



## STATE CORONER'S COURT OF NEW SOUTH WALES

<b>Inquiry:</b>	Concerning a Fire at 5/15 Percy St Auburn Sydney
<b>Hearing dates:</b>	27 April – 1 May, 5 – 8 May, 25 – 27 May 2015
<b>Date of findings:</b>	19 August 2015
<b>Place of findings:</b>	State Coroners Court, Glebe
<b>Findings of:</b>	Deputy State Coroner E.Truscott
<b>Catchwords:</b>	Suspicious Fire - Insurance
<b>File number:</b>	2013/00389337
<b>Representation:</b>	<p><u>Coronial Advocate Assisting:</u> Ms B Lorenc</p> <p><u>Director of ET Food International Pty Ltd Lessee of Premises Li Mei Chen:</u> Mr C. O'Neill instructed by Peter O'Brien and Lauren Wakeling of LMI Legal</p> <p><u>Insurers of ET Food International Pty Ltd JUA Underwriting:</u> Mr R Gambi instructed by Colin Davidson of Davidson Legal</p> <p><u>Insurers of Strata Plan 73204 CHU Insurance:</u> Mr S Dickson instructed by Duncan Stuart of McCulloch &amp; Buggy Lawyers</p>

<b>Findings:</b>	<p>On 20<sup>th</sup> August 2013 certain real and personal property located at Unit 5/15 Percy Street, Auburn was destroyed by fire. The origin of the fire was the south west corner of the processing area on the ground level of the premises of Unit 5/15 Percy Street. The cause of the fire was the result of an introduced ignition source to a stack of wooden pallets doused in petrol. The fire spread to the mezzanine level where the corner had also been doused in petrol. I am unable to be satisfied as to the identity of the person or persons responsible.</p>
<b>Recommendations:</b>	Nil

## REASONS FOR DECISION

1. On 27 January 2012 a company called ET Foods International Pty Ltd ("ET Foods") entered into a lease agreement for Unit 5/15 Percy Street, Auburn, a large commercial premises fitted out for food preparation and storage. From February to June 2012, Ms Li Mei Chen who runs ET Foods set up the factory installing specific electrics, plumbing, internal CCTV security devices and machinery such as smoke ovens, boilers, packaging equipment and refrigerators for the production of Chinese meat products and delicatessen foodstuffs.
2. From about July 2012 the factory was operational and supplied products primarily to a delicatessen run by Ms Chen and to Chinese supermarkets. In the early hours of 20 August 2013 a fire, deliberately lit with the use of petrol, destroyed the factory. There had been no break in at the premises and the inquiry has focused on the persons involved with the company or who had keys to the premises.

### The Fire

3. The factory is one of 5 units in a complex surrounded by high perimeter fencing. There is a high double gate locked by padlock and chain. To the left is a storm water canal and at the other side of the building there is an "exit-only" pedestrian gate. At about 2.00am on Tuesday 20<sup>th</sup> August 2013, fire brigade and police attended the premises in response to an automatic fire alarm from a nearby building activated by the smoke coming from unit 5/15 Percy Street. The double gate was locked so they used bolt cutters to gain access to the complex. There was smoke and flame at the join of the back wall and the roof of the premise. The unit was found locked and secured and the fire fighters forced entry into the factory by cutting the loading dock's steel roller door with a power saw and also going through an adjoining unit. The factory was well alight when they entered and the fire was extinguished 3 hours later at about 5.30 a.m.

4. A subsequent examination of the scene was undertaken by Christopher Turville of the NSW Police Force and Richard Schembri and Jock Gilmour of the Fire & Rescue NSW Fire Investigation and Research Unit (FIRU). Melissa Salmon and Greg Kelly, two private fire investigators, also attended the scene and conducted an examination on behalf of the insurer for ET Foods (JUA Underwriting) and the building insurer (CHU Insurance) respectively. Detective Adriano Leite, the officer in charge, also attended the scene on this and other dates.
5. On the day following the fire, 21<sup>st</sup> August 2013, an accelerant detection dog "Sheba" and her handler Officer Tim Garrett attended and searched the ground floor near where the seat of the fire was, namely the south western corner of the processing room. Sheba made 4 "detections" indicating the presence of an accelerant in that vicinity.
6. Ms Salmon attended on this day and she reports that she could smell petrol. She obtained samples from the corner of the production room including a sample from one of several wooden pallets that had been found burnt out in that location. Above that area was a mezzanine. Ms Salmon inspected this area and also took a sample from underneath a cardboard box. Mr Kelly attended on a separate day and he also obtained samples from the downstairs area. These samples were subsequently analysed by Walter Stern, a Chemist. His report sets out that the results from each sample were consistent with petrol.
7. There is clear and cogent expert evidence that the fire was deliberately lit. That evidence is uncontroversial. A number of wooden pallets placed in the corner of the processing room were doused with petrol. Petrol was also doused in the corner directly above on the mezzanine level. The perpetrator has also lit a fire in another area of the mezzanine where a mattress was used to add to the fuel load and has left the premises while the fire took hold.
8. The main issue in this Inquiry is identifying who lit the fire and for what reason or reasons. There was an internal CCTV camera system installed in the factory however the hard drive system had been removed from the premises either that night or days or weeks earlier.

#### The Factory Layout

9. There are three entrances to the factory, one is a steel roller door at the loading dock and the second is a single wooden door next to it. This wooden door has a deadlock and only Ms Chen and Yong Jian Diao, her former husband who also worked at ET Foods, say they each had a key. They say there are no other key holders. The third entrance is a single glass door about 20

metres along the same side of the building which is the corporate entrance to upstairs office suites. Ms Chen says that the glass door has always been locked, no one has a key to it and it was never used to enter or exit the premises throughout the time ET Foods held the lease. The stairs to the corporate area are accessible if one enters through either of the other 2 entrances by walking along a corridor past a staff room.

10. Upstairs from the glass door entrance is a carpeted area or foyer which has been described as a “lounge”. Coming off that room and looking in the direction of the entrance are 3 large rooms of which 2 were set up as bedrooms, the 3<sup>rd</sup> was vacant but had been used as a bedroom. There were also male and female toilets, one of which had been turned into a bathroom by Ms Chen when she had a shower unit installed in early 2012. There were various toiletries belonging to adults, both male and female, and also children. Ms Chen denies anyone ever lived in the premises.
11. The “lounge room” has a door to the factory. At the time of the fire that door must have been closed as there is no fire damage and very little smoke damage. The door leads to a concrete mezzanine area which covers most of the left hand side of the factory stopping about 10 metres short of the end wall. Directly below the mezzanine was the production area. The first half of the mezzanine housed an assortment of stored household and personal items. This area is adjacent to the ground floor loading dock area. It had a pile of burnt items including the remains of a mattress.
12. The far end of the mezzanine housed a cool room lined with refrigeration panelling suspended from the roof which is conveniently referred to as “EPS”. It is a highly flammable panelling. Inside that area were cardboard boxes containing items such as latex gloves, food casings, packaging and labels, and perhaps non-perishable food items such as additives and flavourings. There had been wooden pallets on the floor in the same corner directly above the origin of the fire. It is not known whether these pallets had been placed there to add fuel to the fire or left there as they contained packaged items. Directly below was the origin of the fire, in the production area used for mixing meats and making sausages. Beyond the mixing and sausage machines was a line of 6 very large cauldrons or “boilers” used to cook the various meat products. Next to the room was a packaging room. A set of steel stairs runs between the mezzanine and the production area.
13. The other half of the factory was a ground floor cool store. It had with 3 rows of back-to- back 3 tiered wooden shelving units running the length of the factory. The entire cool store area was

lined with EPS panelling suspended from the roof. All the EPS panelling buckled and collapsed during the fire.

14. Entering the factory through either the roller door or the single wooden door, one enters the loading dock which also contained a large refrigerated container. To the right one could proceed to the foyer where the glass door is. Ahead of the loading dock entrance is a small corridor leading to Ms Chen's office on the right and the packaging room on the left. Moving past the office one would go straight ahead to the cool store. Just prior to entering the cool store was a cupboard which had housed the telephone system and the CCTV security hard drives.
15. On the ground floor at the rear of the factory beyond the production area there were 2 smoke ovens against the wall adjacent to which was a single exit-only door at the end wall. That door also had a steel mesh security door which at the time was locked. Exiting the factory by this door, to the right is a footpath running along the back wall and down the side of the unit to the "exit-only" pedestrian gate to the public road. Alternatively, exiting the end wall door and turning left is just a few steps to the car park area with its perimeter fencing and a storm water canal leading back to the main gate.
16. CCTV footage showing the double gate area was obtained from a neighbouring unit 4 (APACK Warehouse) was obtained and viewed by Detective Leite. Detective Leite says that the CCTV captured no images of persons or vehicles arriving or leaving the front gates of the factory area between 9.00pm on 19 August to the time the emergency vehicles arrived around 2am on 20<sup>th</sup> August 2013.

#### The Background

17. From 2005 – 2009 Ms Chen had a similar business which operated out of a leased factory in Berry Street Granville from about 2007. Prior to 8 January 2009 the company was called ET Foods Pty Ltd for which there were 3 shareholders and directors. On that date Ms Chen registered ET Food International Pty Ltd nominating herself as sole shareholder and director. The "new" company apparently subsumed the assets of the previous company; Ms Chen advised the insurers that the company had changed its name. She also commenced a business interruption insurance policy.

18. Six weeks later, on 27 April 2009, the factory and business records were destroyed by fire. The cause of that fire was never able to be investigated or determined as the site was inaccessible due to the presence of asbestos. The fire was “written off” as accidental possibly having been caused by a faulty pilot light on one of the smoke ovens.
19. Shortly after the Berry Street fire Ms Chen relinquished her position as sole director and shareholder to her friend Ms Guilan Xue with Ms Chen becoming secretary. After the fire Ms Chen’s assistant/bookkeeper Min “Iris” Sun was employed full time to substantiate quantum for both the assets insurance and the business interruption insurance. A total of \$1.3 million was eventually paid out to ET Foods by late 2011/early 2012. According to Ms Sun, Ms Chen transferred much of the money to China but some of the proceeds were used to restart the business operating out of the Perry St premises.
20. Ms Sun said that ovens and equipment were imported from China and installed in Percy Street by the people who worked for the suppliers. They stayed for up to 6 weeks in the factory and instructed Mr Diao how to use the ovens and boilers and Ms Sun was shown how to use the packaging machine so she could teach workers who were going to be employed.

The Company operating as an avenue for Migration under the subclass 457 work visa programme, operating a delicatessen in Ashfield and a restaurant in Burwood

21. In June 2012, ET Foods submitted an application to the Department of Immigration Multicultural Affairs and Indigenous Affairs (DIMIA) seeking approval to be a sponsor for employees to migrate to Australia under a subclass 457 work visa. Ms Sun said that documents were created with the direction and knowledge of Ms Chen and the assistance of a migration agent. Shortly after that application was submitted Ms Xue relinquished her directorship and shareholding back to Ms Chen which she held exclusively until December 2012.
22. About mid 2012 Ms Chen also opened the delicatessen in Ashfield the products for which were supplied by the factory. On or about 1 June 2013 she apparently bought a restaurant in Burwood, which it is said the factory also supplied. She told the investigator Mr King that the shop and restaurant were ET Foods though no accounts have been produced supporting this position though photographs of the delicatessen show signage pronouncing the shop as being run by ET Food International Pty Ltd. Other documents suggest that a company called Sunny Day Trading Pty Ltd entered into the lease and paid the rent on the shop.

23. The financial arrangements have been neither disclosed nor discernible and raise the question of Ms Chen's financial motive to recoup losses or potential losses through fire and business interruption insurance. In Ms Chen's second interview with Mr King, she said that the machines were worth \$1 million dollars, (Q216), the stock was \$250,000 and gross wages \$1 million (she meant turnover) and that the total she was claiming in insurance was \$2,250,000.
24. From the documents obtained in the Inquiry it is impossible to say how accurate any of this is, but even on the basis of calculations of the accounts given her unknown but presumed expenditure on the shop and buying the restaurant (she did say ET Foods in her interview owned them though that is not evident from the accounts), there would be financial benefit in destroying the factory for an insurance payout which would also cut out any other persons who were wanting to stake a claim.
25. Sunny Day Trading had also invoiced ET Foods for some of the equipment apparently imported from China to set up the factory. Its sole shareholder and director was Ms Chen's ex-husband Yong Jian Diao. When Mr Diao was giving evidence in the inquiry he was shown the company documents and he said he had no idea that he was the shareholder and director and that he would have merely signed whatever document Ms Chen asked him to sign.
26. Ms Sun said that Ms Diao had married Ms Chen's friend Guilan Xue (who was the nominal owner of ET Foods until all the insurance monies had been paid out) so that she might migrate to Australia with him but that it was for migration only. Mr Diao, though Ms Chen's ex-husband, has always lived with her since his migration and was a pivotal worker in the processing and production of ET Foods. He remains living with her since the fire. He could be fairly described as a person who is prepared to carry out her instructions which he may have done in relation to the fire.
27. At the time of the fire a man named Tao Su was the majority shareholder and a director of ET Foods. He and Ms Chen both deny that he was an investor in the company. They both claim that they used the company structure to advance Mr Su's attempts to migrate to Australia.
28. Whilst that may be the case, other evidence points to Mr Su being an investor, business partner or someone with a pecuniary interest in the company, but the mechanism of such has not been disclosed or discerned in the inquiry.



29. Whether Ms Chen directed Mr Diao to light the fire because Mr Su was taking over her business without completing a promise of financial input or whether he was just using her and her business for migration and he wasn't going to help her financially as a reward for her assistance is an unresolved issue in the inquiry. Alternatively, whether Mr Su was involved in a sabotage of Ms Chen's business because of some disagreement with the factory and/or the restaurant is also possible. Further, to that whether Mr Diao acted alone because of some slight to him arising from liaison between Ms Chen and Ms Su is also possible.

Mr Tao Su

30. In December 2012 Mr Tao Su travelled to Australia from China on a business development visa. His application for this visa was to develop business opportunities with Ms Chen's business. According to Ms Min "Iris" Sun, Ms Chen's bookkeeper and assistant until October 2012, Ms Chen had asked Mr Su to help her build up her business. Ms Chen knew Mr Su because he was married to a friend from her hometown of Harbin in Northern China.
31. Mr Su says that in China he was a deputy general manager of a company manufacturing biodegradable tableware products. He said he established the company and then sold it to a friend some years previously. He said that though he was employed by the company and it paid for his accommodation in Shanghai, he did not draw a wage or salary, rather he was able to take as much money as and when he wanted from the company. He said he would do this every few months. He said that there would be no company records in relation to his employment or the money he received from the company. In contrast he specified an income of about \$AUD55,000 to Mr King when he said his annual income was about CNY300,000. In contrast he told Mr King that he was a lawyer – though his evidence in relation to that indicated that he had never practiced law though he claimed to be a partner in two firms.
32. Mr Su remained in Australia for 3 weeks and he became a majority shareholder and director in December 2012 with Ms Chen retaining a 30% shareholding and directorship. By that stage Mr Su was of the view that Ms Chen's meat products and "his" biodegradable packaging were incompatible and so they were unable to do business together. However, he was keen to migrate to Australia and visited a number of migration agents with Ms Chen for advice about how to do this. Whilst he hoped to initially migrate under the 457 programme sponsored by ET Foods, after "owning" ET Foods he would apply for permanent residency under the s188 business migration programme.

33. Mr Su returned to China and on 4 January 2013 ET Foods submitted to DIMIA a 457 application for Mr Su to be the company's "director of sales and marketing". Mr Su returned to Australia for 3 weeks in April 2013 and stayed at the factory. He said that he did not perform any work or involve himself in any way with the business.
34. It is difficult to ascertain why he would be there. It does not seem that he was there to learn anything about the business because he claims to know nothing about it at all. Before Mr Su again returned to China he met Mr Nick Liew who later travelled to China and visited Mr Su in Shanghai. Both Mr Su and Ms Chen describe Mr Liew as their accountant. He gave evidence and was at pains to say that he was in fact an accountant but acted as tax agent not an accountant for them. The precise nature of any business dealings between Mr Su and Mr Liew were difficult to ascertain but it seemed more than what they were willing to disclose. They were each recalled to give evidence to answer questions arising from documents which were obtained under s53 *Coroners Act* orders. Both Mr Su and Mr Liew said that Ms Chen was not aware of their meetings and as far as they knew she had not before the fire become aware of them.
35. On 30 May 2013 a 457 visa was granted to Tao Su, (which also enabled his wife and 2 children migration to Australia).
36. From June to July 2013 funds of about \$350,000 were sent from China to ET Food's accounts by Mr Su. He says that it was not his money but Ms Chen's. He said that Ms Chen's brother who lives in Harbin asked Mr Su to help send money to Ms Chen and he did so using names of friends and family. He explained that this process was relied on because only one person can transfer \$50,000 per year out of China so he was happy to help Ms Chen with this request. It seems strange to me that Ms Chen's brother would need Mr Su to be the person to orchestrate this given he lived in Shanghai and the brother lived in Harbin and the brother could have used his own friends to transfer the money.
37. Mr Su's explanation is not particularly convincing but the money trail has not been a matter which this inquiry has investigated. However, the transfers of funds are certainly consistent with Mr Su being an investor or business partner in ET Foods.
38. Mr Su returned to Australia in late June with his teenage son, they stayed at the factory for a couple of days until they could move into an apartment in the same Burwood complex occupied by Ms Chen and her ex-husband Yong Jian Diao. According to Mr Su his accommodation (which

he remained in for at least 12 months) was paid for by Ms Chen. This generous arrangement is consistent with Mr Su having a relationship with ET Foods beyond that of employer/employee.

39. Mr Su returned to China for 2 weeks so he could spend that time with his daughter who had to return to China for that period as a condition of her visa while studying in the United States of America. Ms Su's wife stayed with their son in Burwood so he could start school.
40. Two days before the fire on Sunday 18 July 2013, Mr Su returned to Australia and his wife returned to China the following day. She apparently remains in China working at the taxation office in Harbin. It has never been ascertained when Mr Su thought he might take up his employee position with ET Foods but perhaps it could be said that the fire commenced on the very day he was due to start work.
41. Two days after the fire Mr Su relinquished his majority shareholding and directorship retaining just 25% and Ms Chen became majority shareholder and director of the company. Both Ms Chen and Mr Su say that the change in shareholding and directorship did not reflect a change in investment or ownership as a result of the fire; rather they say it was merely an expedient means by which Mr Su was relieved from any director's obligations relating to completing documents following the fire. Whilst that may explain why he would relinquish being a director it does not explain why he would forgo majority shareholding.
42. Mr Su says that he worked at the Burwood restaurant until it closed (in April 2014). However, Ms Chen has told Detective Leite he only worked at the restaurant if it was short staffed. Mr Su moved out of the rented apartment in Burwood into an apartment in Bondi Junction which he bought for \$1 million in mid-2014. He said that the money for the 20% deposit was transferred from China by friends in the same manner in which he sent money to ET Foods. He said he held a mortgage with St George Bank. He has never worked for the factory pursuant to the 457 visa.
43. In early September 2013 Mr Su started up a company with Mr Liew, the first was to sell a container load of the biodegradable dinnerware products that he imported but he says that that product remains unsold in a storage facility. He then started a chicken products business supplied by a person who used to supply Ms Chen introduced to him by Mr Liew. Mr Liew was a shareholder and director of the company. Mr Liew says he does provide this service to clients and withdraws from the corporate role when the company starts trading.
44. Ms Chen and Mr Su deny that they were ever in dispute to give cause to a malicious or expedient act such as causing the fire.

45. Though Ms Chen and Mr Su's say they were not in business together, that evidence contradicted by evidence of Min Sun and also by evidence from Ms Chen's insurance broker Lauren Shen.
46. Ms Sun said that Ms Chen had a serious cash flow problem and that Ms Sun had assisted her by loaning her 2 significant sums of money, the first \$50,000 which was repaid and the second \$100,000 which remains unpaid. Ms Sun said that Ms Chen told her that Mr Su was going to be Ms Chen's business partner in ET Foods and he was going to bring in much needed capital and was going to help the business grow.
47. Min Sun said that Ms Chen had much difficulty in obtaining insurance for the factory because of the previous fire and the EPS paneling. The company had still not obtained insurance by the time Ms Sun left in October 2012.
48. This was verified by Lauren Shen, an insurance broker of FLP Worldwide when she gave evidence in the inquiry. Ms Shen provided documents to support her evidence of how the business struggled to obtain insurance for the Percy St business. She verifies that it was Ms Chen who gave directions. She also verifies that Ms Chen had referred to having a business partner from China who was coming to Sydney at the end of 2012.
49. In November 2012 Ms Shen telephoned and spoke with Ms Chen (in Mandarin) about a quote she was able to offer for assets fire insurance. Ms Chen asked her to wait a few days as she needed to speak to her business partner who was about to arrive from China. Mr Su arrived in Australia and Ms Shen received instructions to proceed with the insurance application. The Fire Insurance policy commenced on 14<sup>th</sup> December 2012 and expired on 14<sup>th</sup> December 2013, providing \$1.25 million asset coverage. On 1 July 2013 business interruption insurance to \$1million was added to the policy held by JUA.
50. Mr Su was interviewed about his role by investigator Bob King and police and it was clear that he knew absolutely nothing about the company operations or who they supplied or what he would be doing as sales and marketing manager – despite being there for 3 weeks in December 2012 and 3 weeks in April 2013. Mr Su said to Detective Leite "I don't have great knowledge of the company because I became a partner days before the fire happened". In fact he had been a "partner" for 8 months.
51. Tellingly in her interview on 2 September when Ms Chen was asked for the names of the people who worked for ET Foods she never put forward Mr Su's name. Further during the

interview she was asked about his involvement with ET Foods “my factory is helping him with the migration by lodging a Form 5, 457 Visa application” (Q442) and she said “we don’t have any written down agreement, but he wants to introduce his equipment...to produce...environmental products in Australia” (Q445). Mr Su told Mr King in his interview that he thought he might bring his products (not equipment) to sell.

52. Mr Su did not tell Mr King that he was supposed to start work as a sales manager. He just told him that he had 4 years residency under the s457 visa so his son could study in Australia. I can only conclude that Mr Su never had any intention of working as a salesman for Ms Chen.
53. Rather than telling Detective Leite that Mr Su was an experienced salesman in China Ms Chen told him that he was a lawyer (as Mr Su had said he was as well which turned out not to be quite the case) and they had been in business together in China (which seems not to be the case either).
54. Ms Chen had no plan that Mr Su was going to be her sales manager. I doubt that Ms Chen was assisting Mr Su’s migration as a favour without a significant amount of money being involved. In her first interview with Mr King he asked her if Mr Su had invested any money in the company and she replied “No, not yet” which suggests at least an expectation that was to occur. I also note that in Ms Chen’s interview with Mr King on 26 August Ms Chen said that the change in shares was “because we are busy...mainly for the purpose of migrating to Australia” (Q129) “Yeah he’s too busy if he was here he looks after the majority of the business, it will be something as troublesome for him that’s why we changed the percentage of the shares” (Q132), “it was changed several days ago, but you know...we were in a great relationship. I think he is coming here for migration only”.
55. When Mr King asked Mr Su about having a key to the premises he said he had stayed at the factory for 3 days before he moved to Burwood. He maintained that position when he gave his statement to Detective Leite in February 2015. His evidence was that he had stayed there not only for those 3 days but also the 2 periods of 3 weeks in April and December. He was also very reluctant to explain to Mr King the bedrooms at the premises. Both he and Ms Chen deny he had a key and Mr Su says that when he stayed there on every occasion he could only gained access when Ms Chen let him in and once she left and the gates were locked he stayed on site. I find that extremely unlikely.

### The Day before the Fire

56. Ms Chen says that on Monday 19 August 2013 she attended the factory in the morning to prepare the spices and left at some stage to buy provisions and then went to her restaurant in Burwood by 12 noon. She told Detective Leite that she and Su spent the evening in the Burwood restaurant together and left together at 10 p.m. (Q 282 – 287)
57. However, Mr Su told Mr King that throughout the day of 19 August he was in the company of Ms Chen and his wife. They had breakfast together at “our” Burwood restaurant and at 11 went shopping in the city. Ms Chen drove and waited for them. They returned to Burwood at about 2 pm. After lunch they returned to the apartment, picked up his wife’s luggage and Ms Chen drove them to the airport. Ms Chen dropped Mr Su and his wife off at the presumably back to Burwood (Q200 – 219).
58. Mr Su said he did not see Ms Chen until a couple of days after the fire. He did not go to the Burwood restaurant for dinner. Rather he telephoned Mr Liew and they arranged to meet for dinner - without Ms Chen and without her knowledge. He says that he and Mr Liew were friends and Mr Liew was helping him to adjust to living in Sydney and he could advise him on matters such as what would be a good school for his son. Mr Su said that the dinner had been pre-arranged, they did not discuss business and they did not have any type of business relationship or client/agent relationship. This evidence contradicted what he told Mr King in the interview in September 2013. He said that it was a business dinner and it had been pre-arranged. (Q220 – 233)
59. Mr Liew says that the dinner took place in Flemington. He said that the dinner was not pre-arranged but that he picked Mr Su up after he telephoned him. He said that he and Mr Su were not friends and that their relationship was an accountant/client relationship. He said that he later sent an invoice to Mr Su for the time he spent with him that night. Such an invoice or costing was not evident in the file Mr Liew later produced to the Inquiry. Mr Liew said he and Mr Su discussed business matters but Ms Chen was unaware of the meeting and Mr Su’s relationship with him. Both Mr Su and Mr Liew denied that there had been a falling out or a double cross situation against Ms Chen.

### The Morning of the Fire

60. Ms Chen said that she was home in bed when the telephone rang at about 3.30 a.m. A police or fire officer said her factory was on fire. She immediately went to the factory. She told Mr King and Detective Leite that Yong Jian Diao was asleep in his room at home but she did not wake him or tell him about the fire because they do not talk and her business has nothing to do with him. She told Mr King that she knew he was home because his shoes were on the stairs. She said in evidence that she knew he was home because she opened the door of his room and told him the factory was on fire. This is denied by Yong Jian Diao. When Ms Chen got to the factory she rang her son and told him about the fire and then he arrived with Yong Ji Diao later that morning. Telephone records are consistent with Ms Chen telephoning her son when he was in Randwick.
61. A few weeks after the fire Ms Chen closed the Ashfield delicatessen and in about April 2014 the restaurant was also closed. The ET Foods tax returns and company profit and loss sheets produced by Mr Liew do not suggest that the shop and restaurant were part of ET Foods which is inconsistent with Ms Chen's earlier indication to Mr King. What Ms Chen's true financial position at the time of the fire was is impossible to say on the evidence before the inquiry.

### Mr Yong Jian Diao

62. Mr Diao was interviewed by Mr King on 6 September 2013 and has provided a statement to police. His position is that he has no knowledge of the fire. He says he has really no involvement in the business other than being a worker who is paid about \$600 cash. He says that a couple of months prior to the fire he stopped working for a short time because Ms Chen because she stopped paying him claiming that her payment of his rent at the Burwood apartment was sufficient payment for his work at the factory. He says that he knows nothing about the business and Ms Chen didn't tell him about the fire because they don't talk.
63. From hearing Mr Diao in the witness box the production in the factory would not have occurred but for him as he was the man who was able to operate the smoke ovens, the boilers and managed the production. His involvement in the company was far more pivotal than just a labourer. Given the indiscernible cash flow of the businesses it is not impossible

to say whether Mr Diao was a disgruntled employee nor is it possible to say if Mr Diao was unhappy about Mr Su's involvement in the business.

64. Mr Diao says that he and Ms Chen don't talk because they don't get on. Ms Chen says the same thing. I find them both unbelievable given they are obviously closely associated and Ms Chen relied on Mr Diao for the entire production at the factory. He collected money from the Ashfield shop. He lived with her from the moment he arrived in Australia and has remained living with her. Telephone records show that they communicate with each other even when it is not a work day. I think that their claim of "non-engagement" is an attempt to explain why Ms Chen didn't tell Mr Diao the factory was on fire. Whether or not he was home in the apartment will never be known but there is sufficient evidence to suggest he may not have been.

#### Wooden Pallets being used to fuel the fire

65. Mr Diao says that he left the premises locked and secured at 5 pm on 19 August 2013. There were no people upstairs or downstairs. He gave evidence that he had placed the wooden pallets (that were later discovered to have been doused in petrol to fuel the fire) in the downstairs processing room because he used to stack them on top of each other to wipe the steam from the boilers off the ceiling. He was shown photographs and a diagram of the area and he was invited to mark on those documents where he says he had placed them and where he wiped the ceiling. Despite being afforded much time to carry out this task and numerous requests he declined to do so.
66. The area where the pallets were placed to start the fire was at the far end of the boilers in any event. The processing area had large extractors to remove steam. Ms Chen told investigators that she had never seen wooden pallets in the processing area, and indeed they did not have enough pallets. She said she had no knowledge of pallets being stacked to clear steam from the ceiling but suggested in her evidence that if they were there she wouldn't have seen it because she didn't go into the processing area and was always busy in her office when she was at the factory. I don't believe her. Mr Diao's evidence to explain the presence of the pallets was nonsense and his desire to attempt to put forward an innocent explanation is highly suggestive that he put them there for a suspicious activity such as lighting a fire.



Mr Jian Wei Diao

67. Ms Chen and Mr Diao's son, Jian Wei Diao was a student at the University of New South Wales in Kingsford. He lived in student accommodation. He says that the first he heard of the fire was when his mother called him early in the morning. His evidence was that he coincidentally met his father at the railway station on his way to the factory. This contradicts his father's evidence. In fact, Mr Diao's version changed from being picked up at the apartment to meeting at Auburn train station to meeting on a platform at another train station. The evidence in relation to Mr Diao's whereabouts is not easy to reconcile.
68. However, telephone records do show that at the time of the fire Jian Wei Diao was in Kingsford. I note that it wasn't until January 2015 that he was first interviewed by Detective Leite and it may be that the passage of time has caused him not to remember the details of his journey to the factory that morning.
69. In relation to whether anyone was living at the factory, there is evidence that at some stage Jian Wei Diao stayed there but he says he moved into university accommodation at the beginning of the year. He said that his parents lived at the factory for over a year before they moved to Burwood. He said he never had a key to the premises on a full time basis but was given one by his mother which he had returned to her.

Ms Li Mei Chen

70. Ms Chen was interviewed by Mr King on 26 August and 6 September 2013 and by Detective Leite on 7 January 2014 and she gave evidence with the assistance of a Mandarin-speaking interpreter. There are numerous times where Ms Chen was unable to provide an adequate answer or explanation and there were numerous inconsistencies. Her whereabouts on the day and more relevantly the night of the fire are contradicted by Mr Su and Mr Liew's evidence.
71. Whether anyone was resident at the factory at the time of the fire has always been denied by Ms Chen. But she has said that no-one ever lived there explaining that the beds were there because Mr Diao liked to lie down after lunch as he had stomach troubles. Mr Diao said he might sleep there if he had to start early to let a truck in. Ms Chen said sometimes their son would stay while visiting his father. Whatever the truth of the matter, the rooms

and bathroom facilities was consistent with some degree of recent use and whether that has any connection with the fire is an unresolved question.

72. Ms Chen sought to explain the fire to Detective Leite on the basis of an electrical fault, namely that a couple of days prior to the fire she had problems with the electrical plugs near the sausage machine (the origin of the fires) and that these 2 plugs were always having trouble. Detective Leite took a statement from the electrician George Qiu who said that he had been called out in 2013 for some short circuit problem but there was never anything wrong with the plugs, he suggested that it could have been due to the machines (from China) causing problems. His last invoice of attending the factory was 15 May 2013, certainly not within a couple of days of the fire. I don't know why Ms Chen would suggest an accidental cause of the fire when she knew investigators had concluded it was a deliberately lit fire.
73. Ms Chen seeks to explain the flaws in her versions in the interviews as being the result of translator/interpreter misinterpretations. She did not specify which issues or questions but whilst it might be the case that one or two responses were lost in translation, overall the explanation is not realistic.
74. When Mr King first interviewed Ms Chen she seemed unable or unwilling to tell him about the operations of the company in terms of structure, employees, and turnover. I think there were at least 3 reasons for that. First, because she was involved in so much suspect dealing relating to staff, wages, tax, immigration, and corporate matters that it was actually difficult for her to know a truthful and accurate picture of the company's finances and employees to be able to provide it to investigators. Secondly, for her to speak of those matters could expose her to further investigations and possibly prosecutions. Thirdly, for her to reveal the arrangements she did have and with whom, could inculcate others and give rise to the collapse of a dubious house of cards.
75. Accordingly, it is difficult to determine whether Ms Chen's inconsistencies, contradictions and lack of candour is related to a consciousness of guilt about being involved in the lighting of the fire at the factory or whether it is due to being concerned about repercussions from organisations such as the tax office and immigration department or indeed business associates.

### Missing CCTV Hard Drives

76. One striking example of Ms Chen's changeable evidence relates to what happened to the CCTV hard drives. Mr Milford, a forensic accountant has given evidence that when he attended 2 days after the fire, he was privy to a conversation where investigators told Ms Chen that the hard drives for the CCTV were not on the premises, and he asked her where they were. Mr Milford said her explanation was translated by either Mr Liew or Ms Shen (however neither could recall this conversation). Mr Milford said that Ms Chen explained that a few weeks prior to the fire a chicken truck delivery driver was using her forklift and broke something in relation to the CCTV and a person had picked them up and taken them away from the premises to repair them. Detective Leite said he heard this version as well.
77. In her interview with Mr King on 2 September 2013 Ms Chen gave a different version, saying that she wanted to prove that the chicken truck driver had damaged a wire when using her forklift by producing footage from the CCTV recorder. She said she didn't know how to do that so telephoned the installer and asked him to come out. He could not come out and so advised her to turn the recorder off so it would not record over the event she wanted to retrieve. The installer didn't get to come out to the factory prior to the fire. She said that it was a few weeks prior to the fire that this occurred.
78. When Ms Chen was interviewed by Detective Leite he said "You told me that you took the (hard drive) machine two weeks before the fire, is that true?" to which she replied "No the machine is still in there". Detective Leite told her that when he went into the cupboard the cables were just dangling and there was no box to which she replied "I thought you took it" and he said "No, You told me it got taken weeks before the fire" She said "I didn't take anything. I never took it. I did not take it...I turned it off; I already told you the reason why I turned it off, I called the person...who installed the CCTV...the Caucasian denied responsibility. I mean the driver. Then I said I want access to the video...the person who installed...the camera told me that turn it off..." (Q146 – 158).
79. Ms Chen tendered a photograph of the forklift showing damage to cabled wiring on the forklift which she says she took on 5 August 2013. The veracity of that photograph is difficult given that it relies on Ms Chen as a reliable and honest witness which I have much difficulty in finding. Her responses to Detective Leite that the hard drive was in the factory at the time of the fire and that she thought he had taken it from the premises is difficult to understand.

80. Dong Li installed the CCTV. He supports Ms Chen's evidence that he did advise Ms Chen to turn the hard-drive off and he would come when he could but was unable to attend the factory before the fire. He gave a statement a year after the fire at the request of Ms Chen for her insurance claim. He gave evidence in the inquiry where he also said he installed a security alarm system with key pad at the single wooden door and showed Ms Chen how to use it – something Ms Chen denies so it is difficult to reconcile the evidence.
81. If the CCTV hard drives were not removed prior to the fire then they were removed by the person who lit the fire on the night because they were worried that their crime would be detected. If that was the case the perpetrator knew the cupboard where the hard drives were. It would have been easier to have just turned them off before committing the crime. The evidence is that not only were the CCTV drives removed but so were the brackets which housed them to the wall as if to remove evidence that they were ever there or perhaps they were going to be used in some other premises. It remains another piece of evidence difficult to reconcile.

Non-legitimate 457 sponsored "employees"

82. Some of the documentation produced in the inquiry is fabricated and fraudulent and according to Min Sun it was at the direction of Ms Chen. Ms Chen says because she does not speak, read or write English her ability to explain a document is very limited. Whilst that may be the case, I have no doubt she was very aware of what she was representing to the immigration department in ET Food's application to be a 457 visa sponsor was submitted.
83. That application represented that Ms Xue was the managing director which was false as Ms Xue was apparently not involved in the company other than being a name on a document for Ms Chen. The application set out a company structure where there were full time positions occupied by a product manager, factory manager, a maintenance officer and 10 factory processing workers together with an accounting/administration manager and an accounts receivable manager. The proposal for the two nominated sales and marketing managers was on the basis they each would be paid \$60,000 salary plus superannuation. From what I can gather from the evidence the company has never had such a structure – other than Ms Chen running the business, Min Sun working in the office (and later replaced by Lili Yang) and about 5 possibly 6 people who were involved in the processing or production of the foodstuffs.

84. It may have been a complete misrepresentation to DIMIA that any of the sponsored workers were going to work at the factory. At the time of the fire, ET Foods had 2 employees sponsored under the 457 programme (there had been earlier unsuccessful applications for other people to carry out the same job). Ms Xiao Feng ZHANG, whose visa was granted on 31<sup>st</sup> July 2012 and Mr Tao SU, whose visa was granted on 30<sup>th</sup> May 2013.
85. At the time of the fire, according to DIMIA, ET Foods had 2 sales and marketing managers Ms Zhang and Mr Su. However, it is telling that Ms Chen did not nominate either of them as employees when asked by investigators for a list of employees. There was a difference of \$20,000 in Ms Zhang's purported salary and Mr Su's salary. It was not because they occupied those positions or that Mr Su's role was because he was a director of sales and marketing as opposed to being the manager. It was solely because his stated salary needed to be over \$80,000 as that was the minimum wage that could be approved for a person who was older than 50 years under the 457 visa programme.
86. Neither Ms Chen nor Mr Su advised DIMIA that the factory was destroyed on 20 August 2013. Consequently, Ms Chen has been banned from being a sponsor under the 475 scheme for a period of 3 years and Mr Su was informed by DIMIA in early 2015 that he was required to obtain a new sponsor. At the time of the inquiry he had not. Mr Su does not appear to need to work in Australia which is consistent with him never intending to be an employee of ET Foods. Whether his involvement was one as an investor, business partner, migrant for reward is unable to be reconciled but his association with ET Foods was not as an employee and Ms Chen does not strike me as a person who does something for nothing so there must have been a financial advantage to her that did not go according to plan.

False Invoices for Equipment and Questionable explanations for undocumented transfers of funds suggests business wasn't as it seemed and financial situation not so positive

87. Ms Chen has shown herself to be capable of submitting false documentation in relation to ET Foods. For example, the document submitted in the application for DIMIA approval by ET Foods was an invoice purporting to be issued by Sunny Day Trading Pty Ltd to ET Foods. That invoice is a fabrication purporting to evidence over \$177,000 worth of cooking and packing equipment being purchased by ET Foods. The address on the invoice is that of the migration agent used by Ms Chen and the address for Sunny Day Trading is the old Berry St factory address.

88. Ms Chen has given similar documents to Mr Liew to evidence ET Food expenditure on equipment which is contained in other invoices purporting to be from China. Mr Liew has given evidence about the returns for 2011, 2012, 2013 and 2014 he submitted for ET Foods and has explained that he relied on what Ms Chen told him the items were for as they are not able to be identified in the book keeping or bank accounts. It is abundantly evident that the financial returns are not documents from which a true picture of the company's financial status can be ascertained.
89. Ms Chen has told Mr Liew that she spent over \$800,000 on equipment to set up the factory. The company account has the opening balance of about \$500,000. Mr Liew explains that because he was instructed that the equipment replaces equipment destroyed in the Berry Street fire it can be written off completely rather than be included for depreciation so the accounts have not itemized what the equipment was, its price or from where it was purchased. There does not seem to be a set of reliable invoices identifying this expenditure.
90. Likewise the banks records show money going into and out of differing personal and company accounts, coming into Australia from China and it impossible to identify its purpose and providence. Again Mr Liew says he relies on what Ms Chen tells him about those funds.
91. Ms Chen told investigators that she had no debts and borrowed no money, thus there was no financial motive to cause the fire to secure an insurance payout. Whilst the books might balance on paper they do not bear up to scrutiny and the real financial situation is accordingly submerged from reality.
92. When it was put to Ms Chen that she would not have handed over control of her company to Mr Su unless it was for business she said she trusted him like family just as she trusted Ms Xue when she had sole directorship. Whilst this might be the case at first glance, I do not think Ms Chen does anything for nothing. There would be some form of significant financial or business gain to her for the arrangement other than simply helping her friend. On balance, Ms Chen likely did have a need for substantial amount of money from a person such as Mr Su.

### A disgruntled Previous Investor, Border Control and Competitors

93. Ms Chen apparently had investors or “partners” when she had the factory at Berry Street. One of the other shareholder directors was a man called Li Ping Zhang who was also a director. There is some suggestion that he was being extorted or at least violently pursued by criminal persons for possibly gambling debts. Mr Zhang left Australia 2 – 3 months prior to the fire at Berry Street. There is no evidence that he was aware that Ms Chen changed the company name and placed herself as sole director and shareholder and subsumed the assets for the company of which he was a joint shareholder and director.
94. Min Sun gave evidence that the reason Ms Chen placed her friend Ms Guilan Xue as sole shareholder and director was so that she could distance herself from the company if it received any insurance money so Mr Zhang could not ask her for any money. DIMIA says that Mr Zhang has not returned to Australia since he departed in early 2009. However, Min Sun said that sometime after the Berry Street fire Mr Zhang did come into her aunt’s shop inquiring about the fire and Ms Chen’s whereabouts.
95. DIMIA records also indicate that Ms Chen has never left Australia since 1996 but this is not correct. A copy of Ms Chen’s Australia passport, which she says she uses to depart and arrive in Australia, was sighted. The photograph contained in that passport is according to Ms Chen’s son, a photograph of Ms Chen when she was some 20 years younger. If Ms Chen’s travel is possible without DIMIA records being accurate then it is entirely possible that Mr Zhang has been back in Australia despite DIMIA records suggesting otherwise.
96. If Mr Zhang was owed money by Ms Chen he may want to light the fire as a vengeful act however there is no evidence that he was proximate or in possession of a key to enter the premises. Whoever was involved in the lighting of the fire had access to the building with the use of a key. Ms Chen certainly hasn’t suggested to investigators or this inquiry that she had any information or concerns about Mr Li Ping Zhang.
97. Ms Chen suggested to investigators that she had competitors in Melbourne that may have wanted to damage her business. There is no evidence of this and given the lack of a break in to the premises, I think her suggestion was purely fanciful seeking to put something rather than nothing up as a possibility other than herself.

### "Sudden" Business Interruption Insurance

98. From the outset the fire at Unit 5/15 Percy Street was always a fire known to be deliberately lit with the use of petrol by someone who had access to the premises. Ms Chen was a primary person of interest given the previous fire at Berry Street. The fact that she took out business interruption insurance on 1 July 2013, just 6 weeks prior to the fire (co-incidentally similar to that in Berry St) could be just another co-incidence.
99. Ms Shen said that she had advised Ms Chen to take out business interruption insurance but she understood that Ms Chen was reluctant to do so until she was able to accurately assess the turnover. Ms Shen thought the commencement of the policy was timed so that it coincided with the commencement of the new financial year and by that stage Ms Chen had a fair idea of what her turnover was so she could calculate the insurance more accurately. However, there is no evidence that any account records were relied upon to make this calculation.

### Depleted Stock Levels

100. It has been suggested that there was very little stock inside the cool store, all the stock having been placed in the refrigerator units – one of which was in the car park and the other in the loading dock. Having viewed photographs I think that this is correct. Whether this was a deliberate minimizing of stock prior to lighting a fire in your own factory or whether it was a co-incidence that most of the stock had been placed in containers to avoid fire damage is another piece of unresolved evidence – as it turned out the stock in the loading dock container had to be discarded.

### The Question of Referral for Prosecution

101. Mr O'Neil submits that it is unlikely that Ms Chen was involved in the fire because she had put so much work into a big operation and the factory was successful and would have continued to be. I agree the factory was impressive and a legitimate enterprise and that Ms Chen put a huge effort in to re-establishing the company. But I think that she has a few too many pokers in the fire and something has not gone according to plan and whether she



chose to lose the business rather than have Mr Su take over control and/or to extricate herself and recoup her losses through insurance I do not know.

102. Mr Su's position is that he wasn't involved in the fire because it was not in his interests as he needed the company shareholding for his migration. This contradicts his statement to Mr King that when he found the documents troublesome while he was in China and he had decided before the fire that he was going to return them to Ms Chen. I think Mr Su had plans afoot and was receiving some assistance from Mr Liew so once ET Foods had served its purpose for his 457 migration he was free to do as he pleased. Whether he had an argument with Ms Chen when she wanted money or more money I do not know.
103. Mr Diao says that he wouldn't light the fire because he has so few employment prospects, this was a job that was very good for him, and he wanted a peaceful life. Mr Diao still lives with Ms Chen so their relationship isn't employment related. I think Mr Diao and Ms Chen have more in common than the factory and what her interests are may well be his. Whether he was involved at her bidding I do not know.
104. Despite the evidence that the fire was deliberately lit the investigation into who lit it was not vigorously pursued. Interviewing of persons was difficult due to Ms Chen's lack of effort in providing names and details of employees to investigators but there was a lack of investigation into financial records, only limited telephone records were obtained, CCTV footage from 9 pm was viewed but not before, the discrepancy in Ms Chen and Mr Su's evidence about where each were the previous evening was not investigated. The company lap top which was on the premises and undamaged was not seized. Fingerprints were not tested around the CCTV cupboard. The explanation surrounding the missing CCTV, bank accounts and financial records and computer entries were not scrutinised as they should have been. The true nature of the relationships has not been scrutinized.
105. Mr Gambi for JUA Underwriting Agency and Mr Dickson for CHU Insurance submit that I should refer Ms Chen Mr Su and Mr Diao to the Office of the Director of Public Prosecutions for an offence such as a conspiracy to damage the premises by fire. A course resisted by Mr O'Neil. I am unable to accept their submission as I do not think that the evidence is capable of satisfying a jury as to the guilt of any person/s of an indictable offence relating to the fire.
106. I now answer the questions posed at the commencement of this Inquiry by Coronial Advocate Ms Lorenc who worked tirelessly in preparing and conducting this inquiry:

### Finding

On 20<sup>th</sup> August 2013 certain real and personal property located at Unit 5/15 Percy Street, Auburn was destroyed by fire. The origin of the fire was the south west corner of the processing area on the ground level of the premises of Unit 5/15 Percy Street. The cause of the fire was the result of an introduced ignition source to a stack of wooden pallets doused in petrol. The fire spread to the mezzanine level where the corner had also been doused in petrol. I am unable to be satisfied as to the identity of the person or persons responsible.

Magistrate E Truscott

Deputy State Coroner

19 August 2015