce to Mr Suleman as I said a full statement of

16 where we're up to, cause what's happened, I think, is by

17 giving you the times of us speaking ignoring the times

18 you're speaking, we're going to little bit out in terms

19 of how close to our total time allowances we're going to

20 be and we'll end up in a bit of a spat at the end,

21 I suspect, if we don't agree it now, certainly by the

22 end of the factual evidence, as to what time has been

23 spent overall in the first three days and compare that

24 to the last 11 hours that we will have

25 left, so we each know how much time we have to speak, to

1 cross-examine, given that we are going to allow the  
2 expert to take a certain amount of our time each for the  
3 presentations as well.

4 SOLE ARBITRATOR: Correct.

5 MR HOWELLS: So by the end of the examination of the factual  
6 evidence, have a complete comprehensive statement as to  
7 where we're up to attend of I think day 3, so that Mr Suleman and I can see -- sorry. So we can  
8 see how much time we've got left. Clearly there will be  
9 your questions and I think we'll have to adopt those as  
10 we go.

11 When I looked at it last night, I could see times  
12 you have been given by the parties didn't account  
13 for  
14 about an hour and a quarter worth of the time time we  
15 spent ^. So I've had it re -- that is basically  
16 housekeeping, evidence-in-chief, questions you've asked  
17 and other bits and pieces. When that's properly clean  
18 us the in the time calculations ^, we will then be able  
19 to see how much time we have left. What I'm keen to do  
20 is avoid a misunderstanding about that, because as time  
21 gets closer to the end of Friday afternoon, I don't want  
22 either of us to feel that we've not had the full period  
23 of time.

24 SOLE ARBITRATOR: Absolutely. I think that's a very  
25 important concern and I would like if we can, at the end

1 of the day today, even if we have to take a 15-minute  
2 break and come back, I would like to solve it to  
3 the  
4 extent possible later today.  
5 MR HOWELLS: Certainly.  
6 SOLE ARBITRATOR: Thank you.  
7 MR SULEMAN: Thank you.  
8 (1.00 pm)  
9 (The luncheon adjournment)  
10 (2.01 pm)  
11 202409180098MR SULEMAN: Mr Chevreau, in construction terms, could you  
12 explain your understanding of the means of substantial  
13 completion?  
14 A. Yes.  
15 Q. Yes, please.  
16 A. I would say that my understanding of substantial  
17 completion would be at least at least 90 plus per cent of  
18 the contract, and then the contractor would then request  
19 a certificate stating that there is substantial  
20 completion, in order to go to the relevant authorities  
21 and get -- try to obtain a building completion  
22 certificate.  
23 Q. We can see in exhibit C1, page 6, substantial completion  
24 under (o), we've got a definition of substantial  
25 completion. That definition, Mr Chevreau, includes that

1 the employer can occupy or utilise the permanent works

2 for which they are intended. That's your understanding?

3 A. Yes.

4 Q. If the site is at a state where the employer can't

5 occupy or utilise the permanent works, you wouldn't

6 certify that as substantial completion?

7 A. No.

8 Q. Could we please turn to exhibit P2.3.

9 If we zoom in on the writing that says, "Pursuant to

10 the contract" ^doc), Mr Chevreau, I am reading this out to

11 you:

12 "Pursuant to the contract and current conditions of

13 project, the above mentioned project has been reviewed

14 and found, to the engineer's best knowledge, information

15 and belief, to be substantially complete on

16 17 April 2019." ^doc.

17 This is signed by -- it's your colleague, in fact,

18 Tan Guoyi who signed this on behalf of Fittons.

19 The engineer there is certifying that the project

20 is substantially complete. That's right, isn't it?

21 A. This particular document, if we look at the top heading,

22 is headed as provisional taking-over certificate.

23 Q. That's not my question. I appreciate you want to give

24 an explanation, but we're a little short of time. That

25 sentence that I read to you, where it says:

1 "Engineer's best information and to be substantially  
2 complete." ^doc.  
3 Do you stand by that?  
4 A. That statement is a correct description as applied to  
5 provisional taking-over certificate, yes.  
6 Q. Contractually speaking, we went to the definition of  
7 substantial completion. Fittons at this point have  
8 confirmed that the project is substantially complete;  
9 yes?  
10 A. As part of issuing or requesting this provisional  
11 taking-over certificate, it does state that here,  
12 correct.  
13 Q. At this point, you have set out, we can see below, six  
14 point that is require action.  
15 A. Yes, correct, I did.  
16 Q. If there was anything significant outstanding, that  
17 would not be substantial completion, would it?  
18 A. Correct.  
19 Q. Therefore, those six items are minor items that need  
20 addressing?  
21 A. No. I disagree with that. They don't necessarily minor  
22 items ^.  
23 Q. But they're not -- those six items are not significant  
24 enough to impact whether the site is substantially  
25 complete; yes?

1 A. Yes.

2 Q. What you are confirming in this document is that there

3 is nothing else outstanding that's not mentioned in this

4 document that impacts your assessment that is project is

5 substantially complete?

6 A. There was nothing that as I was informed, everything was

7 substantially complete.

8 Can I point out what this document is?

9 Q. Yes, please do.

10 A. This particular document is not an official application

11 for building completion certificate. This particular

12 document is what consultants normally issue -- sorry,

13 not normally, can issue to request further connections

14 on a temporary basis. A document entitled

15 "provisional", there is no such document in the

16 authority's arsenal -- let me put it that way.

17 Consultants regularly, on projects, major projects,

18 try to issue this to get further enhancements and

19 provisions that are not yet currently being utilised on

20 site, if I can explain a little further ^.

21 It's generally used by contractors, consultants to

22 try to progress the project further by attempting to get

23 a temporary connection to permanent power approved

24 supplied by DEWA.

25 So this particular document, we attempted to get

1 temporary connection to the permanent power and not use  
2 temporary generators on site.  
3 In this case, it would have benefited both the  
4 client and the contractor. Part of the contract was  
5 that Hadeed provided temporary generators for site  
6 power.  
7 Provisionally, the fuel for that temporary  
8 generators were provided by the client. Had we achieved  
9 the desire to get temporary power by issuing this  
10 document, although it is an unregulated document, to  
11 DEWA, to the contractor, so he may have approached DEWA,  
12 we would have had, let's say, probably given 60 per cent  
13 of the total loading for the power for the building.  
14 The total loading for this particular building was  
15 approximately 1,390 kilowatt at full load.  
16 The attempt here was to try to persuade DEWA to  
17 allow us 60 per cent of the power, let's say 1,000  
18 kilowatts, from the actual main distribution network.  
19 Q. The intention here is -- and this is why you certified.  
20 You said that it's substantially complete, you said ^^  
21 substantially complete, six minor issues remain  
22 outstanding. That's the --  
23 A. No, the intention was not that. The intention was to  
24 get temporary power from DEWA.  
25 Q. I want to take you -- you said I asked you earlier

1 whether these were substantially complete. We went the  
2 definition and you confirmed that there was nothing so  
3 significant outstanding that would warrant  
4 any -- (overspeaking) -- ^^?  
5 A. I recognise what it physically states, but that document  
6 is not a regulated document and it's one that is  
7 normally used by contractors and by consultants on large  
8 projects where projects get to a state that the  
9 temporary generators are not enough to allow  
10 commissioning purposes and not enough to allow major  
11 equipment to be connected.  
12 Q. Could I take you to your first witness statement. This  
13 is at D4, paragraph 4.162.  
14 You say here:  
15 "Furthermore and most importantly, while only 6 item  
16 were listed in the provisional taking-over certificate  
17 there were several other major items of out stalling  
18 ^reading...) reinforces the fact that the project was  
19 not anywhere near complete." ^doc?  
20 A. Correct.  
21 Q. I asked you earlier whether the project was  
22 substantially complete and you said that was correct?  
23 A. No, I didn't say that. I explained the reason between  
24 substantially complete and complete. You asked me what  
25 was the meaning of that letter and I explained



1 letter. I then explained that that document is not  
2 a valid regulated document. It is a document that is  
3 commonly used in the construction industry to persuade  
4 main power -- the main power supplier to allow temporary  
5 power for the building to be connected to the mains  
6 power.  
7 Q. We've looked at the definition of substantially  
8 complete?  
9 A. Yes. You're looking at that, I agree.  
10 Q. Yes, we looked at that definition. We looked at the  
11 taking-over certificate where you certify that the  
12 project is substantially complete by 17 April. Now we  
13 look at your statement, your witness statement where you  
14 say the project was not anywhere near complete.  
15 Mr Chevreau, can you explain how -- and I take what you  
16 said that this was provisional. Can you explain how you  
17 can justify you certifying the project as substantially  
18 complete and at the same time maintain that it was  
19 nowhere near complete?  
20 A. That particular document, as I just explained, is not an  
21 application that could be taken by any of the  
22 authorities as a request for substantial completion.  
23 Q. Are you trying to mislead the authorities into thinking  
24 the project was substantially complete?  
25 A. No, I'm not trying to mislead the authorities. That

1 document would not have been accepted, because there is  
2 no such document as a provisional request for -- you  
3 cannot have provisional substantial completion.  
4 Q. Quite right. In fact, that was my next question.  
5 There's nothing within the contract that provides for  
6 provisional taking-over certificate. There's either  
7 a taking-over certificate or there isn't?  
8 A. Neither was it ever submitted.  
9 Q. In the contract, there isn't a provision for provisional  
10 taking-over certificate, is there?  
11 No, there's not A provisional --  
12 Q. So this document is either a taking-over certificate or  
13 it's not?  
14 A. It's not.  
15 Q. But you have certified --  
16 A. And it was never submitted.  
17 Q. But you have -- what I want to be very clear on is that  
18 you stand by the statement there that it's substantially  
19 complete. You don't retract from that. You don't  
20 retract from your certificate face on that documentation  
21 that it's substantially complete on that date. You  
22 don't resile from that position?  
23 A. That document is not a substantial completion  
24 certificate.  
25 Q. When you said -- (overspeaking) -- ^^?

1 A. Sorry, I don't wish to interrupt. That document is  
2 stating that provisional. Ing there no such document, but  
3 there is an accepted what pitchlation between the  
4 authorities, DEWA in this case, to bring to their  
5 attention that we believe we're close by and could they  
6 please allow us temporary connection to permanent power.  
7 Q. Mr Chevreau, we understand that what you explain, you  
8 think the purpose of this document is?  
9 A. Yes.  
10 Q. What you seek to achieve. What I want to be clear,  
11 because it is very important, is where in that -- if we  
12 go back to the P2.3, please. If we zoom in on the  
13 passage there where it says:  
14 "To the engineer's best knowledge, information and  
15 belief, the project is substantially complete." ^doc.  
16 Are you saying that was the case or that wasn't the  
17 case?  
18 A. That wasn't --  
19 Q. It's a simple "yes" or "no"?  
20 A. That wasn't the case.  
21 Q. Why did you sign and stamp a document that says that is  
22 the case ^^?  
23 A. I received the request from Altaaqa to try to accelerate  
24 the programme, so that it would enable the request for  
25 power -- -- (overspeaking) -- ^^.

1 Q. Carry on, please?

2 A. That would benefit both parties.

3 Q. But do you see how -- I don't wish to put this any  
4 stronger than I need to. Do you see how that would go  
5 to the integrity and the credibility of Fittons that  
6 they are certifying a document saying to the best  
7 knowledge, information and belief, substantially  
8 complete and you're saying in fact that's not true and  
9 we just stamped this document to achieve --

10 A. I can understand who you're saying, but again I tell --  
11 this type of document is common in the industry,  
12 contracting industry practice.

13 Q. Mr Chevreau, if Fittons are signing and stamping  
14 documents that are wrong, why should we trust any of the  
15 other evidence you submit on behalf of Fittons, any of  
16 the documents signed and stamped on behalf of Fittons if  
17 you're capable of stamping and signing documents that  
18 are blatantly you accept not true?

19 A. Again, I state there is no intent to misinform either  
20 party on the site. Everybody was aware of what was  
21 going on. Few ther would it have been taken any  
22 particular ^ manner as extraordinary to DEWA to receive  
23 such a document. It is not an official document.  
24 There's no such thing as a provisional document. It  
25 brings to the attention, normally DEWA, to come and

- 1 inspect the site and agree. But, yes, you can do it ^^.
- 2 Q. You gave this document to Altaaqa. Altaaqa didn't --
- 3 when you gave this document to Altaaqa saying there's
- 4 only six items outstanding, the project was stability
- 5 I will completed?
- 6 A. I was requested by Altaaqa to produce this document. We
- 7 then discussed this document with Hadeed ^. This
- 8 document with later reflection, because the site was not
- 9 anywhere near to substantial completion, we did not go
- 10 further with this particular document.
- 11 When you gave this document to Altaaqa, did they not
- 12 reply and say hold on, this isn't substantially
- 13 complete. There's more than six items. Why have you
- 14 certified this document?
- 15 A. Altaaqa --
- 16 Q. Wanted this?
- 17 A. Wanted it. Hadeed wanted it.
- 18 Q. Did Hadeed ask for it?
- 19 A. Hadeed asked for assistance in achieving temporary
- 20 supply.
- 21 Q. I want to be clear. Hadeed asked for a taking-over
- 22 certificate. Altaaqa asked for this document. This is
- 23 what you have given and signed and stamped?
- 24 A. Yes.
- 25 Q. For all intents and purposes under the contract, this is

1 the taking-over certificate?

2 A. This document does not exist as a regulatory document.

3 It does not exist. It's generally accepted by DEWA that

4 contractors try to get provisional permanent power,

5 although not utilising the full power as provide -- can

6 be provided. It's a document to try to increase the

7 availability of temporary power at the time period.

8 That time period would then benefit the contractor, it

9 would remove the need for temporary generators and the

10 high cost and it would remove from Altaaqa the high cost

11 of fuel, paying for those temporary documents.

12 Q. My final question on this document, then we'll move on.

13 It's clear, isn't it, that you lied -- not you

14 personally, Fittons lied in certifying this

15 documentation at Altaaqa's request?

16 A. No, I wouldn't say we lied.

17 Q. I will leave that --

18 A. At the point of time of that being issued, we were

19 informed by the contractor that they were close to the

20 end of the contract by the work that was being carried

21 out. That was not correct. It was an attempt to speed

22 up the documents required to get DEWA permanent power.

23 Q. I did say my last question -- (overspeaking) -- ^^ but

24 this is ^^?

25 A. Asking me, but ^^ I also point out that this document on

1 further examination of the site, did not go anywhere.

2 Hadeed were aware of it, but it was never processed any

3 further than that particular document.

4 Q. Definitely my final question on this. The document --

5 it clearly says the project has been reviewed. We can

6 see in the middle, the project has been review and found

7 to be ^doc)?

8 A. Yes.

9 Q. What I put to you is that in fact, you haven't lied,

10 you're right, this is in fact an accurate reflection and

11 that the project was substantially complete, as

12 certified by Fittons. You didn't lie and it was

13 substantially complete?

14 A. Okay.

15 Q. That's my question to you?

16 A. We didn't lie.

17 Q. My question to you is you didn't lie and what this says

18 on its face is in fact the true position, that the

19 project --

20 A. In fact, sorry.

21 Q. The true position is that you did not lie -- not you

22 personally, I mean Fittons did not lie, the document is

23 correct and that there is substantial completion and

24 that this is the taking-over certificate?

25 A. No, there is not. I have a two part answer. It does

1 state it there, that there is. However, on further  
2 investigation, it was deemed it was nowhere near  
3 substantial, so that particular document did not go  
4 anywhere.

5 Q. Are you in the habit of certifying things and then  
6 carrying out further investigations that show that your  
7 initial findings were complete --

8 A. If further information comes to light, it can be done,  
9 yes.

10 Q. Could I take you to your first witness statement,  
11 paragraph 4.167.

12 In fact, even the paragraph above. Is it your  
13 evidence that when you certified substantial completion,  
14 you didn't notice those things were outstanding at that  
15 time and only later you realised that was the case?

16 A. The substation where the power is connected to the DEWA  
17 network was looked at time ^ locked ^ by DEWA and we  
18 couldn't get access to it. So it was impossible at that  
19 time to get 100 per cent accurate determination. We  
20 were informed by Hadeed that they had indeed finished  
21 all of the switchgear.

22 However, it later became clear that that was  
23 incorrect also.

24 Q. I will leave that there.

25 Could we then, in terms of timeframes, go to



1 24 September 2019. I think you'll be familiar with that  
2 date?  
3 A. Yes.  
4 Q. Can you explain what discussions took place between  
5 Fittons and Altaaqa on that date? Did you meet Altaaqa?  
6 Any representative from Altaaqa in person on that date?  
7 A. I met Altaaqa.  
8 Q. On that date?  
9 A. No, not particularly on that date. That was  
10 24 September was the date that letters were issued by us  
11 to Hadeed, yes, Hadeed, and instructed by Altaaqa.  
12 Q. Prior then -- either on 24 Septemberr immediately some  
13 time before that, do I understand correctly that Fittons  
14 and Altaaqa perhaps yourself, discussed the state of the  
15 project and discussed termination? Is that right?  
16 A. I attended a meeting in Altaaqa's office with Mr Faraz  
17 and Mr Sameer Dabbas, where a discussion took place  
18 regarding Hadeed's termination. Subsequently, letters  
19 were issued to Hadeed.  
20 Q. Did you have any conversations with Altaaqa in the  
21 absence of Hadeed, Mr Dabbas or anybody else from Hadeed --  
22 A. No, I did not.  
23 Q. None?  
24 A. I did not have any further conversations regarding the  
25 termination, only with Mr Dabbas present, and Mr Faraz.

- 1 That took place in the Altaaqa offices in the Jebel Ali
- 2 Free Zone, not at the site.
- 3 Q. We can have a look now at some of those letters.
- 4 Beginning with G612, please.
- 5 The attachment to that email.
- 6 This is from Fittons and signed off by you?
- 7 A. Yes.
- 8 Q. You say here that it is the employer, so it's Altaaqa
- 9 who are advising that there's been a breach of contract;
- 10 yes?
- 11 A. Yes.
- 12 Q. You're not making a finding of breach of contract?
- 13 A. No.
- 14 Q. You're not suggesting there's a breach of contract?
- 15 A. Sorry?
- 16 Q. You are not suggesting that you are making a finding of
- 17 breach of contract. The first sentence, it's the
- 18 employer, Altaaqa advising that you, Hadeed, are in
- 19 breach of contract?
- 20 A. Yes.
- 21 Q. So it's not Fittons, it's not the engineer that is
- 22 making a finding that Hadeed are in breach of contract?
- 23 A. No, that letter is giving notice to Hadeed via Fittons.
- 24 We're providing the conduit to express the requirements
- 25 of the client.

1 Q. Could we then turn to G609, please. We saw that letter,  
2 the previous one we looked at was dated 24 September?

3 A. Yes.

4 Q. This letter is likewise dated 24 send from Altaaqa to Hadeed?

5 A. Yes.

6 Q. If we scroll further down the page. We can see the  
7 second paragraph says:

8 "Pursuant to clause 47 the engineer reported that

9 you are in breach of the contract ^doc) Altaaqa are say

10 thank you made a finding of breach of contract and that

11 is why Altaaqa are issuing this notice. When we went to

12 the earlier letter, Mr Chevreau, you, the engineers were

13 saying Altaaqa have made a ^^ saying it's you, the

14 engineer who has made a finding of breach of contract?

15 A. No, they refer to clause 14(7) breach of contract by the

16 contractor.

17 Q. Yes, my question is its saying the engineer reported

18 that there's a breach. What I want to understand is

19 who's made a finding of breach of contract? Is it the

20 engineer or is it Altaaqa?

21 A. It's Altaaqa who made the final decision. We reported

22 to the client that they were -- had been in breach of

23 the contract, clause 14, as of clause 14(7), responding

24 to lack of progress on the site.

25 Q. So you, if I understand, so you made -- the engineer

1 made the finding of breach of contract, due to  
2 clause 14(7)?  
3 A. I gave them the information. The engineer gave them the  
4 information pursuant to slow progress on the site.  
5 Q. You provided the information and Altaaqa made the  
6 decision that it was a breach?  
7 A. They made -- no, we made the decision that it was  
8 a breach. Altaaqa made the decision to proceed with  
9 termination.  
10 Q. If we go back, then, the previous letter we were looking  
11 at G612. It was in fact the PDF. I think it's the PDF  
12 still might be there.  
13 That breach that that's referred to there, is that  
14 the breach that you made a finding of, the breach of  
15 14(7)?  
16 A. Is we reported to the client that they were in breach of  
17 the contract -- they being Hadeed.  
18 Q. We can have a look at G610, please.  
19 This is Fittons to Altaaqa, 24 September again.  
20 Before we look at this letter, Mr Chevreau, I'm going to  
21 suggest to you that this is a coordinated sequence of  
22 letters on 24 September. You're writing to Altaaqa,  
23 Altaaqa are writing to Hadeed, you're writing to Hadeed.  
24 These are entirely coordinated on the same date.  
25 A. Yes.

1 Q. Did you have a discussion that you were going to

2 coordinate this?

3 A. Sorry?

4 Q. Did you have a discussion with Altaaqa that you were

5 going to coordinate these letters on 24 September?

6 A. No, I think these are --

7 Q. Coins dep tall?

8 A. They're proof of us sending the information that had

9 been requested by Altaaqa, to Altaaqa, and confirming

10 what we said. If we go down, further down the document,

11 it's not the first time that we informed both Hadeed and

12 Altaaqa that in our consideration, Hadeed were in breach

13 of contract. Previously, we had been instructed by

14 Altaaqa not to take any further action and carry on with

15 the contract. At this particular time, September 2019,

16 I believe that the client had become exasperated with

17 the delays and constant delays by the contractor and he

18 then decided to issue termination notice.

19 Q. At this point --

20 A. Sorry. He instructed us to issue the termination

21 notices.

22 Q. He instructed you to send that notice, the one we have

23 on our screen --

24 A. No, he didn't instruct us to send that election he

25 instructed us to proceed with notification that Altaaqa

1 were going to terminate the contract.

2 Q. What about this letter? Altaaqa instructed you to send  
3 that notice on 24 September, didn't they?

4 A. They did not instruct us to seasoned it. We sent the  
5 letter passing information ^ back to again once again,  
6 a breach of contract.

7 Q. Do you suggest it's entirely coincidental that all of  
8 these letters are dated 24 September or did you sit down  
9 with Altaaqa and say we'll send this notice, you send  
10 this follow up to Hadeed on 24 September?

11 A. No, we sent those letters, as I explained, I hope I've  
12 explained, because Altaaqa had become completely  
13 exasperated regarding constant ongoing delays, constant  
14 promises that nothing was -- that everything would be  
15 completed.

16 We understood that part of the process, these  
17 letters needed to be passed to Hadeed and passed to  
18 Altaaqa.

19 Q. You were, as we have determined throughout yesterday and  
20 today's cross-examination, you frequently have been  
21 taking instructions from Altaaqa as to what to do,  
22 haven't you?

23 A. We were the project managers of the site and as such, we  
24 coordinated with the owner of the site and the  
25 contractor.

1 Q. You, as you said, you said at this point, in September,  
2 Altaaqa had had enough?

3 A. Yes.

4 Q. Altaaqa said to you we've had enough, sent us this  
5 notice of breach ^^ ^?

6 A. No, I didn't say that -- (overspeaking) -- ^^.

7 Q. You didn't say that?

8 A. Altaaqa were exasperated by the constant delays from  
9 Hadeed, the constant promises that things would be  
10 better, the constant updated recovery programmes that  
11 were never met.

12 Q. Coincidentally, in September when Altaaqa had had  
13 enough, the engineer independently decided that  
14 actually, there was a breach and we're going to give the  
15 notice under 24 September ^^?

16 A. We, throughout the contract, in numerous cases, pointed  
17 out to the contractor and Altaaqa, that there were  
18 constant breaches of the contract. Progress in one of  
19 the main ones ^ being. That progress was measured  
20 against the contract documents that says they must  
21 have -- there must be at least 10 per cent progress from  
22 one month to another, and that was never achieved.

23 Q. We looked earlier at your letter. When did you draft  
24 your letter? In fact, this is also, if we scroll down,  
25 this I believe is also signed off by you. If we scroll

- 1 to the bottom of this letter.
- 2 A. You're referring to this letter.
- 3 Q. Yes.
- 4 A. When was this --
- 5 Q. Scroll to the bottom of this -- sorry, the signature
- 6 page. It's signed by you. When did you draft this
- 7 letter?
- 8 A. On the day that -- maybe a week before.
- 9 Maybe a week before?
- 10 A. We started the letter ^^.
- 11 Q. Sorryless may be the week.
- 12 Q. Maybe the week before it was sent?
- 13 A. Yes.
- 14 Q. Did you personally draft this letter?
- 15 A. I did a draft, but we then subsequently sent it to
- 16 a lawyer.
- 17 Q. You sent this draft to a lawyer?
- 18 A. Yes.
- 19 Q. Are you able to say which lawyer?
- 20 A. I don't have the client's permission to reveal that.
- 21 Q. Okay. Can I ask this. Is it Fittons' lawyer?
- 22 A. No.
- 23 Q. Altaaqa's lawyer?
- 24 A. Yes.
- 25 Q. You gave a copy of this notice to terminate to Altaaqa's



1 rather for them to comment on the draft, presumably.

2 Draft notice was given to Altaaqa'slar?

3 A. No, Altaaqa sent it to their lawyer. We sent a draft

4 letter and Altaaqa sent it to their lawyer.

5 Q. I see. Forgive me. So you sent the draft left to

6 Altaaqa. Altaaqa September it to their lawyer?

7 A. Yes.

8 Q. Do you know what date you sent this draft letter to

9 Altaaqa?

10 A. Again.

11 Q. Approximately do you have a ^^?

12 A. The week before.

13 Q. A week before. A week before you drafted this letter?

14 A. At the point in time that we were notified in the

15 meeting with Samer, and Faraz.

16 Q. A week before, so a week before you drafted this -- if

17 we go back to the top of this letter. This is roughly

18 we are talking middle of September, 24 September is the

19 date, so a week before, you drafted this letter, you

20 sent it to Altaaqa?

21 A. Yes.

22 Q. For what purpose did you send the draft to Altaaqa?

23 A. To give them the information that the contractor was

24 substantially in breach of contract and knowing that the

25 client now was completely exasperated.

1 Q. Is it -- (overspeaking) -- ^^.

2 Q. I appreciate that. Isn't that exactly the issue,

3 Mr Chevreau, that you're acting as the Altaaqa are your

4 client and you're giving them the draft for them to

5 approach?

6 A. No, I'm acting as the project manager ^ for both the

7 client, in conjunction with Hadeed.

8 Q. When you -- (overspeaking) -- ^^?

9 A. They are the project manager consultant on site and

10 constantly liaise and inform the owner. The owner's

11 representative is sat on site with me and he wants the

12 individual -- sorry, the impartial discussion with

13 what's going on on the site. So we were informing as we

14 were required to do, under our contract with Altaaqa,

15 we're doing exactly what a project manager does, informs

16 the client.

17 Q. At this point, when you gave this draft to Altaaqa, did

18 Altaaqa give you a draft of their letter, the one we

19 looked at earlier? It's G609. Or in fact any other

20 letter. Did Altaaqa give you a draft of their letter?

21 A. No.

22 Q. Was it an exchange of draft letters?

23 A. Again.

24 Q. Was it an exchange of draft letters?

25 A. No, it wasn't an exchange of draft letters.

- 1 Q. You justify your draft to them?
- 2 A. We sent our draft to them.
- 3 Q. Did they ask you to send the draft to them?
- 4 A. I would say this is normal format. We're informing
- 5 a client of what we believe they should be doing.
- 6 Q. Are you able to provide us with the draft letter?
- 7 A. No, I'm not able to.
- 8 Q. You're not in a position to provide the draft letter?
- 9 I don't have the draft letter.
- 10 Q. Okay. Are you in a position to provide us with any
- 11 clarity on what Altaaqa or their lawyers came back on
- 12 the draft letter, whether they made any amendment,
- 13 whether this tidied understood language, reference to
- 14 contractual terms ^^?
- 15 MR HOWELLS: I'm not sure you can ask to see that
- 16 information, can you.
- 17 MR SULEMAN: Well, possibly. I assume it's not privileged
- 18 in that they're not your lawyers. In that as
- 19 I understand it's Fittons speaking to Altaaqa's lawyer.
- 20 May be I'll collar ^^ as a client relationship between
- 21 you and Altaaqa's lawyers? Were they your lawyers?
- 22 A. No.
- 23 Q. There's no client privilege. I would assume that I'm?
- 24 MR HOWELLS: ^^ you've had your answer, he hasn't got it.
- 25 MR SULEMAN: There's no privilege, in which case are you

1 able to disclose that document between Altaaqa's lawyers

2 and yourself?

3 A. No.

4 Q. Why not?

5 A. We don't have a draft.

6 Q. What happened to the draft?

7 A. Sorry.

8 Q. What's happened to the draft, where is it?

9 It was a draft and probably after this was produced,

10 that was a draft and it was disposed of.

11 Q. How? Was it sent by email?

12 A. Sorry.

13 Q. Was the draft sent by email?

14 A. No.

15 Q. How was the draft provided to Altaaqa's lawyers?

16 A. It would have been as discussion between me and Faraz.

17 Q. A verbal discussion?

18 A. Yes.

19 Q. You verbally discussed the draft notice with Faraz

20 Shamsi?

21 A. Yes.

22 Q. And then Faraz Shamsi gave the draft to his lawyers?

23 A. I assume he gave that and this was the final document.

24 Q. Did you hand write this?

25 A. Sorry.

- 1 Q. Do I understood ^^ you handwrite this first and then
- 2 give it to Faraz sham I will and ^^?
- 3 A. Yes, I had handwritten notes.
- 4 Q. And you gave those handwrite notes to Faraz sham?
- 5 A. We sat and discussed it.
- 6 Q. When I asked you earlier was there a meeting where you
- 7 coordinated this 24 September letters, the answer is
- 8 yes, isn't it? This is a coordinated sequence of
- 9 letters?
- 10 A. I would -- (overspeaking) -- ^^?
- 11 A. Coordinated because I would say that the coordination
- 12 would require them sending back to me and me sending
- 13 back to Faraz, he looked at my draft and agreed that was
- 14 a requirement to sends a termination letter. At that
- 15 point, we received a draft of this letter back from the
- 16 lawyers.
- 17 Q. I will leave that there. I'm just going to conclude
- 18 remaining questions. There's only two or three
- 19 questions, Mr Chevreau.
- 20 The delays that this case concerns were caused by
- 21 your failure to promptly respond to variation orders,
- 22 payment applications, wasn't it?
- 23 A. I deny that there was any delays to payment.
- 24 Q. And the issues surrounding approvals and the design
- 25 delays made significant contributions to the delays a

1 across the whole project, didn't they?

2 A. We subsequently responded to all of the allegations and

3 refute them ^ and we've provided information that we

4 believe refutes those allegations.

5 Q. And you simply didn't have the oversight and the control

6 of the project that you would have been expected to have

7 over a project of this nature. Partly may be because of

8 your health, partly, I don't know what other

9 explanation, but you had a lack of control over the

10 process?

11 A. We had enough control over the process.

12 Q. Yes.

13 A. We had control over our part of the process. We didn't

14 have control of what I consider a oblige rant

15 contractor, in that they very rarely responded directly

16 or on time to any of our requests for information or

17 discussions of when things should take place and when

18 things did take place.

19 Q. As you know, you will have seen from the document,

20 Hadeed claim for a delay of 1,240 days. In your view,

21 how many of those days of delay was due to Altaaqa?

22 A. 98 per cent of them. I think we agreed on one

23 particular item, I can't recall what it is at the

24 moment. Most of them I don't believe were -- the

25 responsible party was the contractor.

1 Q. So you believe 98 per cent, so you believe 2 per cent of  
2 the delays were caused by Altaaqa?

3 A. Were not the responsibility of Hadeed.

4 Q. Do you think any of the delays, because you had  
5 oversight, you say, of the entire project, any of the  
6 delays on the project were caused by Altaaqa?

7 A. There were some and it was agreed that there were some  
8 delays.

9 Are you able to give us an indication, I want to be very  
10 clear, your indication of how many days of delay or  
11 which specific items -- (overspeaking) -- ^^?

12 A. I think that's covered by our expert witnesses in  
13 breakdown.

14 Q. I know what your experts -- the respondent's expert  
15 witness says. I want your view, Mr Chevreau, because  
16 you were the engineer on the project. You were deciding  
17 the extension of time applications -- (overspeaking) --  
18 ^^?

19 A. With all due respect, I believe it was probably around  
20 15 days.

21 Q. 15 days of delay across the entire project you allocate  
22 to Altaaqa?

23 A. It's not the responsibility of Hadeed.

24 Q. That's not my question. I'll give you one final  
25 opportunity if you wish ^^ extension of time

1 applications are made to you, which you rejected. Of  
2 the delays during the project, how many days, which  
3 aspects of those delays would you say Altaaqa was  
4 responsible for, if any?

5 A. I wouldn't say Altaaqa are responsible. I I'm saying  
6 that there were probably about 15 days that Hadeed were  
7 correct in their assumption and their claim.

8 Q. Your view, you have read the experts reports I'm not  
9 going to take you through those. Your view is that  
10 Altaaqa are not responsible for any of the delays at  
11 all?

12 A. Correct.

13 Q. Do you say that you are entirely independent in your  
14 assessment of that? Do you say you're entirely ^^  
15 assess Altaaqa are not responsible for any of the delays  
16 at all? Light of the evidence that you saw at the time  
17 and you've now seen, your conclusion catqua ^^ any of  
18 the delays at all?

19 A. Correct.

20 Q. Thank you. I have no further questions.

21 SOLE ARBITRATOR: Thank you very much, Mr Chevreau. We will  
22 now turn to new how.

23

24 Re-examination by Mr How

25 MR HOWELLS: Mr Chevreau, I'm going to focus on one issue,



1 which is the review of payments applications?

2 A. Yes? Remember you were asked about this morning. I'm

3 going to take you back if you could have open on

4 the December income front of you, your second witness

5 statement, paragraph 2.63. That's on page 25. Up

6 a little bit, Muhammad. You can look it on the screen

7 or you can look at it on paper. 2-point # 3. Bit

8 further so we can see the whole paragraph.

9 So you were asked about application 14, you remember

10 that was in July 2016, the first application version

11 that was submitted. As you can see there, you've dealt

12 with this in your second witness statement. Do you

13 remember that?

14 A. Yes.

15 Q. You were asked about this particular payment

16 application. In particular, you were asked about the

17 periods of time taken for review?

18 A. Yes.

19 Q. And you were discussing with Mr Suleman the process you

20 adopted where you would sit with the Q system for Hadeed

21 and go through line by line?

22 A. Yes.

23 Q. And explain your views on the applications and they

24 would revise and you said revise again. So we're going

25 to look at invoice -- the application number 14?

1 A. Yes.

2 Q. You weren't taken to anymore documents, I want to show  
3 you the documents you refer to here, please. We're  
4 going to look at those in turn. The first one you refer  
5 to in your witness statement, which I don't think you  
6 were shown, but is relevant to the questions you were  
7 asked, is at G661.

8 Muhammad, these are the Excel spreadsheets that you  
9 have opened up and held for me. Thank you.

10 Yes.

11 Q. So just to remind yourself of this document, it's an  
12 Excel spreadsheet form. Application of payment 14, the  
13 sum of 589,658, so about half a million dirham. Dated  
14 31 July 2016. Yes?

15 A. Yes.

16 Q. That's the invoice cover. If we can just to orient  
17 ourselves, I think you also said to Mr Suleman that when  
18 you looked at these, you looked at various other  
19 information that came with it. I think that's probably  
20 the tabs at the the bottom where you mention material on  
21 site. If you can press the material on-site tab,  
22 please.

23 A. Yes.

24 Q. For example, general summary tab, I'm not going to ask  
25 you detailed questions about all of these tabs, general

1 summary. And the site works summary, for example. And  
2 numerous tabs here. Does this document and these  
3 various parts of this spreadsheet, do you want to  
4 comment on those in the light of what you told  
5 Mr Suleman about the detail you went to?  
6 A. These tabs are in line with the BOQ sections, each one  
7 of these sections refers to a building. These are the  
8 progress -- these are a summary sheet of the site work,  
9 the details of the site work, the site work detail will  
10 reflect the overall summary.  
11 So when we are going through these invoices, first  
12 of all, this is the summary, then we taboo to the site  
13 works, actual, which formulates this particular summary.  
14 The cumulative totals are reflected on this summary  
15 page of the individual BOQ marks -- sorry, titles as  
16 preliminaries and it shows the various count downs or  
17 count ups of the valuations from every month. This is  
18 exactly the same format every single month.  
19 Q. So you think ^^ site press the tab for site work details  
20 as an example, Muhammad, at the bottom, press that tab?  
21 A. If you go to site summary, that's this particular page.  
22 Q. Then we're now looking at the end of it, 900 lines  
23 through?  
24 A. Yes.  
25 Q. Back to the invoice, then. This is --

- 1 A. The site works is the breakdown of that particular
- 2 document.
- 3 Q. Just briefly scroll up, so we can see the other 900 --
- 4 very quickly, please. Very quickly.
- 5 A. Sorry, again, please.
- 6 Q. I'm talking to Muhammad, sorry. That's just I think as
- 7 I understand it, that's setting out all the lines that
- 8 you would go through each month, yes.
- 9 You told Mr Suleman that you would go through all
- 10 lines in detail and you would look at those with the QS?
- 11 A. Correct.
- 12 Q. Back to the invoice, please.
- 13 MR SULEMAN: , Muhammad. Invoice. ^.
- 14 So that's the first one dated 31 July. You've
- 15 explained in your witness statement that that was the
- 16 pun you reviewed and spoke to the QS about and suggested
- 17 was wrong and they issued it again or submitted again
- 18 and that's at G662.?
- 19 A. Yes.
- 20 Q. So a different figure. As you say in your witness
- 21 statement, 416,756.41 dirhams. So a change in the
- 22 figure. Can you explain what the change in the figure
- 23 came from in in was the figure changed and lowered,
- 24 total figures?
- 25 A. I'm sorry.

1 Q. Why was the total figure lowered to 416,000-odd?

2 A. Because when I first looked at this particular invoice,  
3 I went in detail through the other aspects of the Excel  
4 sheet and found errors, either in the documentation or  
5 the calculations were over-exaggerated. At that point,  
6 I would then bring in the project manager and QS and we  
7 would then individually go through this document, Mark  
8 it down or up, whichever was the case, and it would be  
9 re-submitted.

10 The date on the document, if you look at column E, row  
11 6, 31 July 2016, it's the same date as the previous  
12 version?

13 A. Altaaqa very rarely -- sorry, Hadeed very rarely changed  
14 the document dates, but we prove the fact that the  
15 variation, the valuation amounts changed and in  
16 99 per cent of the case, the change downwards, not up.

17 Q. I've asked Mohammed to open up the properties section of  
18 this Excel spreadsheet to see if we can work out the  
19 dates for the version. If we look at the related dates,  
20 there's a printed date of 9 August 2016. Does that help  
21 you work out when that second version may have been  
22 submitted?

23 A. Yes.

24 Q. Yes? It was around then? Okay. In your witness  
25 statement, you've also said there's a third and final

1 application submission revised again and that's at G663?

2 A. Yes.

3 Q. Again, still dated 31 July?

4 A. It's still dated the first date of application, but

5 obviously that's wrong, because there is further work

6 being done on the invoice and now the valuation is 383.

7 Q. Again you have identified in your witness statement, did

8 the same job again with Mohammed we looked at the

9 properties section of the Excel spreadsheet and that has

10 a last print date of 30 August?

11 A. Yes.

12 Q. Does that accord word with any recollection you have

13 about the timeframe on which you were working on this

14 document?

15 A. It's clearly excess time from the 31 July on ^ and it

16 points -- makes the point that we were assisting them

17 without definitively rejecting them, by sitting with

18 them on a regular basis.

19 Q. There are also some discussions you had with Mr Suleman

20 about some later invoices. In particular you were

21 shown letters which Mr Suleman said showed complaints

22 being made to you about late certification or late

23 payment, rather, of certified sums. Those related to

24 invoices 19 and 20?

25 A. Yes.

1 Q. That was in the period after November 2016. I just want  
2 to have a look at the submittal dates for those  
3 invoices, the ones that you approved?

4 A. Yes.

5 Q. Number 19 is at N79. Fittons monthly invoice submittal.  
6 We've got the invoice 19 described in the description  
7 box for December 2016 there. Do you see that?

8 A. Yes.

9 Q. Scroll down a little bit, please. Then on to the  
10 submittal form itself, the next page. Hadeed  
11 transmittal. Again, the description is invoice number  
12 19 for December 2016, if you see that in the description  
13 box?

14 A. Yes.

15 Q. Then just a pit further down to the date boxes, please.  
16 They have an issue date of 5 June 2017, re received of 6 June 2017. Keep those dates in mind, please. On to  
17 the invoice itself. Down further, please. A bet  
18 further, please.

19 There's a proof of payment on 2 July?

20 A. Yes.

21 Q. I show you that one first. We can look at the other two  
22 very briefly. Can you explain to the arbitrator what  
23 those dates to the best of your recollection what those  
24 dates illustrate?

25 A. Again, refer to the extent that working with Hadeed to

1 progress the invoice payments, we took the view of  
2 sitting with the QS and sitting with the project manager  
3 of this particular time ^. These indicate also the  
4 number of applications carried out by the contractor,  
5 re-applications by the contractor, to achieve the agreed  
6 amounts.  
7 Q. And -- I believe that explains ^.  
8 Q. Okay. Just if we can scroll up a little bit above --  
9 stop there, thank you. No, down a little bit. Date of  
10 29 January for this invoice, for example.  
11 A. Yes this was the first time that date would reflect the  
12 first time that we received the invoice. It does not  
13 necessarily reflect the time of the final invoice.  
14 Q. Mohammed, if you can show Mr Chevreau again the previous  
15 page, with the -- going up the document, please.  
16 5 June. Does that help you identify when the relevant  
17 version of the invoice was submitted?  
18 A. Yes, from the invoice number 19, received on 6 June by  
19 us on site.  
20 Q. Thank you. Those are my questions. Thank you very  
21 much, Mr Chevreau. The arbitrator may have some  
22 questions as well.  
23  
24 Questions by TRIBUNAL  
25 SOLE ARBITRATOR: Thank you, Mr Chevreau. Most of my



1 questions you'll be happy to hear, have already been

2 addressed.

3 I wanted to clarify a few points. Throughout the

4 discussions surrounding the interim statement of

5 account, you mentioned a VO meeting. You referred to

6 a VO meeting. Is that --

7 A. I'm sorry.

8 SOLE ARBITRATOR: You mentioned a VO meeting, you referred

9 to it as a variation order meeting?

10 Yes.

11 SOLE ARBITRATOR: Are you referring to a meeting which

12 lasted 14, 15 hours on the day before signature of the

13 interim statement of account or are you referring to

14 another meeting?

15 A. The meeting regarding the VOs, was a separate meeting,

16 as you stated, from what I understand is the question

17 from our friend, regarding the ISA. The ISA was

18 formulated separately to that particular meeting. That

19 particular meeting, regarding the VOs, did not mention,

20 in particular, an ISA. It was part of the formulation

21 of the ISA later and it was separate in content from the

22 VO meeting.

23 I'm sorry. Am I --

24 SOLE ARBITRATOR: Yes, you're answering my question. Thank

25 you. Do you believe it was held a day or two before

1 signature of the interim statement of account or much  
2 earlier than that?  
3 A. I think it was possibly earlier than that. Maybe weeks  
4 rather than days, two or three weeks, prior to the  
5 formation of the ISA. But I can't 100 per cent rely on  
6 that.  
7 SOLE ARBITRATOR: Understood. Thank you.  
8 Muhammad, could I ask you to put up on the screen,  
9 R78, please.  
10 If you could just -- this first page, I put to you  
11 is the de-scoped work?  
12 A. Yes.  
13 SOLE ARBITRATOR: If we could go to the second page, it will  
14 actually be the third page, because page 2 is blank.  
15 This is the variation order status page?  
16 A. Yes.  
17 SOLE ARBITRATOR: Was this discussed -- is this the document  
18 that was discussed during the meeting that you've  
19 referred to as a VO meeting?  
20 A. Yes, this particular document formed the basis of the  
21 discussion regarding the VOs and the contractor actually  
22 brought each VO file to be reviewed and information  
23 shown to Altaaqa and shared between Altaaqa and Hadeed.  
24 That's correct. This particular document and the  
25 back-up hard copies.

1 SOLE ARBITRATOR: What about the de-scoped page that we just  
2 went -- that we just saw? Was that discussed at the VO  
3 meeting?  
4 A. No.  
5 SOLE ARBITRATOR: It was not. So this was the subject of  
6 the VO meeting, this particular -- and you went through  
7 each variation order?  
8 A. That's correct, ma'am.  
9 SOLE ARBITRATOR: Who prepared this sheet, if you recall?  
10 This particular sheet, Fittons prepared it.  
11 SOLE ARBITRATOR: When you entered the meeting, it was  
12 already highlighted in the manner that it is currently  
13 highlighted with the rejections?  
14 A. Yes.  
15 SOLE ARBITRATOR: Or this was a work in progress throughout  
16 the meeting?  
17 A. This is not the variation order status of the end of the  
18 meeting. This was prepared as an agenda for the  
19 meeting. So the contentions are highlighted in red and  
20 these were the variations discussed during the meeting.  
21 SOLE ARBITRATOR: Unless I'm mistaken, the total of this  
22 document, which is 5.995, is then replicated in the  
23 interim statement of account?  
24 A. Yes.  
25 SOLE ARBITRATOR: So the number proposed by Fittons at the

1 start of the meeting on the basis of this status, was  
2 the agreed number at the end of the meeting, which  
3 lasted 14 hours?  
4 A. Correct, yes.  
5 SOLE ARBITRATOR: May I just -- I just want to understand  
6 how this document works and I apologise I'm not as  
7 knowledgeable as others might be, but if you look at  
8 item 6, if we so zero in on that a little bit?  
9 A. Yes.  
10 ARBITRATOR: This is the item relating to jib cranes?  
11 A. Correct.  
12 SOLE ARBITRATOR: The total variation percentage that was  
13 agreed at this stage is 80 per cent with the third party  
14 certification being outstanding, so that corresponds to  
15 20 per cent. What was the expectation? What would  
16 happen with that 20 per cent?  
17 A. We would -- I would have expected that the remaining  
18 variation value would have been claimed by the  
19 contractor. It was never claimed.  
20 SOLE ARBITRATOR: By which contractor?  
21 A. Hadeed. This was a variation -- the jib crane was never  
22 originally in the contract documents.  
23 SOLE ARBITRATOR: Correct?  
24 A. As to be supplied by anybody. Hadeed won the contract  
25 submittal out of four contractors, they were awarded the

1 jib crane contract. Their first claim would have been  
2 70 per cent to secure the order. The balance would have  
3 been on handover, and a final submittal by Hadeed, and  
4 invoice process.  
5 This particular stage, they never claimed the  
6 84,000. Perhaps I'm not --  
7 SOLE ARBITRATOR: No, I understand exactly what you're  
8 saying.  
9 So your understanding of the status of the variation  
10 orders is that the number that appears at the bottom  
11 here is a definitive number, but that the -- and that is  
12 the only definitive number in the interim statement of  
13 account?  
14 A. Yes.  
15 SOLE ARBITRATOR: All the other numbers in the interim  
16 statement of account are interim?  
17 A. As we went through this particular document and provided  
18 the other documents in the respect to back up the  
19 documents here, the end of the day, everybody sat down  
20 and agreed that variation.  
21 I would suggest that the 84,000 refers to work not  
22 yet complete at the end of the contract, in that the  
23 cranes were actually commissioned by a further  
24 contractor at the end of the project after Hadeed were  
25 admitted. So all of those, the only one that is

1 outstanding any particular money, at the point of the  
2 variation meeting, that 84,000 was still outstanding and  
3 had not yet been claimed by the contractor, because the  
4 cranes had not yet been commissioned. There was no  
5 dispute that the cranes were on site, there was no  
6 dispute of the valuation of the cranes, only the further  
7 work to be carried out as part of the proposal from  
8 Hadeed, was commissioning.  
9 That part of the contract was never completed by  
10 Hadeed as they had been dismissed at that -- the  
11 eventual dismissal commissioning was still outstanding  
12 ^.  
13 So all of those were then agreed at the valuation  
14 ^^.  
15 SOLE ARBITRATOR: If I could ask you to take a look at R34,  
16 please.  
17 A. I'm sorry.  
18 SOLE ARBITRATOR: Muhammad is going to put it up. It's  
19 a delay report.  
20 Is this a report you prepared?  
21 A. Yes, I formulated this. This comes from 2015,  
22 I believe.  
23 SOLE ARBITRATOR: I do not -- I think this one is a little  
24 bit later than that. Muhammad, if you could scroll down  
25 a bit -- no, in R34, but just scroll down so that Mr

1 Mr Chevreau can see the content of the report?

2 A. Yes. This report was sent to Altaaqa, not to Hadeed,

3 and it was meant to give an overall picture of, we

4 believe, the current status.

5 SOLE ARBITRATOR: The last date which appears inside the

6 report is August 2019. Do you anticipate that you

7 prepared -- sorry, 2017. Do you anticipate that you

8 prepared, do you recall exactly when you prepared it,

9 shortly after August 2017, later?

10 This particular report was in response to a request by

11 Altaaqa to give an overall picture of Fittons work

12 during this particular period.

13 SOLE ARBITRATOR: Hadeed's work?

14 A. Hadeed's work, correct. I believe this was instigated

15 by discussions direct from Hadeed to Altaaqa and then

16 Altaaqa asked Fittons produce this document, which we

17 have. I don't know if this particular document was

18 shared with Hadeed, but this was the last we ever heard

19 from Altaaqa regarding this particular document.

20 SOLE ARBITRATOR: Okay. Thank you.

21 My last question to you. Did you perform any

22 valuation at the time that the September 2019 letters

23 were issued?

24 A. Any valuation to complete the works?

25 SOLE ARBITRATOR: No,?

1 A. Sorry.

2 SOLE ARBITRATOR: The contract at 63(2), maybe we can ^^ if

3 I could ask you to go to C1.

4 So the contract at page 40 of 50 of the contract.

5 It's going to be a bit lower, yes. At 60(3) ^ 63(2) ^.

6 So if I could ask you to read that. (Pause).

7 I don't believe I've seen anything in the record,

8 but I'm wondering if you've undertaken it or

9 contemplated undertaking such a valuation at the time of

10 the September letters?

11 A. We didn't -- I did not provide detailed valuation as per

12 this clause. What we tried to use was a measurable

13 amount and we took the amount of the last invoice that

14 was provided to us by Hadeed and we took the percentage

15 of work done analysis shown in that particular document.

16 That particular document showed a completion of some

17 40 per cent and an outstanding amount percentage to

18 completion of of 0 per cent, as Hadeed's assessment of

19 where they were with the contract.

20 So we utilised the only real measurable amount being

21 the final invoice approved invoice number 38. So they

22 claimed that the project was 60 per cent complete in

23 their assessment of invoice number 38.

24 Therefore, we took a view that as it was the only

25 real valuation, we assumed then that the valuation was



1 that the contract was only 60 per cent complete and the  
2 outstanding remaining amount would be 40 per cent.  
3 That's how we gave our figures to Altaaqa.  
4 Sorry, does that --  
5 SOLE ARBITRATOR: No, thank you.  
6 A. Thank you.  
7 SOLE ARBITRATOR: I have no further questions. Thank you  
8 very much, Mr Chevreau. Is there anything else from  
9 either side.  
10 SULEMAN: No thank you.  
11 MR HOWELLS: No thank you.  
12 SOLE ARBITRATOR: Mr Chevreau, your two witness statements  
13 form part of the record as well as your oral testimony  
14 today and today. Than.  
15 MR SULEMAN: ^^ I hope you have a very nice afternoon and  
16 evening. You are discharged as a witness. Witness  
17 witness thank you, ma'am.  
18  
19 (Witness was released)  
20 MR HOWELLS: It's 25 past 3, so maybe now is the time to  
21 break.  
22 SOLE ARBITRATOR: Yes.  
23 MR SULEMAN: Yes.  
24 SOLE ARBITRATOR: Shall we take a 10-minute break? Are you  
25 all ready to proceeds after 10 minutes?

1 We came back at 2, so it's been an hour and a half.

2 Let's come back at 3.35. I'm increasingly concerned

3 about our time. It is now 3.35. Sorry. We'll come

4 back at 3.45. 3.356789 sorry.

5 MR HOWELLS: 3.35, ^. We're coming back at 3.35. Thank

6 you.

7 (3.24 pm)

8 (A short break)

9 (3.37 pm)

10

11 Mr ^

12 SOLE ARBITRATOR: Good?

13 A. Mr Shamsi.

14 WITNESS: Good afternoon.

15 SOLE ARBITRATOR: Welcome. This is the evidentiary hearing

16 as you know, in ICC case 26620.

17 Could I ask you to please commence by stating your

18 full name.

19 WITNESS: My name is Faraz ^^ Shamsi.

20 SOLE ARBITRATOR: Thank you. Could I ask you to read the

21 oath that's been plated in front of you.

22 WITNESS: I swear by almighty Allah that the evidence

23 I shall give is the truth and nothing but the truth.

24 SOLE ARBITRATOR: Thank you.

25 Mr Shamsi, we have on the record before us, the

1 witness statement signed by you dated 24 July 2023 and  
2 a second witness statement signed by you dated  
3 1 July 2024. Do you confirm the content of those  
4 witness statements.  
5 WITNESS: Correct, I confirm.  
6 SOLE ARBITRATOR: I note that you've corrected Mr Howells'  
7 has provided us ^ with an errata slate pertaining to  
8 your witness statement.  
9 WITNESS: Correct.  
10 SOLE ARBITRATOR: Do you confirm the content of that errata  
11 sheet.  
12 WITNESS: Yes.  
13 SOLE ARBITRATOR: Thank you very much. Do you wish to make  
14 any other corrections.  
15 WITNESS: No, at the moment.  
16 SOLE ARBITRATOR: Thank you very much.  
17 I trust that you know the process. Mr Suleman is  
18 going to ask you some questions -- well, unless  
19 Mr Howells --  
20 MR HOWELLS: I have no questions, thank you.  
21 MR HOWELLS: Howell has no questions on direct, so  
22 Mr Suleman will start with his cross-examination ^. If  
23 Mr Howells chooses to, he can ask you some questions  
24 thereafter on re-direct and of course I can ask you some  
25 questions as well.

1 WITNESS: No problem.

2

3 Cross-examination by Mr Suleman

4 MR SULEMAN: Good afternoon, Mr Shamsi?

5 Good afternoon.

6 Q. Could I start by taking you to exhibit G610, please.

7 This is a letter from Fittons, Mr Chevreau from Fittons,

8 to Altaaqa, dated 24 September 2019. This is a notice

9 of the contractor's breaches of contract.

10 Can you confirm, when did you first see this letter?

11 A. Probably on the same date.

12 Q. On that date?

13 A. Yeah.

14 Q. Did you see a draft of that letter at any point before

15 that date?

16 A. No.

17 Q. Did Mr Chevreau give you a draft of that letter at any

18 point before 24 September?

19 A. I don't recall.

20 Q. Did you pass on a draft of this letter to Altaaqa's

21 lawyer?

22 A. It has nothing to -- under my responses ^^.

23 Q. I'm not sure thatness ^^ did you pass on a draft of this

24 letter to Altaaqa's lawyers?

25 A. I can't remember, but as I said, it was not my

- 1 responsibility to manage the project.
- 2 Q. It's quite significant. You definitely do not remember,
- 3 you can't say "yes" or "no", you haven't seen the draft
- 4 of this election yes?
- 5 Yes.
- 6 Q. You confirm you haven't seen a draft?
- 7 A. I have seen the letter when it came to me.
- 8 Q. In it's final format?
- 9 A. Of course.
- 10 Q. Did you sit down with Mr Chevreau and discuss the
- 11 contents of this letter before it was formulated?
- 12 A. It's five years. I did not sit down with him and draft
- 13 this letter. It was project engineer was responsible
- 14 for this project, Mr Chevreau, ie Fittons, and he was in
- 15 contact with Altaaqa Global public management.
- 16 Q. Do you know whether anybody else passed this on to
- 17 Altaaqa's lawyer, a draft of this letter?
- 18 A. To.
- 19 Q. You don't know, but it wasn't you, as far as you can
- 20 recall ^^?
- 21 A. No.
- 22 Q. Could we please take a look at G609.
- 23 This is from Altaaqa to Hadeed. Do you know who
- 24 drafted this letter?
- 25 A. It was drafted by the GM at the moment, CEO.

- 1 Q. Did you have any involvement with this at all?
- 2 A. No.
- 3 Q. None whatsoever?
- 4 A. (witness shook head).
- 5 Do you know whether anybody from Altaaqa spoke to
- 6 Mr Chevreau before this letter was sent?
- 7 A. Sorry.
- 8 Q. Did anybody speak to you, discuss the contents of this
- 9 already before it was sent? Anybody from Altaaqa?
- 10 A. You see, Altaaqa Global has a management including the
- 11 lawyers and they help and they work together with
- 12 Fittons, ie Chevreau row. I can confirm that. But if
- 13 you are asking any specific names, no, I don't know.
- 14 Q. This is 24 September. At any point in September, were
- 15 you told anything about the activities of Hadeed on the
- 16 site?
- 17 A. No, that was under discussion, of course, Hadeed was not
- 18 there at the site.
- 19 Q. You were part of those discussions?
- 20 A. Not directly, but when it comes to the payment to the
- 21 subcontractors, because since July, their subcontractors
- 22 were not at the site.
- 23 Q. Did you in August of this year, of 2019, speak to
- 24 Mr Chevreau about what's happening on the site, what is
- 25 outstanding, any details?

1 A. Yes, of course.

2 Q. You did?

3 A. Yes.

4 Q. During the course of those conversations in August, did

5 you express any view as to Altaaqa's position on this as

6 to what should happen?

7 A. It was not my view to do whatever. It is with the site.

8 At the end of the day, the project was not going forward

9 as we all know and I have given in my statement, that in July, Hadeed was pulling out everyone from the site

10 and there were no staff at site.

11 Q. That's what you were informed?

12 A. Yes.

13 Q. By whom?

14 A. Of course Mr Chevreau.

15 Q. Mr Chevreau told you?

16 A. Yeah.

17 Q. How did he tell you this?

18 A. Through email.

19 Q. Through email. Was there anybody else at Altaaqa

20 involved in these conversations at that time?

21 A. The management of Altaaqa Global crops.

22 Q. Were involved in discussions?

23 A. Yes.

24 Q. Did they express any view?

25 A. Not with me.

1 Q. Not that you're aware of?

2 A. No.

3 Q. As far as you know, did anybody at quality quasi to

4 Mr Chevreau, we're not happen which with this situation,

5 there's no progress ^ -- (overspeaking) -- ^^?

6 A. The management was not happy of course.

7 Q. As best you know, did anybody at Altaaqa say that they

8 would like this contract to be terminated?

9 A. The management was not happy and the project was not

10 going anywhere further. So there was no other option

11 but to go for a termination in case there's no

12 improvement in the project.

13 Q. At what point did Altaaqa reach that view that

14 termination is the way forward here?

15 A. I think it was somewhere around late August or

16 early September. Because by the time we had already

17 encashed the guarantees, that's for sure.

18 Q. Could I take you to exhibit G612, please. It's the

19 attachment to that email, please.

20 This is Fittons letter to Hadeed. This is the

21 letter you have seen before?

22 A. Yes.

23 Q. This is Fittons saying, am I right to understand, this

24 is Fittons saying that Altaaqa have taken the view that

25 Hadeed is in breach of the contract?



- 1 A. That's what is written.
- 2 Q. That was your understanding?
- 3 A. That was it is written here.
- 4 What was your understanding? Were you involved in any
- 5 discussions at this time surrounding these letters at
- 6 all?
- 7 A. I did not draft this letter, I was not part of drafting
- 8 this letter. I've told you.
- 9 Q. Can I tack you then to G609.
- 10 As you can see it's from Altaaqa to Hadeed. It says
- 11 here that Altaaqa are exercising their rights. Were you
- 12 part of any discussions surrounding this letter?
- 13 A. I have told you no.
- 14 Q. You were not part of any discussions at all?
- 15 A. I have told you that the lawyers and the management of
- 16 Altaaqa Global were in discussions at this point ^^.
- 17 Q. Were you copied into any emails surrounding this?
- 18 A. I might be copied in the email, but I don't read every
- 19 email.
- 20 Q. Could we then turn to -- I appreciate I'm going in
- 21 reverse chronological order here. Could we then turn to
- 22 the issues you discuss in your witness statement
- 23 surrounding the discussions that took place in July?
- 24 A. Yes.
- 25 Q. 2019. This was in particular 9 July; is that right?

- 1 A. Yes.
- 2 Q. What was present at those discussions?
- 3 A. On that particular day?
- 4 Q. Yes.
- 5 A. It was myself, Mr So bean dab, Mr Achieve on top of my
- 6 head, one of my admin team guy and Ms Tan was there
- 7 I guess, she was part of Fittons team, and, yeah
- 8 basically these were the people I can recall.
- 9 Q. How long did that meeting last?
- 10 A. On that particular --
- 11 Q. Approximately, yes ^^?
- 12 A. I think it was two, three hours on that particular day,
- 13 but there was another meeting before that, which lasted
- 14 for about the whole day, even until midnight.
- 15 Q. Approximately when was that meeting?
- 16 A. 8 July.
- 17 Q. The preceding day?
- 18 A. Yeah, preceding.
- 19 Q. What was present at the 8 July meeting?
- 20 A. Almost the same people.
- 21 Q. Almost, who was not there?
- 22 A. I can't remember, but it's five years. But definitely
- 23 Mr Sameer we had a discussion, Ray Chevreau from Fittons
- 24 team, Tan, and myself.
- 25 Q. Were there, after 9 July, were there further discussion

- 1 discussions, further meetings?
- 2 A. Just we signed off the next morning.
- 3 Q. There were no other meetings after that?
- 4 No. The day we signed off the interim statement of
- 5 account, after that, there were no meeting.
- 6 Q. That was the end of the matter? That was the end of the
- 7 discussion on those figures?
- 8 A. Sorry?
- 9 Q. As far as you're concerned that was the end of the
- 10 discussion on those figures less if my side, because we
- 11 were reconciling the accounts, that was the end of the
- 12 discussion.
- 13 Q. You are very confident that there were no further
- 14 meetings?
- 15 A. With Mr Sameer dab?
- 16 Q. Yes.
- 17 A. No.
- 18 Q. It was clear at that meeting, was it not, that for
- 19 instance, the position Altaaqa's position on various
- 20 claims you may have, for example, liquidated damages or
- 21 anything else they may claim, was not being decided, it
- 22 was still open to discussion chart?
- 23 A. So there were some claims that Mr Sam dab was claiming,
- 24 that were out rightly rejected by Fittons being
- 25 engineer, and that we intended not to discuss further.

1 Because it was something to do with between the engineer  
2 and the contractor.

3 Q. Did you discuss any aspects of Altaaqa's further claims?

4 No.

5 Q. Nothing?

6 A. Except that I told him that we are paying on his behalf

7 and the objective of this interim statement of account

8 is to make sure that everybody knows how much we have

9 overpaid on the contract and that overpayment will be

10 recovered from the guarantees provided by Hadeed, unless

11 Hadeed pays in cash.

12 Q. As far as you were concerned if I ^^ with the ^^

13 liquidated damages or anything else after that?

14 A. There was no discussion on the liabilities under the

15 contract. Because it was not the intention of the

16 parties.

17 Q. The intention of the parties wasn't to determine

18 liabilities under the contract?

19 A. Yes, it was only the objective of that meeting was to

20 finalise the interim statement of account.

21 Q. Because of course it was interim, so you knew you could

22 finalise the liabilities later?

23 A. It has nothing to do with my scope of work. My

24 objective was to make sure that all parties know how

25 much we have paid on this account on account of

1 So that we have a clear picture which party owes to the  
2 other party and how much, with regards to the  
3 liabilities under the contract, it is a separate subject  
4 subject.

5 Q. I understand. That was not what you were there to  
6 decide.

7 It was clear that the figures you were proposing,  
8 they were your figures?

9 A. No, it was agreed.

10 Q. Who proposed the figures?

11 A. We prepared the figures. We gave it them, they verified  
12 from their contract, their account people, and they  
13 signed off on that basis. Each and every figure which  
14 is presented is backed by or was backed by the letter  
15 from Hadeed when we paid off.

16 Q. It was made clear at that meeting when discussing those  
17 figures, that those figures were not relevant to any  
18 liabilities under the contract?

19 A. If you mean delayed liabilities, yes, but if you mean  
20 that any liability related to Hadeed on account we are  
21 paying off to the suppliers, the answer is no. It was  
22 meant for that one. Because as per the contract -- let  
23 me finish, please.

24 Q. Of course.

25 A. As per the contract, and it is agreed by Hadeed, that

1 whatsoever the payment we are paying directly to the  
2 subcontractor other than Hadeed, it has to be deducted  
3 from their contract lump sum contract amount.  
4 □20240918□0159 So liability has a different meaning. If you are  
5 asking on the liquidated damages liability, no we were  
6 not discussing that one. But if you're asking liability  
7 to pay Hadeed under the contract for 32 million ^^ and  
8 if you're paying on their behalf, yes.  
9 Q. It was ^^ any further claims Hadeed may have, but not in  
10 terms of anything Altaaqa may claim?  
11 A. I'm not saying this one.  
12 Q. Could I take you to the signed document, G583, please.  
13 We can see at the top of the document, if we just  
14 look at the very top, interim statement of account.  
15 This was your understanding that it was interim?  
16 A. Correct. It can never be final, because the project was  
17 not finished.  
18 Q. Exactly. The intentions were that there would be  
19 a final statement of account in due course?  
20 A. Okay. The background of this whole activity was that  
21 Mr Sam dab was asking to pay Hadeed on the account and  
22 we agreed that we will have a reconciliation of the  
23 account and in case Altaaqa Global owes money at this  
24 stage, we will pay to Hadeed and if there is no payment  
25 due, the interim statement of account will confirm. So

1 that's why this exercise was conducted and it took  
2 a month. It was not conducted overnight.  
3 Q. In your -- I asked you earlier it was interim, you said  
4 it was interim?  
5 A. Yes.  
6 Q. If I could take you to your second witness statement.  
7 This is D7, please, paragraph 6.8.2, we can see there  
8 you say there that you in fact deny that it was an  
9 interim account.  
10 A. Sorry?  
11 Q. You there in that paragraph you deny that it is an  
12 interim account, but I understand your evidence today is  
13 that it is an interim account?  
14 A. No, I'm saying that I deny that the balance amount  
15 stated in the interim statement account was an is ^^  
16 I did not interim account. They are two different  
17 things. Interim account of statement is different than  
18 interim amount.  
19 Q. Okay, please explain the difference.  
20 A. So interim amount is that we are calculating in the  
21 meantime, the amount what we have calculated is a final  
22 amount, at this stage. So there is no further  
23 discussion on the amounts already stated and confirmed.  
24 That's called the final amount on this one. It's not  
25 interim amount. Interim account statement is this

1 statement we have prepared in case in future there are  
2 some other invoices that are legitimate invoices under  
3 the contract we have to pay, we will pay and we include  
4 it.  
5 Q. If we go back to the document, G583, you recognise, of  
6 course and particularly if we look at the in the text  
7 below the figures, it's an interim balance, yes?  
8 A. Interim balance on what?  
9 Q. On the account statement?  
10 A. On the account statement, correct.  
11 Q. Yes. We can see the third sentence says:  
12 "The final amount will be agreed once the projected  
13 is completed?  
14 A. No, but that's on contract value. I think there's  
15 misunderstanding on this one. When I'm saying I deny on  
16 the interim amount, means that the amounts which we have  
17 presented already are the final amount. At this stage  
18 ^ . You understand the point? At this stage, these are  
19 the final amount.  
20 Q. As far as Altaaqa are concerned, are these also final  
21 for Altaaqa?  
22 A. At that level. ^^ at this stage, for the amount paid to  
23 the subcontractors or to the Hadeed, these were the  
24 amounts paid and confirmed.  
25 Q. As far as Altaaqa is concerned, by 10 July, the date



1 this document, they have no further  
2 damages -- (overspeaking) -- ^^ as of that date?  
3 A. Damages are different things. I again say damages are  
4 different things. I reply to this one earlier. So  
5 please don't mix these two differents. This is  
6 important develop ^?  
7 A. If you can construe whatever you want to construe, but  
8 I'm saying damages are different that was not the  
9 subject at that moment. The objective of the interim  
10 statement of account was to make sure we have been  
11 paying on account of Hadeed for the last one and a half  
12 year so we need to make sure that whatever we are paying  
13 on account of Hadeed, it is documented and Hadeed should  
14 agree to the amount that we have paid on their account  
15 fight the fact that the letters they were providing to  
16 pay off the subcontractors were clearly stating and it  
17 was documented.  
18 But they were not accepting that we are paying on  
19 their account. So it was the objective of this meeting  
20 to make sure that we reconcile the account. Damages  
21 claim liquidated damages contract delays that's  
22 a separate subject. -- (overspeaking) -- ^^.  
23 Q. Okay. Absolutely. I'm not trying to put words in your  
24 mouth. I'm trying to just to make sure we're clear?  
25 A. Thank you.

1 Q. As far as you were concerned those were not part of this  
2 at all in any way.

3 That paragraph that we have just looked at, who  
4 drafted that?

5 A. I drafted.

6 Q. You drafted that paragraph?

7 A. Yes.

8 Q. Okay. That was your understanding when you drafted this  
9 document?

10 A. Yes.

11 Q. So when you drafted this document, you recognised that  
12 what you were not creating there was a binding  
13 contractual agreement on damages or anything else the  
14 parties may have?

15 A. I believe whatever you agreed becomes binding  
16 contractual agreement, because both parties were  
17 authorised to sign off the document ^ . Being CFO I was  
18 authorised to sign on behalf of Altaaqa Global on all  
19 the account that is we are paying and we are agreeing  
20 with our contractors. Being CEO of Hadeed Sam dab was  
21 authorised so it becomes contractual binding.

22 Q. Thank you, Mr Shamsi. We'll leave that there for the  
23 time being.

24 I'm going to chronologically go now to the very  
25 beginning of your involvement with this.

1 A. Sure.

2 Q. As I understand, you were involved with the tender  
3 evaluation process?

4 Yes.

5 Q. That involved looking at Hadeed's financials?

6 A. Hadeed Abu Dhabi financials.

7 Q. When you were looking at the financials what exactly are  
8 you trying to establish? What's the purpose of the  
9 exercise that you're carrying out?

10 A. I want to make it very clear that we were provided the  
11 financials of Abu Dhabi entity, not Dubai entity, which  
12 is the contracting party.

13 Q. My question is this. When you were carrying out the  
14 tender evaluation process, what is the purpose of that?  
15 I'm trying to understand --

16 A. The objective of is to review their financial strength  
17 in terms of their current asset, how liquid the company  
18 is and what are the fixed assets they have to perform  
19 the project.

20 Q. This was in order for you to make a decision on Hadeed  
21 Dubai's position?

22 A. Yes. Abu Dhabi position, not Dubai position. Because  
23 at that time, let me correct. At that time, there was  
24 no discussion who will be the contracting party.

25 Q. At what point did you agree ^^ Hadeed Dubai ^^?

- 1 A. When it was signed off.
- 2 Q. At that point, as far as you were concerned, you were
- 3 happy for Altaaqa and this is outside your role, you can
- 4 say so ^?
- 5 A. It was outside my role.
- 6 Q. It's outside your role?
- 7 A. Yes.
- 8 Q. But if I -- I want to understand your understanding of
- 9 this at that time. Altaaqa signed the contract with
- 10 Hadeed Dubai?
- 11 A. Yes.
- 12 Q. With you having evaluated Hadeed Abu Dhabi's financial
- 13 records?
- 14 A. Correct.
- 15 Q. Altaaqa were happy to contract with Hadeed Dubai on this
- 16 basis?
- 17 A. It was the management decision.
- 18 Q. Management decision. Okay.
- 19 We know also from your witness statement we can see
- 20 that there were site visits as well. Those sites have
- 21 you made ^ they were also in Abu Dhabi?
- 22 A. I did not go to any site.
- 23 Q. You didn't. I see. But in your witness statement, you
- 24 mentioned a site visit, I believe it's by your
- 25 colleague, in fact?

- 1 A. Yes. I understand it was somewhere in Abu Dhabi.
- 2 Q. As far as you understood, for all intents and purposes,
- 3 Altaaqa were treating Hadeed Dubai and Hadeed Abu Dhabi
- 4 as related parties?
- 5 A. Correct.
- 6 Q. When you looked at the Hadeed Abu Dhabi documents of
- 7 course you would have gone through them in some detail
- 8 I imagine?
- 9 A. Yes.
- 10 Q. It's a lengthy exercise. You would have seen, I'm sure,
- 11 the three of money between Hadeed Abu Dhabi and Hadeed
- 12 Dubai within those documents?
- 13 A. At that time, there was no discussion only the
- 14 contracting party ^^ who will be ^.
- 15 Q. That was not my question. Did you or did you not,
- 16 within the Hadeed Abu Dhabi audits, did you see?
- 17 A. No.
- 18 Q. You didn't. How thoroughly did you evaluate those
- 19 Hadeed Abu Dhabi financial statements?
- 20 A. I mentioned this one, that we evaluated the assets of
- 21 Abu Dhabi vis-a-vis their liabilities and the cashflows.
- 22 Q. And the cashflows?
- 23 A. Yes.
- 24 Q. But you didn't see the cashflow showing Hadeed Abu Dhabi
- 25 cashflow to Hadeed Dubai?

1 A. If you see the financials that's not clearly mentioned

2 ^^.

3 Q. The next issue I want to briefly touch on is your

4 involvement at the very early stages. I understand you

5 did the financials, evaluation, et cetera. You weren't

6 involved, beyond the financials, you're not involved

7 with any on the ground activities?

8 A. No.

9 Q. You're not there at the site, are you. Not every day

10 definitely.

11 Q. How often do you go there?

12 A. Whenever I was asked to join any meeting. If I'm

13 participant of the meeting, yes.

14 Q. Do you know roughly how often, how frequently you would

15 be at the site?

16 A. Maybe couple of times in counsel of months, that's it.

17 Q. If I could take you to your first witness statement,

18 please, paragraph 3.4.

19 This is your recollection of Mr Dabbas' presence on

20 the site?

21 A. Yes.

22 Q. This is from 2010 to 2019, you say he was there no more

23 than four or five times?

24 A. Yes.

25 Q. You yourself were there a couple of times a month?

1 A. Yes.

2 Q. So you can't comment on anything beyond, say,

3 approximately 24 days a year?

4 Yeah, because Nasser el aery was the CEO and the project

5 in charge and he was managing the site.

6 Q. What I want to be clear on is that this is your

7 recollection. We're not talking about documentary

8 evidence, this is your recollection?

9 A. Yes.

10 Q. This is entirely speculative. You don't know how often

11 Mr Dabbas is on the site?

12 A. I'm not at site, but of course sometimes I know when Sam

13 dab is coming. And Sam dab would not come without

14 informing Altaaqa Global management.

15 Q. You state else why in your witness statement that

16 Mr Dabbas you understood had a very limited involvement?

17 A. Yes.

18 Q. Did you know whether he was communicating regularly with

19 Altaaqa during the project?

20 A. Not much.

21 Q. Not much. Do you know whether letters were being sent

22 by Mr Tshabalala to Altaaqa ^s management ^?

23 A. To Altaaqa management? If it is copied to me or it is

24 attended for my attention, then, yes, I would know.

25 (mr Dabbas.

1 Q. Other wide you all the ^^ when you say you don't think  
2 he was engaged very much, you mean not insofar as you  
3 were copied in?  
4 Yeah, based on my discussion with Sam dab on many  
5 occasion, whenever we had a problem, because Nasser was  
6 not attending the site properly, so I called Sam dab  
7 many times to come and meet and look into the matter.  
8 And clearly, during the discussion, he was not aware of  
9 many issues. So that's the conclusion of my -- this  
10 statement.

11 Q. Have you seen any of the correspondence in which  
12 Mr Dabbas writes to Altaaqa raising concerns at some  
13 length in some detail?

14 A. For?

15 Q. Concerns about delays, concerns about payments, have you  
16 seen any of those correspondence as far as you recall?

17 A. Yes.

18 Q. You have?

19 A. Yes. But that does not mean that he knows everything  
20 about the site.

21 Q. I want to turn now to your involvement with the bonds  
22 and the advance payment guarantees?

23 A. Sure.

24 Q. When was the first time, as you can recall, when was the  
25 first time you threatened to liquidate the bonds?



- 1 A. I object on the word "threatened".
- 2 Q. When was the first time you suggested you were going to
- 3 do so?
- 4 So as part of the normal commercial contracts, as long
- 5 as the contract is continuing, the contractor is obliged
- 6 to keep the bond intact, not expired. In 2018, the
- 7 first was discussed, where Mr Sam dab refused to extend
- 8 the bonds and as per the commercial contracts, the
- 9 employer has the authority to either liquidate the bond
- 10 or extend the bond and they can request the bank to
- 11 extend the bond or liquidate, if not extended.
- 12 So the discussion was going on for about a year.
- 13 Q. Since 2018?
- 14 A. Since 2018, correct.
- 15 Q. Did you write to HSBC?
- 16 A. Yes.
- 17 Q. When was the first time you wrote to HSBC?
- 18 A. Back in 2018.
- 19 Q. In 2018 you wrote to HSBC. You knew by threatening to
- 20 liquidate --
- 21 A. I object again the word ^^.
- 22 Q. You -- (overspeaking) -- ^^?
- 23 A. This is a commercial discussion, sorry, this is
- 24 a commercial agreement and it's a commercial contract
- 25 and all commercial contracts have this clause. This

- 1 not new to the business.
- 2 Q. The word threat inned I'm using deliberately here. It's
- 3 not ^^ it's mine.
- 4 Did you use the threat of liquidating the bonds in
- 5 order to pressurise Mr Dabbas and Hadeed into ^^?
- 6 A. No, that's wrong.
- 7 Q. You knew the consequences of liquidating the bonds?
- 8 A. What do you mean?
- 9 Q. For HSBC?
- 10 A. What do you mean.
- 11 Q. The financial ^^?
- 12 A. I have no responsibility on their financial concerns.
- 13 Q. You were aware, weren't you, that by liquidation of the
- 14 bonds, would have an impact in terms of Hadeed's ability
- 15 to borrow?
- 16 A. I have no responsibility on financial strength of
- 17 Hadeed. They are to manage their own financials.
- 18 Q. In the run up to the -- I'm returning back to the ISA.
- 19 In the run up to the ISA, I believe correct me if I'm
- 20 wrong, it was 7 July, you contacted HSBC. You wrote to
- 21 HSBC?
- 22 A. Yes. Because it was going on for quite some time,
- 23 because the bonds were coming to the expiry. It was not
- 24 the first time. I mean, I wrote it in May as well,
- 25 because they extended in May for another three months.

1 Q. When you were in the meeting on 9 July, Hadeed were in  
2 a position where if they didn't go along with some of  
3 the figures you were suggesting on an interim basis,  
4 they would be much worse off because you liquidated  
5 their bonds?

6 A. Okay, again, all those figures were verified and agreed  
7 bigged on the letters provided by Hadeed. We did not  
8 drew up any figures. So let me correct that figure.  
9 Okay? We did not drew up any figure.

10 Second, when we were drafting the intention was to  
11 come up with a figure and agree how Hadeed is going to  
12 repay that amount if they owe to us. Because clearly  
13 they were overpaid on the account.

14 Q. Could I please take you to exhibit G581. If we go down  
15 to page 4 of that exhibit, please. Dear Sameer, --  
16 sorry, page 4, please. Towards the bottom of page 4,  
17 the second half of page 4, please. Dear Sameer, I agree  
18 to meet tomorrow, this is on 8 July. I agree to meet  
19 tomorrow morning ^^ outstanding balance sheet issues.

20 I can wait for liquidation until tomorrow 11 am." ^doc.  
21 You objected to my use of the word threat, you're ^^  
22 threat in a deadline of 11 am to liquidate the bonds?

23 A. Yeah, because Mr Sam was not extends doing bond. How  
24 would you secure your interest? It's not threaten. It  
25 was the principle agreement that we are not going to

- 1 encash the guarantees in case we come to an agreement
- 2 how they're going to pay. And we agreed in that interim
- 3 statement of account, that they will pay us by
- 4 liquidating one of the bonds, because Hadeed was not
- 5 clearly paying any cash.
- 6 Q. This email frankly, let's put this frankly. You're
- 7 saying turn up at 9 am tomorrow or 11 am I'm liquidating
- 8 the bonds?
- 9 A. Because I have a deadline with the bank as well. You
- 10 have to understand the commercial position of Altaaqa
- 11 Global. It's not a threat. It's a timeline that you
- 12 have to follow while you go and get the extension of the
- 13 guarantees.
- 14 Q. I will leave that there?
- 15 A. Okay.
- 16 Q. Turning then to the position surrounding -- we already
- 17 looked at the termination, but the position surrounding
- 18 the outstanding works at that time. I appreciate you're
- 19 not in lawyer, I imagine you didn't have, correct me if
- 20 I'm wrong, you didn't have much involvement with the
- 21 contract?
- 22 A. Yes.
- 23 Q. But you are here putting forward, in fact, you're the
- 24 only witness on behalf of Altaaqa for the counterclaims?
- 25 A. Yes.

1 Q. You address the claimants at some length in your witness

2 statement?

3 A. With regards to the cost of completion.

4 Is it your view that Altaaqa is entitled to

5 counterclaims under the contract?

6 A. Yes.

7 Q. Under which provisions in the contract do you say

8 Altaaqa is entitled to them?

9 A. I can't remember the clauses of the contract, but

10 definitely under the contract, it saves the interest of

11 the employer, if the contractor is at fault, Altaaqa

12 Global should claim the amount.

13 Q. Who at Altaaqa is involved with determining which

14 provisions in the contract are breached and entitlement

15 Altaaqa to counterclaims?

16 A. Sorry?

17 Q. Who at Altaaqa, if it's not you, who at Altaaqa is the

18 one who decides --

19 A. I mentioned earlier that we have lawyers who are helping

20 us out and who helped us out.

21 Q. If I take you, please, I'm caveatting this by saying

22 I know you're not a lawyer, relevant to what's in your

23 witness statement ^^ . C1, page 44, please.

24 I'll take you through boat of those provisions, but

25 the first of which, as far as you were aware,

1 know whether the engineer had carried out a valuation on

2 the date at forfeiture, on the date of termination?

3 A. I can't remember anything on that one.

4 Q. You don't know?

5 A. But definitely he mentioned that there is a lot of work

6 that needs to be completed.

7 Q. The following clause, if you could read that -- I'll

8 give you a moment to read that before I ask you my

9 question. (Pause).

10 As far as you're aware, was any of of that have

11 process complied with in the engineer's role in

12 determining?

13 A. I'm not part of that process, so I cannot answer that

14 one.

15 Q. Let's go through what you do set out in your witness

16 statement. This is particularly from page 9 -- sorry,

17 paragraph 9 of your second witness statement in

18 particular.

19 I'm looking in particular at some of the

20 rectification works first. The expert ^^ for instance

21 ^. You provided an invoice, don't you (expert coatings

22 ^ for that, you provided an invoice?

23 A. Yes.

24 Q. What does the invoice show?

25 A. Sorry?

1 Q. What does the invoice show?

2 A. For the epoxy flooring?

3 Q. When was that carried out?

4 I can't remember the exact date. If there is an

5 invoice, you can pull up, you can see the date.

6 Q. You don't recall when the works were carried out, though

7 though?

8 A. I don't recall exact date, but I can give you the

9 background, why this expenses is being claimed.

10 Q. Forgive me, I'm just bringing up the reference to the

11 invoice.

12 A. Yes.

13 Q. The invoice -- I'm just finding the exact reference,

14 it's within a folder with the invoices, it's difficult

15 to find.

16 The invoice is dated 30 August 2021?

17 A. Yes.

18 Q. That's nearly two years after the termination?

19 A. That's where I'm saying that you need to understand what

20 is the background of this claim.

21 Q. Which is what exactly?

22 A. The background is that the epoxy floor that was carried

23 out by Hadeed was defective and we had to do -- we had

24 to redo it again.

25 Q. This is why re doing is important. What I'm saying

- 1 you is that this takes place in 2021?
- 2 A. No. The work was completed in 2021. The invoice was
- 3 given to us in 2021. But it was before the handover
- 4 date, before the operational certificate. The invoice
- 5 date was given late. But the work was completed back
- 6 somewhere in 2020. By the way, Hadeed knew and
- 7 Mr Sameer Dabbas knew in the facility that the epoxy
- 8 floor has damaged, was they had done. But it was kept
- 9 for a later part to be completed.
- 10 Q. When did Altaaqa occupy the premises, the building?
- 11 A. April 2021.
- 12 Q. April 2021. This work was carried out after they had
- 13 already moved in?
- 14 A. No, the work was carried out before, because no
- 15 operational certificate can be provided or will be
- 16 provided by DWC unless the facility is completed. But
- 17 the invoice was provided by the supplier later.
- 18 Q. Could we look next at exhibit 9 -- sorry, 595. (G595 ^ N595 ^ ^, please.
- 19 Can you explain this invoice, what it relates to?
- 20 A. It is a manpower provided by G TS to complete the job as
- 21 I understand from the contractor, they were hired to
- 22 complete the job.
- 23 Q. What exactly are they doing? You can't say, you sant
- 24 say what they're doing?
- 25 A. It is standard -- they are helper and electrician



- 1 plumbers at site ^^ -- (overspeaking) -- ^^.
- 2 Q. If I say -- (overspeaking) -- ^^?
- 3 A. I can't certify their job, because they are technical
- 4 people under the contractor. My job was to pay for
- 5 them. Based on the request from the --
- 6 Q. If I said to you they did work that was ^^?
- 7 A. Sorry.
- 8 Q. If I said to you that these, the individuals here,
- 9 masons, help ^^ they carried out works that were not in
- 10 fact defects or anything arising out of the contract,
- 11 you can't confirm or deny whether that is the case?
- 12 A. We have appointed an engineer for the site, who was
- 13 responsible for complete the site. And we believe that
- 14 what he was saying is true. So it's not that we are
- 15 forging document or he's forging documents.
- 16 Q. You say it's the engineer who confirms that that's
- 17 what's happening, yes, of course.
- 18 Q. You can't ^^?
- 19 A. Because I don't certify the work at site.
- 20 Q. Could I tack you please to your second witness
- 21 statement, paragraph 9.11.
- 22 A. Yes.
- 23 Q. You set out -- this is the reference. This is the
- 24 invoice we're now looking at. You set out there they
- 25 were carrying out, you say, snagging issues?

- 1 A. Remained incomplete.
- 2 Q. Yes. The snagging issues and over the page, this is
- 3 9.11.1 over the page?
- 4 Yes.
- 5 Q. The snagging works include cleaning, ^^ maintenance
- 6 work. If I said to you, for example, if we go back to
- 7 the invoice. In 595, if I said to you what's the
- 8 electrician doing there?
- 9 A. Sorry.
- 10 Q. If I said to you what is the electrician doing there,
- 11 you can't say that that in any way relates to snagging
- 12 issues?
- 13 A. No, but snagging includes everything. It's not only
- 14 plumbing job or electrical job.
- 15 Q. You were not, as far as the finances are concerned, you
- 16 haven't put forward any evidence that directly links can
- 17 this invoice to anything that you can directly say
- 18 arises out of defects?
- 19 A. ^^ put forward to us for payment to complete the job and
- 20 certified by the engineer. So that's the relationship.
- 21 Q. Are you able to show me where the engineer has certified
- 22 that these are the tasks that need to be carried out?
- 23 A. It is approval on the invoicing that he put put forward
- 24 for a payment.
- 25 Q. Are you able to -- if you can't, you can say so.

1 you able to tick me to neglect where the egg ^^ that  
2 needed, this is the contractor that's going to go there  
3 to do these tasks?  
4 No.  
5 Q. Anything on the record? (witness shook head) ^.  
6 Q. I'm not going to take you to absolutely every invoice,  
7 but let me take you to N626, please.  
8 Are you able to explain who this is? Again, if you  
9 can't, is it the same answer?  
10 A. The point is, I have provided in my statement and  
11 supporting evidences, that what I believe we, as Altaaqa  
12 Global paid to complete the job or complete any  
13 insufficient work from Hadeed's contract. And I have  
14 provided support as an evidence. And that is certified  
15 by the engineer as well, because I was not at site and  
16 I was not certifying any work at site.  
17 So my job was to pay as per the request of the  
18 engineer, and that's what I can confirm, that it was put  
19 forward for the payment on this account of completion at  
20 that time.  
21 Q. I'm not finance to take you through, I I ^^ through the  
22 other invoices because I want to be clear. All of the  
23 invoices you've put in for the various works, your  
24 position is you didn't certify those?  
25 A. I don't certify and I never certify.

1 Q. Your position is all of the invoices you have attached  
2 to your two witness statements you can't say that they  
3 directly relate to any remedial works?  
4 A. ^^ certified by the engineer at site., like all other  
5 invoices we have paid.  
6 SOLE ARBITRATOR: I'm just going to interrupt row for  
7 a second. Your using the word certified by engineer.  
8 What do you mean by certified in this context?  
9 A. Whenever we have these invoices to be paid Fittons used  
10 to write us a letter that this is the invoice due under  
11 the contract to be paid.  
12 SOLE ARBITRATOR: A cover letter?  
13 A. Yes.  
14 SOLE ARBITRATOR: Attached to?  
15 A. Or email.  
16 SOLE ARBITRATOR: Or an email?  
17 A. Yes.  
18 SOLE ARBITRATOR: Attaching the subcontractor's invoice?  
19 A. Yes.  
20 SOLE ARBITRATOR: That's that you're referring to as  
21 seniority occasion?  
22 A. Yes.  
23 SOLE ARBITRATOR: Thank you.  
24 A. But there was a process, complete process whenever we  
25 had to pay, there was a purchase order to be issued and

1 a request from the engineer to make the payment.

2 SOLE ARBITRATOR: Thank you.

3 MR SULEMAN: In your witness statement, this is particularly

4 paragraphs 9 onwards, your second witness statement, you

5 explain at length the various defects recollect occasion

6 works with pictures and demonstrations, et cetera. This

7 goes on for several pages. I'm not going to take you

8 through those. One of those are your determinations,

9 someone else's ^^?

10 A. Okay, whenever the process was whenever we received

11 a request for payment, I used to receive a detailed

12 requirement or at least the explanation why we are

13 paying this or why we need the services. That's how

14 these are drafted. But of course the request was coming

15 from the engineer side.

16 Q. This information, if I could take you to one example,

17 paragraph 9.7.1. That is not your understanding of what

18 was carried out, that is someone else's ^^ the engineer

19 or somebody else?

20 A. I'm not a technical few.

21 Q. Then why did you put this in your equipment?

22 A. Because I paid for that.

23 Q. Your witness statement is essentially just saying you

24 paid for these things?

25 A. Yes.

1 Q. No more, no less.

2 If we go to paragraph 10, please. Third-party costs

3 of ^^ I system it's same here answer ^^ you're

4 confirming money that went out?

5 A. Yes.

6 Q. You can't say whether what these services and utilities

7 are, what they relate to, how the costs are?

8 A. No, I can tell you what this is related to, because as

9 I said, that whatever we are paying for any service, it

10 is my duty to make sure that these are relevant costs

11 for the Altaaqa Global business. So we went for

12 Mohammed Al ba what services, because ^ the facility was

13 not ready, that was supposed to be ready for service for

14 Altaaqa.

15 Q. Yes, forgive me for interrupting when you say we, is

16 that you?

17 A. Altaaqa Global we as ^^.

18 Q. Who at Altaaqa made this decision?

19 A. We as Altaaqa Global.

20 Q. I mean all the is a company. Is there a board that

21 decided this?

22 A. The management.

23 Q. Management. Are you part of that management?

24 A. I'm the CFO of the Altaaqa Global. I was.

25 Q. Were you part of the decision making process where

- 1 was decided?
- 2 A. To get the services from all ba what.
- 3 □20240918□0184Q. Yes?
- 4 A. No, it was technical team who was responsible for this
- 5 one.
- 6 Q. The technical team explained to you their relationship
- 7 with the Al Bahar ^?
- 8 A. In terms of.
- 9 Q. In terms of how they work emwhether they outsource work
- 10 to them or what occasions they would outsource work to
- 11 them whenever ^^ in the past?
- 12 A. You need to understand what this work is. That was
- 13 explained to me by the technical team. The engine
- 14 requires overall. That requires a workshop. The
- 15 workshop was not ready that was supposed to be ready by
- 16 2016 September. It was not right-hand side. Al Bahar
- 17 is a caterpillar dealer just like Altaaqa global is
- 18 a caterpillar dealer. So that's why Altaaqa Global
- 19 requested Al Bahar to complete this overall service of
- 20 those engines at their workshop facility.
- 21 Q. Forgive me for interrupting this the not your
- 22 explanation, this is a technical team explained it to
- 23 you?
- 24 A. Of course.
- 25 Q. The technical team haven't -- I mean this is not a

1 a question for you. I won't ask you this question.

2 When you in your witness statement said that this is

3 paragraph 1.3 of your witness statement,?

4 A. Of one or two.

5 Q. Both, in fact, both witness statements but we're object

6 second witness statement, paragraph 1.3.

7 A. Yes.

8 Q. When you say these are ^^ in my own knowledge where they

9 are not within my known ^reading...) the source of this

10 information." ^doc.

11 You haven't in fact done that, your witness

12 statement doesn't identify that this is not your --

13 A. It's an interpretation. When I'm saying it's any

14 knowledge, that does not mean I have to write in each

15 every paragraph that this knowledge is acquired from X,

16 Y, Z. That's my knowledge. Let me explain.

17 That's my knowledge that I obtained from the

18 technical team and that's why I'm putting it if my

19 witness statement. I'm not a lawyer. To put never

20 a legal context. I will put in in a layman context. My

21 understanding I'm putting it as per my knowledge. What

22 is this service is required for. ^.

23 Q. I think you're not going to be able to help me in any

24 further questions on this, but I will ask you think any

25 in case you can.



- 1 Do you know whether Altaaqa have previously priority
- 2 2016, outsourced any of the servicing to Al Bahar?
- 3 Yes.
- 4 Q. They have?
- 5 A. Yes.
- 6 Q. Did they do when in in 2016 do you know sorry.
- 7 Q. Did they do in in 2016. Sorry, say it again.
- 8 Q. Did Altaaqa outsource any of the servicing of the
- 9 generators to Al Bahar in 2016?
- 10 A. I I can't remember the exact date, but definite I told
- 11 you that before September 2016, yes.
- 12 Q. Again, if you can't answer, say so. How much of the
- 13 work was outsourced to --
- 14 A. I can't recall.
- 15 Q. ^^?
- 16 A. I can't recall.
- 17 Q. So you can't say how much of the work
- 18 post September 2016, was outsourced to Al Bahar. That
- 19 would otherwise not have been outsourced to Al Bahar?
- 20 A. Post-2016? Other than what we are claiming here in the
- 21 invoicing?
- 22 Q. No, what you're claiming here in the invoice?
- 23 A. Other than that?
- 24 A. No, that included, what I'm asking is your claim relates
- 25 to October 20 ^^ June 2020.

1 Q. Yes?

2 A. You can't look at those figures for that period and say  
3 what portion of that you would have outsourced in any  
4 event?

5 A. They would have been no event. If we had a facility  
6 ready everything was supposed to be completed and this  
7 service would have been done in-house. There was no  
8 work there was supposed to go outside.

9 Q. But in 2016 work did go outside?

10 A. Because the facility was not ready.

11 Q. 2015 did the work go outside?

12 A. I can't remember, but if there was a requirement, yes.

13 Q. I asked you at the beginning I said to you prior to 2016

14 ^^ you said yes?

15 A. Yes, of course.

16 Q. You said you can't say how much was outsourced?

17 A. Of course, I can't remember everything 10 years ago.

18 Q. You can't say that between October 2017 and June 2020,

19 no work would have been outsourced to Al Bahar, can you?

20 A. Because this facility would have been ready. That's

21 what that point is. This facility is meant for

22 completing the overhaul for the engine. You have to

23 understand the context why this facility is being

24 completed and what is the outsource work to Al Bahar.

25 Okay? The context is this fasten collude a workshop.

1 That workshop meant to complete the overhaul of the  
2 engine. Just like you get your car overhaul done at any  
3 car dealer shop or workshop. So this facility contract  
4 was supposed to be completed in September 2016. So  
5 after 2016, there was no job supposed to be given to  
6 Al Bahar unless the facility is not ready.

7 Q. Turning to the next item on your list, this is 11. Can  
8 you talk us through this?

9 A. Which one?

10 Q. This is 11, the rental contract, utilities.

11 A. Okay, I will save your time.

12 Q. Just ^^ start with the first time.

13 A. This cost in 11 are the consequential costs for the  
14 delay. If we had the facility, this is the rental of  
15 the yard that we had to pay because we could not use our  
16 own yard, incomplete. That's why we had to hire  
17 a third-party yard to keep our equipment at that place.

18 Does this answer your question?

19 Q. Yes. What I'm trying to understand is in terms of the  
20 costs again the leasing, any costs that would have been  
21 incurred in any event, you can't ascertain what those  
22 would have been?

23 A. Sorry?

24 Q. You can't ascertain what the costs would have been in  
25 any event. What the costs would have been had the

- 1 project completed on time, you can't apportion whether
- 2 you would have necessarily have needed the rental
- 3 facilities or utilities?
- 4 A. Definitely we would not need that.
- 5 Q. On what basis, what's the evidences for that?
- 6 A. Because we have a 38,000 square metre plot at AI quality
- 7 global and it had a warehouse area. And the plot size
- 8 is big enough to host all the equipment.
- 9 Q. Similarly, 11.3, if we look at the --
- 10 A. ^^.
- 11 Q. 11.3. This, as I understand, correct me if ^^
- 12 essentially Alqua continuing paying subcontractors for
- 13 completing the job ^^. Isn't this a cost that's in any
- 14 event already factored into the agreement that was
- 15 reached, you say, the ISA that we looked at? Interim
- 16 statement of account we looked at?
- 17 A. This one? ^^ but this is cost of the payment we paid
- 18 after the interim statement of account, not the before
- 19 one.
- 20 Q. I see, so it was still open to you to incur fuse costs?
- 21 A. Until the project is completed, yes.
- 22 Q. I appreciate you're not a lawyer. These costs are
- 23 essentially delay, Altaaqa delay claims you're saying
- 24 longer than expected?
- 25 A. Yes.

1 Q. And you're saying these delay claims we're now looking  
2 at you're saying they fall outside the ISA, prolongation  
3 costs, Altaaqa claiming outside the ISA?

4 A. (Witness nodded).

5 Q. Neither party has discussed anything on prolongation  
6 costs during the ISA agreement?

7 A. The objective of ISA was to make sure what has been paid  
8 till that date, not what in future will come. Because  
9 nobody can ascertain who in future will bring in the  
10 cost, how long this going to be delayed.

11 Q. But the expenses we've gone through, for example,  
12 Al Bahar we looked at just a moment ago, you're claiming  
13 from 2017?

14 A. Yeah, because those are consequential delay claim. Not  
15 the payment made to Hadeed's subcontractor. ISA does  
16 not include these amounts.

17 Q. That's what I want to be clear on. When the ISA was  
18 agreed in July 2019, you say it was an agreement. That  
19 didn't include, for example, Altaaqa's delay claim  
20 infrastructure 2017?

21 A. No.

22 Q. Simply wouldn't include Hadeed's delay claims?

23 A. Of course. That was not the intention of the party.

24 Q. Again, I'm not going to go through each of these in  
25 turn, because I think it's going to be too time consume

1 consuming. The remaining, what you said out there, RSS  
2 and AQPL, these again are costs you would have incurred  
3 in any event, you would have just had to pay them  
4 through Hadeed?  
5 A. No.  
6 Q. To the subcontractors?  
7 A. No.  
8 Q. If Hadeed completed this job?  
9 A. May I ^^.  
10 Q. You suspect ask a question, unfortunately that's not how  
11 this works?  
12 A. Okay. Then I will give you the background of this one.  
13 Q. Yes. Please do?  
14 A. First we need to understand what is the background of  
15 RSS. As part contract, Hadeed is supposed to provide  
16 the power at site until the completion of the project  
17 and until the DEWA switchgear is live. Okay? This is  
18 the fact that nobody can deny.  
19 In Hadeed fails to provide this power at site until  
20 its completion, and Altaaqa is providing this service,  
21 it should be on account of Hadeed. So that's what the  
22 RSS power equipment or the power generators were  
23 provided for.  
24 Just to give you the background, even priority 2016,  
25 Hadeed provided generator was blown up because it was an

1 old generator and since then Hadeed was renting it out  
2 from their own subcontract, which is in their scope,  
3 which is fine. I have no problem in that.  
4 But since we were requested to hire this RSS  
5 generator on account of Hadeed, we are claiming on the  
6 counterclaim. That's the ^^? That background comes  
7 from whom? Who provided you with that back grounds? Is  
8 it Mr Chevreau?  
9 A. Of course the engineer.  
10 Q. That's not your account of what happened?  
11 A. But physical asset that was at site running the power at  
12 the site before the DEWA electricity was switched on.  
13 Q. Briefly I don't think we want to overrun. I'm going to  
14 ask you very briefly finally on the counterclaim. You  
15 do address the advance payment guarantee. Did you  
16 understand the manner which that guarantee was to  
17 operate in that it was supposed to be reduced as the  
18 payments were made? Was that your understanding?  
19 A. If it is requested and written as per the contract, yes.  
20 Q. Why was that not done?  
21 A. Because we were paying on behalf of Hadeed to the  
22 subcontractor and there was no evidence that we were --  
23 they were not overdrawn. They were always overdrawn on  
24 their account.  
25 Q. We can see, we can actually look at the contract, it's

1 C1, page 40. Halfway down the page, clause 60(2),  
2 monthly payments, we can see it's amortised any advance  
3 payment. That was your understanding?  
4 A. If it is, yes.  
5 Q. The advance payment guarantee should have been reduced  
6 accordingly?  
7 A. Yeah, but it is not in my hand.  
8 Q. Not in your hand. Whose happened was it?  
9 A. Project management team. ^.  
10 Q. That's Altaaqa's project management team?  
11 A. Yes.  
12 Q. They fail to do what they were supposed to do which the  
13 contract?  
14 A. I can't see ^^.  
15 Q. You can't say.  
16 I'm going to leave the counterclaims there. I've  
17 only got a few general questions. I'm not going to take  
18 you through the four years of all the payments that were  
19 made.  
20 What I am going to ask you is this, and it may not  
21 have been your decision. But can you explain. There's  
22 been a lot of delays with making payment where payments  
23 were approved by the engineer, but Altaaqa department --  
24 certified and approved by the engineer, but Altaaqa  
25 didn't make the payments. Were you aware



- 1 decision making process?
- 2 A. I deny this one, because there was no payment that was
- 3 late after the certification of the engineer.
- 4 Q. Were you involved in the process?
- 5 A. For?
- 6 Q. The payment process, were you involved if it at all?
- 7 A. Of course it came to me after the certification of
- 8 engineer.
- 9 Q. This came to you?
- 10 A. Yes, for the payment.
- 11 Q. What did you do when anything came to you?
- 12 A. Pay in accordance with the agreement. In fact, we had
- 13 actually reduced the payment days. Sometimes within
- 14 three to four days, we paid. Once the engineer
- 15 certified.
- 16 Q. Forgive me, I'm just finding exhibit number. What
- 17 I want to be clear on is the last date as far as you are
- 18 aware that Altaaqa made direct payments to Hadeed. What
- 19 was that? Do you know the date?
- 20 A. February 2017.
- 21 Q. That was payments authorised in November, certified --
- 22 A. No, it was Thursdayed in February. It was paid within
- 23 four days or five days.
- 24 Q. When was the -- you may not know this. When was the
- 25 payment application approved by the engineer?

1 A. I'm saying it was -- it came to me and it was approved

2 in February.

3 In February?

4 A. Yes. That was related for November invoice, that was

5 back and forth for couple of times.

6 Q. The November invoice is the last invoice that was paid?

7 A. Directly to Hadeed, yes.

8 Q. Directly to Hadeed?

9 A. Yes.

10 Q. Between November and June -- November 2016

11 and June 2017, did Altaaqa pay Hadeed or any of the

12 subcontractors?

13 A. Between November and?

14 Q. And June 2017. Yes, in February.

15 Q. Forgive me, I'm saying the invoices. I think you

16 understand the question. I understand the invoice

17 is November. Was there any invoice post November 2016,

18 but before June 2017, that Altaaqa paid?

19 A. For Hadeed?

20 Q. To Hadeed, yes?

21 A. Between February or November invoice.

22 Q. I think you ^^ you paid the November invoice?

23 A. We paid the November invoice in February.

24 Q. Yes.

25 A. Right? So the question is if we have paid further

- 1 amount between February and June? The answer is no.
- 2 The first time we started making payment at the request
- 3 of Hadeed was in June.
- 4 Q. Did you receive invoices for December 2016, Jan
- 5 for December 2016, January 2017?
- 6 A. For payment ^^.
- 7 Q. Yes.
- 8 A. No.
- 9 Q. You didn't receive anything?
- 10 A. No.
- 11 Q. That suggested payment was due. You didn't, the
- 12 engineer didn't provide anything that suggested
- 13 certified and approved?
- 14 A. No.
- 15 Q. No? Was there anyone ^^ dealing with invoices?
- 16 A. No.
- 17 Q. It was just you.
- 18 A. I mean of course we have payment team, but no payment
- 19 can go out unless I sign off.
- 20 Q. Hadeed or any representative of Hadeed, Mr Dabbas, write
- 21 to you or anyone else to Altaaqa, at the relevant time,
- 22 the window we are now speaking of, to say we've got
- 23 payment outstanding?
- 24 A. Yes, I was in contact with Nasser.
- 25 Q. What did he say to you, what did Nasser say?

1 A. He was complaining about the payment and I was just  
2 saying that he need to talk to the engineer to speed up  
3 the work at site. Because I'm not involved in  
4 certifying his progress billings.

5 Q. Do you think this was -- was there any miscommunication  
6 between Altaaqa and the engineer? You thought the  
7 engineer wasn't certifying payments that the time. Did  
8 you think the engineer was not certifying payments this  
9 that window?

10 A. It's not my job to see what engineer is doing. There's  
11 a project management team, who is looking after the  
12 project.

13 Q. You said when Nasser approached you, you said to Nasser  
14 speech to ^^ he's the one who's dealing with this?

15 A. Yes, yes.

16 Q. As far as you were concerned, there were no payments  
17 outstanding. Did Hadeed directly give you the four  
18 account of what's outstanding ^?

19 A. To me?

20 Q. To you or to Altaaqa generally, that landed on your  
21 desk, at to point?

22 A. No.

23 Q. Did they do that?

24 A. No.

25 Q. Were you aware that there were issues on the site

- 1 shortage of manpower, et cetera, caused by payment
- 2 problems, delayed payments by Altaaqa?
- 3 A. As I said, that were Nasser called me and he was
- 4 explaining I told him he needs to work out with the
- 5 engineer and this was the one of the issues where we
- 6 were the Altaaqa Global management team was facing, that
- 7 the progress is very slow and that's why it took some
- 8 time back and forth where the progress receive billing
- 9 was even wrong.
- 10 Q. Were you curious why the engineer was not approving
- 11 payments this that time?
- 12 A. No, why should I?
- 13 Q. As far as you were concerned it's for the engineer and
- 14 you were happy to pay if the engineer processed them ^^?
- 15 A. Yes.
- 16 Q. Did you, because I understand the extent of your
- 17 involvement. Did you have any discussionsr were you
- 18 privy to any discussions at Altaaqa about the manpower
- 19 shortage caused by lack of payment?
- 20 A. As I said, I'm not part of the management team. So I'm
- 21 not involved in that discussion.
- 22 Q. Were you copied in any of emails?
- 23 A. Copied I don't ^^ 200, 300 emails if there is misl needs
- 24 to attend I will attend. But that has to be directed to
- 25 me.

1 Q. I'm just checking my notes. I suspect that's all the  
2 questions.  
3 Thank you. That concludes my questions. Thank you.  
4 SOLE ARBITRATOR: That concludes therm permanently or until  
5 tomorrow morning.  
6 MR SULEMAN: The problem I need to very quickly check some  
7 references but I think I'm -- if we can break for the  
8 day, because we are exactly at 5 o'clock.  
9 SOLE ARBITRATOR: Okay. Very well.  
10 Mr Sameer, thank you very much for your testimony  
11 today. We will re commence tomorrow morning at 10 am.  
12 Mr Shamsi ^ for all intents and purposes, and I'm sure  
13 counsel has informed you, you are sequestered witness,  
14 so I would ask that you not speak to anyone about the  
15 case including your witness testimony and tomorrow  
16 morning you will remain under oath when we start when we  
17 department the examination.  
18 WITNESS: Sure. So I will be again here in the witness box?  
19 SOLE ARBITRATOR: Yes. At 10 am.  
20 WITNESS: No problem, sure.  
21 SOLE ARBITRATOR: Shaw were much and have a very good  
22 afternoon.  
23 I'm available. I'll just wait for the parties to  
24 confirm.  
25 MR HOWELLS: I think the agreement was 5 minutes.

- 1 (5.00 pm)
- 2 (A short break)
- 3 (
- 4 (
- 5 (The hearing adjourned until 10 am on the following day)
- 6 I N D E X
- 7