

10:03:08 1           **THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY 7TH JULY**

2           **2004 AT 11.30 AM:**

3

4           CHAIRMAN: Morning Mr. Gallagher.

11:35:06 5

6           MR. GALLAGHER: Good morning.

7

8           Mr. Owen O'Callaghan please?

9

10          **OWEN O'CALLAGHAN, HAVING BEEN SWORN, WAS EXAMINED**

11          **AS FOLLOWS BY MR. GALLAGHER:**

12

13          CHAIRMAN: Morning Mr. O'Callaghan.

14          A.       Morning.

15          MR. GALLAGHER: Good morning Mr. O'Callaghan. Mr. O'Callaghan, you were  
16          circulated with the Tribunal's brief over a period of months.

17          A.       Yes I was.

18          Q. 1      Did you disclose any part of that brief to any person other than your legal  
19          advisers?

20          A.       No.

21          Q. 2      Did you authorise or do you know of anybody who did disclose any part of that  
22          brief to anybody?

23          A.       No.

24          Q. 3      I see. Mr. O'Callaghan you have made number of statements to the Tribunal. I  
25          intend, for the record, to go through some of those statements that are  
26          relevant to this part of the present module. The statements will appear on  
27          screen before you and you can follow them if you don't have a hard copy of your  
28          own statements with you.

29

11:36:38 30       The first statement I want to open is a statement made by you dated 3rd of May

11:37:00 1 2000. It's on page 971.

2  
3 And it reads as follows:

4 "I Owen O'Callaghan of Glen Farm, Upper Rochestown, Cork, make this statement  
11:37:16 5 on my own behalf and on behalf of Barkhill Limited and Riga Limited. The  
6 various companies referred to in this statement are as follows:

7  
8 A. O'Callaghan Properties Limited. This company hold a number of non retail  
9 investments, but carries out no direct development work itself. However  
11:37:33 10 generally all letters written on behalf of any of the various companies in  
11 which I have an involvement are written on O'Callaghan Properties Limited  
12 notepaper.

13  
14 B. Riga Limited. Riga Limited is the company which has carried out all the  
11:37:47 15 major retail developments and holds some investment properties.

16  
17 C. Merrygrove Estates limited. This company was originally owned by Albert  
18 Gubay, but was acquired by Riga Limited as part of the transaction relating to  
19 the Neilstown site referred to below. Subsequently when arrangements were made  
11:38:04 20 for me to become involved in Barkhill Limited, this company became a subsidiary  
21 of Barkhill Limited. Subsequent to the purchase of Riga Limited of Tom  
22 Gilmartin's interest in Barkhill in 1996, the company again reverted to Riga  
23 ownership.

24  
11:38:20 25 D. Barkhill Limited. This company was owned by Tom Gilmartin which became  
26 involved in the Quarryvale site. Riga Limited and AIB later became shareholders  
27 in this company.

28  
29 Neilstown site. Riga Limited was involved in various developments in and  
11:38:32 30 around Cork city in the early 1980's. In the late 1980's I sought to expand

11:38:38 1 the company's interest to Dublin. The first site I looked at was at  
2 Cooldrinagh, Lucan, County Dublin. The site was sufficient to accommodate a  
3 shopping scheme, but after further investigation it transpired that the site  
4 was not correctly zoned for retail. Following various discussions with members  
11:38:56 5 of my professional team, I discovered for the first time, the difficulties  
6 which were likely to be encountered in having land rezoned. My professional  
7 team explained to me that in order to have the Cooldrinagh lands rezoned it  
8 would be necessary to canvas local councillors to put through a Section 4  
9 motion, effectively forcing the local authority officials to grant the planning  
11:39:18 10 permission. I decided at this stage that I did not wish to be involved and  
11 consequently dropped the site, subsequently Riga became interested in a site at  
12 Neilstown. This site was zoned town centre since 1972 as part of the original  
13 three town centres planned on the western side of Dublin. One was Tallaght,  
14 the other was Blanchardstown and Neilstown was the third.

11:39:33 15

16 Merrygrove Estates, a company owned by Albert Gubay had arrangements made with  
17 Dublin Corporation to purchase the Neilstown site. Riga Limited purchased the  
18 share holding in Merrygrove in 1988, Early 1989.  
19

11:39:49 20 As part of ongoing discussions with prospective anchor tenants as to their  
21 interest in the Neilstown site I was informed by Quinnsworth that there was a  
22 competing site owned by a Tom Gilmartin at the junction of the N4 and M50. On  
23 making enquiries I discovered that this site was not zoned for retail and took  
24 no further action. This site is known variously as Westpark, Quarryvale,  
11:40:15 25 Liffey Valley, Lucan/Clondalkin Town Centre.  
26

27 In due course a planning application for Neilstown was prepared and submitted  
28 to the local authority.  
29

11:40:27 30 I believe that I was contacted first by Tom Gilmartin in late 1988 to see if I

would be interested in selling my interest in the Neilstown site. My initial reaction to this was that I would not be interested and wished to continue my own development. However, Tom Gilmartin persisted in his approach and I decided to visit the Gilmartin site. It was apparent that should Tom Gilmartin be successful in rezoning the site at Quarryvale there would be no contest between the two sites, as clearly the Gilmartin site was in a superior location. Any possibility of successful rezoning would have killed off any interest from anchor tenants in my Neilstown site, as they would certainly have waited until the possibility of zoning of the Quarryvale site was clarified.

Discussions followed with Tom Gilmartin. Frank Connolly in an article in the Sunday Business Post described correspondence between me and Tom Gilmartin as follows (I do not have copies of this correspondence).

"The letter followed a meeting between Gilmartin and O'Callaghan in December 1988 held to discuss possible co-operation in the scheme for what was then known as the proposed Clondalkin/Lucan satellite town.

In a letter to Gilmartin the following day, December 8, O'Callaghan recorded that among the options discussed was a joint venture 50/50 agreement for the development or a complete buy out of the project by O'Callaghan:

1. We believe that the most suitable proposition would be a joint venture, 50/50 agreement.

2. We also outline our interest in exploring details with you of a buy out of the project subject to your agreement to remain an integral part of the team."

In his letter, O'Callaghan also pointed to the experienced team of in-house architects, engineers and other project co-ordinating personnel, before

11:42:22 1 indicating that he could achieve early planning permissions on the project.

2

3 On reflection since our meeting, if we can come to a suitable working  
4 arrangement we would suggest we could have a very major beneficial role in the  
11:42:36 5 project, in assisting in having the planning application granted in a  
6 relatively short programme which would be to the advantage of all concerned",  
7 O'Callaghan wrote.

8

9 That's the end of the quotation from the Sunday Business Pose article, sorry, I  
11:42:54 10 beg your pardon, the end of the quotation from the letter.

11

12 The article continued as follows,  
13 "Gilmartin subsequently replied and claimed that any joint venture proposal  
14 could place the finances he had in place for the ambitious project in jeopardy.

11:43:08 15

16 In looking at what involvement I could envisage you having within my scheme at  
17 this stage, I'm afraid I would have to rule out any consideration of either a  
18 joint venture agreement or indeed selling out my interest to you", Gilmartin  
19 wrote on December 20th, 1988.

11:43:24 20

21 "You will appreciate in respect of the joint venture proposal, that while I  
22 have my finances arranged in principal, the details of these arrangements could  
23 be placed in danger should an agreement such as you suggest, be entered into by  
24 me. On the question of selling my entire interest in the project, I have  
11:43:44 25 decided that this proposal is completely out of the question." that's the end  
26 of the newspaper quotation.

27

28 You continue your statement as follows:

29 "The reference to a "beneficial role in the project in assisting in having the  
11:43:57 30 planning application granted in a relatively short programme" related to the

11:44:02 1 fact that Tom Gilmartin told me (and I believed at the time) that once the  
2 zoned site at Neilstown and the Quarryvale site were under the same ownership  
3 the zoning could have been easily transferred from one site to another.

4

11:44:16 5 Option agreement dated the 31st of January 1989. O'Callaghan Properties and  
6 Thomas Gilmartin. (being an option for Tom Gilmartin to acquire Riga's  
7 interest in the Neilstown site .) (copy attached in appendix 1).

8

9 Various discussions followed and finally an option agreement was entered into  
10 by O'Callaghan Properties Limited (on behalf of Riga Limited) with Tom  
11 Gilmartin, for him to purchase the interest of Riga in the Neilstown site.

12

13 When the final terms were agreed, the option agreements were duly prepared and  
14 sent to Seamus Maguire, Tom Gilmartin's solicitor. At a meeting in Seamus  
15 Maguire's office the documents were finalised.

16

17 The terms finally agreed provided for:

18

A. Payment of eight hundred thousand pounds on the signing of the agreement.

19

11:45:09 20 B. The option to be exercised on or before the 31st of October 1989, by  
21 payment of 1.35 million on the 31st day of October 1989 and handing over a bank  
22 guarantee, guaranteeing the payment of the sum of 1.35 million on the 31st day  
23 of January 1990.

24

11:45:25 25 C. Tom Gilmartin to use his best endeavours to obtain the return of the  
26 deposit of 300,000 pounds by paid O'Callaghan Properties through Merrygrove to  
27 Dublin Corporation.

28

29 D. In the event of Tom Gilmartin not exercising the option in the manner  
30 provided in B above, then Tom Gilmartin was to procure that the Quarryvale site

1 would be subject to a covenant not to be used for retail purposes for five  
2 years from the date of the agreement. This was to enable O'Callaghan  
3 properties to build the Neilstown scheme without threat from Quarryvale.

4

5 During the final discussion in Seamus Maguire's office, Seamus Maguire advised  
6 Tom Gilmartin that the option agreement should not be signed by Tom Gilmartin  
7 unless it was subject to Tom Gilmartin obtaining planning permission for the  
8 Quarryvale site. Tom Gilmartin says this was not a term of the agreement with  
9 me and he did not expect me to wait for the money. He was prepared to take the  
10 risk.

11

12 Seamus Maguire later advised at the same meeting that in his opinion Tom  
13 Gilmartin would be unwise to sign any agreement which was not subject to  
14 planning permission. My solicitor John Deane indicated that the obtaining of  
15 planning permission by Tom Gilmartin for his Quarryvale site was not a term of  
16 the agreement and Tom Gilmartin agreed with this. Tom Gilmartin subsequently  
17 signed the option agreement unconditionally and handed over a cheque for  
18 800,000 pounds.

19

20 The second payment (1.35 million) was not made on the due date on the 31st of  
21 January 1990, but was paid some months later", I pause there Mr. O'Callaghan to  
22 point out that in a letter of the 12th of March 2004, your solicitors corrected  
23 that date and pointed out that the date of the 31st of January 1990 should have  
24 been the 31st of October 1989.

25

26 "Thereafter I contacted Tom Gilmartin on a regular basis seeking payment of the  
27 remaining 1.35 million, but same was not forthcoming. During the period of  
28 time when I was waiting for the balance of the proceeds of the Neilstown site  
29 Tom Gilmartin would tell me about the various funding packages that he was  
30 trying to put in place to pay the balance of our money. In all cases, these

1 proposed funding arrangements were "definitely going happen", it was just a  
2 matter of days. Every time I tried to help a refinancing project by speaking  
3 to those involved at Tom Gilmartin's request I was accused by Tom Gilmartin of  
4 taking over the project.

5  
6 Despite being given a number of extensions, Tom Gilmartin still did not  
7 complete the purchase. Following Tom Gilmartin's failure to complete, I  
8 finally decided that I had no option, but to continue with the development at  
9 the Neilstown site.

10  
11 None the less, I was subsequently still prepared to consider allowing Tom  
12 Gilmartin to complete the agreement. I even wrote at Tom Gilmartin's request  
13 to Minister Flynn on the 5th of February 1990 (copy of this letter is attached  
14 in appendix 2) confirming this fact and also the fact that Tom Gilmartin had  
15 confirmed that he would complete the transaction that week. Tom Gilmartin (I  
16 believe) had told the Minister that he had an agreement with me to buy out my  
17 interest in the Neilstown site which was properly zoned for retail. Apparently  
18 the Minister asked Tom Gilmartin for some confirmation that such an arrangement  
19 was in place. Tom Gilmartin asked me to give the necessary confirmation to the  
20 Minister, which I did.

21  
22 Despite the fact that Tom Gilmartin was unable to pay the 1.35 million to  
23 O'Callaghan Properties, he still made preliminary soundings to have the zoning  
24 changed from the Neilstown site to the Quarryvale site.

25  
26 I became aware of this fact and made it clear to Tom Gilmartin that I would not  
27 agree to this happening until I was paid and furthermore, in the event of any  
28 formal efforts being made by Tom Gilmartin to have the Neilstown site zoning  
29 transferred to Quarryvale, I would object to any such transfer. In fact, Sean  
30 O'Leary BL was instructed in this matter on the 22nd of March 1990 and his

11:49:40 1 advice sought on the issue of transferring the zoning from the Neilstown site  
2 to Quarryvale site, as I was extremely concerned that had Tom Gilmartin might be  
3 able to change the zoning from Neilstown to Quarryvale to my detriment. (copy  
4 of letter of instruction from Deane and copied to Sean O'Leary BL is annexed  
11:49:54 5 here to in appendix 3)

6  
7 In July 1990 an attempt was made by Tom Gilmartin to revive the transaction and  
8 correspondence passed between Deane & Company and Seamus Maguire. The  
9 suggestions made by Tom Gilmartin were not acceptable. (copy correspondence  
11:50:10 10 annexed hereto in appendix 4.)

11  
12 In October 1990 another attempt was made by Tom Gilmartin to finalise the  
13 transaction and again I was prepared to cooperate. This time he was using  
14 Derek Saunders of Park Grange Investments to put the refinancing package in  
11:50:25 15 place. Derek Saunders was in contact with AIB directly and apparently  
16 confirmed the transaction could be completed by February 19th 1990. This did  
17 not happen. My solicitor received a list of queries by letter dated 4th  
18 December 1990 from Ciaran Murray & Company solicitor, 9 the Crescent, Galway.  
19 (copy letter and queries annexed hereto in appendix 5) but the refinancing  
11:50:51 20 package never materialised.

21  
22 MR. SREENAN: Just on a point of clarification there, Chairman, I think  
23 Mr. Gallagher reading that, mistakenly said by February 19th 1990, it should be  
24 Friday 19th October 1990.

11:51:04 25  
26 CHAIRMAN: All right.  
27

28 MR. GALLAGHER: Sorry on -- "That the transaction would be completed by Friday  
29 19th October 1990, this did not happen." is that it?

11:51:19 30

11:51:19 1 The next statement I want to refer you to Mr. O'Callaghan is a statement of the  
2 24th of November 2003, which was in response to a letter from the Tribunal of  
3 the 7th of November 2003 and this is to be found on page 998.

4

11:51:45 5 This was a letter in which you were asked to deal with information that had  
6 been conveyed to the Tribunal by Mr. Sean Haughey.

7

8 Your statement reads as follows:

9 "In the matter of Sean Haughey and Thomas Gilmartin.

11:52:05 10

11 At some point during the course of 1989, on a specific date that I cannot  
12 recall, I met with Sean Haughey at Mr. Haughey's request at his office in  
13 Dublin.

14

11:52:15 15 Mr. Haughey told me that Thomas Gilmartin had made comments to him as follows.

16

17 1. That he, Mr. Gilmartin was having difficulties (involving George Redmond  
18 and Liam Lawlor amongst others) concerning his attempts to develop lands at  
19 Irishtown/Quarryvale.

11:52:29 20

21 2. That Dublin was awash with corruption and that one cannot do anything in  
22 Dublin without spending money. I.e. if one wanted anything done the  
23 councillors were the people with the power and had to be paid.

24

11:52:40 25 I indicated to Mr. Haughey that Mr. Gilmartin had made comments to me similar  
26 to those outlined by Mr. Haughey, as having been made by Mr. Gilmartin to  
27 Mr. Haughey, at 2 above. I indicated to Mr. Haughey that I was not in a  
28 position to either confirm or contradict the nature of the comments made by  
29 Mr. Gilmartin to both Mr. Haughey and I, as outlined at 2 above, as I had no  
familiarity whatsoever with how such matters operated in Dublin. I indicated

11:53:11 1 to Mr. Haughey that my only experience was in Cork and Limerick where the  
2 system operated in a different way to that perceived by Mr. Gilmartin as  
3 applying to Dublin and where (in Cork and Limerick) the managers words are  
4 final."

11:53:26 5 That statement is the 24th of November 2003, as I have said.

6  
7  
8 A further statement was furnished by you dated the 5th, sorry 1st of March 2004  
9 at page 3741 and it relates to your dealings with Mr. Hanrahan.

11:53:53 10 "During the course of 1987, 1988 and to January 1989, I had no involvement in  
11 Quarryvale. In January 1989 I executed an agreement to transfer the Balgaddy  
12 site to Tom Gilmartin. In December 1990, my company took a stake in  
13 Quarryvale.  
14

11:54:09 15 During 1989 and 1990, even though I had no involvement in the Quarryvale site,  
16 Tom kept me informed as to progress on Quarryvale and in particular the  
17 numerous attempts he was making to finance the project and to complete the  
18 purchase of the Balgaddy site from my company. Having regard to the fact that  
19 Tom Gilmartin was in default in completing the agreement which we reached in  
20 relation to the Balgaddy site, I was obviously interested in his progress in  
21 the Quarryvale site as funding for that development was to be used to complete  
22 the Balgaddy agreement.  
23

24  
11:54:39 25 Finbarr Hanrahan came to my office in Cork during the second half of 1989 to  
26 seek support as he was standing for the Senate. At his request I gave him the  
27 name of two or three councillors to contact.

28  
29 An appointment was arranged for Tom Gilmartin to meet Finbarr Hanrahan. I  
30 cannot recall whether it was arranged by Tom Gilmartin or me. This meeting

1 took place at Buswells Hotel where I pointed out Finbarr Hanrahan to Tom  
2 Gilmartin, Finbarr Hanrahan having arrived before us. I refer to this meeting  
3 which is the subject of a separate statement.

4

5 With regard to the correspondence from Ciaran O'Malley, faxed to my office on  
6 24th of March 1990, I believe I told Tom Gilmartin that some politicians were  
7 meeting in Cork and Tom Gilmartin asked me to make a presentation to them.  
8 Subsequently, I must have felt that making such a presentation was not feasible  
9 because I don't believe that I actually ever made such a presentation nor do I  
10 believe I ever attended at this meeting.

11

12 I wrote to the Padraig Flynn, then Minister for the Environment, on of the 5th  
13 of February 1990. See page 5 my statement submitted to the Tribunal on 3rd of  
14 May 2000 and to appendix 2 thereto."

15

16 The fifth statement I want to read into the record is also dated 1st of March  
17 2004, to be found at page 3737. It's headed "Statement of Owen O'Callaghan  
18 dated first March 2004.

19

20 "As outlined in my statement to the Tribunal of May 2000, when I decided to  
21 expand my companies interests in Dublin, I looked at a site in Cooldrinagh in  
22 Lucan. I was introduced to the site by my architect, Ambrose Kelly (Ambrose  
23 Kelly had acted as my architect on projects in Cork, Paul Street and Merchants  
24 Quay since 1983) who in turn introduced me to the solicitor acting for the  
25 vendor, Mr. Paul Smithwick.

26

27 The site at Cooldrinagh was sufficient to accommodate a shopping centre, but  
28 was incorrectly zoned. I was informed that there should no difficulty in  
29 having the site rezoned for retail because the local Lucan councillors would be  
30 supportive. My recollection is that this was said to me by Paul Smithwick. In

1 particular I understood again from Paul Smithwick that Finbarr Hanrahan, who  
2 was from the Lucan/Clondalkin ward, was fully supportive of the proposed retail  
3 project at Cooldrinagh. This was the first time I heard mention of the name of  
4 Finbarr Hanrahan, but to the best of my recollection I did not meet him at that  
11:57:22 5 time. I never proceeded with the Cooldrinagh site.

6

7 At a local function in Lucan/Clondalkin, probably towards the middle of 1988, I  
8 met Finbarr Hanrahan who was one of the local councillors. Finbarr Hanrahan  
9 told me that as a local councillor he fully supported my proposed development  
11:57:41 10 at Balgaddy. He also informed me that he was originally from the south of  
11 Ireland, but I cannot remember if it was either West Cork or Kerry.

12

13 I believe the next time I met Finbarr Hanrahan was in Cork when he arrived  
14 unexpectedly at my office in Cork. This would have been in the second half of  
11:57:59 15 1989. He told me he was canvassing for the Senate election and at his request  
16 I gave him the name of two or three councillors who he might contact. I said  
17 to him that he could use my name as a reference contact.

18

19 Sometime in 1989 Tom Gilmartin asked me to introduce him to Finbarr Hanrahan.  
20 I don't specifically recall, but this request was probably made by Tom  
21 Gilmartin on the phone. Tom wanted Finbarr's Hanrahan's support for Quarryvale  
22 as he was one of the local councillors. I am not sure if it was Tom Gilmartin  
23 or I who made the appointment. The meeting was arranged for Buswells Hotel. I  
24 do not recall the date upon which this meeting took place, but I am reasonably  
25 confident that it was not before the 31st of January 1989 as that was the date  
26 on which Tom Gilmartin and I signed the option agreement for Balgaddy and prior  
27 to that, our respective sites were rival. (see appendix 1 to the statement  
28 that I submitted to the Tribunal on 31st of May 2000)

29

30 I arrived at the hotel with Tom Gilmartin and John Deane as I believe the three

1 of us had been meeting previously at the office Tom Gilmartin used in  
2 St. Stephen's Green. I believe that these were the Arlington offices. Other  
3 than possibly arranging the meeting I did not have any discussion with Finbarr  
4 Hanrahan in relation to the Quarryvale site either at or prior to the Buswell  
5 meeting. Finbarr Hanrahan was already there. I pointed him out to Tom  
6 Gilmartin and Tom Gilmartin went straight over to him. John Deane and I sat  
7 some distance away while Tom Gilmartin and Finbarr Hanrahan spoke to each  
8 other. We could not hear what they were saying.

9

10 Within 15 minutes or so Tom Gilmartin walked out of the hotel and John Deane an  
11 I followed him out on to Molesworth Street. He seemed quite upset and when I  
12 asked him what was wrong he told me that Finbarr Hanrahan had asked him for one  
13 hundred thousand pounds. He said to me that here he was trying to bring all  
14 the barefoot Irish immigrants back from Luton and this effer asked for 100,000  
15 pounds. He said that he was going into the Dail the following day to tell the  
16 Ministers.

17

18 I believe the foregoing represents all the contacts I had with Finbarr Hanrahan  
19 up to the 31st of December 1990. I don't believe that I had any written  
20 communications with him." signed Owen O'Callaghan dated 1st of March 2004.

21

22 They are the statements to date you have made Mr. O'Callaghan which are  
23 relevant to the current phase of this module. Are these statements correct?

24

A. Yes.

25

Q. 4 And these statements are essentially your evidence to the Tribunal in relation  
26 to the matters dealt with in these statements?

27

A. That is correct.

28

Q. 5 Would you just tell the Tribunal briefly, something about your background  
29 Mr. O'Callaghan, please?

30

A. My company is in business since 1969. We have been involved initially in the

- 12:01:00 1 house building business, in the mid '70s we moved into the more commercial side  
2 of building and in the '80s we became what we call developers. The reason for  
3 that was that at that time the economy, things were pretty quiet, pretty slack.  
4 And we decided try and create our own work by becoming developers and  
12:01:25 5 developing our own projects, mainly in the retail field. Those operations took  
6 place mainly in Cork and in Limerick. We would probably employ between 3 and 4  
7 hundred people, on a continuous basis. Most of our development that is we have  
8 completed over the past couple of years we have maintained, we have kept. And  
9 it was our ambition in the late '80s to move and get established in Dublin.
- 12:01:55 10 Q. 6 I think that up to the late 1980s, the early 1990s, you had been involved in  
11 developments in Limerick, in I think two developments in Limerick, a number of  
12 developments in Cork, including Merchants Quay, you had been involved, I think,  
13 in a development in the UK, is that right?
- 14 A. That's correct.
- 12:02:20 15 Q. 7 And you also expressed interest and perhaps were involved in office, an office  
16 development, Cumberland House, looked at properties in Arran Square around this  
17 time?
- 18 A. Yes.
- 19 Q. 8 Arran Quay, etcetera. And at this stage at the end of the 1980s you were a  
20 very substantial company or group of companies, is that correct?
- 21 A. Yes.
- 22 Q. 9 I think that Mr. Deane became a director of Riga Limited in 1982, when the  
23 company was incorporated?
- 24 A. I believe that is correct.
- 12:03:04 25 Q. 10 And effectively Mr. Deane has been a partner of yours since the very early  
26 days, early 1980s?
- 27 A. In most of my companies, yes.
- 28 Q. 11 Most of your companies?
- 29 A. Yes.
- 12:03:19 30 Q. 12 And he is a direct of O'Callaghan Properties, was at all times a director of

- 12:03:27 1 Riga Investments Limited?
- 2 A. Correct.
- 3 Q. 13 Riga Limited rather. And he is a director of Ellendale Investments Limited,
- 4 which effectively is a holding company for many of the companies which you
- 12:03:43 5 jointly own?
- 6 A. For some of the companies, yes, correct.
- 7 Q. 14 You -- may I have 971 please? In this statement you say that you are making
- 8 the statement on behalf of Barkhill and Riga Limited. Is there any reason why
- 9 you left out O'Callaghan Properties out of that?
- 12:04:06 10 A. Well the main companies involved in the, the main developments would be Riga
- 11 and Barkhill. O'Callaghan Properties is kind of a public name we use, it
- 12 doesn't do, for the past couple of years it has carried out very little
- 13 developments itself. It's the public image, the public name we use really.
- 14 Q. 15 Yes, but O'Callaghan Properties for example is the company that contracted with
- 12:04:35 15 Mr. Gubay's company in relation to, with Merrygrove, in relation to the
- 16 Neilstown lands and O'Callaghan Properties is the company that negotiated and
- 17 dealt with and entered into a contract with Mr. Gilmartin in relation to the
- 18 same lands?
- 19 A. Yes.
- 12:04:48 20 Q. 16 Why was there no reference to Riga in any of those documents?
- 21 A. Well in the Gubay case specifically Mr. Gubay asked to deal with the
- 22 O'Callaghan Properties company.
- 23 Q. 17 Where is that to be found?
- 24 A. I can't tell you.
- 12:05:00 25 Q. 18 Who did he ask?
- 26 A. I presume he asked me through his agents.
- 27 Q. 19 Can you say who, when was that request made and in what form?
- 28 A. It would have been a verbal request I believe.
- 29 Q. 20 Why did Mr. O'Callaghan, why did Mr. Gubay want O'Callaghan Properties to enter
- 12:05:19 30 into a contract with him rather than Riga?

- 12:05:22 1 A. Obviously he didn't know who Riga was and did not know anything about Riga.
- 2 Q. 21 Was he not told at that stage why Riga was being proposed as the purchaser of
- 3 these lands?
- 4 A. I presume he was, but the name that we would have been using and that would
- 12:05:47 5 have been known would be O'Callaghan Properties and he preferred to deal with
- 6 that company.
- 7 Q. 22 Was Mr. Deane a director of O'Callaghan Properties at that time?
- 8 A. To the best of my knowledge, no.
- 9 Q. 23 Was he a director of Riga Limited at that time?
- 12:06:02 10 A. Yes.
- 11 Q. 24 Now in your statement at, which we see on screen at C, you say that Merrygrove
- 12 was originally own by Albert Gubay, but was acquired by Riga Limited as part of
- 13 the transaction. I suggest to you that that is not correct. That Merrygrove
- 14 was acquired by O'Callaghan Properties Limited?
- 12:06:34 15 A. I'm not certain of that.
- 16 Q. 25 Well may I have page 3960? This is the option agreement with Mr. Gilmartin.
- 17 This is the option agreement of 31st of January 1989 and it's between
- 18 O'Callaghan Properties Limited and Thomas Gilmartin, isn't that correct?
- 19 A. Yes.
- 12:07:04 20 Q. 26 I am not asking you anything further about it, I just want to establish the
- 21 parties to the agreement, now can I have 2176? On the 21st of February 1989, I
- 22 suggest that Mr. Deane wrote to Mr. Gilmartin confirming that.
- 23 "We have now completed with Gubay" and that's O'Callaghan Properties Limited,
- 24 isn't that right?
- 12:07:30 25 A. Yes.
- 26 Q. 27 "As a result of this completion the entire issue of share capital of Merrygrove
- 27 Estates has been acquired by my clients", isn't that right?
- 28 A. Yes.
- 29 Q. 28 And his clients in that context was O'Callaghan Properties Limited?
- 12:07:45 30 A. Yes.

12:07:45 1 Q. 29 Now therefore the suggestion that the interest had been acquired by Riga  
2 Limited was incorrect as contained on page 971 of your statement.  
3

4 MR. SREENAN: Chairman, I don't think it's appropriate for Mr. Gallagher to put  
12:07:57 5 that because there is a Declaration of Trust by O'Callaghan Properties in  
6 favour of Riga Limited which has been provided to the Tribunal and I think that  
7 should be drawn to the attention of the witness.  
8

9 MR. GALLAGHER: The property was not acquired by Riga, it was acquired by  
12:08:13 10 O'Callaghan Properties. If the full story is to be told it maybe that there  
11 was a Declaration of Trust I am simply making that point.  
12

13 CHAIRMAN: All right, it is not of huge interest.  
14

12:08:28 15 MR. GALLAGHER: At 972, you deal with the Cooldrinagh site and you talk about  
16 discussions with members of your professional team, who did you have  
17 discussions with in relation to the Cooldrinagh site?  
18

A. My own professional team at that time consisted of the Ambrose Kelly  
Partnership Architects.

12:08:52 20 Q. 30 Right, you say that they explained to you that in order to have the Cooldrinagh  
21 lands rezoned, it would be necessary to canvas local councillors to put through  
22 a Section 4 motion, effectively forcing the local government officials to grant  
23 the planning permission. Did you personally have any negotiations or  
24 discussions with any councillors in connection with that proposed development?

A. Yes.

Q. 31 Who did you have discussions with?

A. I spoke to one councillor, Councillor Patrick Hickey.

Q. 32 Yes. And what was the purpose in speaking to Councillor Patrick Hickey?

A. At the time he was the Chairman, I believe, of Dublin County Council.

12:09:28 30 Q. 33 Yes. What did you ask him to do or why did you approach the Chairman of the

- 12:09:38 1 County Council?
- 2 A. I asked him to, I showed my plans to him for the Cooldrinagh project and asked  
3 him if he was prepared to support it. He asked me if I was in a position to  
4 carry out such a development and if the development was supported by the local  
12:09:58 5 councillors, my answer to both questions was yes, because I was told that the  
6 local councillors supported the Cooldrinagh development and he said he would  
7 consider seriously supporting it, that was the extent of my conversation with  
8 Patrick Hickey.
- 9 Q. 34 Who introduced you to Councillor Hickey?
- 12:10:09 10 A. I am not quite sure who made the introduction. I think it was somebody in  
11 Dublin.
- 12 Q. 35 Oh, yes. Did you ask Councillor Hickey to sign a Section 4 motion at that  
13 time?
- 14 A. No I did not, I asked him if he would support our project, he was not able to  
12:10:33 15 give me a definite answer, but said he would seriously consider it and I did  
16 not further, I did not ask him to sign a Section 4.
- 17 Q. 36 Well we know he signed a Section 4 motion?
- 18 A. Yes he did.
- 19 Q. 37 I take it you know that?
- 12:10:46 20 A. Oh, yes I do.
- 21 Q. 38 Who obtained his signature on that Section 4 motion on your behalf?
- 22 A. As far as I know having met Paddy Hickey I relayed the result of my meeting  
23 with him back to the solicitor acting for the landowner, Paul Smithwick and the  
24 planning consultant acting for the landowner the late Brian Meehan and both of  
12:11:14 25 them took it from there. Having met Paddy Hickey I went to Cork, back to Cork  
26 and made my phone call the following day.
- 27 Q. 39 Did you discuss with your own legal, with your own professional advisers?
- 28 A. Yes, I mentioned it to them.
- 29 Q. 40 And were they able to give you any advice or any assistance in relation to the  
12:11:36 30 Section 4?

- 12:11:36 1 A. Not really. Not really.
- 2 Q. 41 I see.
- 3 A. Because the landowners people, Mr. Smithwick and Mr. Meehan were looking after  
4 that.
- 12:11:46 5 Q. 42 I see. What was the status of the planning application at that time?
- 6 A. At that time we were preparing the retail planning application for that  
7 location.
- 8 Q. 43 Do you remember when the planning application was submitted?
- 9 A. The planning application was submitted sometime in March 1988.
- 12:12:10 10 Q. 44 On the 7th of March 1988 I suggest, would you --
- 11 A. March 1988.
- 12 Q. 45 Yes. May I have 1686 please? This is a record of the executive business and  
13 the Managers order relating to the Cooldrinagh application and it shows that  
14 the planning application in respect of the proposed development, register  
12:12:37 15 reference 88A/259 was submitted on 7th of March 1988 by O'Callaghan Properties  
16 Limited. And that was an application which proposed a development of something  
17 of the order of 130,000, 136,000 square feet.
- 18 A. That is correct.
- 19 Q. 46 Now the Section 4 motion, may I have 1627 please? Was submitted on the 3rd of  
12:13:18 20 May 1988 to the County Council. It's on screen, signed by Finbarr Hanrahan,  
21 Paddy Hickey and Sean Walsh. Had you met Mr. Hanrahan prior to the signing of  
22 this motion?
- 23 A. No sir.
- 24 Q. 47 Had you met Mr. Walsh prior to the signing of this motion?
- 12:13:39 25 A. Never met him in my life.
- 26 Q. 48 Do you know who wrote out the motion?
- 27 A. No.
- 28 Q. 49 Was it written out with your knowledge and/or was it submitted at least with  
29 your knowledge and with your consent?
- 12:13:53 30 A. Submitted with my knowledge and consent, yes.

- 12:13:56 1 Q. 50 And on your behalf?
- 2 A. And on my behalf, yes.
- 3 Q. 51 And you knew I suggest, that in submitting the planning application on the 7th
- 4 of March 1988 that the lands in question were zoned for agricultural use?
- 12:14:09 5 A. Yes.
- 6 Q. 52 And you knew that rezoning or a Section 4 would be required if the planning
- 7 permission were to be granted?
- 8 A. Yes.
- 9 Q. 53 And how did you propose to go about obtaining the support of the majority of
- 12:14:22 10 the councillors, for the passing of a Section 4?
- 11 A. I did not myself propose to do that at all.
- 12 Q. 54 Who were the vendors at that time?
- 13 A. To the best of my knowledge the vendor was a Mr. Burke.
- 14 Q. 55 Yes. Who went about, if you didn't go about obtaining the support of the
- 12:14:42 15 majority of the councillors, do you know who went about it?
- 16 A. I don't know.
- 17 Q. 56 Well are you asking the Tribunal or telling the Tribunal that at a time when an
- 18 application was submitted on your behalf for 136,000 square feet of development
- 19 you didn't know who had been approached or spoken to to elicit support for the
- 12:15:07 20 Section 4?
- 21 A. No, but I can explain to you. The application would have been submitted by
- 22 either Mr. Paul Smithwick or Mr. Brian Meehan the planning consultant or the
- 23 landowner. We were purchasing the site subject to zoning and subject to
- 24 planning.
- 12:15:37 25 Q. 57 In your statement you said that, at page 972 you said.
- 26 "I decided at this stage that did I not wish to be involved and consequently
- 27 dropped the site?"
- 28 A. Yes.
- 29 Q. 58 That is in the context of it being necessary to put a section, canvas local
- 12:16:00 30 councillors to put a Section 4 effectively forcing the local authority

- 12:16:00 1 officials to grant permission. In fact, a planning application was submitted  
2 and a Section 4 was submitted and you had spoken with Mr. Hickey who was one of  
3 the signatories of the Section 4.
- 4 A. Yes.
- 12:16:14 5 Q. 59 And you say that you believed that, the running, if I may so describe it, in  
6 relation to the Section 4 was being made by the vendor and or on behalf of the  
7 vendor, that's Mr. Burke?
- 8 A. By the vendor and his team, sir.
- 9 Q. 60 Were you aware that Mr. Burke had written in relation to this proposal and had  
12:16:48 10 queried it and queried the granting of permission in relation to it?
- 11 A. No, I was not.
- 12 Q. 61 Were you aware that, was there litigation in respect of this proposed  
13 development?
- 14 A. Not that I know of.
- 12:17:09 15 Q. 62 May I have 1726? You will see number 9 there, there is a letter dated 31st of  
16 the 5th '88 from Young & Company Solicitors on behalf of Gerard and Louise  
17 Burke, stating that in respect of two plots of land there is litigation in  
18 which their clients are involved?
- 19 A. I was not aware of that, sir, at the time.
- 12:17:35 20 Q. 63 Were you aware of the report that was submitted in relation to the material  
21 contravention by Dublin County Council, the document to be found at 1725 and  
22 subsequent pages?
- 23 A. Yes.
- 24 Q. 64 You had seen that before I take it?
- 12:17:50 25 A. Yes that was, I had been informed about that by my architects.
- 26 Q. 65 And your architects Ambrose Kelly and Partners, or Partnership?
- 27 A. Yes.
- 28 Q. 66 There was strong objection to the proposed development, isn't that right, at  
29 1725 and 1726?
- 12:18:10 30 A. Absolutely.

- 12:18:11 1 Q. 67 That included opposition from Kildare County Council and whatever. The report  
2 referred to anomalies in the application as submitted?
- 3 A. Yes.
- 4 Q. 68 It appeared that the proposal was for 136,000 square feet, but the lodged plans  
12:18:25 5 indicated 264,000 square feet, that's double the size which the application was  
6 made. There was a question about the validity of the application having regard  
7 to the discrepancy, we see at 1727, and there were difficulties in relation to  
8 drainage, in relation to bye-law approval, in relation to traffic danger and  
9 there was a reference to the general policy directive on retail shopping issued  
12:18:50 10 by the Minister in 1982 and there was strong opposition from the planners to  
11 the proposal?
- 12 A. Yes.
- 13 Q. 69 Now as a result of that the planning application was withdrawn.
- 14 A. Yes by me.
- 12:19:04 15 Q. 70 Yes. Now it was at that time that you, or in or about that time that you came  
16 interested in the Neilstown lands, is that correct?
- 17 A. Yes.
- 18 Q. 71 Had you met Mr. Liam Lawlor at that time?
- 19 A. I've met Mr. Liam Lawlor in the very early 80s in Cork.
- 12:19:33 20 Q. 72 Had you met him in the context of the Cooldrinagh application?
- 21 A. No.
- 22 Q. 73 Did you ever discuss the Cooldrinagh application with him?
- 23 A. Not at the time. But when I met Mr. Lawlor casually in September of '88, for  
24 the first time in Dublin, he referred to the Cooldrinagh site at that  
particular time.
- 25 Q. 74 The application had been withdrawn on the 21st of June 1988.
- 27 A. Yes.
- 28 Q. 75 May I have 1745 please? You said you met Mr. Lawlor -- in September 1988, is  
29 that correct?
- 12:20:20 30 A. Approximately that time, yes.

12:20:22 1 Q. 76 So the application had been withdrawn.

2 A. Oh, yes.

3 Q. 77 Mr. Lawlor has suggested, may I have page, Day 487, page 33? That it was as a

4 result of his intervention that you decided to put your tail between your legs

12:20:42 5 and withdraw your Cooldrinagh possibility?

6 A. Well that is only partially correct, sir. I withdrew --

7

8 MR. LAWLOR: Chairman, where did I suggest that?

9

12:20:55 10 CHAIRMAN: Mr. Gallagher?

11 Q. 78 Page 487 -- sorry Day 487, page 33.

12

13 MR. LAWLOR: Come on, read it out.

14

12:21:10 15 CHAIRMAN: Is that the page that's up on screen?

16 Q. 79 Yes, question 121. In the course of cross-examination of Mr. McLoone.

17 "That is the lands --

18

19 MR. LAWLOR: Don't selectively quote, read the whole lot please.

12:21:32 20 Q. 80 I am about to. The question is:

21 "That is the lands -- sorry 120. Question by Mr. Lawlor:

22 "You claim that I was in and spoke favourably about Cooldrinagh, that's a lie

23 or you don't know what you are talking about or you are making it up in the box

24 now to defend the indefensible.

12:21:50 25 Answer: I am not making it up, I was talking about the lands at Tara Co-op, is

26 that the lands?

27 Question: That is the lands. Are you aware, are you aware that when

28 Mr. O'Callaghan got other colleagues to sign a Section 4 which was put up on

29 screen to you here yesterday or the day before and I got to know about it and

12:22:11 30 for the first time he came and asked of my opinion, and in no uncertain terms I

1 told him that he could do what he liked with Cooldrinagh. I wanted something  
2 built in North Clondalkin. And as a result of my intervention he decided to  
3 put his tail between his legs and withdraw his Cooldrinagh possibility, because  
4 I didn't want it and it was the wrong thing to do. That is what happened with  
5 Cooldrinagh.

6 Question: That's how Cooldrinagh got buried on the 10th. His words to me as  
7 he left was I have learned more in the last 20 minutes than I did in the last  
8 two years. That was the end of Cooldrinagh for him. So I just put it back to  
9 you now whatever your so called recollection of so called meetings are, they  
10 are totally wrong."

11  
12 That was an exchange, question and answer between Mr. Lawlor and Mr. McLoone.  
13 Mr. Lawlor as I read that, that question suggests that it was as a result of  
14 his intervention with you that you decided not to proceed with Cooldrinagh.

12:23:09 15 A. Well that is not correct sir. I withdrew the Cooldrinagh application because  
16 Cooldrinagh had so many planning problems, it was a mistake on my part from day  
17 one to get involved in Cooldrinagh. I didn't realise that until sometime in  
18 April/May when I saw the first manager's report. I wanted to withdraw the  
19 application at that stage, but the landowner, the land owners representative  
20 asked me to leave it in there for a while to see if it could be progressed, it  
21 was an embarrassment to me to have it in there. So the first opportunity I got  
22 I withdrew it. That was in June. I met Mr. Lawlor in September and he told  
23 me, or mentioned to me, he asked me about the Balgaddy site and mentioned to me  
24 how he would much prefer to see me develop that than Cooldrinagh. Because  
25 Cooldrinagh site had quite a lot of problems and if I asked him about the  
26 problems in advance he would have told me.

27 Q. 81 What was said about the Neilstown Balgaddy site?

28 A. As far as Mr. Lawlor was concerned he said that was the correct site to develop  
29 and said it should be developed as a town centre for the area.

30 Q. 82 And what did you know about the arrangements made between Dublin Corporation

- 12:24:33 1 and Mr. Gubay at that time or Merrygrove at that time?
- 2 A. Well at that time it was my architect again introduced me to Edwards Lyons who  
3 was the agent acting for Mr. Gubay. We discovered that Mr. Gubay had bought or  
4 was about to purchase the Balgaddy site. Having seen the difficulties we had  
12:24:52 5 in Cooldrinagh we decided that, I decided that, we wanted a site that was  
6 properly zoned and that was Balgaddy. We approached Mr. Lyons with view to  
7 purchasing that site from Mr. Gubay.
- 8 Q. 83 At what stage did you become aware of the possibility of a development on the  
9 Quarryvale site or the Westpark site?
- 12:25:21 10 A. First time I heard the name Quarryvale mentioned was late August probably early  
11 September and it wasn't the actual word Quarryvale I heard mentioned, it was  
12 the word Sharp's lands. I didn't know where Quarryvale was.
- 13 Q. 84 Are you referring to 1988 now?
- 14 A. I am referring to August of 19 -- September, possibly September 1988.
- 12:25:49 15 Q. 85 1988?
- 16 A. Sorry '88, yes. Again I was at a function, social function I think it was a  
17 council function, or something similar to that, in the Lucan or Clondalkin  
18 area, might even have been the Tallaght area, but it was in North Clondalkin or  
19 Lucan and it was at that function that casually again there was quite a lot of  
support, I had said to a few councillors that I met there, some people I met,  
21 Liam Lawlor was there, Finbarr Hanrahan was there, Councillor Ridge was there,  
22 that we were looking seriously at the Balgaddy site and everybody was  
23 supporting that idea, that was a site that everybody wanted to see the  
24 developed as being the properly zoned designated site. At that particular time  
25 Finbarr Hanrahan suggested to me that there was another site called the Sharpe  
26 lands, I think he mentioned Quarryvale as well, that had been, had got a  
27 planning permission for residential on it and that it would possibly get an  
entrance onto the Galway Road. I didn't take too much notice of that because  
28 it didn't mean anything to me I was then concentrating on the Balgaddy site,  
29 but that was the first time I heard the word Sharpe or Quarryvale mentioned.
- 12:26:59 30

- 12:27:06 1 Q. 86 May I refer you to page 972, you say in your statement, the third paragraph  
2 down;  
3 "As part of ongoing discussions with prospective anchor tenants as to the their  
4 interest in the Neilstown site I was informed by Quinnsworth that there was a  
12:27:22 5 competing site owned by Tom Gilmartin at the junction of the N4 and M50".  
6 A. That's correct.  
7 Q. 87 Well that is not what you told us about being told for the first time about the  
8 Sharpe lands or the Quarryvale as you describe it, about Mr. Hanrahan?  
9 A. I don't understand.  
12:27:39 10 Q. 88 Well in your statement you are suggesting that you were informed by Quinnsworth  
11 that there was a competing site owned by Tom Gilmartin at the junction of the  
12 N4 and M50?  
13 A. That was the first time I took it seriously. The remark passed by Finbarr  
14 Hanrahan I didn't take very seriously it didn't effect me very much, I didn't  
12:27:59 15 take any notice of it. The first time I got concerned about an opposing site  
16 was when the Quinnsworth people mentioned it to me in October of 1988 in a  
17 meeting in Belfast.  
18 Q. 89 In a meeting in Belfast?  
19 A. Yes.  
12:28:12 20 Q. 90 Was this after Finbarr Hanrahan had told you about the Sharpe land?  
21 A. I say, it's not correct sir to say Finbarr Hanrahan told me about the Sharpe  
22 land, Finbarr Hanrahan mentioned in passing the Sharpe land, which I think I  
23 associated with Quarryvale, I did not take any notice of it.  
24 Q. 91 I think we can take it Quarryvale was not a name that was mentioned at that  
12:28:33 25 stage, is that correct?  
26 A. I am not quite sure of that. Sharpe land and Quarryvale didn't mean an awful  
27 lot to me at the time.  
28 Q. 92 What, the first meeting you had with Mr. Hanrahan at which the Sharpe lands  
29 and/or Quarryvale were mentioned, what did Mr. Hanrahan tell you?  
12:28:50 30 A. He just told me that there was some lands in Quarryvale, known as the Sharpe

1 lands, not too far away from the Balgaddy site to be correct, that had just got  
2 residential permission and was about to get or had got an entrance onto the  
3 Galway Road, that was the important thing about this site, an entrance on to  
4 the Galway Road. I didn't relate it to retail at the moment, because it didn't  
12:29:15 5 have retail permission. It didn't mean an awful lot to me but it was the first  
6 time I heard the word mentioned.

7 Q. 93 I suggest to you, Mr. O'Callaghan, that that discussion took place on the 4th  
8 of November 1988 with Mr. Hanrahan?

9 A. No sir, it did not.

10 Q. 94 May I have page 1941 please? Sorry 1940 first, this is a document, memorandum  
11 sent by fax to Edward Lyons by you on the 4th November 1988, is that correct?

12 A. Yes.

13 Q. 95 And it continues on to page, the following page 1941 copies of that were sent  
14 to Mr. Ambrose Kelly and Mr. John Deane?

15 A. Yes.

16 Q. 96 It's, the subject is notes of a meeting with Liam Lawlor/Robin Cherry and  
17 Finbarr Hanrahan.

18 "Liam Lawlor. I met with Liam Lawlor on Wednesday last" 2nd of November.

19 20 "Lawlor told me that Flynn and McSharry asked him to look after Gilmartin and  
21 would have preferred if nothing happened on the Clondalkin site and was under  
22 the impression, like everybody else, that the site was going nowhere. Lawlor  
23 so quite confident that Gilmartin will get his permission but that we are in  
24 the driving seat for the time being. He also feels that the provision of the

25 26 road is essential to our scheme and suggested that we write to Paddy Morrissey  
27 or George Redmond immediately to establish the situation with the road. I am  
28 not sure whether Lawlor is trying to be helpful to us or just looking for  
29 information. Lawlor suggested that a meeting be arranged between Gilmartin and  
myself.

12:31:13 1 Robin Cherry. I met Robin Cherry in Limerick yesterday and discussed  
2 Clondalkin with him. He confirmed that Quinnsworth have an option on the best  
3 located unit in Tallaght and had already paid quite an amount of money to  
4 Monaghan and were not going to progress any further with Monaghan until he had  
5 a second anchor in place. He felt this would be difficult as Quinnsworth had  
6 tied up the best location. On Blanchardstown he felt that the scheme was too  
7 large and too costly and will never get off the ground. However he felt that  
8 with regard to Clondalkin, Quinnsworth would sit on the fence and wait. His  
9 own feeling was that Clondalkin was a good scheme because it was basically a  
12:31:51 10 practical scheme but he emphasised that the provision of the road was  
11 essential.

12  
13 Finbarr Hanrahan. Dublin County Councillor.

14 I spoke to Finbarr Hanrahan this morning in Cork. Finbarr was our main  
12:32:05 15 supporter in Lucan and it was he who told me about the Gilmartin site some  
16 three months ago. As you know Gilmartin has an option on the site which was  
17 owned by Paul Sharpe. The land was zoned industrial and now zoned residential.  
18 Dublin County Councillor put a Section 4 through instructing Dublin County  
19 Council officials to give Gilmartin an entrance on to the Galway Road. The  
12:32:26 20 County Manager refused to carry out this instruction and the High Court ruled  
21 against him some months ago. The case is now with the Supreme Court and a  
22 decision will be made on Tuesday next, 8th November. Hanrahan is confident the  
23 decision will be in favour of Gilmartin and the councillors. All Gilmartin has  
24 then to do is get a change of use to retail. The site is obviously a better  
12:32:45 25 location than Clondalkin.

26  
27 Sharkey's accountant Gerry McEvoy rang me this morning to know if I was  
28 prepared to have a meeting with Sharkey.

29  
12:32:53 30 I feel it is essential that Ambrose and yourself and myself, if necessary, open

12:32:58 1 initial discussions with Redmond and Morrissey on (A) the road and (B) the  
2 Gilmartin situation. Please ring me when you get this fax. Cc Ambrose Kelly  
3 and Mr. John Deane."

4 You sent that to Mr. Lyons and Mr. Kelly and Mr. Deane?

12:33:15 5 A. Yes.

6 Q. 97 That was on 4th November 1988?

7 A. Yes.

8 Q. 98 So you say that you had been told prior to that meeting by Mr. Hanrahan of the  
9 Gilmartin lands, the Sharpe lands you are talking about.

12:33:29 10 MR. SREENAN: Chairman, in fairness to Mr. O'Callaghan that's precisely what  
11 the memorandum says.

13 Q. 99 I appreciate that. Are you saying you were told by Mr. Hanrahan some three  
14 months earlier about the Sharpe lands and, sorry about the Sharpe lands?

12:33:46 15 A. Yes. It was mentioned in passing by Finbarr Hanrahan to me. I wasn't quite  
16 sure what he meant by the Sharpe lands or Quarryvale if he made a reference on  
17 that particular occasion, it didn't mean anything to me in August or September  
18 but I did pick it up, I did listen to it.

19 Q. 100 When did you find out about the High Court proceedings and the challenge in the  
20 Supreme Court?

21 A. Possibly the first or second of November.

22 Q. 101 Who told you about them?

23 A. Finbarr Hanrahan that's how he is on the memo there. I rang him and asked him.

24 Q. 102 You said you spoke "to him this morning in Cork"?

12:34:23 25 A. Mm-hmm.

26 Q. 103 Did you speak to him in Cork?

27 A. No.

28 Q. 104 Why did you put that in the memo?

29 A. I spoke to him from Cork.

12:34:31 30 Q. 105 From Cork?

- 12:34:32 1 A. On the telephone.
- 2 Q. 106 I see. What was the purpose in telephoning him?
- 3 A. Because when he mentioned the Sharpe lands to me in August/September of 1988  
4 and when I heard somewhere toward the end of October that it was possible or  
12:34:54 5 there was a possibility that the Sharpe lands would get an exit out onto the  
6 Galway Road and that Tom Gilmartin had an option or had purchased the Sharpe  
7 lands, as I have said in the memo, it then seems as if all Tom would have to do  
8 was get a change of use to retail; and the only person I knew or heard or  
9 remembered mentioning the word Sharpe lands to me was Finbarr Hanrahan. He  
12:35:19 10 mentioned that to me in August or September, so I rang him and asked him what  
11 was he talking about and what was it all about. He told me and that's why it's  
12 on the memo.
- 13 Q. 107 Can you explain why the memo refers to your meeting Mr. Hanrahan in Cork rather  
14 than telephoning from Cork?
- 12:35:40 15 A. Difficult to explain. If you look at the rest of the memo I met Robin Cherry  
16 in Limerick the day before and different people in different places, but I  
17 certainly did not meet Finbarr Hanrahan in Cork, I rang him from Cork.
- 18 Q. 108 I see. Where did you meet Mr. Lawlor on Wednesday 2nd November?
- 19 A. I am not sure, in Dublin somewhere but I can't tell you where, I don't know  
where.
- 12:36:03 20 Q. 109 What did he say about Mr. Gilmartin's lands or the lands that Mr. Gilmartin was  
22 about to acquire?
- 23 A. Well I believe that Liam Lawlor was genuinely concerned that both Tom Gilmartin  
24 and myself were heading into a bit of a mess with the Balgaddy site and  
12:36:23 25 Quarryvale site. He knew a lot more about the Quarryvale site than I did and I  
26 think he felt that something should be done to resolve the problem because we  
27 were both going nowhere, even at that time. The memo says there that he felt  
28 that Tom Gilmartin was going to get planning permission. I wouldn't feel that  
29 strong about it but that's what he said to me. He was well aware that Balgaddy  
12:36:45 30 was the correct site but also had difficulties because of the Fonthill Road

- 12:36:50 1 because of the alignment etcetera, I think he was trying to be helpful or  
2 trying to defuse the situation developing.
- 3 Q. 110 What did he say about, "when asked by Flynn and McSharry to look after  
4 Gilmartin"?
- 12:37:04 5 A. That surprised me of course, said that to me, just made that statement.
- 6 Q. 111 Did he elaborate on it or did you ask him anything about it?
- 7 A. No, I did not.
- 8 Q. 112 Did you ask how he was asked to look after Gilmartin?
- 9 A. No, I did not actually.
- 12:37:20 10 Q. 113 In what context was this reference to Flynn and McSharry made.
- 11 A. Well I think probably in the context that even though Quarryvale would have  
12 great difficulty getting a planning permission that it would have ministerial  
13 support, in that it could get planning permission.
- 14 Q. 114 Well the sentence that you have, second sentence in relation to Mr. Lawlor you  
12:37:46 15 said that "Flynn and McSharry asked him to look after Gilmartin and would have  
16 preferred if nothing happened on the Clondalkin site" is that a reference to  
17 Mr. Flynn and Mr. McSharry preferring that nothing would happen on the  
18 Clondalkin site?
- 19 A. On the Balgaddy site.
- 12:38:06 20 Q. 115 And when you say "Was under the impression like everybody else that the site  
21 was going nowhere" is that a reference to Messrs Flynn and McSharry also?
- 22 A. Yes.
- 23 Q. 116 But Mr. Lawlor told you that he was quite confident that Mr. Gilmartin would  
24 get planning permission on the Quarryvale site at that time?
- 12:38:23 25 A. Yes.
- 26 Q. 117 And did he explain why he thought you were in the driving seat for the time  
27 being?
- 28 A. Well no, but it was very obvious.
- 29 Q. 118 Why was that?
- 12:38:35 30 A. We had the proper correct zoning.

- 12:38:37 1 Q. 119 I see. What was your response to the suggestion that provision of a road is  
2 essential to the scheme?
- 3 A. Sorry, I didn't get that question, sorry?
- 4 Q. 120 In the memo you say that, you record Mr. Lawlor as saying that he would  
12:38:58 5 consider that a road would be essential for the scheme, what was your response  
6 to that?
- 7 A. Yes, I agreed that. The realignment of the Fonthill Road was essential to the  
8 commercial success of the Balgaddy site.
- 9 Q. 121 When you referred to Finbarr Hanrahan as being your main supporter in Lucan  
12:39:21 10 what did you mean?
- 11 A. Well to put that into context, Finbarr Hanrahan was the main supporter for the  
12 project in Lucan, not me.
- 13 Q. 122 What -- you didn't say that, you said "Finbarr Hanrahan was our main supporter  
14 in Lucan"?
- 12:39:37 15 A. I know. What I meant was he was the main supporter of the project, because I  
16 never met Finbarr Hanrahan in connection with Cooldrinagh.
- 17 Q. 123 On what basis then did you say he was our main supporter, if you had never met  
18 him?
- 19 A. That was confirmed to me by, when I say "our" I mean the project, that was  
12:39:57 20 confirmed to me by Mr. Smithwick and Mr. Brian Meehan.
- 21 Q. 124 I see. Did you have a copy of this memorandum Mr. O'Callaghan, did you keep a  
22 copy of this memorandum?
- 23 A. Which memorandum?
- 24 Q. 125 That I have just put on screen, 1940?
- 12:40:21 25 A. The 4th November, is it?
- 26 Q. 126 Yes. You do?
- 27 A. Yes.
- 28 Q. 127 Can you say when in late November, sorry in late 1988 Mr. Gilmartin contacted  
29 you, was it before or after this memorandum was written?
- 12:40:41 30 A. Afterwards.

- 12:40:42 1 Q. 128 Yes. And did he contact you, did he meet you physically or did he telephone  
2 you or did he write to you, how did he set up the meeting?  
3 A. He rang me twice before we met in December.  
4 Q. 129 Yes. Where did you meet?  
12:40:57 5 A. I met him, to the best of my knowledge in the Shelbourne Hotel.  
6 Q. 130 He has, he is emphatic that he met you in the Royal Dublin Hotel, that you had  
7 a room booked in the Royal Dublin Hotel, he met you there in O'Connell Street?  
8 A. Absolutely incorrect, sir.  
9 Q. 131 Are you equally emphatic that you met in the Shelbourne Hotel?  
12:41:22 10 A. I am not, but I have never been in the Royal Dublin Hotel in my life sir, it  
11 couldn't have happened.  
12 Q. 132 I see. You were never in it?  
13 A. No.  
14 Q. 133 May I have page, Day 463 please at page 85? Mr. O'Callaghan, your counsel  
12:42:17 15 Mr. Sreenan put it to Mr. Gilmartin on that date, that you had in fact met  
16 Mr. Gilmartin in the Royal Dublin Hotel --  
17  
18 MR. SREENAN: Question 605 I put it to him it was the Shelbourne not the Royal  
19 Dublin.  
12:42:39 20 Q. 134 We'll take 605, the question was as follows "See I suggest to you that it  
21 wasn't the Royal Dublin Hotel it was the Shelbourne.  
22 Answer: No it was not the Shelbourne. It was in the hotel next to the Council  
23 Offices on O'Connell Street. And it was upstairs in a room in that hotel. It  
24 was not the Shelbourne.  
12:42:57 25 Question: You see you did have a meeting with Mr. O'Callaghan upstairs in a  
26 room in the Royal Dublin Hotel, but it was --  
27 Answer: On the 7th December.  
28 Question: Let me finish Mr. Gilmartin. It was after the rezoning which I  
29 think was in May 1991.  
12:43:11 30 Answer: Rezoning of what?

- 12:43:13 1 Question: Of the Quarryvale lands.
- 2 Answer: No, that's a lie.
- 3 Question: And I suggest to you you've got those meetings mixed up in your
- 4 mind. Nothing turns on that."
- 12:43:22 5
- 6 Now Mr. Sreenan, your senior counsel, is putting it to Mr. Gilmartin that you
- 7 did in fact have a meeting in the Royal Dublin Hotel but it took place after a
- 8 rezoning meeting which he thought was in May 1991?
- 9 A. That's where it took place.
- 12:43:36 10 Q. 135 Well you have just told this Tribunal that you were never in the Royal Dublin
- 11 Hotel?
- 12 A. Never in the Tribunal, never sir in the Royal Dublin Hotel up to, prior to
- 13 1989. The meeting Mr. Gilmartin was referring to took place in May I think of
- 14 1991.
- 12:43:59 15 Q. 136 I put it to you Mr. O'Callaghan that Mr. Gilmartin was emphatic that he met you
- 16 in the Royal Dublin Hotel, that you had a room booked in the Royal Dublin Hotel
- 17 that he met you there on O'Connell Street. You said "absolutely incorrect
- 18 sir". I said "are you equally emphatic that you met him in the Shelbourne
- 19 Hotel" you said "I am not, but I have never been in the Royal Dublin Hotel in
- 20 my life sir, it couldn't have happened".
- 21 A. Well if I can correct that. I was never in the Royal Dublin Hotel up to that
- 22 time sir.
- 23 Q. 137 Up to what time?
- 24 A. 1989. I wasn't even quite sure where it was, that's the hotel in O'Connell
- 25 Street we are talking about.
- 26 Q. 138 That's the hotel in O'Connell Street. Your Counsel put to Mr. Gilmartin you
- 27 had in fact met in that hotel, you met in a room in that hotel, but that you
- 28 met not in December 1988 but in May 1991?
- 29 A. In May 1991 after the council meeting, Dublin County Council meeting, we met in
- 30 the hotel next to the Council chamber, in O'Connell Street. But prior to that

- 12:45:18 1 I had never been in the Royal Dublin Hotel, I could not have met Tom Gilmartin  
2 in the Royal Dublin Hotel.
- 3 Q. 139 So your answer that you were never in the Royal Dublin Hotel "in my life," is  
4 incorrect?
- 12:45:34 5 A. Up to that time sir. Up to 1989.
- 6 Q. 140 You didn't say that.
- 7 A. That's a correction. That's what I should have said sir, never up to 1989. I  
8 wasn't even sure where it was.
- 9 Q. 141 Now you say "in due course a planning application for Neilstown was prepared  
12:46:08 10 and submitted to the local authority", that in fact happened on the 22nd of  
11 December 1989?
- 12 A. It happened on that date, is that what you are saying.
- 13 Q. 142 That's the date on which the application was submitted?
- 14 A. December '89.
- 12:46:23 15 Q. 143 Yes?
- 16 A. That's correct.
- 17 Q. 144 You said that your first contact with Mr. Tom Gilmartin to see if you were  
18 interested in selling the site, that your initial reaction to this was that you  
19 would not be interested and wished to continue your own development?
- 12:46:45 20 A. That's absolutely correct.
- 21 Q. 145 However Tom Gilmartin persisted in his approach "and I decided to visit the  
22 Gilmartin site". Had you seen the site up to that time?
- 23 A. No.
- 24 Q. 146 What did you know about the extent of the Gilmartin site when you visited it?
- 12:47:03 25 A. I wasn't, I didn't, I didn't know what the boundaries actually were, I just  
26 drove past it.
- 27 Q. 147 In what way did you drive past it?
- 28 A. I drove around it, the four roads that surrounded it actually, and assuming the  
29 lands within that area were his.
- 12:47:19 30 Q. 148 The four roads that surrounded it were the Galway Road?

- 12:47:24 1 A. Fonthill, Cork Road and M50.
- 2 Q. 149 The which?
- 3 A. M50.
- 4 Q. 150 Was the M50 open at that stage?
- 12:47:32 5 A. A portion of it was I think, at that stage, wasn't it?
- 6 Q. 151 Was it open enough to let you drive down and see the boundary of the land?
- 7 A. I'm not quite sure sir.
- 8 Q. 152 I take it that you had visited the Neilstown lands before you had got involved  
9 in negotiations for them?
- 12:47:50 10 A. Yes.
- 11 Q. 153 And negotiations in relation to Neilstown/Balgaddy had been ongoing for some  
12 considerable time?
- 13 A. Well between, with me and myself and --
- 14 Q. 154 Between you and Mr. Gubay?
- 12:48:04 15 A. Yes, yes.
- 16 Q. 155 And you had in fact signed a contract on the 7th of October of 1988?
- 17 A. Yes.
- 18 Q. 156 And you had agreed to pay Mr. Gubay for the contract he had with Dublin  
19 Corporation and you had agreed a reverse option of 500 thousand pounds that he  
20 could call upon, or one of his companies could call upon you to pay in return  
21 for the shares in Merrygrove, isn't that right?
- 22 A. That's right.
- 23 Q. 157 That was done on the 7th October 1988?
- 24 A. Yes.
- 12:48:38 25 Q. 158 Now you say that it was clear to you on visiting this site, which presumably  
26 was after Mr. Gilmartin contacted you in November or December 1988, that his  
27 site was in a superior location?
- 28 A. Yes.
- 29 Q. 159 Did you know what the extent of the site was at that time?
- 12:48:59 30 A. Generally, yes.

- 12:49:00 1 Q. 160 How many acres did you know was involved?
- 2 A. Approximately I would have thought about 150 acres.
- 3 Q. 161 I see. Did you make any inquiries to establish how much of those, how many of
- 4 that lands he had acquired, or had options on?
- 12:49:15 5 A. No.
- 6 Q. 162 I see. You arranged to meet Mr. Gilmartin and it would appear that you met him
- 7 on the 7th of December of 1988, is that correct?
- 8 A. No sir, he arranged to meet me.
- 9 Q. 163 Well you arranged to meet each other?
- 12:49:45 10 A. He arranged to meet me. I didn't really want to meet Mr. Gilmartin.
- 11 Q. 164 You didn't want to meet him?
- 12 A. No.
- 13 Q. 165 But you did agree to meet him?
- 14 A. Yes he persisted, yes.
- 12:49:55 15 Q. 166 Did he tell you why he was telephoning you and trying to meet you?
- 16 A. Oh, yes.
- 17 Q. 167 Why was that?
- 18 A. Because he wanted to acquire our Balgaddy site.
- 19 Q. 168 Did he tell you that he had been advised by Mr. Lawlor to meet with you?
- 12:50:14 20 A. No, he did not.
- 21 Q. 169 I see. Do you have a clear recollection of the meeting with Mr. Gilmartin?
- 22 A. That's the meeting of the 7th of December.
- 23 Q. 170 That's correct?
- 24 A. Yes, I do indeed.
- 12:50:30 25 Q. 171 And you say this meeting took place in the Shelbourne Hotel to the best of your
- 26 recollection?
- 27 A. Best of my knowledge, yes.
- 28 Q. 172 Where in the Shelbourne Hotel?
- 29 A. I'm not quite sure what part of it.
- 12:50:47 30 Q. 173 What time did it occur at?

- 12:50:49 1 A. I would have thought that it would have been somewhere between 11 and 4  
2 o'clock. It would have lasted from 11 to about 4 o'clock.
- 12:51:13 3 Q. 174 And what did you discuss in the course of that meeting?
- 12:51:13 4 A. Well I suggested, first of all Tom Gilmartin asked me if we were interested in  
5 selling our Balgaddy site to him. I told him we would prefer not to because we  
6 wanted to develop it, that was our whole intention and that was why we got  
7 involved in it. He told me he wanted to buy it because it was upsetting his  
8 zoning plans for Quarryvale. I suggested to him that we would buy his site  
9 from him or alternatively that we would do a joint development with him. And  
12:51:45 10 he actually, towards the end of the meeting he agreed that he would consider  
11 both options.
- 12:52:15 12 Q. 175 Mr. Gilmartin has told the Tribunal that at that meeting you agreed to terms  
13 whereby he was to acquire the Neilstown lands?
- 12:52:15 14 A. That is not correct sir.
- 12:52:15 15 Q. 176 Were any terms in relation to Neilstown lands discussed as to what monies might  
16 or might not have to be paid?
- 12:52:30 17 A. No.
- 12:52:30 18 Q. 177 Was there any suggestion that 7 million pounds might have to be paid?
- 12:52:30 19 A. At that meeting, no.
- 12:52:30 20 Q. 178 Was 7 million pounds mentioned as a price at any stage?
- 12:52:30 21 A. On, when the actual meeting took place in January that figure was mentioned as  
22 the potential profit figure to be made on the site. Mr. Gilmartin has got that  
23 figure completely mixed up sir.
- 12:52:52 24 Q. 179 Did you tell Mr. Gilmartin that you had drawings ready to, prepared to go for  
25 planning permission on the Neilstown site?
- 12:52:52 26 A. At the meeting on the 7th of December, yes I did, and I showed them to him.
- 12:52:52 27 Q. 180 He says that you did show him such drawings and that he said to you that you've  
28 got to be mad that nobody will build on the site, that it would cost a fortune  
29 to build the road?
- 12:53:12 30 A. He said that I said that, is it?

12:53:14 1 Q. 181 Sorry, he said to you. Sorry, may I have page, Day 457, he says that "when I  
2 arrived in the Royal Dublin Hotel I was directed to room that Mr. O'Callaghan  
3 had seemingly hired. I think it was on the first floor, so I met  
4 Mr. O'Callaghan.

12:53:34 5 Question: Yes.

6 Answer: In the room. So after initial introductions and chitchat about  
7 various things he mentioned he had drawings ready to go for planning and he had  
8 made them, ready to build on Neilstown. So I told him you have to mad, nobody  
9 would build on that site it would cost you a fortune to build the road. He  
10 said that doesn't matter, you are going nowhere while we're there. So I said  
11 well you've got me there"?

12 A. First of all sir, the meeting did not take place in that hotel. Second the  
13 meeting he is talking about took place around the middle of January 1989.

14 Q. 182 Where was that meeting?

12:54:12 15 A. The meeting where the whole Balgaddy deal was discussed was in the Airport  
16 Hotel.

17 Q. 183 When do you say that was?

18 A. Early to mid January 1989. He has got his meetings completely mixed up sir.

19 Q. 184 He went on to say that you wanted 7 million pounds for the Neilstown, for the  
20 option on the Neilstown site and he said he ruled that out completely and he  
21 suggested to you that you can go ahead with Neilstown, he would sell off his  
22 site, that he put it on the market and sell it off. He then said to you "You  
23 have the option to buy if you want" in other words, you have an option to buy  
24 the Quarryvale lands. He says the price then dropped "and eventually we agreed  
25 a price that I would take over the Neilstown option for 3.5 million".

26 A. Why then sir did he refuse to sell me the Quarryvale lands? In his letter of  
27 the 20th December.

28 Q. 185 I am putting to you what Mr. Gilmartin has said happened at that meeting?

29 A. He has got the meeting completely wrong. All wrong.

12:55:24 30 Q. 186 He said in his conversation with Chief Superintendent Sreenan on the 4th March

12:55:30 1 1989 page 1128, that it was suggested that he should, he and you should get  
2 together and he went on as follows "We meet and he agreed" that's you "That his  
3 was a mistake. He had paid a deposit and there was no way that he could make  
4 it work and he did not know what to do. We agreed to work together and if mine  
12:55:58 5 was a success I would see he would be reimbursed and if mine failed he could go  
6 ahead with his own then".

7 A. I disagree with all that sir, it's completely wrong.

8 Q. 187 That was a conversation that Mr. O'Callaghan had with Chief superintendent  
9 Sreenan, sorry Mr. Gilmartin had with Chief Superintendent Sreenan on the 4th  
12:56:21 10 March 1989?

11 A. Yes.

12 Q. 188 You disagree with that?

13 A. Yes.

14 Q. 189 Do you disagree that you said that your entering into the Neilstown contract  
12:56:32 15 was a mistake?

16 A. No sir, I did not say that.

17 Q. 190 I see. In your statement you said that discussions followed with Tom Gilmartin  
18 and you then quote an article by Frank Connolly in which he quotes the  
19 correspondence, and I have read that to you, it's on page 973. Can you tell  
12:57:00 20 the Tribunal about those meetings, where you say they took place and when they  
21 took place?

22 A. Which meetings are these sir?

23 Q. 191 These are the meetings you say discussions followed with Tom Gilmartin, page  
24 973?

12:57:12 25 A. The first meeting with Tom Gilmartin in connection with Quarryvale and Balgaddy  
26 was the 7th December which more than likely took place in the Shelbourne Hotel  
27 in Stephen's Green in Dublin and lasted four or five hours. That was the  
28 meeting I suggested to Tom Gilmartin that I would buy his lands from him or do  
29 a joint development with him. He replied to that meeting on the 20th of  
12:57:38 30 December saying that he wouldn't accept any of those two options. He again

12:57:43 1 asked to meet me to discuss the Balgaddy sale again. I arranged to meet him in  
2 Dublin Airport Hotel a meeting that lasted for almost 8 hours when we agreed to  
3 transfer the Balgaddy site to Tom Gilmartin because he refused to give up the  
4 Quarryvale site and let us alone and build the Balgaddy site where we wanted to  
5 build it. That meeting took place between the 2nd and first week of January,  
6 probably, in 1988 sir, in the Airport Hotel in Dublin.

7 Q. 192 Do you have any note or memorandum or diary entry in relation to that?

8 A. To the meeting in the Dublin Airport Hotel?

9 Q. 193 Yes?

12:58:25 10 A. I'm sorry, I have not. But there is correspondence about the first meeting  
11 which Tom is completely mixed up, the first meeting was 7th December.

12 Q. 194 That's the meeting --

13 A. He has the meetings mixed up and dates mixed up completely.

14 Q. 195 I see. I wonder would it be -- it's almost one o'clock.

12:58:44 15 CHAIRMAN: Okay, we'll adjourn until two o'clock.

16 MR. GALLAGHER: Thank you.

17

18

19

**THE TRIBUNAL THEN ADJOURNED FOR LUNCH**

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12:58:59 1     THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

2

3                   MR. GALLAGHER: Good afternoon Mr. O'Callaghan. I will come back to the  
4                   meetings and discussions you had with Mr. Gilmartin in just a moment, but lest  
14:09:06 5                   I forget it, I want to go back if I may, to the Cooldrinagh application and the  
6                   events surrounding that. I mentioned to you that there was a letter referred  
7                   to in the planning application, Cooldrinagh planning application, sorry in the  
8                   manager's report relating to the Cooldrinagh application and that that was a  
9                   report from Young & Company dated 31st of the 5th '88, who wrote on behalf of  
14:09:36 10                  Gerard and Louise Burke stating that, in respect of two plots of land there is  
11                  litigation in which their clients are involved.

12

13                   I had understood from you that, and correct me if I am wrong on this, I had  
14                  understood from you that Mr. Smithwick was acting for the vendors in relation  
14:09:55 15                  to the land, is that correct?

16                  A.       That is correct.

17                  Q. 196   That's Mr. Paul Smithwick?

18                  A.       Correct.

19                  Q. 197   And so far as you are aware Young & Company were not acting for Gerard and  
14:10:08 20                  Louise Burke, who were the vendors?

21                  A.       To my knowledge, no.

22                  Q. 198   May I have 1688 please? This is a letter which was sent to the principal  
23                  officer of the Planning Department in connection with your planning  
24                  application; "Our clients Gerard and Louise Burke" sent by Young & Company  
14:10:36 25                  Solicitors, 2 Charleston Road, Rathmines. 31st of May 1988.

26

27                   "We act for Gerald Burke and Louise Burke of Spring Vale, Palmerstown, Dublin  
28                  20. Our clients are the owners of lands at Cooldrinagh, Leixlip, County  
29                  Kildare and have entered into an agreement for sale in respect of portion of  
14:10:57 30                  those lands, which portion is the subject matter of the above planning

- 14:11:00 1 application.
- 2
- 3 With regard to other lands owned by our clients. At separate stages they
- 4 entered into agreements with Messrs. Financial Indemnity Company Ireland
- 14:11:05 5 Limited in relation to the sale of two portions of land and in respect of one
- 6 portion Financial Indemnity Company Ireland Limited nominated Lismore Homes
- 7 Limited to proceed. Lismore homes is a company that was at that stage owned
- 8 and controlled by Mr. James Kennedy, do you know Mr. James Kennedy?
- 9 A. No, sir.
- 14:11:14 10 Q. 199 "We have been furnished with an undated letter, we understand it was sent early
- 11 in May 1988 from Binchy & Partners, to you" that's to the planning department,
- 12 "in relation to the above planning application in which reference is made to
- 13 litigation between their client and our clients", were you made I aware of that
- 14 letter from Binchy & Partners to the County Council?
- 14:11:34 15 A. No.
- 16 Q. 200 The application to Dublin County Council was submitted by Ambrose Kelly,
- 17 Ambrose F Kelly Partnership on behalf of O'Callaghan Properties, did they keep
- 18 you informed of developments in relation to the planning application, the
- 19 objections, etcetera, to it?
- 14:11:55 20 A. Oh, yes.
- 21 Q. 201 Did they not inform you of this letter that had come in that suggested that
- 22 there was a dispute between, in -- between two parties in relation to the lands
- 23 which you were buying?
- 24 A. No, I was never aware of that, or made aware of that.
- 14:12:09 25 Q. 202 I see. The letter continues "The position is that in respect of two plots of
- 26 land mentioned, there is litigation in one case the Plaintiffs being Financial
- 27 Indemnity Company Ireland Limited and Lismore Homes Limited V Gerald Burke and
- 28 Louise Burke and in the other case the parties are Financial Indemnity Company
- 29 Ireland Limited V Gerard Burke and Louise Burke.
- 14:12:34 30

14:12:34 1 The letter sent by Binchy and Partners solicitors to you referring to the  
2 above, does not set out the full position and accordingly is misleading. In  
3 each action the plaintiffs are claiming specific forms of the agreement  
4 relating to the sale of lands in question, both actions are being defended.  
  
14:12:40 5 Accordingly, there is a dispute between the parties which dispute is before the  
6 court and according the matter is Sub Judice. In due course the courts will  
7 decide on the issues between the parties. If the courts hold in favour of the  
8 Plaintiffs then they will be granted specific performance. If the court hold  
9 in favour of the Defendants then they will be granted the orders which they  
10 seek in their defence and counter claim"

11

12 Were you ever made aware that there was a claim for specific performance of an  
13 agreement other than the agreement that you had?

14 A. No, I knew absolutely nothing about this.

14:13:10 15 Q. 203 Can you say in, the name of the company, can you identify the company that was  
16 taking the lands or purchasing the lands from the Burkes?

17 A. I can't remember what company was used to, what special purpose company was  
18 used.

19 Q. 204 I see. Would it be Canderly?

14:13:38 20 A. That's possible.

21 Q. 205 Right. In any event, you say that the running, I think as I described it  
22 earlier, in relation to the planning application and the Section 4 was being  
23 made on behalf of the vendors by Mr. Smithwick as I understood your evidence,  
24 is that correct and Mr. Meehan?

14:13:57 25 A. Yes, correct.

26 Q. 206 Both of those?

27 A. Both people.

28 Q. 207 Yes. And were they --

29 A. Sorry and possibly the landowner. I am not quite sure.

14:14:06 30 Q. 208 I see. But it would appear that neither you nor any of your agents, including

- 14:14:15 1 the architects who applied for the planning permission, did anything in  
2 relation to the proposed development or indeed the planning application or the  
3 Section 4 save that you spoke with Mr. Paddy Hickey?
- 4 A. Correct.
- 14:14:24 5 Q. 209 Did you give him assurances at that stage that the local councillors were in  
6 favour of the proposal?
- 7 A. I wouldn't call it an assurance. He asked me, did the local councillors  
8 support the proposal and I said I had been told that they did.
- 9 Q. 210 Who told you they did?
- 14:14:38 10 A. Mr. Paul Smithwick.
- 11 Q. 211 I see. I now want to go back to the meeting or meetings you had with  
12 Mr. Gilmartin in late 1988, early 1989 depending on which version --  
13 Mr. Gilmartin has told the Tribunal that he met you in the Royal Dublin Hotel  
14 and that on that occasion you told him that you had political clout, that  
14:15:23 15 Mr. Ambrose Kelly had political clout and that effectively he should have you  
16 on board with him. Did you say anything like that to him on that occasion, or  
17 on any occasion?
- 18 A. Absolutely not.
- 19 Q. 212 He went on to say at page, sorry, Day 460, page 7, that that was your first and  
14:16:04 20 opening statement to him in the Royal, in the hotel on O'Connell Street on the  
21 7th of December and he continued.  
22 "And I have to have Ambrose Kelly on board if it was to get through An Bord  
23 Pleanala", did you anything like that to him on that or any occasion?
- 24 A. No, no. What I would have said to him on that point was that I would have  
14:16:26 25 suggested that he would have been better off with local, Irish architects than  
26 UK or North of Ireland architects.
- 27 Q. 213 Why did you tell him that?
- 28 A. Because they would know the planning system better than the foreign architects.
- 29 Q. 214 But, you had the unfortunate experience from your point of view, of getting  
14:16:45 30 involved in Cooldrinagh and although you had local architects, you had found

- 14:16:53 1 yourself in the planning application situation, Section 4 application  
2 situation, which you apparently regretted and regarded as a mistake?  
3 A. Absolutely, mistaken experience, learning curve actually.  
4 Q. 215 Why then were you encouraging Mr. Gilmartin to take on local architects in  
14:17:10 5 circumstances where you had just had that experience?  
6 A. Well because he would -- local architects, the architects that Tom Gilmartin  
7 had been speaking to me about, Taggarts from the North of Ireland, he explained  
8 and mentioned that they are not that familiar with the Irish planning system  
9 and I suggested he would be much better off use local architects providing they  
14:17:35 10 were Irish, preferably Dublin. My point is backed up there by Mr. Willie  
11 Murray who mentioned here a few days ago, last week he spent a lot of time as  
12 well, the planning officer, explaining to Tom Gilmartin's architects how the  
13 Irish planning system worked.  
14 Q. 216 Yes. Did you suggest or nominate the Ambrose Kelly Partnership?  
14:17:54 15 A. No, no.  
16 Q. 217 Did you have political clout at that time?  
17 A. No, sir.  
18 Q. 218 Do you now have political clout?  
19 A. Very, very little.  
14:18:08 20  
21 JUDGE KEYS: Sorry could I just ask you Mr. O'Callaghan, just one question, you  
22 say you had no political clout then, is that correct?  
23 A. Sorry Judge --  
24  
14:18:24 25 JUDGE KEYS: You say you did not have political clout at that stage or very  
26 little now.  
27 A. In 1988/89? That is correct.  
28  
29 JUDGE KEYS: When Mr. Hanrahan went down to your office he called in I think  
14:18:34 30 looking for some support, isn't that correct, when he was running for the

- 14:18:38 1 Senate?
- 2 A. He called in looking for directions really.
- 3
- 4 JUDGE KEYS: Yes and didn't you say to him when he went off that he could use
- 14:18:44 5 your name as a reference or introduction to whom he would meet, who would be
- 6 normal County Councillors, people in the political world, is that correct?
- 7 A. That is correct, I mentioned two or three names to him.
- 8
- 9 JUDGE KEYS: I take it from that point of view you would know people in the
- 14:18:58 10 political world?
- 11 A. I would know people, Judge, but I wouldn't classify it as clout by any means.
- 12
- 13 JUDGE KEYS: I see. Thank you.
- 14 Q. 219 Now your position, as I understand it, is that agreement was not reached with
- 14:19:14 15 Mr. Gilmartin at the first meeting in relation to the sale of the option or the
- 16 Neilstown lands, that that agreement was reached at a subsequent meeting, isn't
- 17 that right?
- 18 A. That's correct.
- 19 Q. 220 I think after the meeting on the 7th of December you wrote to Mr. Gilmartin,
- 14:19:46 20 may I have 1996 please? And 1997. This is a letter Mr. O'Callaghan that you
- 21 signed, if we can have the two pages side by side perhaps? This is a letter
- 22 which is dated the 8th of December 1988 and was sent, by fax, to Mr. Gilmartin
- 23 at his address in Luton?
- 24 A. Yes.
- 14:20:26 25 Q. 221 And this is a letter I presume dictated and signed by you?
- 26 A. Yes sir.
- 27 Q. 222 For the record perhaps I just better read what the letter says;
- 28 "Dear Tom, I would firstly like to thank you for seeing me in Dublin on
- 29 Wednesday 7th to discuss the proposed project for Clondalkin/Lucan satellite
- 14:20:44 30 town. The wide ranging discussion and your sincere frankness is much

14:20:48 1 appreciated. I outline for you my analysis of our discussion and would welcome  
2 your response when you have had the opportunity to consider the points  
3 concluded on at the end of our meeting.

4

14:20:57 5 1. We believe the most valuable proposition would be a joint venture 50/50  
6 agreement.

7

8 2. We also outline our interest in exploring details with you a buy out of the  
9 project subject to your agreement to remain an integral part of the team as we  
10 would highly value your expertise, your understanding and in particular your  
11 contacts to see such a large scale project through to opening.

12

13 3. We, as a property development company, have on our staff a competent  
14 team of in-house architects engineers and other project coordinating personnel  
15 who have carried out successfully the projects we discussed at our meeting. We  
16 feel an alternative solution may be reached agreement on a project management  
17 brief for our company, together with a substantial share of the development. I  
18 fully appreciate that you already have architects and engineers in place.

19

14:21:48 20 I trust I have interpreted correctly the concluding points as discussed at our  
21 meeting and when you have had an opportunity to consider the various options,  
22 we can arrange a further meeting.

23

24 On reflection, since our meeting, if we can come to a suitable working  
25 arrangement, we would also suggest we could have a very major beneficial role  
26 in the project in assisting in having the planning application granted in a  
27 relatively short programme, which would be to the advantage of all  
28 concerned.

29

14:22:19 30 We have been informed that the Western Parkway motorway is scheduled to open at

14:22:24 1 the end of 1989 and the Chapelizod 22 million bypass is scheduled to open on  
2 the 1st June 1989.

3

4 It is obvious from the major road traffic links to the site that the centre  
14:22:37 5 should be opened as soon as possible.

6

7 I look forward to hearing from you in this matter."

8

9 Just for clarification, would you please confirm, if you can, that the Western  
14:22:49 10 Parkway that is referred to, is in fact the first section of the M50 that was  
11 opened?

12 A. Yes.

13 Q. 223 And it is that section which runs along side the eastern side of the Quarryvale  
14 site now?

14:23:01 15 A. Yes.

16 Q. 224 From the Galway Road in the Tallaght direction?

17 A. Yes.

18 Q. 225 Isn't that right?

19 A. Yes.

14:23:07 20 Q. 226 Now it would appear from this letter that that road wasn't due to open until  
21 the end of 1989, it was being constructed at the time you are referring to. So  
22 it seems unlikely that you would have driven along that road in order to view  
23 the Quarryvale site as you have indicated, isn't that right?

24 A. No, sir.

14:23:28 25 Q. 227 Pardon.

26 A. No.

27 Q. 228 It was a building site at that time.

28 A. Yes.

29 Q. 229 Are you saying that you drove along a building site in order to view it?

14:23:36 30 A. Correct.

- 14:23:37 1 Q. 230 I see. Now this letter to Mr. Gilmartin was one that was referred to in the  
2 newspaper article in the Business Post which you quote in your statement of  
3 2000, why were you not in a position to furnish a copy of this at that time?
- 4 A. I'm sorry --
- 14:24:12 5 Q. 231 You said in your statement that you didn't have a copy of this letter in 2002?
- 6 A. Yes.
- 7 Q. 232 Can you tell the Tribunal why it is that didn't have a copy of the letter?
- 8 A. I'm not sure, I don't know why I didn't have it in my possession.
- 9 Q. 233 May I have page 973, you can take it from me that you said:  
10 "Discussions following the Tom Gilmartin. Frank Connolly, in an article in the  
11 Sunday Business Post, described correspondence between me and Tom Gilmartin as  
12 follows, I do not have copies of this correspondence?"
- 13 A. Yes, that is correct, I said that yes.
- 14 Q. 234 Can you explain why?
- 14:24:48 15 A. I don't know why I did not have it, probably could not locate it. But I said  
16 that yes, I did not have it.
- 17 Q. 235 Now the first suggestion that you made was that, first of all it was a wide  
18 ranging discussion.
- 19 A. Yes.
- 14:25:01 20 Q. 236 And you outline for Mr. Gilmartin your analysis of the discussion and you would  
21 welcome his response, when he has had an opportunity, of the points concluded  
22 on at the end of the meeting. What do you mean by the words "concluded on"?
- 23 A. Because at that meeting Tom Gilmartin gave me the distinct impression and it  
24 was a long meeting, that he was prepared to either do a joint development or  
25 even possibly sell his site to us. I left that meeting feeling that we had  
26 definitely, we didn't have an agreement, but Tom was seriously considering  
27 selling on his site to us or doing a joint development with us.
- 28 Q. 237 So when you say the points concluded on at the end of the meeting, are you  
29 referring to the matters that were discussed at the end of the meeting or?
- 14:25:51 30 A. At the meeting, yes, matters discussed at the meeting.

- 14:25:56 1 Q. 238 At the meeting. I see. Are you saying that these were the only matters  
2 discussed at the meeting?
- 3 A. They were the only relative matters, the meeting lasted five hours sir, we  
4 probably spoke about that subject for maybe 15 minutes.
- 14:26:11 5 Q. 239 15 minutes. Well you said that we believe that the most suitable proposition  
6 would be a joint venture, 50/50 agreement, that's on the Quarryvale site?
- 7 A. Yes.
- 8 Q. 240 You were seeking to acquire a portion of his site on a 50/50 basis?
- 9 A. Yes.
- 14:26:33 10 Q. 241 Had you talked about the cost or the, what he would require in order to -  
11 A. No, we never got to that stage.
- 12 Q. 242 But how could you, or why would you make a suggestion of acquiring a 50/50  
13 interest in it, when you wouldn't have a clue as to what he might want for a 50  
14 per cent share?
- 14:26:52 15 A. Because at that particular meeting Tom Gilmartin suggested that that would  
16 probably be a good idea for us to work together, and that he would look  
17 seriously at that.
- 18 Q. 243 But working together didn't necessarily mean that he would give you 50 per  
19 cent?
- 14:27:05 20 A. Sorry, as a joint development, working together, what I mean is as a joint  
21 development partnership.
- 22 Q. 244 I see. Well you went on then to say "We also outlined our interest in  
23 exploring details with you, a buy out of the project."
- 24 A. Yes.
- 14:27:26 25 Q. 245 Had you any idea what a buy out who have cost at that stage?
- 26 A. Approximately, just an approximate figure, the figure at the time was around 15  
27 million pounds.
- 28 Q. 246 Had you spoken about 15 million pounds?
- 29 A. Yes we mentioned, very round terms, as close as Tom could get to the figure  
30 actually.

- 14:27:41 1 Q. 247 I have no recollection of that being put to Mr. Gilmartin as something that was  
2 discussed at that meeting?
- 3 A. Well they are the figures he was talking about, he mentioned to me at that  
4 meeting.
- 14:27:51 5 Q. 248 My understanding of his evidence, is that, he said that there was no question  
6 of his seeking to sell on his interests or involving himself with you in the  
7 sale of the lands?
- 8 A. That is correct, that is what he said in his letter to me of the 20th of  
9 December sir, but at the meeting, and I am repeating it, at the meeting we had  
10 7th of December, Tom was quite prepared to look at a joint development he felt  
11 would be suitable to him, he also suggested he would look at selling his site  
12 on to us, the approximate figure mentioned, without going into detail because  
13 it wasn't finalised, the site had not been put together completely was  
14 approximately 15 million pounds, he changed his mind completely when he wrote  
15 his letter on the 20th of December.
- 14:28:35 16 Q. 249 Do you say the 15 million pounds was in respect of the 50 per cent share in the  
17 property or a hundred per cent?
- 18 A. Outright, I think that would have been probably a hundred per cent.
- 19 Q. 250 A hundred per cent.
- 14:28:47 20 A. You have to bear in mind sir only a certain amount of the land was acquired at  
21 that stage.
- 22 Q. 251 Well what was he suggesting that he would sell on, or might sell on for 15  
23 million pounds?
- 24 A. What he had purchased.
- 14:28:58 25 Q. 252 What he had purchased at that stage, that is the 7th of December of 1988?
- 26 A. Yes.
- 27 Q. 253 Of 1988?
- 28 A. Yes.
- 29 Q. 254 That obviously did not include the Dublin Corporation lands or the Dublin  
30 County Council lands.

- 14:29:13 1 A. I am not sure, he hadn't them purchased.
- 2 Q. 255 Pardon?
- 3 A. He had not purchased it at that stage.
- 4 Q. 256 We know that, in general terms?
- 14:29:22 5 A. I presume it didn't include that.
- 6 Q. 257 I have no recollection, I am sure Mr. Sreenan will correct me if I am incorrect  
7 in this, but I have no recollection of a figure of 15 million pounds being put  
8 to Mr. Gilmartin as a figure that he had suggested you would be prepared to  
9 talk about or negotiate about in relation to the sale of the lands to you.
- 14:29:42 10 A. I am not saying that we agreed any figure. I said that was an approximate  
11 figure of what he had possibly spent on the land at that stage. What he said  
12 to me was he would look at both options and at the time, at the date of the  
13 meeting he was looking at both of them favourably. The figure mentioned with  
14 regard to the land that he had acquired to date was about 15 million pounds.
- 14:30:02 15 There was nothing firm about it. Tom was to go and consider both options and  
16 come back to me.
- 17 Q. 258 Well if he had spent 15 million pounds on the lands at that stage, presumably  
18 he was going to look for a profit on the lands, if he was selling them on?
- 19 A. I am sure he was, yes. That was not mentioned, but I am sure he was.
- 14:30:20 20 Q. 259 And did you have any idea as to what profit he would look for?
- 21 A. Oh, no sir.
- 22 Q. 260 Now the third point you made to him was that; "we as a property development  
23 company have on our staff a competent team of in-house architects engineers and  
24 other project co-ordinating personnel, who have carried out successfully the  
25 projects we discussed at our meeting."
- 26
- 27 MR. LUCEY: I wonder Chairman, if that letter could be put up on the screen.
- 28
- 29 JUDGE FAHERTY: 1996.
- 14:30:59 30

14:30:59 1 MR. GALLAGHER: Sorry, I beg your pardon 1996, yes. "We feel an alternative  
2 solution may to be reach agreement on a project management brief for our  
3 company together with substantial share of the development. I fully appreciate  
4 that you already have architects and engineers in place".

14:31:20 5  
6 Now did you have, or did you envisage that any planning application that might  
7 be necessary in relation to the lands in question, the Quarryvale lands, would  
8 be submitted by your in-house architects and engineers, what were they going to  
9 contribute that the architects and engineers that he had in place could not  
contribute?

14:31:49 10 A. Well we were, I was talking about projecting managing, project managing the  
11 project when it had planning permission.

14:32:12 13 Q. 261 I see. Did you think at that his architects and engineers, at that time, were  
14 not in a position to provide project management services to him?

14:32:12 15 A. I am not too sure if they were into that business actually, but Tom had said to  
16 me at that meeting that he felt, if he would eventually, when he would  
17 eventually get permission for his project, if that happened, that it would be  
18 quite a large project and he would want some assistance especially on the  
19 building and project management side of it.

14:32:30 20 Q. 262 Well now, had you any idea of the size of development that he was talking about  
21 at that stage?

22 A. Oh, yes.

23 Q. 263 What size was it?

24 A. Approximately one and a half million square feet of retail space.

14:32:45 25 Q. 264 And when had you learned --

26 A. And a half million square feet of retail park space and one thousand houses on  
27 the Liffey Valley.

28 Q. 265 So there were three elements to it really?

29 A. Correct.

14:32:57 30 Q. 266 1.5 million of retail?

- 14:33:00 1 A. 1.5 million square feet of pure retail space.
- 2 Q. 267 500 thousand square feet of retail warehousing, is that correct?
- 3 A. Retail park.
- 4 Q. 268 Retail park. And one thousand houses?
- 14:33:15 5 A. Correct.
- 6 Q. 269 And when did you discover that was what was proposed?
- 7 A. When I spoke to Tom on the 7th of December.
- 8 Q. 270 I see. Had you any idea before that as to what was, what he had in mind?
- 9 A. I had heard it was quite big, but I didn't realise it was that large.
- 14:33:35 10 Q. 271 Who had told you it was quite big?
- 11 A. That was the local word that was going around. This if you remember was
- 12 December I was trying to assemble the Balgaddy site, or get it started and word
- 13 was there was a very large scheme, most of the councillors were talking about
- 14 this, I believe, a very large scheme being mooted for West County Dublin.
- 14:33:56 15 Q. 272 Would that have been, we know that you signed your contract on the 7th October
- 16 1988 with Merrygrove, etcetera, and that they, about that time had negotiated
- 17 with Dublin Corporation for the sale of the Neilstown lands, did you know and
- 18 was it generally known at that time that another large scheme was being
- 19 proposed on the Quarryvale lands?
- 14:34:26 20 A. It was vaguely mooted, I wouldn't say I knew about it, it was rumoured is
- 21 probably the best way to put it.
- 22 Q. 273 Yes. We know that there was a press release in early, I think about the 2nd of
- 23 November of 1988, there was an article in the Irish Times by Jack Fagan,
- 24 outlining the proposal to develop the Neilstown lands, do you remember that?
- 14:34:57 25 A. I think, yes I think I do. Yes.
- 26 Q. 274 That was the same day that you met, I think, Mr. Lawlor?
- 27 A. Yes.
- 28 Q. 275 Were you aware at that time that Mr. Gilmartin was proposing to develop a very
- 29 large scheme on the Quarryvale lands?
- 14:35:19 30 A. Rumour again sir, just rumour.

14:35:22 1 Q. 276 Yes, but was it your belief at that stage, I mean you had a discussion about  
2 the size of the, the fact that such a development was being proposed, that  
3 Mr. Gilmartin had acquired lands there and you say that Mr. Lawlor told you he  
4 had been asked by Mr. Flynn and Mr. McSharry to look after Mr. Gilmartin, isn't  
14:36:00 5 that right?

6 A. Who did you say? You said I was speaking to somebody.

7 Q. 277 No you were speaking to Mr. Hanrahan on the morning of the 4th of November  
8 1988, and you had been speaking with Mr. Lawlor on Wednesday last, that was the  
9 2nd of November?

14:36:14 10 A. Yes.

11 Q. 278 So around that time, were you aware of Mr. Gilmartin's intention to build a  
12 very large --

13 A. Well that's putting it very strong sir. Intention. It was a pure rumour and  
14 because of the size I am sure as you are well aware, it was a very, very weak  
14:36:37 15 rumour, but it was sufficient to concern me because of what I was trying to do  
16 on the Balgaddy site.

17 Q. 279 Did I understand you to say earlier that the councillors were, had this rumour?

18 A. This was floating around West County Dublin, that there was rumour of it, of a  
19 large centre to be built somewhere in the area.

14:36:55 20 Q. 280 And Mr. Lawlor told you he was confident that this centre, Mr. Gilmartin's  
21 centre would get planning permission?

22 A. Yes. He did tell me that, yes.

23 Q. 281 Now I want to return if I may please to the letter that I was taking you  
24 through.

14:37:12 25  
26 On page 1997: "I trust I have correctly interpreted the concluding points as  
27 discussed at our meeting and when you have had an opportunity to consider the  
28 various options, we can arrange a further meeting.  
29

14:37:34 30 On reflection, since our meeting, if we can come to a suitable working

14:37:37 1 arrangement, we would also suggest we could have a very major beneficial role  
2 in the project in assisting in having the planning application granted in a  
3 relatively short programme, which would be to the advantage of all concerned."

4

14:37:49 5 What were you seeking to convey by that sentence?  
6 A. Two things I think. One, Tom was of the belief that if he controlled or if the  
7 one company controlled the Balgaddy site as well as Quarryvale, that the zoning  
8 could be transferred from Balgaddy to the Quarryvale site. Obviously that was  
9 not correct, but Tom believed that and I wasn't quite sure whether it was true  
10 or false. I was inclined to agree with him at the time that it could be done,  
11 but I wasn't sure. And secondly, again I was suggesting to him, and confirming  
12 what Mr. Murray said here recently, that he should use local Dublin based  
13 architects in his planning application.

14 Q. 282 Did you intend to convey anything else?

14:38:43 15 A. That's it.

16 Q. 283 Just have a look at the sentence. First of all, you are saying that "if we can  
17 come to a suitable working arrangement", isn't that right?

18 A. Yes.

19 Q. 284 That presumably was a suitable working arrangement such as envisaged at one two  
14:39:05 20 and/or three above?

21 A. I presume, I'm sure that was --

22 Q. 285 Perhaps we can show them side by side, 1996 and 1997.

23 A. 1, 2 and 3, yes?

24 Q. 286 So the suitable working arrangement was something that involved one or other or  
14:39:24 25 all of those, or a combination of those proposals?

26 A. Yes.

27 Q. 287 And you said "We could have a very major beneficial role in the project".

28 A. Yes.

29 Q. 288 That's we, O'Callaghan Properties?

14:39:38 30 A. Yes.

- 14:39:40 1 Q. 289 "In having the planning application granted in a relatively short programme".
- 2 A. Well that's the transferring of the Balgaddy site to, the Balgaddy site being
- 3 in the one ownership, so the zoning could be transferred to Quarryvale.
- 4 Q. 290 But you don't mention zoning Mr. O'Callaghan.
- 14:39:58 5 A. That's what is intended.
- 6 Q. 291 Mr. O'Callaghan that's not what you say. You say "in having the planning
- 7 application granted in a relatively short programme."
- 8 A. Yes.
- 9 Q. 292 Why did you not mention zoning, if that was your intention?
- 14:40:12 10 A. Well planning, I was referring, that was what I was actually referring to
- 11 planning and zoning.
- 12 Q. 293 Well you had been dealing with development since the 1970s and you knew the
- 13 difference between planning and, planning permission and zoning, did you not?
- 14 A. Yes.
- 14:40:28 15 Q. 294 Why did you not refer to zoning, in that sentence, rather than planning
- 16 permission?
- 17 A. Quite often, very often I would use both words, use planning instead of zoning
- 18 and vice versa. There is not a great difference between them really.
- 19 Q. 295 If you were suggesting that local architects be employed, why did you not say
- 20 that, on reflection --
- 21 A. I had spelt that out, this is a follow up to a meeting. I had mentioned that
- 22 at the meeting to Tom Gilmartin, I recommended that to him.
- 23 Q. 296 All right. Why did you not say that to him? Say on reflection it has occurred
- 24 to me, I should reiterate again that you should employ local architects who
- 14:41:11 25 would have a knowledge of Irish planning law and the situation in Dublin
- 26 generally in relation to planning, zoning, etcetera, why did you not say
- 27 something to that effect?
- 28 A. Maybe I should have said that.
- 29 Q. 297 Why did you not --
- 14:41:27 30 A. I did not say it, maybe I should have say it.

- 14:41:30 1 Q. 298 Why did you not say it if that's what you intended to convey?
- 2 A. I can't answer that, I can't go into that detail, I can't answer that.
- 3 Q. 299 On its face it seems to suggest that if a deal could be done with
- 4 Mr. Gilmartin we, that's O'Callaghan Properties, could have a major beneficial
- 14:41:52 5 role in the project in assisting in having the planning permission granted in a
- 6 relatively short programme?
- 7 A. Yes, because if a deal was done the Balgaddy site and the Quarryvale site would
- 8 come under the same company.
- 9 Q. 300 But --
- 14:42:03 10 A. And in accordance with Tom Gilmartin's own thinking, the zoning would be
- 11 transferred from the Balgaddy site to Quarryvale site.
- 12 Q. 301 But you, first of all, did you check that out to find out whether what he was
- 13 telling you was accurate, i.e. that if the two parcels of lands were in the
- 14 same ownership there would be no trouble in having the zoning transferred from
- 14:42:30 15 one to the other?
- 16 A. No, sir did I not. I should have, but I did not. He told me that on numerous
- 17 occasions and I accepted it from him. It turned out to be incorrect.
- 18 Q. 302 Did you discuss it with any of your architects or engineers employed in-house
- 19 or with your solicitors or with your consulting architects Ambrose Kelly and
- 14:42:48 20 Partners?
- 21 A. Yes, I discussed it with Ambrose Kelly and he felt that that was possible.
- 22 Q. 303 When did you discuss it with him?
- 23 A. Same time, around the same time.
- 24 Q. 304 Was this before or after the letter was written?
- 14:42:58 25 A. Before the letter was written.
- 26 Q. 305 What did Mr. Kelly say?
- 27 A. He was like myself, he wasn't quite sure, but we took Tom Gilmartin's word for
- 28 it. Tom was adamant that that was the case.
- 29 Q. 306 So the position then is as I understand it, correct me if I am misunderstanding
- 14:43:13 30 you Mr. O'Callaghan, Tom Gilmartin who was based in Luton, and who had no

14:43:19 1 engineering or planning qualifications was telling you, an experienced  
2 developer in this country, that zoning could be changed from one side to the  
3 other provided that both sites were in the same ownership. You sought advice  
4 from Ambrose Kelly who was a consulting architect here, and who had applied for  
14:43:44 5 planning permission and was readily experienced in this area and he felt that  
6 Tom Gilmartin was right. And on that basis you wrote this letter in relation  
7 to a planning application being granted in a relatively short period. Is that  
8 correct?

9 A. No no, no. First of all Mr. Gilmartin, Tom Gilmartin, believed that he knew a  
14:44:08 10 lot more about planning, building, and property than I ever did or ever will.  
11 His opinion, as far as he was concerned was correct. He didn't, you are  
12 painting the image that Tom came over from Luton not knowing anything about  
13 building, that was incorrect. As far as Tom was concerned he was a complete  
14 expert in planning, he told me that and I accepted it from him. Both of us  
14:44:36 15 were wrong.

16 Q. 307 Why did you not say to him, in this letter, since our meeting I have spoken to  
17 Ambrose Kelly who confirms that in his view, that you are correct, i.e. if the  
18 two parcels are in the same ownership there won't be a difficulty in  
19 transferring the zoning?

14:44:55 20 A. Tom Gilmartin had no respect for Ambrose Kelly's opinion sir.

21 Q. 308 Why didn't you give it to him whether he would respect it or not?

22 A. I wouldn't waste my time.

23 Q. 309 How did you know he had no respect for Ambrose Kelly's opinion?

24 A. Because he told me.

14:45:15 25 Q. 310 When?

26 A. Oh numerous, two or three occasions at least.

27 Q. 311 When did he tell you --

28 A. On my first meeting on the 7th, he told me. Then he told me on the telephone  
29 prior to that.

14:45:26 30 Q. 312 Why did he --

- 14:45:27 1 A. I don't know. You would have to ask him that question yourself sir, I don't  
2 know.
- 3 Q. 313 So far as you were aware had he had any dealings with Ambrose Kelly at that  
4 stage?
- 14:45:37 5 A. Not to my knowledge.
- 6 Q. 314 Did you tell him that Ambrose Kelly was your consultant architect in Dublin?
- 7 A. Yes. Yes, sir.
- 8 Q. 315 Did you tell him that the consultant you had in mind in replacing the English  
9 and Northern Ireland based architects and consultants, was Ambrose, the Ambrose  
14:46:02 10 Kelly Partnership?
- 11 A. No.
- 12 Q. 316 How then did the Ambrose Kelly name or Ambrose Kelly Partnership arise in  
13 conversation?
- 14 A. Tom Gilmartin was aware that he was my architect.
- 14:46:11 15 Q. 317 And did he give you any reason why he would not accept Mr. Kelly as the  
16 consultant?
- 17 A. No.
- 18 Q. 318 Well now, why is it that knowing that Mr. Gilmartin would not accept Mr. Kelly  
19 as a consultant, you went to Mr. Kelly for advice as to whether or not the  
14:46:33 20 zoning could be readily changed from one site to another provided both were in  
21 the same ownership?
- 22 A. Because I respected Ambrose Kelly's opinion.
- 23 Q. 319 Why then did you not say "I have since our meeting on the 7th checked and have  
24 obtained confirmation that zoning can readily be changed from one site to the  
14:46:57 25 other, provided they are in common ownership?"
- 26 A. I couldn't give an opinion on that, sir.
- 27 Q. 320 But you had obtained that opinion from Ambrose Kelly?
- 28 A. As I said to you, his opinion was the same as mine, we were not a hundred per  
29 cent certain that it was correct, but we assumed, we accepted Tom Gilmartin was  
14:47:13 30 correct in what he said.

- 14:47:14 1 Q. 321 Why did you tell Mr. Gilmartin that you had obtained some further confirmation,  
2 although it may not be definitive, that his view about the changing of the  
3 zoning from one site to another was probably correct?
- 4 A. Because he wouldn't have taken any notice of the opinion.
- 14:47:29 5 Q. 322 What made you think that he would take any notice of your suggestion that if he  
6 could arrive at a suitable working arrangement, you could have a very major  
7 beneficial role in the project in assisting in having the planning application  
8 granted in a relatively short programme?
- 9 A. Well he didn't take any notice it have sir.
- 14:47:52 10 Q. 323 Why did you write it?
- 11 A. It was always a hope. The meeting we had, the meeting that took place on the  
12 7th was very friendly meeting. The suggestions were made, he listened to all  
13 those suggestions, he seemed as if he was going to take them on board, that's  
14 why I wrote the letter, confirming the meeting.
- 14:48:09 15 Q. 324 You said that he had no respect for Mr. Kelly's opinion. And you spoke  
16 subsequent to the meeting with Mr. Kelly, and notwithstanding what  
17 Mr. Gilmartin had said at the meeting on the 7th, you suggested that if you  
18 were to come on board with him, you could have a major beneficial role in  
19 assisting in having the planning application granted in a relatively short  
programme. Now, if knowing what he, his lack of respect for Mr. Kelly's  
opinion, did you not feel that you should perhaps point out that this  
assistance would not involve enlisting the aid of anybody other than your  
in-house architects and engineers.
- 20 A. I didn't say what architects we were going to use sir. That was open for  
21 discussion.
- 22 Q. 325 You didn't say that though.
- 23 A. That was open for discussion. We didn't even get to that stage.
- 24 Q. 326 But you didn't mention this, knowing that Mr. Gilmartin --
- 25 A. The subject didn't come up.
- 14:49:07 26 Q. 327 But it had come up at the meeting on the 7th.

- 14:49:18 1 A. If we had got to the stage where we could have agreed to get together, we would  
2 then probably have started to discuss the design team, we hadn't even got to  
3 that stage.
- 14:49:34 4 Q. 328 Mr. O'Callaghan, one thing you are agreed on with Mr. Gilmartin at this stage  
5 and there may be others, this is in relation to the meeting on the 7th of  
6 December, you are in dispute as to where it happened, you are in dispute as to  
7 what was agreed, etcetera?
- 14:49:53 8 A. No I am not in dispute as to what was agreed.
- 14:50:13 9 Q. 329 He says one thing was agreed, you say it wasn't agreed. So you are disputing,  
10 you admit a meeting took place, you dispute, you have a dispute as to where the  
11 venue was.
- 14:50:13 12 A. Yes.
- 14:50:13 13 Q. 330 You have a dispute as to whether anything was agreed or not agreed. You have a  
14 dispute about what your proposals were whether you were offering to buy him  
15 out, etcetera.
- 14:50:29 16 A. That's detailed in my letter of the 8th of December.
- 14:50:45 17 Q. 331 I understand. But what you are agreed is that there was a discussion in  
18 relation to the Ambrose Kelly Partnership, he say that is it was mentioned, the  
19 Ambrose Kelly name was mentioned at that meeting and you confirm that it was  
20 mentioned.
- 14:51:15 21 A. At the meeting?
- 14:51:15 22 Q. 332 At the meeting on the 7th December. He says that you told him, advised him,  
23 that you had to have, that he had to have yourself and Mr. Kelly on board  
24 because of your clout?
- 14:51:15 25 A. That is incorrect. Yes?
- 14:51:15 26 Q. 333 And he says that you told him, that he had to have Ambrose Kelly on board if he  
27 was to get through An Bord Pleanala. He mentioned at a later stage when he was  
28 being questioned by Mr. Sreenan in relation to this, he said that this was  
29 chitchat, but you confirm that there was mention of Mr. Kelly at this meeting?
- 14:51:15 30 A. I'm not quite sure if there was.

- 14:51:17 1 Q. 334 You have told the Tribunal that it was mentioned, that he had mentioned, he  
2 told you that he wouldn't, that he had no respect for Mr. Kelly's opinion?  
3 A. Not at that meeting sir, I said he did not have any respect for Ambrose Kelly,  
4 I didn't say it happened at that meeting.  
14:51:30 5 Q. 335 Bear with me now for one moment and I will just check my recollection of what  
6 you said and I am subject to correction on this Mr. O'Callaghan if my  
7 recollection is wrong I apologise to you, my recollection is that you said to  
8 the Tribunal that Mr. Gilmartin had indicated to you, that he told that he had  
9 no respect for Ambrose Kelly's opinion and I said how do you know that. You  
14:51:59 10 said because he told me. And I said when, you said on numerous, two or three  
11 occasions at least. When did he tell you. At my first meeting on the 7th he  
12 told me, then he told me on the telephone prior to that. That's what you said.  
13 A. Mm-hmm. Well it's, what I mean by that is that it's a general statement, it  
14 was said on quite a few occasions. Any time I mentioned Ambrose Kelly's name  
14:52:23 15 Mr. Gilmartin wouldn't want to speak about him --  
16 Q. 336 Would you agree with me Mr. Gilmartin, I beg your pardon Mr. O'Callaghan, would  
17 you agree with me that the sentence on page 1997, is one which is capable of  
18 being interpreted as --  
19 A. Can I see it again please?  
14:52:42 20 Q. 337 Sorry, it's on screen in front of you. You see it there the paragraph  
21 beginning "On reflection since our meeting"  
22 A. Oh, yes sorry.  
23 Q. 338 "On reflection since our meeting, if we can come to a suitable working  
24 arrangement, we can would also suggest we could have a very major beneficial  
14:53:03 25 role in the project in assisting in having the planning application granted in  
26 a relatively short programme, which would be to the advantage of all  
27 concerned."  
28  
29 Now reading that objectively, I suggest to you it is capable of being  
14:53:15 30 understood as saying that if you are taken on board on this project, you could

14:53:19 1 have a major beneficial role in assisting in having the planning application  
2 granted in in a relatively short period, that is a shorter period than it would  
3 otherwise be the case if anybody else was taken on board, would you agree with  
4 that?

14:53:42 5 A. If the Balgaddy site became part of the overall, Quarryvale and Balgaddy became  
6 part of the overall, one company and under one control, yes.

7 Q. 339 And this would be to the advantage of all concerned. That would include your  
8 company and Mr. Gilmartin?

9 A. Yes.

14:54:05 10  
11 JUDGE FAHERTY: Mr. O'Callaghan, sorry just on that point, can I ask you when  
12 you are writing to Mr. Gilmartin on the 8th of December, some four or five  
13 weeks previously you had had a meeting with Mr. Lawlor, because we know it is  
14 referred to in your memo of the 4th November, isn't that correct? And in that  
14:54:31 15 you make reference to Mr. Lawlor being quite confident that Mr. Gilmartin will  
16 get his permission in the end, but for the moment that you were in the driving  
17 seat. Now my read of that doesn't suggest any link between Mr. Gilmartin  
18 getting permission for his Quarryvale site and Balgaddy lands being under the  
19 one ownership of two companies. They seem to be two distinct concepts in the  
14:54:57 20 memo.

21 A. Yes.

22  
23 JUDGE FAHERTY: I am just wondering in light of that, when you wrote, when you  
24 are saying to Mr. Gilmartin that you, that you could be beneficial in assisting  
14:55:09 25 in having the planning permission granted, were you in some way buoyed up by  
26 what your discussions with Mr. Lawlor on the 4th of November, because in the  
27 memo, it's on page 1940, it would appear in that memo, your understanding is,  
28 from Mr. Lawlor, that he is quite confident Mr. Gilmartin will get planning  
29 permission for his project, but at the moment that you are in the driving seat  
14:55:37 30 and that both would be going, if you like, in tandem.

14:55:39 1 A. Yes.

2

3 JUDGE FAHERTY: You see what I'm getting at? What you are suggesting in  
4 response to Mr. Gallagher, is that it could only arise if Balgaddy and  
14:55:51 5 Quarryvale were under the one ownership

6 A. Yes.

7

8 JUDGE FAHERTY: But that doesn't seem to be the suggestion, however --

9 A. That is Tom Gilmartin's suggestion. That is Tom Gilmartin's belief, that if  
14:56:04 10 both sides were together, his advice was, and I don't know where he got his  
11 advice. His advice was, if both sides were together that he could transfer the  
12 zoning from Balgaddy --

13

14 JUDGE FAHERTY: I understand that and I understand you thought that --

14:56:17 15 A. I didn't know, but I accepted what he said.

16

17 JUDGE FAHERTY: I understand your answer Mr. O'Callaghan, but the point I am  
18 making is, that's not what's suggested in your own memo of the 4th of November  
19 1988.

14:56:28 20 A. Well that suggestion is quoting what Mr. Lawlor said to me. I am not saying  
21 whether that was wrong or right, that's what Liam Lawlor said. He felt Tom  
22 Gilmartin would get planning permission, I am not saying whether that was  
23 correct or not. But naturally because he said it me it also concerned me a  
24 little bit, that if he did get planning permission on the Quarryvale site it  
25 would downgrade Balgaddy site even more so.

26 Q. 340 Mr. Gilmartin replied to that letter, I think, on on the 20th of December 1988,  
27 2004 please?

28

29 "Dear Owen, thank you for your letter of the 8th of December.

14:57:35 30

1 I was very pleased to have an opportunity to meet you in Dublin, I felt it was  
2 most useful to discuss openly and frankly our respective development proposals  
3 for the Clondalkin area.

4

14:57:46 5 In looking at what involvement I could envisage you having within my scheme, at  
6 this stage I'm afraid I would have to rule out any consideration of either a  
7 joint venture agreement for indeed selling out my interest entirely to you.

8

9 You will appreciate in respect of the joint venture proposal, that while I have

10 my finances arranged in principle, the details of these arrangements could be  
11 placed in danger should an arrangement such as you suggest be entered into by  
12 me.

13

14 On the question of selling my entire interest in the project I have decided  
15 that this proposal is completely out of the question.

16

17 This therefore leaves the only option as some sort of project consultancy role  
18 and this I would be happy to discuss in more detail with you. I would be  
19 grateful if you could define more precisely the areas of work where you feel  
20 that your firm could be of assistance in this project and details of who  
21 exactly in your organisation would be involved in each of the proposed stages.  
22 You will appreciate that we would also need to discuss any such arrangement  
23 with our bank and I will therefore need at some stage copies of the accounts of  
24 O'Callaghan Properties Limited.

25

26 I look forward to hearing from you so that we can discuss these matters. May I  
27 take this opportunity to wish you a very Happy Christmas", that letter was  
28 faxed to you, or sent to you on 20th of December 1988 by Mr. Gilmartin in  
29 response to your letter.

14:59:07 30 A. Yes.

- 14:59:08 1 Q. 341 And he asked you to define the areas of work in which your firm could be of  
2 assistance in this project and details of who exactly in your organisation  
3 would be involved in each of their proposed stages. Did you ever respond to  
4 that.
- 14:59:25 5 A. No, I did not.
- 6 Q. 342 Why not?
- 7 A. Well I felt that he was going nowhere.
- 8 Q. 343 Well you had suggested as the third option, a project consultancy role?
- 9 A. Mm-hmm.
- 14:59:38 10 Q. 344 And he was, he was addressing the three issues that, options that you had  
11 proposed to him. He would rule out any joint venture agreement, he would also  
12 rule out the question of selling his entire interest in the project and he was  
13 leaving open the possibility of a project consultancy role. He said you would  
14 have to discuss this in more detail?
- 15:00:05 15 A. That was just a sop really, and I wasn't interested any more in it, he wasn't  
16 serious about that. That was my feeling and that's the way I felt about it.
- 17 Q. 345 But you had raised it with him and you had discussed it with him and he was now  
18 coming back in a not -- he was quite, a negative approach in relation to the  
19 joint, 50/50 venture. He was negative in relation to the sale to you, but he  
20 was open to discussion in relation to the project management and he was asking  
21 you who was going to be involved in it?
- 22 A. Yes.
- 23 Q. 346 Why did you not take that up?
- 24 A. I left, I decided at that stage that we got into, that he wasn't serious, that  
25 he wasn't that serious about the project management side of it and I left it  
26 go.
- 27 Q. 347 Was there anything in his request to you to define more precisely the work that  
28 you would be involved in and the personnel who would be involved, that caused  
29 you to abandon that as a proposal?
- 15:00:57 30 A. No, I just felt that it was a waste of time dealing any further on that basis

- 15:01:01 1 with him.
- 2 Q. 348 You had, subsequently, you had a meeting with Mr. Haughey and Paddy Morrissey
- 3 in March of 1989. Perhaps I will leave that for the moment, I will come back
- 4 to it.
- 15:01:37 5
- 6 In any event, in January 1989 an agreement was reached with Mr. Gilmartin and
- 7 this was an agreement which culminated in the signing of an agreement on the
- 8 31st of January, the option agreement.
- 9 A. Yes.
- 15:01:58 10 Q. 349 Would you tell the Tribunal what lead up to the signing of that option
- 11 agreement, as you recall it?
- 12 A. From the start.
- 13 Q. 350 Well from, you had now, a letter from Mr. Gilmartin dated the 22nd of December
- 14 rejecting any possibility of selling his entire interest to you or taking you
- 15 on as a 50/50 joint venture partner, but suggesting that he might consider a
- 16 project consultancy role.
- 17 A. Yes.
- 18 Q. 351 What happened after that?
- 19 A. Early in January Tom Gilmartin rang me. And said he suggested, was anxious to
- 15:02:41 20 proceed again and try and purchase, acquire the Balgaddy site from us. I
- 21 suggested to him again that we would want to stay where we were and proceed
- 22 with Balgaddy site and get on with our own job and it was probably as well if
- 23 we went our separate ways and we built our development and he did his. But he
- 24 said he was in trouble, he had a difficulty doing that and he really wanted to
- 15:03:05 25 buy the Balgaddy site, buy us out really was what he said. On the strength of
- 26 that he arranged that we would meet again. I am not sure of the date, but it
- 27 was early in January, I am certain of the meeting, the meeting was in the
- 28 Dublin Airport hotel, not the new hotel, the old Dublin Airport hotel. Tom
- 29 booked a room there and the meeting started around 10 o'clock in the morning
- 15:03:32 30 and lasted until 6 o'clock that night.

15:03:37 1 How I am so sure of that was that Tom arrived with a carton of cigarettes, they  
2 were practically all smoked the same day, I am sure that will jog his memory.  
3 We spent the best part of the day talking about Tom's life story really.  
4  
15:04:00 5 Towards the end of the meeting we got down to the real business, and I produced  
6 my plan of Balgaddy and said that, Tom said, well can we come to an arrangement  
7 and I said that we actually had a projected profit figure of 7 million pounds  
8 on that development, on Balgaddy if we proceeded with it. That's where Tom has  
9 got his figure of 7 million pounds.  
10  
15:04:27 10 I told him that we were prepared to walk away from the deal and sell our  
11 interest in Balgaddy to him for 3 million pounds plus the half a million pounds  
12 that we had to give to Albert Gubay to buy out his contract. Tom agreed  
13 immediately and we shook hands on the deal. It lasted not too long.  
14  
15:04:48 15 That was almost at the end of the meeting. That was based on an unconditional  
16 contract, Tom would buy Balgaddy from us, buy our interest in Balgaddy from us.  
17 In other words he was stepping into my shoes and take over the Dublin  
18 Corporation contract  
19  
15:05:06 20 Q. 352 Well in stepping into your shoes, there was a provision in relation, in the  
21 Dublin Corporation contract, which required the planning permission be  
22 obtained, be applied for within two months of the 21st of November of 1988,  
23 isn't that right?  
24 A. That's correct.  
15:05:28 25 Q. 353 And that period was rapidly running out, if your recollection is correct?  
26 A. That is correct.  
27 Q. 354 Did you make that clear to Tom?  
28 A. Mm, I am not quite sure whether I did or not, because I was aware of it and I  
29 was told that -- my advice on this from John Deane was that time was, we  
30 didn't -- time was not of the essence in this particular case.

- 15:06:03 1 Q. 355 Well you were, dealing with Mr. Gilmartin, did you write to him at that stage  
2 to confirm what had been agreed?
- 3 A. No.
- 4 Q. 356 Did you ask your solicitor to write to him to confirm what had been agreed?
- 15:06:21 5 A. I asked John Deane to write to Tom Gilmartin's solicitor Seamus Maguire to  
6 confirm what had been agreed.
- 7 Q. 357 When was the 3.5 million to be paid?
- 8 A. Tom, the follow on to this, in accordance with the agreement of that day, that  
9 day in early January, as soon as possible. Tom, and it was an unconditional  
15:06:44 10 agreement, unconditional contract. Tom rang me back within a matter of days,  
11 to ask me could we change the unconditional agreement to an option agreement.  
12 At this stage we had decided to walk away from Balgaddy and I said yes, we  
13 would agree to that. He then also asked me could he have some staged payments  
14 and pay it in stages, I said yes and we agreed them on the telephone.
- 15:07:13 15 Q. 358 Mr. Gilmartin says that you agreed with him as I have already put to you on the  
16 7th of December and he says that the agreement that you had with him was one  
17 which was subject to zoning or, and planning, that at a later stage, on the  
18 31st of January 1988, if my recollection is correct, he says that the question  
19 of planning was dropped, but that zoning was retained.
- 15:07:45 20 A. As I said to you before lunch, he has his dates and everything else mixed up  
21 like that. The question of zoning and planning was never, never mentioned. It  
22 was an unconditional contract, it was then an unconditional option agreement.
- 23 Q. 359 You say that he telephoned you and asked for a staged payment, what staged  
24 payment --
- 15:08:07 25 A. For staged payments.
- 26 Q. 360 Pardon?
- 27 A. Staged payments.
- 28 Q. 361 Staged payments. Yes. And you agreed?
- 29 A. Yes.
- 15:08:15 30 Q. 362 On staged payments. What staged payments did you agree on the telephone?

- 15:08:20 1 A. We agreed that 800,000 pounds would be paid on the signing of the agreement.
- 2 Excuse me. We agreed that an additional 1.35 million pound would be paid in
- 3 June of 1989 and we agreed that the final payment of 1.35 million pounds would
- 4 be paid in October of 1989.
- 15:08:46 5 Q. 363 As I understand your evidence Mr. O'Callaghan, you place the meeting that you
- 6 say took place at Dublin Airport in the first ten days approximately of January
- 7 of 1988.
- 8 A. Thereabouts.
- 9 Q. 364 Is that correct?
- 15:09:02 10 A. Yes, sir.
- 11 Q. 365 And you say that there was a subsequent telephone conversation with
- 12 Mr. Gilmartin, he telephoned you subsequently?
- 13 A. Yes.
- 14 Q. 366 And in the course of that conversation the, a change was made in what had been
- 15 agreed, i.e. he was now, you now had agreed to give him an option on the lands,
- 16 when did that happen approximately?
- 17 A. That happened when Tom rang me a few days after the meeting, early January,
- 18 three or four days.
- 19 Q. 367 Doing the best you can when approximately?
- 15:09:33 20 A. I can do the best, purely guessing now sir, purely guessing. But I think the
- 21 meeting, I know the meeting was the first or second week of January, I am
- 22 guessing the 10th of January, don't hold me to that. The first or second week
- 23 of January. The phone call from Tom came three or four days after that.
- 24 Q. 368 Right.
- 15:09:54 25 A. So let's say the meeting could have been around the 10th of January, Tom would
- 26 have rang me the 13th or 14th of January.
- 27 Q. 369 And having reached the agreement in the first two weeks in January, did you
- 28 contact Mr. Deane and give him instructions in relation to what had been
- 29 agreed?
- 15:10:11 30 A. In relation to the unconditional contract, yes.

- 15:10:13 1 Q. 370 And did you write to him to confirm that?
- 2 A. Did I write to John Deane.
- 3 Q. 371 Yes?
- 4 A. No, sir, no.
- 15:10:23 5 Q. 372 Did you send him any memorandum for example, such as you had sent on the 4th
- 6 November?
- 7 A. No, no.
- 8 Q. 373 Did you write to him or send him any memorandum following the second telephone
- 9 conversation?
- 15:10:38 10 A. No.
- 11 Q. 374 When the option agreement was agreed? How did you convey the changes to him?
- 12 A. I spoke to him.
- 13 Q. 375 Pardon?
- 14 A. I spoke to him.
- 15:10:48 15 Q. 376 I see. You say then that there was a meeting on the 31st of January at which
- 16 an agreement was signed and executed, this is the option agreement?
- 17 A. Yes.
- 18 Q. 377 When you had agreed the option, the agreement for sale that you say took place
- 19 sometime in the first two weeks in January, had you agreed to, when the sale
- 20 would be concluded and when the monies would be paid over?
- 21 A. Not specifically. Tom wanted a contract to be signed as quickly as possible
- 22 and the sale closed as quickly as possible, didn't put a date on it. We
- 23 suggested we would leave that to both solicitors to agree that.
- 24 Q. 378 But at that stage you were going to get 3,500 pounds, is that correct?
- 15:12:14 25 A. Three and a half million pounds.
- 26 Q. 379 Sorry, I beg your pardon. Three and a half million pounds?
- 27 A. Yes.
- 28 Q. 380 And it was, it was going to be dealt with sooner rather than later on a date to
- 29 be fixed by your solicitors, would that be fair?
- 15:12:30 30 A. Absolutely, yes.

- 15:12:32 1 Q. 381 May I have page 3931 please? This is an agreement, a draft agreement which was  
2 described as Draft A, which was furnished by Mr. Deane to the Tribunal. You  
3 will see Draft A written on the bottom. Mr. Deane wrote that for the purpose  
4 of identification to distinguish Draft A from Draft B etcetera. If we go onto  
15:13:27 5 the next page, 3932? That document was, as I say which was drafted by  
6 Mr. Deane, provided that the 3.5 million would be payable as follows; so much  
7 on the signing here off and the rest was left blank. Can you explain why it  
8 was, if the agreement was as you recall it, Mr. Deane was providing for what  
9 appeared to be the payment of 3.5 million in more than one tranche?
- 15:14:03 10 A. Well that wasn't --
- 11 Q. 382 Pardon?
- 12 A. This is the actual unconditional --
- 13 Q. 383 This is the draft A which was the unconditional agreement, if we look at, we'll  
14 see on page 3931 the vendor has agreed with the purchaser for the sale of it's  
15 interest in the aforementioned agreement for the price, or sum of 3.5 million  
16 pounds and page 3932 -- now this agreement witnesseth -- perhaps we can have  
17 the next page "That a consideration of a sum of 3.5 million pounds payable as  
18 follows". It seems to suggest that there was going to be staged payments of  
19 that 3.5 million?
- 15:14:48 20 A. That's possible, yes.
- 21 Q. 384 Now if, we have had Mr. Deane's evidence and Mr. Gilmartin's and indeed  
22 Mr. Maguire's evidence in relation to the events of the 31st of January. It  
23 does appear that, from Mr. Maguire's evidence and I think Mr. Deane subject to  
24 checking it agrees that no further draft agreement was sent to Mr. Maguire  
15:15:29 25 between the, the 20th -- sorry the 17th of --  
26  
27 MR. SREENAN: 19th, I think.
- 28 Q. 385 Sorry. The 19th of January 1989 and the 31st of January 1989 when the  
29 agreement was signed. In other words draft A was sent but no further draft was  
15:16:02 30 sent. Now can you tell the Tribunal what your recollection was, or is, of the

- 15:16:09 1 events on the 31st of January?
- 2 A. The meeting on the 31st January.
- 3 Q. 386 Yes?
- 4 A. Well we met in Seamus Maguire's office. About 10 o'clock in the morning.
- 15:16:33 5 Seamus Maguire, Tom Gilmartin, John Deane and myself. And it was I think, at
- 6 that stage as far as I know, John Deane brought the option agreement with him
- 7 to that meeting and it was discussed between the four of us at the, four
- 8 parties over the table. There were some changes made to it. It was retyped a
- 9 few times and we finally agreed, signed, witnessed and dated the agreement at
- 15:17:12 10 about half past two that afternoon I think. Half past two or three o'clock.
- 11 Q. 387 Mr. Gilmartin says that the document which, well perhaps I will ask you to
- 12 identify the document first, may I have 3960 please? And can we go to 3962 and
- 13 63 please? Mr. Gilmartin -- sorry, it's not on screen yet. This is part of
- 14 the agreement, option agreement which has been identified by Mr. Deane and I
- 15 15 believe Mr. Maguire, as the document that was signed in their office on that
- 16 date. Your name appears, or signature appears on page --
- 17 A. Yes.
- 18 Q. 388 3962. And Mr. Gilmartin appears on 3963. When do you say that agreement was
- 19 signed and where was it signed?
- 15:18:48 20 A. That agreement was signed.
- 21 Q. 389 Yes?
- 22 A. In Seamus Maguire's office.
- 23 Q. 390 Yes?
- 24 A. In Blanchardstown.
- 15:18:54 25 Q. 391 Was that on the 31st of January?
- 26 A. 1989.
- 27 Q. 392 1989. Mr. Gilmartin says that a draft was looked at, or a number of drafts and
- 28 that there were initials on some of the drafts and that document was signed in
- 29 that office, but was taken away to be retyped and to be tidied up for want of
- 15:19:21 30 a, paraphrasing essentially what he said, what do you say to that?

- 15:19:27 1 A. I say that's completely untrue.
- 2 Q. 393 I see. Now you say that, in your statement, that Mr. Maguire advised Tom  
3 Gilmartin that the option agreement should not be signed unless it was subject  
4 to a planning permission for the Quarryvale site. Tom Gilmartin, you say said  
15:19:49 5 that this was not a term of the agreement with you and did not expect you to  
6 wait for your money, he was prepared to take the risk, that's page 975.  
7  
8 Can I ask you, in preparing this statement did you consult with Mr. Deane as to  
9 your recollection and his recollection of what transpired on the occasion in  
15:20:09 10 question?
- 11 A. That's what happened --
- 12 Q. 394 -- as to what happened in Mr. Maguire's office?
- 13 A. Did I consult when?
- 14 Q. 395 Did you consult with him before you prepared this statement?
- 15:20:17 15 A. I can't remember.
- 16 Q. 396 This is in the year 2000 at a time the Tribunal was three years in existence?
- 17 A. Yes, I can't remember that. Did I consult -- I can't remember.
- 18 Q. 397 Did you talk to Mr. Deane about what do you remember about the meeting in  
19 Maguire's office, did you say anything like that to him or did he say anything  
15:20:40 20 like that to you?
- 21 A. I can't remember.
- 22 Q. 398 I see. The reason I ask you is that there appears to be a certain similarity  
23 in the recollection, of your recollection and indeed Mr. Maguire -- Mr. Deane's  
24 recollection of events on that occasion. In particular in relation to what  
advices were given by Seamus Maguire to Tom Gilmartin. I wonder could I have  
15:21:09 25 page -- 975 which is on screen, could I put along side that, 4584? As I say  
26 this, I am not drawing any conclusion from it, I am simply pointing to the fact  
27 that there are certain similarities and I wanted to give you an opportunity of  
28 explaining the similarities if you can, if you cannot then we may have, they  
29 may have no consequence.
- 15:21:48 30

15:21:50 1  
2 Sorry, that is not the correct page. Sorry it's 4585. This is a statement  
3 also made by Mr. Deane on the 3rd May 2000, the same day you made your  
4 statement. So we have page 975 on screen, that's part of your statement and we  
15:22:35 5 have 4585 which is part of Mr. Deane's statement of the same date. I beg your  
6 pardon, go back to just the bottom of 4584, it starts at the bottom of 4584.  
7  
8 On your statement you say "During the final discussions in Seamus Maguire's  
9 office, Seamus Maguire advised Tom Gilmartin that the option agreement should  
15:23:06 10 not be signed by Tom Gilmartin unless it was subject to Tom Gilmartin obtaining  
11 a planning permission for the Quarryvale site. Tom Gilmartin said this was not  
12 a term of the agreement with me and he did not expect me to wait for the money.  
13 He was prepared to take the risk."  
14  
15:23:22 15 Mr. Deane says at the bottom of page 4584 "During the course of the discussions  
16 on the agreement Seamus Maguire advised Tom Gilmartin that the agreement should  
17 include a clause making it conditional upon Tom Gilmartin obtaining planning  
18 permission for the site. Tom Gilmartin's response to this was that it was not  
19 part of the agreement with Owen O'Callaghan and he did not expect Owen  
15:23:44 20 O'Callaghan to wait for his money. Tom Gilmartin was prepared to take the  
21 risk."  
22  
23 Your statement then continued at 975. "Seamus Maguire later advised at the  
24 same meeting that in his opinion Tom Gilmartin would be unwise to sign any  
15:24:02 25 agreement which was not subject to planning permission. My solicitor indicated  
26 that the planning permission that the obtaining of planning permission by Tom  
27 Gilmartin for the Quarryvale site was not a term of the agreement. Tom  
28 Gilmartin agreed with this. Tom Gilmartin subsequently signed the option  
29 agreement unconditionally and handed over a cheque for 8 hundred thousand  
15:24:25 30 pound."

15:24:26 1  
2 Mr. Deane's statement said as follows: "When the final engrossments were  
3 prepared for signing, Seamus Maguire again told Tom Gilmartin that it would be  
4 unwise for him to sign any agreement which was not subject to planning. I  
15:24:33 5 reminded Mr. Maguire that Tom Gilmartin had earlier said it was not a term of  
6 the agreement and Tom Gilmartin agreed with this. The option agreement was  
7 signed in Seamus Maguire's office. Owen O'Callaghan kept me informed of his  
8 discussions with Tom Gilmartin regarding the payments due under the option  
9 agreement"

15:24:49 10  
11 In general terms they are, those accounts are complimentary and in some  
12 respects almost identical, and it was that reason that I asked you had you  
13 discussed it with Mr. Deane? Had he refreshed your memory, or you refreshed  
14 his memory or had you discussed it at all before you signed the agreements or  
15 before these agreements -- sorry, before these statements were prepared on the  
16 3rd May?

17 A. Mm. No, we did not discuss it, I can't remember, you know, I certainly don't  
18 remember that. But if I can help you in any way there, it's something that I  
19 certainly remember happening on that particular day because Seamus Maguire is a  
15:25:14 20 very quiet spoken person and he, on two occasions made that point at that  
21 meeting and on each occasion Tom Gilmartin overruled him completely in a very  
22 boisterous way, actually I think that's why it sticks in my mind so much.

23 Q. 399 You say that the second payment was not made on the due date of the 31st of  
24 October 1989 but was paid some months later. And you say "Thereafter I  
15:26:24 25 contacted Tom Gilmartin on a regular basis seeking payment of the remaining  
26 1.35 million, but same was not forthcoming" Mr. Gilmartin says that is what he  
27 agreed with you, was that the first payment would be made on the anniversary of  
28 the signing of the agreement, that was on the 31st of January 1990 and that the  
29 second payment of 1.35 million was to be made a year after that, unless in that  
15:26:56 30 intervening period planning permission, sorry zoning -- I will correct myself.

15:27:02 1 Unless zoning was obtained. And that the second payment was 1.35 million  
2 pounds was conditional on zoning being obtained. Do you understand that's his  
3 contention?

4

15:27:16 5 MR. SREENAN: Chairman, I don't think that's what Mr. Gilmartin said. He  
6 said -- he didn't say the second payment was conditional on zoning being  
7 obtained. He said the second payment was on the second anniversary or zoning,  
8 whichever came first.

9 Q. 400 Well if I have misstated it I will -- I will go back again because I have, I  
15:27:41 10 may have misstated it.

11

12 Mr. Gilmartin said on Day 463 on page 113 that the first payment of 1.35  
13 million was to be made on the 31st of January 1990, that the second payment of  
14 1.35 million was to be made on the 31st January 1991 or the date of rezoning if  
15 earlier than the 31st of January 1991. Now that's what I thought I had said  
16 and had intended to say, if I did not say that then I apologise to all  
17 concerned. That is what I have noted Mr. Gilmartin as having said. In other  
18 words, there was a payment one year of 1.35 million pounds one year after the  
19 signing of the agreement, and a further payment to be made on the 31st of  
January 1991 or the date of rezoning if earlier than the 31st of January 1991.

21

22 A. Yes.

23

Q. 401 What do you say to that?

24

A. Well I haven't used this expression before today sir, but that is a shocking  
lie.

26

Q. 402 I see. In your statement at page 975 you say that, after you said "Thereafter  
I contacted Tom Gilmartin on a regular basis seeking the payment of 1.35 but  
same was not forthcoming." I should say in your statement it was not made on  
the due date of the 31st January 1990 which was according to, according with  
what Mr. Gilmartin was saying. I should in fairness to you point out your

15:29:34 1 solicitors in a letter of the 12th of the 3rd 2004 made it clear that the  
2 reference to the 31st of January 1990 was in fact an error and that that should  
3 read the 31st of October 1990 -- 1989?

4 A. 1989.

15:29:51 5 Q. 403 Yes. So that on the assumption that it's the, that you meant to put in the  
6 31st October 1989 which is the date in the contract we have seen, do you say  
7 that you contacted Mr. Gilmartin on a regular basis seeking payment of the 1.35  
8 million pounds after the 31st of October 1989?

9 A. Yes.

15:30:08 10 Q. 404 Mr. Gilmartin says that the payment was not due until the 31st of January 1990  
11 and that he in fact made the payment to you in February of 1990. First of all  
12 do you accept that he made a payment of 1.35 million pounds to you in February  
13 of 1990?

14 A. Yes, I do.

15:30:34 15 Q. 405 And you accepted that from him at that time?

16 A. Yes.

17 Q. 406 And at that time, according to what I understand you to say, Mr. Gilmartin was  
18 in breach of his contract with you in that that 1.35 million pounds should have  
19 been paid by the 31st of October 1989 --

15:30:55 20  
21 JUDGE FAHERTY: Mr. Gallagher, I am a little confused now. I want to understand  
22 the terms of the agreement. You are saying the first 1.35 million, is that  
23 what you are talking about? Not the second one, the first?

24 Q. 407 Yes. The first one I am talking about.

15:31:15 25 The first 1.35 million, if he was to exercise the option, was to be paid by the  
26 31st of October 1989, is that correct?

27 A. Correct.

28 Q. 408 And at the same time if he was to exercise the option he was to give you a bank  
29 guarantee, guaranteeing the payment of the 1.35 million within the time  
30 specified in the option agreement?

- 15:31:37 1 A. 31st of January, 1989.
- 2 Q. 409 Which is the 31st of January 1989?
- 3 A. Sorry, 1990.
- 4 Q. 410 1990, I beg your pardon. Mr. Gilmartin says that the first payment wasn't due  
15:31:53 5 until the 31st of January 1990, that he in fact made that payment to you on or  
6 about the 20th of February, 1990?
- 7 A. He made the first payment in February.
- 8 Q. 411 That's right. Of 1990, you accept that?
- 9 A. Oh, yes.
- 15:32:07 10 Q. 412 And you accepted that payment without the bank draft or the bank guarantee for  
11 the 1.35 million that was mentioned in the option agreement of the 31st of  
12 January 1989?
- 13 A. Yes, I did.
- 14 Q. 413 Why did you accept it at that time given that on according to what you say, he  
15:32:36 15 was in breach of contract at that time?
- 16 A. It was quite simply sir, I just wanted to get my money and go away.
- 17 Q. 414 I see. You had at that stage --
- 18 A. -- Thomas Gilmartin continuously promised he would give it to me, I waited and  
19 waited as long as I possibly could. I just wanted to go away and leave  
15:32:55 20 Quarryvale to Tom Gilmartin.
- 21 Q. 415 You had in fact submitted a planning application through Ambrose Kelly and  
22 Partners, on the 22nd of December of 1989?
- 23 A. '89, correct.
- 24 Q. 416 And that was pending, that was an application for a town centre development,  
15:33:20 25 may I have 2629 please? At Neilstown?
- 26 A. Correct.
- 27 Q. 417 Mr. Gilmartin complains that this was a breach of your agreement with him and  
28 was done by you, he says, in order to frustrate his attempts to develop  
29 Quarryvale and get zoning for Quarryvale. Because as I understand it, his  
15:33:46 30 evidence, once there was planning application pending for Neilstown, the

15:33:53 1 likelihood of getting planning permission or indeed zoning for Quarryvale was  
2 greatly reduced. Am I correct, is that your understanding of his evidence?

3 A. No sir, no. No, not at all. Tom Gilmartin was fully aware of the planning  
4 permission we had for Balgaddy because we had to make it. It was a condition  
5 of the, our contract with Dublin Corporation, as you know. If we hadn't made  
6 the planning application by the end of '89 which was our time extension that we  
7 had received from Dublin Corporation, we would forfeit the Balgaddy contract  
8 and it would probably have been taken up by Green Properties or somebody else  
9 like that, who would not have treated Tom Gilmartin the way we treated him.

15:34:34 10 Q. 418 So you deny that -- well can I ask you this, did you consult with Mr. Gilmartin  
11 before that application went in?

12 A. Absolutely.

13 Q. 419 Mr. Gilmartin, as I recall his evidence, says that he wasn't consulted, that  
14 this was put in without his knowledge or his consent?

15:34:58 15 A. Completely untrue, sir.

16 Q. 420 I see.

17 A. It was done to protect Quarryvale and Tom Gilmartin.

18  
19 CHAIRMAN: Mr. Gallagher, we have a witness specially fixed for around now,  
20 this might be an appropriate time to adjourn until tomorrow. Half ten tomorrow  
21 suit you, Mr. O'Callaghan?

22 A. Yes sir. Thank you very much.

23  
24 **THE WITNESS THEN WITHDREW FOR THE DAY.**

15:35:35 25  
26 MR. QUINN: I understand counsel for Mr. Gilson is on his way.

27  
28 MR. GALLAGHER: I should say I understand there are witnesses fixed for  
29 tomorrow morning at 10.30.

15:35:46 1 CHAIRMAN: Who is fixed for 10.30?

2

3 MR. GALLAGHER: Mr. Eddie Kaye and Mr. Denis Chambers fixed, as I understand,  
4 for 10.30.

15:35:55 5

6 CHAIRMAN: Well perhaps if they could be told not before lunchtime? Or are  
7 they --

8

9 MR. GALLAGHER: I understand that there may be a difficulty in that. I am not  
15:36:12 10 certain, I believe that somebody had a difficulty and for that reason asked  
11 that it be specially fixed for Thursday the 8th at 10.30.

12

13 CHAIRMAN: What's their estimated length in the witness box?

14

15 MR. GALLAGHER: I think that Mr. Kaye will be a short witness. He is here to  
16 be cross examined primarily, and Mr. Chambers; I am not quite sure how long he  
17 will take --

18

19 MR. SREENAN: Chairman, I would be anxious that Mr. O'Callaghan's evidence  
15:36:45 20 would be interrupted as little as possible. Mr. Kaye was fixed at a time when  
21 it was thought Mr. O'Callaghan would commence his testimony last Friday and I  
22 suspect Mr. Lawlor may take some time in cross-examination of Mr. Kaye.

23

24 CHAIRMAN: We would prefer, if possible, not to interrupt Mr. O'Callaghan's  
15:37:03 25 evidence certainly for any lengthy period of time. Perhaps the Tribunal might  
26 contact the witnesses to see if they could be rearranged for next week?

27

28 MR. GALLAGHER: Perhaps, you did say you were going rise, perhaps it will give  
29 me an opportunity to speak with my colleagues here.

15:37:18 30

15:37:18 1 CHAIRMAN: All right.

2

3 **THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK**

4 **AND RESUMED AGAIN AS FOLLOWS:**

15:37:28 5

6

7 MR. QUINN: Mr. Gilsen please.

8 I understand that Mr. Gordon is seeking representation on Mr. Gilsen's behalf.

9

15:45:05 10 CHAIRMAN: Right.

11

12 MR. GORDON: Good afternoon Mr. Chairman, apologies for being delayed. I have  
13 been instructed to appear for Mr. Gilsen this afternoon by Michael Hanahoe &  
14 Company solicitors. Of course being familiar with your procedures here  
15 Chairman and Members of the Board, I know that before I can afford any  
16 representation to him I first of all have to ask you for a right of  
17 representation in these proceedings.

18

19 I should say from what I know of this, I don't at the minute see any necessity  
15:45:44 20 for legal representation for this man, Mr. Gilsen my client. However, I would  
21 ask you to consider putting in place at this moment a right of representation  
22 nonetheless, should representation be required in the course of your inquiry.  
23 At the moment, in a nutshell Chairman, Members of the Board, I see this man as  
24 a witness here to assist the Tribunal in relation to it's inquiries, but  
25 because of the --

26

27 CHAIRMAN: What we'll do is we'll grant you limited representation in respect  
28 of this particular witness.

29

15:46:18 30 MR. GORDON: Thank you, Chairman.

15:46:21 1

2 **NOEL GILSEN, HAVING BEEN SWORN WAS EXAMINED AS FOLLOWS BY MR. QUINN:**

3

4 Q. 421 Thank you Mr. Gilson for attending. Mr. Gilson, the Tribunal wrote to you or  
15:46:41 5 to your solicitors on the 1st of June of this year?

6 A. That's right.

7 Q. 422 Raising certain queries in relation to cheques, and I propose to read that  
8 letter and to read your response. The letter is to be found at 4819 and 4820  
9 of the brief and your response is at 4817 and 4818.

15:47:00 10

11 In that letter the solicitor to the Tribunal, Ms. Gribbin, wrote as follows:

12 "I am directed by the Members of the Tribunal to write to you concerning a  
13 cheque signed by Mr. Tom Gilmartin dated 7th September 1988 and made payable to  
14 his wife Vera Gilmartin in the sum of 7,700 pounds. The cheque was  
15 subsequently endorsed by your client Mr. Gilson, for your attention I enclose  
16 an extract from the Quarryvale/Arlington brief bearing page number 1835 which  
17 shows the front and back of the said cheque.

18

19 The members have directed me to request that your client provide to the  
15:47:30 20 Tribunal a detailed narrative statement detailing the circumstances in which it  
21 came to pass that Mr. Gilson was required to endorse the said cheque as well as  
22 the following information.

23

24 A. Details of your client's involvement and relationship with Mr. Lawlor.

15:47:44 25

26 B. Details of your client's involvement and relationship with Advanced  
27 Proteins Limited and Economic Reports Limited and any other Lawlor related  
28 companies.

29

15:47:54 30 C. Details of the circumstances in which your client came to endorse the

15:47:58 1 cheque for ,7,700, the destination of the proceed of the cheque the  
2 consideration provided if any for the payment, details of his  
3 relationship/association with the payee named in the said check.

4

15:48:11 5 D. Details of your client's knowledge if any of the lodgement of 5205 on the  
6 9th September 1988 to the account of Advanced Proteins Limited at the Bank of  
7 Ireland account 73429836.

8

9 E. Details of the circumstances in which your client came to be payee of a  
15:48:27 10 cheque for 3,500 pounds, dated 5th October 1988, copies enclosed. You will  
11 note that the cheque is endorsed by Mr. Gilsen. In his statement Mr. Gilsen is  
12 also asked to identify the destination of the proceeds of this cheque and to  
13 outline what consideration there was, if any, for the payment.

14

15:48:31 15 F. Kindly identify any other payments received by your client for and on  
16 behalf o,f, or the benefit of Mr. Liam Lawlor and/or Advanced Proteins Limited  
17 and/or Economic Reports Limited and/or any other Lawlor related companies.

18

19 G. Details of all and any other sums received by Mr. Gilsen from or on behalf  
15:48:50 20 of Tom Gilmartin or Arlington.

21

22 H. Details of all and any requests for payments made including invoices,  
23 acknowledgement invoices or receipts issued together with details of the manner  
24 in which the sums were recorded in the books of Advanced Proteins Limited.

15:49:06 25

26 This matter is relevant to the subject of the Tribunal's current public  
27 hearings and the Members have requested that your client's statement be  
28 furnished at the earliest possible opportunity and in any event not later than  
29 Tuesday 15th June, 2004."

15:49:13 30

15:49:13 1 And your response, and the response is signed by you Mr. Gilsen, is as follows,  
2 and it's dated received by the Tribunal on 28th of June 2004.  
3

4 "Dear Madam, I acknowledge receipt of your correspondence dated 1st inst in  
15:49:30 5 connection with the above-mentioned matter. My replies to the queries set out  
6 in your correspondence are as follows.  
7

8 A. I have no business dealings with Mr. Liam Lawlor.  
9

10 B. I have no business dealings or interest in Advanced Proteins Limited or  
11 Economic Reports Limited and have no knowledge whatsoever of any companies  
12 connected with Mr. Lawlor.  
13

14 C. I have no knowledge of any cheque amounting to 7,700 Punts drawn in my  
15 favour. I neither endorsed the said cheque nor was I in receipt of any of the  
16 proceeds, directly or indirectly.  
17

18 D. I have no knowledge of any cheque or lodgement amounting to 5,205 Punts or  
19 the 9th September 1988 to the account of Advanced Proteins Limited at any bank  
20 whatsoever.  
21

22 E. I have no knowledge of any circumstances connected with or relating to a  
23 cheque amounting to 3,500 punts dated 5 October 1988, allegedly endorsed in my  
24 favour. I did not endorse any such cheque nor did I receive the benefit,  
25 directly or indirectly of such cheque.  
26

27 F. I have received no payment what so ever on behalf of Mr. Lawlor's Advanced  
28 Proteins Limited or Economic Reports Limited.  
29

15:50:23 30 G. I have not been in receipt of any sums whatsoever from or on behalf Mr. Tom

- 15:50:28 1 Gilmartin or Arlington, whoever they may be.
- 2
- 3 H. I have absolutely no knowledge or who or what Advanced Proteins Limited is
- 4 or what business they carry on. I have no connection with any such company."
- 15:50:39 5
- 6 Dated 24th June, 2004."
- 7 Is that your position Mr. Gilsen, in relation to the cheques which you
- 8 received?
- 9 A. That's right.
- 15:50:46 10 Q. 423 The first of those cheques, if I could have page number 4799 this is a better
- 11 of the copy of a cheque or document to be found at 1835, is a cheque dated 7th
- 12 September 1988 in a sum of 7,700 pounds. It was thought Mr. Gilsen that cheque
- 13 was made payable to Vera Gilmartin but in fact it may have been made payable to
- 14 N Gilsen?
- 15:51:13 15 A. That's not my signature.
- 16 Q. 424 And it's endorsed Noel Gilsen, you see that, and accept that? Did you endorse
- 17 that?
- 18 A. No, I didn't.
- 19 Q. 425 Have you any idea how that endorsement came to be placed on that cheque?
- 15:51:23 20 A. I have no idea. I only saw this cheque recently.
- 21 Q. 426 Yes. Now there is a second cheque in the sum of 3,500 pounds to be found at
- 22 document page 4800 which again is a better copy of the document which is at
- 23 1876. That's a cheque that's clearly made payable to N Gilsen and signed Noel
- 24 Gilsen, isn't that right?
- 15:51:45 25 A. Yeah.
- 26 Q. 427 Do you accept that?
- 27 A. Yes.
- 28 Q. 428 Do you know anything of that cheque or of that endorsement?
- 29 A. No, I don't.
- 15:51:53 30 Q. 429 Do you know how your name came to be endorsed on that cheque?

- 15:51:58 1 A. That signature there is a forgery, underneath.
- 2 Q. 430 That signature purported to be your signature, is that a forgery?
- 3 A. Yes.
- 4 Q. 431 That cheque appears to have been debited or credited to an account if we can  
15:52:10 5 have 1878 please? Of a company, Advanced Proteins Limited, do you know  
6 anything of a company Advanced Proteins Limited?
- 7 A. No, I don't, no.
- 8 Q. 432 I think Mr. Gilsen you did in the past give evidence to the Tribunal I think on  
9 the 22nd December 2000 in relation to documents at that time which had  
15:52:27 10 purported to contain your signature also, isn't that right?
- 11 A. Yeah.
- 12 Q. 433 That was in relation to a loan with Lombard & Ulster in respect of the purchase  
13 of a vehicle from Bradys Garage, a Mercedes vehicle?
- 14 A. That's right.
- 15:52:40 15 Q. 434 And at that time you confirmed to the Tribunal that the signatures as contained  
16 in that documentation weren't your signatures, isn't that right?
- 17 A. No, it wasn't.
- 18 Q. 435 You were asked in the course of that examination at that time, if I could have  
19 page, sorry Day 229 page 9 please. You were asked if you ever operated any  
15:52:58 20 bank account, that's a bank account for Mr. Lawlor other than the initial  
21 leasing agreement which you had accepted you had entered into for him and you  
22 said no. You were also questioned, 58 asked were any cheques paid or any  
23 cheques paid to you by Mr. Lawlor, you said no. And you were asked had you  
24 endorsed any cheques in over or in favour of him with your signature and you  
15:53:18 25 answered no. Is that still the position Mr. Gilsen?
- 26 A. Yes, that's right.
- 27 Q. 436 Can you give any explanation to the Tribunal as to why cheques which appear to  
28 have been credited to the accounts of a company under Mr. Lawlor's stewardship  
29 or which he had an interest came to be endorsed with your signature?
- 15:53:38 30 A. I have no idea, none whatsoever.

15:53:39 1 Q. 437 Have you discussed with Mr. Lawlor the, these cheques and your purported  
2 endorsement on the rear of them?

3 A. No. I was lead to believe by my solicitor not to discuss it.

4 Q. 438 Yes. Thank you very much, Mr. Gilsen.

15:53:59 5  
6 CHAIRMAN: All right. Mr. Lawlor do you wish to cross examine?  
7

8 MR. GORDON: Sorry, just one question.  
9

15:54:08 10 CHAIRMAN: Unless you want to wait until the end.  
11

12 MR. LAWLOR: I will deal with this in direct evidence, Chairman.  
13

14 CHAIRMAN: Do you wish to cross examine?  
15

16 MR. LAWLOR: No, I will deal in direct evidence.  
17

18 CHAIRMAN: Right, Mr. Gordon.  
19

15:54:24 20 **THE WITNESS WAS QUESTIONED AS FOLLOWS BY MR. GORDON:**  
21

22 MR. GORDON: One question. You were shown copies on screen a moment ago two  
23 cheques one on page 1835 and the other on 4800. You were asked if you knew  
24 anything of the signatures or endorsements as they appear on the cheques. Do  
25 you know anything about the account numbers or the accounts on which those  
26 cheques were drawn?

27 A. No, I don't.

28 Q. 439 Thank you.  
29

15:54:45 30 CHAIRMAN: Thank you very much Mr. Gilsen.

15:54:48 1 A. Thank you.

2

3 **THE WITNESS THEN WITHDREW.**

4

15:54:49 5 CHAIRMAN: Half ten. Is there clarity about --

6

7 MR. LAWLOR: Mr. Chairman, could I ask a question of you?

8

9 CHAIRMAN: Just -- is there clarity about who is being taken tomorrow morning?

15:55:02 10

11 MR. GALLAGHER: The Tribunal are endeavouring to contact Mr. Kaye and  
12 Mr. Chambers through the bank with a view to having them called not before 2  
13 o'clock tomorrow.

14

15:55:15 15 CHAIRMAN: All right.

16

17 MR. GALLAGHER: They may not be reached I should say, it depends on the length  
18 of the cross examination, but Mr. Kaye I understand is a short witness. I  
19 don't know how long Mr. Chambers will be.

15:55:28 20

21 CHAIRMAN: We'll see tomorrow. Now Mr. Lawlor?

22

23 MR. LAWLOR: Chairman, just my submission and your ruling of Day 465 you are  
24 aware in the break that the High Court has ruled, so what's the proposal now?

15:55:40 25

26 CHAIRMAN: You will have to give us an opportunity to read the judgement, we  
27 haven't seen the judgement yet.

28

29 MR. LAWLOR: Will you deal with it in the morning?

15:55:46 30

1 CHAIRMAN: We'll see. It depends. We haven't seen the judgement. We are  
2 aware of the result, but we have to read the judgement and we'll have to  
3 consider the position overnight.

4

5 MR. LAWLOR: Thank you.

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7 CHAIRMAN: All right. Half ten tomorrow.

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9 **THE TRIBUNAL THEN ADJOURNED TO THE FOLLOWING DAY,**

10 **THURSDAY 8TH JULY 2004 AT 10.30 AM.**

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