

THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY MORNING

THE 12TH OF OCTOBER 2004 AT 10.30A.M:

CHAIRMAN: Good morning.

MR. O'NEILL: Good morning, Mr. Chairman, members of the Tribunal. Today marks the resumption of the Carrick 2 and Related Issues Module which was adjourned on the 27th of July last, at which time Mr. Frank Friel was a witness for the Tribunal and was under examination by Mr. Finlay on behalf of his client Mr. John Caldwell. And that matter has been adjourned so as to facilitate the completion of the cross-examination of Mr. Friel. There are in addition a number of relatively short witnesses listed for today in anticipation that the examination of Mr. Friel will conclude within the day. Mr. Friel.

MR. LAWLOR: Chairman, could I ask your indulgence and some guidance please, on this particular module.

I wrote on the 29th of July to the Tribunal. And I got a letter in reply on the 7th of October. I apologise for the delay in replying.

The letter requested documentation regarding statements, and any other documents that the Tribunal has in it's possession regarding this module that would be of -- effect my point of view.

The High Court has decided that I have an entitlement to this documentation. It appears that the Tribunal is prepared to press on with hearings despite a High Court judgement.

CHAIRMAN: Mr. Lawlor, this has been explained to you I think on a number of

10:46:56 1 occasions in correspondence. The matter that you refer to in the High Court
2 is now under appeal to the Supreme Court. And there will be no change in our
3 procedures or in our hearings until such time as the Supreme Court make their
4 decision. And then the position will then be reviewed.

10:47:16 5
6 MR. LAWLOR: Could I just say with respect, Chairman. There is another
7 Tribunal up the road here. And the Chairman has said there's no question of
8 Tribunal hearing sworn testimony until the Supreme Court has the opportunity to
9 consider the matter --

10:47:31 10
11 CHAIRMAN: Mr. Lawlor, that has been explained to you in correspondence as
12 well. That is a completely different case and it doesn't affect this
13 Tribunal. And our position is clear, and it's been made clear to you, that we
14 are going to continue with our business.

10:47:47 15
16 MR. LAWLOR: This Applicant, Chairman, lost the High Court case, you lost the
17 High Court case --

18
19 CHAIRMAN: Mr. Lawlor --

10:47:53 20
21 MR. LAWLOR: Do you not feel that you are answerable to the High Court, no?

22
23 CHAIRMAN: Mr. Lawlor, I am not going to enter into a discussion with you now
24 on this particular topic. The position has been made clear to you. You are
10:48:04 25 here or you should be here for the purposes of assisting the Tribunal in its
26 work.

27
28 MR. LAWLOR: Which is what I'm trying to do. If the Supreme Court finds
29 against you then we'll all be back to square one, but that doesn't seem to be
10:48:16 30 a matter of any consideration, does it?

10:48:19 1

2 CHAIRMAN: It's not a matter for consideration at this stage.

3

4 MR. LAWLOR: The second item that I want to raise, Chairman, is the decision of

10:48:26 5

6 the office of the Information Commissioner, who appointed an investigator into

7 how this Tribunal secured immunity for Mr. Gilmartin and the degree of timing

8 and cooperation that this Tribunal proposes to provide to the office of the

9 Information Commissioner. Are you aware that an investigator has been

10:48:47 10

11 CHAIRMAN: Well you have informed us that an investigator has been -- and we

12 have written to you, I think yesterday or certainly --

13

14 MR. LAWLOR: I think the office -- has the Commissioner informed you?

10:48:56 15

16 CHAIRMAN: Well I'm not prepared, Mr. Lawlor, to enter into a discussion in

17 public about these matters. They will be dealt with in the ordinary way and

18 in the proper way.

19

10:49:07 20

21 MR. LAWLOR: And is it proposed then to resume and recall Mr. Gilmartin before

22 the investigator concludes his --

23

24 CHAIRMAN: It is proposed to recall Mr. Gilmartin subject to his state of

25 health in relation to outstanding issues. And you will be informed in due

10:49:25 26

27 course when we know when Mr. Gilmartin is likely to attend again.

28

29 MR. LAWLOR: And what about the named witness handed up by Mr. Flynn, we have

30 heard nothing about that yet.

10:49:38 31

32 CHAIRMAN: Mr. Lawlor, all those matters as you know are currently under

10:49:41 1 review by the Tribunal.

2

3 MR. LAWLOR: Well, if it takes from the 29th of July to the 7th of October to
4 get a reply from this Tribunal, when the Tribunal will put orders on and want

10:49:50 5 instant reaction, but the Tribunal seems to run to a different agenda from its
6 point of view as against what it expects of others --

7

8 CHAIRMAN: Alright.

9

10:50:00 10 MR. LAWLOR: -- and I just want that recorded.

11

12 MR. O'NEILL: You are already sworn, Mr. Friel. And Mr. Finlay will continue
13 his examination of you now. Thank you.

14 A. Thank you.

10:50:06 15

16 **MR. FRIEL, PREVIOUSLY SWORN, WAS EXAMINED BY MR. FINLAY**

17 **AS FOLLOWS:**

18

19 MR. FINLAY: Mr. Friel, good morning.

10:50:16 20 A. Good morning.

21 Q. 1 Mr. Friel, I hope not to detain you very long this morning. It's just to
22 cover some matters which were still outstanding when we finished the last day.

23 And we need to concentrate on one particular area. We had covered and
24 concluded a number of other matters the last day. What I wanted to do this

10:50:53 25 morning, with the permission of the Tribunal, was to ask you to look at a

26 limited number of documents. Perhaps a dozen or 15 or so, no more. And to
27 obtain your views on those documents.

28

29 You recall that when you were last in the witness box, Mr. O'Neill on behalf of

10:51:17 30 the Tribunal, asked you for your views on some correspondence, some documents

10:51:25 1 which was not your own, if you're with me?

2 A. Certainly, yes.

3 Q. 2 Just for your comment as a non-involved party, so to speak, on certain

4 correspondence exchanged between others. And I propose merely to do the same

10:51:43 5 but in respect of some documents which weren't put to you the last day; do you

6 follow?

7 A. I do, indeed, certainly.

8 Q. 3 And what I propose to do in so far as it's practicable in each case is just to

9 refer to the -- you don't I think have the documents in front of you. But I

10:52:01 10 hope to refer to the identification number of each document and hopefully it

11 will appear on the screen in front of you. Perhaps the first document I might

12 ask you about is, bears a Tribunal page reference No. 104. And if by any

13 chance Mr. Friel, the font may look too small for you on screen would you

14 kindly --

10:52:40 15 A. I think I can read it there.

16 Q. 4 Very good. Just at the extreme top of the screen almost cut off, you can see

17 that's a letter of the 25th of March 1988.

18 A. Yes.

19 Q. 5 You see that?

10:52:53 20 A. Yes, I do indeed.

21 Q. 6 And it's a letter to Mr. Charlton. And I'm taking it, by the way, Mr. Friel,

22 that you broadly recall some of the issues we discussed the last day.

23 A. Yes.

24 Q. 7 And in particular the involvement of Reddy Charlton and McKnight and so on and

10:53:16 25 dealings between Reddy Charlton and McKnight and Mr. Bullock and Mr. Caldwell,

26 you recollect broadly in that context?

27 A. Yes, indeed.

28 Q. 8 As you see, Mr. Friel, it's a letter to Mr. Charlton of that date from Siteland

29 Management Limited. And you recollect, if you don't it's common case that

10:53:43 30 Siteland Management Limited was in fact Mr. Stanley, who was Sam Stanley's

10:53:45 1 trading name or the company through which he operated as an agent. And it's
2 headed "resale of Robert Tracey's lands Carrickmines."

3 And the letter reads as follows:

4 "Dear Mr. Charlton, further to our recent telephone conversations we wish to
10:54:07 5 confirm our Mr. Tracey's agreement to sell his lands at Carrickmines to you, in
6 trust. Full details are provided herein." And if I might just pause there,
7 Mr. Friel, that's really the passage of the letter that I would be glad to have
8 some views from you on.

9
10:54:31 10 I just might explain the approach that I'm trying to take this morning. In
11 respect of most of the documents that I propose to put to you. I am going to
12 ask you to put yourself in the position of either the author or the recipient
13 of the letter, if you are with me?

14 A. Yes.

10:54:55 15 Q. 9 And ask you for a view. In this particular instance, Mr. Friel, I am going to
16 ask you to put yourself in a position of the recipient of the letter, namely, a
17 solicitor. It doesn't really matter what solicitor. A conveyancing
18 solicitor. I just want to ask you the following.

19 As a conveyancing solicitor you receive a letter in the terms of that opening
10:55:29 20 paragraph. If in that circumstance, as a conveyancing solicitor, you had not
21 agreed to purchase the lands in question in trust for someone, what would you
22 do on receipt of such a letter from a vendor's agent? If you as a conveyancing
23 solicitor receive a letter from the vendor's agent stating that you, the
24 solicitor, have agreed to purchase the lands in trust for this, there is an
10:56:15 25 agreement to sell to you in trust --

26 A. You are asking me, if I didn't take --

27 Q. 10 Absolutely. If you had not agreed to purchase the lands in trust or were not
28 aware of any arrangement under which you were to purchase the lands as trustee
29 for a purchaser?

10:56:34 30 A. I would reply to the letter in the terms that I have no such instructions to

- 10:56:38 1 act for any person or I'm not purchasing the property in trust for anybody.
- 2 Q. 11 Am I correct or incorrect in my understanding, Mr. Friel, that a solicitor who
- 3 purchases in trust for an undisclosed beneficiary, at least initially, exposes
- 4 himself to a particular responsibility or liability; is that correct?
- 10:57:19 5 A. Well it certainly would. Under the Law Society General Contract, if you don't
- 6 disclose your acting interest, you are, if I may use the word, you are the
- 7 person up front, it is you until you disclose your, who the principal is.
- 8 Q. 12 Yes. Yes. It's my understanding, subject to your view, that in the event of
- 9 a contract being executed, an agreement being executed, by a solicitor, "Qua
- 10:57:54 10 Trustee," where his beneficiary is not disclosed, he is personally liable until
- 11 that disclosure. Would you agree with that, would that be your understanding?
- 12 A. That would be my understanding as well, yes.
- 13 Q. 13 So if circumstances suggest that a solicitor is buying in trust, it is
- 14 particularly important for that solicitor to make sure that that statement is
- 10:58:21 15 correct, because if it were not correct he may be exposed to a personal risks,
- 16 isn't that so?
- 17 A. That would certainly be my opinion. I think I would go further and say if my
- 18 principal was before I ventured any further, I would ask for his written
- 19 instructions to proceed in trust.
- 10:58:42 20 Q. 14 Indeed, Mr. Friel. It would be a prudent course for an experienced
- 21 conveyancing solicitor to ensure that he had a written instruction from his
- 22 purchaser/beneficiary or beneficiary/purchaser, if I may put it that way,
- 23 before the solicitor agreed to purchase in trust for that person, isn't that
- 24 correct?
- 10:59:03 25 A. Absolutely, yes.
- 26 Q. 15 Now, the next document that I would ask you to look at, which I think comes
- 27 later in time. Is at page 126 of the brief. That's the one. That, Mr.
- 28 Friel, as you see, is again a letter dated the 5th of May 1988, isn't that
- 29 correct?
- 11:00:00 30 A. That is correct.

- 11:00:01 1 Q. 16 And you'll see that it's headed "Paisley Park Investments Limited."
2 A. Yes.
3 Q. 17 It's addressed to Mr. Charlton. And it comes from "Mr. Bullock, director."
4 You see that?
11:00:20 5 A. I do, yes.
6 Q. 18 And it's in the following terms.
7
8 "Dear Mr. Charlton,
9 Cabinteely lands.
11:00:28 10
11 We here by confirm that you are instructed to act for us in the purchase of
12 lands at Carrickmines/Cabinteely belonging to Mr. Tracey, for which a contract
13 exists. A deposit of 5,000 Irish pounds has been paid to the agents acting
14 for Mr. Tracey, Siteland Management Limited. We look forward to hearing from
11:01:05 15 you in due course."
16
17 Now, I just have some -- I would like to have your views on some aspects of
18 that letter. First of all, if I could ask you to go back in your mind, you
19 may need to look at it again briefly, to the letter that we have just looked at
11:01:38 20 from Siteland Management Limited. Which can look at it again in a moment if
21 necessary. You see the statement in the letter of the 5th of May that "a
22 deposit of 5,000 has been paid to the agents acting for Mr. Tracey, Siteland
23 Management Limited."
24 A. Yes.
11:01:58 25 Q. 19 In your view would that be consistent? I merely ask you would it be consistent
26 with the letter of the 25th of March, which indicated that Siteland Management
27 Limited was acting on behalf of Mr. Tracey in relation to that agreement to
28 sell. Would that be consistent with that, in your view?
29 A. It would be consistent, yes.
11:02:32 30 Q. 20 Now, what I would next ask you to consider is the first sentence of this

11:02:41 1 letter. "We hereby confirm that you are instructed to act for us in the
2 purchase of lands at Carrickmines/Cabinteely belonging to Mr. Tracey, for which
3 a contract exists."
4

11:02:57 5 In your view is there anything unclear about that sentence or does it seem to
6 you to be relatively clear in its meaning?

7 A. Well I would have thought if they were confirming something, you know, they
8 would confirm something that was previously in existence.

9 Q. 21 Yes. Would you agree that it appears to be the written confirmation of a
10 previous instruction to act?

11 A. It would, yes.

12 Q. 22 Yes. And would you agree that it appears to be a previous -- a confirmation
13 in writing of a previous instruction to act for Paisley Park Investments
14 Limited?

11:03:41 15 A. Precisely, yes.

16 Q. 23 And would you agree that it would appear to be a written confirmation of a
17 previous instruction to act for Paisley Park Investments Limited in the
18 purchase of Mr. Tracey's lands at Carrickmines?

19 A. It would.

11:03:58 20 Q. 24 Once again Mr. Friel, I would ask you to put yourself in the position of one of
21 the parties to this letter. In this case, again the recipient of the letter,
22 a conveyancing solicitor. If you were a conveyancing solicitor, which of
23 course you are. But assume that you are what you are and you received such a
24 letter. If you had not had instructions to act for Paisley Park Investments
11:04:44 25 Limited in the purchase of Mr. Tracey's lands at Carrickmines, what would you
26 have done on receipt of this letter?

27 A. I would have said, I have not received confirmation to act in the proposed
28 purchase.

29 Q. 25 If we just then look at the next document in sequence, page No. 127.

11:05:41 30

11:05:41 1 This document, as you see, Mr. Friel, contains two file notes, dated
2 respectively the 6th of May 1988 and the 17th of May 1998. And for present
3 purposes I would ask to you take it, Mr. Friel, that these are the file notes
4 of Mr. Bullock. So for the purpose of this discussion, if you would assume
11:06:22 5 that these are the file notes of Mr. Bullock. And the first one is in the
6 following terms.

7
8 "Spoke to Mr. Charlton, introduced myself as a director of Paisley Park
9 Investments Limited. Told him that written confirmation of his instructions
11:06:39 10 to act on our behalf in connection with the purchase of lands at
11 Cabinteely/Carrickmines from Mr. Tracey was on the way to him. Told me that
12 Mr. Tracey's solicitor had acknowledged that a contract already existed." For
13 the purpose of this discussion, Mr. Friel, will you please take it that "told
14 me" is a reference to "Mr. Charlton told me" -- do you follow?

11:07:14 15 A. Yes.

16 Q. 26 "Mr. Charlton told me that Mr. Tracey's solicitor had acknowledged that a
17 contract already existed. He" you can take it that is Mr. Charlton, "was not
18 concerned about the absence of the Law Society Form of Agreement."

19
11:07:30 20 In your -- assuming that note to be a correct account of a conversation which
21 took place. Is that file note, in your opinion, consistent with Mr. Charlton
22 acting on behalf of Paisley Park in connection with the purchase of the Tracey
23 lands?

24 A. It would be, yes.

11:08:06 25 Q. 27 The second file note on that page, Tuesday the 17th of May, 11 days later.

26
27 Is in the following terms: "Rang Mr. Charlton. He was still awaiting the Law
28 Society Form of Contracts. There was a delay with Mr. Tracey's solicitor
29 because the solicitor's nephew had taken over the practice was and was trying
11:08:29 30 to familiarise himself with all of the cases that he was handling."

11:08:33 1
2 Mr. Friel, assume this is a file note of Mr. Bullock's in the context which we
3 have discussed. In your opinion in the sequence of documents that we have
4 already looked at this morning, is that file note also consistent, in your
11:08:54 5 view, with Mr. Charlton's role as the solicitor acting for Paisley Park in
6 relation to the purchase of Mr. Tracey's lands?
7 A. It is.
8 Q. 28 The next document I would ask you to look at is at page No. 128. I'm not
9 quite sure of the date in May. It may be the 4th or the 9th?
11:09:41 10 A. I would expect the 4th.
11 Q. 29 Yes, maybe the 4th. Not much different in terms of the date. Certainly a
12 date in early May 1988.
13
14 It's headed "Attendance Jerry Charlton, re Paisley Park."
11:10:06 15
16 And it's initialled "JAC." You may take it for the purpose of this
17 discussion, Mr. Friel, that that is an attendance of Mr. John Caldwell relating
18 to a conversation which he had with Mr. Charlton. So assume that that's what
19 the attendance is.
11:10:21 20
21 And it's in the following terms: "I spoke to Gerry Charlton. He said that
22 matters were progressing satisfactorily. He said that as far as he was
23 concerned there was already a contract. He said that he was awaiting the Law
24 Society Form but that a contract was in existence. He said he had just
11:10:47 25 received an acknowledgement of his latest letter to the solicitor for
26 Mr. Tracey. I said he would receive formal instructions from Paisley Park.
27 He said he was dealing with it in the name of Paisley Park." You see that?
28 A. I do, yes.
29 Q. 30 Are the contents of that attendance, assuming them to be correct, consistent
11:11:17 30 with the role of Mr. Charlton as the solicitor acting for Paisley Park in

11:11:27 1 connection with the purchase of Mr. Tracey's lands at Carrickmines?

2 A. They are, yes.

3 Q. 31 The next document I would ask you, please, to look at is at page 130.

4

11:12:09 5 That, you will see, is a letter of the 9th of May of the same year, 1988.

6 From Mr. Caldwell to Mr. Charlton. And you will see that it's headed as

7 follows:

8 "Re Folio 4940F County Dublin. Your client: Paisley Park Investments

9 Limited and Robert Tracey."

11:12:49 10

11 And it's in the following terms: "I refer to our telephone conversation and

12 note that you are progressing the contract in this matter. I confirm that we

13 received 5,000 pounds sterling from Paisley Park and as requested we paid 5,000

14 Irish pounds on its behalf to Siteland Management Limited, the agents for the

11:13:25 15 vendor, Mr. Robert Tracey. If we can be of any assistance to you please do

16 not hesitate to contact us."

17

18 You see that short letter?

19 A. I do, yes.

11:13:41 20 Q. 32 First of all, I would ask you to put yourself in the position of the recipient

21 of this letter, as a conveyancing solicitor. Does it tell you, the recipient,

22 Mr. Friel, that the author of the letter understands or believes or considers

23 your client to be Paisley Park Investments Limited?

24 A. It does.

11:14:17 25 Q. 33 There's of course a reference to Robert Tracey, but as is common case, Mr.

26 Friel, Mr. Tracey was the owner, the vendor of the lands, so one can take it is

27 a reference to the vendor. So it's not to be considered as part of the

28 client.

29

11:14:41 30 And then in relation to the body of the letter. In your opinion, is that

11:14:52 1 first sentence , "I refer to our telephone conversation and note that you are
2 progressing the contract in this matter", in your opinion is that first
3 sentence consistent with all of the documentation that we have already
4 considered this morning, in that it is consistent with Mr. Charlton's role as
11:15:13 5 the solicitor acting on behalf of Paisley Park Investments Limited in relation
6 to the purchase of Mr. Tracey's lands at Carrickmines?
7 A. It would be consistent.
8 Q. 34 If you received a letter in those terms, as a conveyancing solicitor, Mr.
9 Friel, and you were -- and Paisley Park Investments Limited was not your client
11:16:06 10 or you were not acting for Paisley Park Investments Limited or progressing any
11 contract on its behalf. What would you have done on receipt of the letter?
12 A. I would say that, I haven't received instructions for you or I'm not acting on
13 behalf or whatever the appropriate words would be.
14 Q. 35 The next document I would ask you to look at is at page 153.
11:16:51 15 And I think the dating may be in the American format, Mr. Friel. I'm not sure
16 but it may be that the date is the 20th of the 6th 1988, do you see those?
17 A. I do, indeed.
18 Q. 36 And you are aware that the different sequence in which Americans show dates.
19 I think it may be the 20th of June 1988. And it's from Mr. Bullock to
11:17:36 20 Mr. Charlton. It says, "From Martin Bullock, Paisley Park Investments Limited
21 re lands at Cabinteely. I was pleased to hear from you that Mr. Tracey's
22 solicitor has confirmed that there is a contract between Mr. Tracey and this
23 company, and that he is sending papers to you. Perhaps in the meantime you
24 would send a copy of the correspondence between yourself and Mr. Tracey's
11:18:10 25 solicitors for my records. I am arranging to transfer to you 10,000 pounds as
26 balance of the deposit monies."
27
28 In your opinion, Mr. Friel, is that -- are the contents of that telex or fax
29 consistent with Mr. Charlton's role as the solicitor acting for Paisley Park
11:18:58 30 Investments Limited in relation to the purchase of Mr. Tracey's lands?

11:19:05 1 A. They are consistent.

2 Q. 37 And in your opinion is -- are the contents of that document entirely consistent
3 with all of the documents we have already considered this morning?

4 A. They are all consistent.

11:19:38 5 Q. 38 If you were to consider the documents, if you were to consider, as a whole, the
6 documents we have looked at so far. And if you were to consider them from the
7 position not of Mr. Charlton, but from the position of Mr. Bullock or
8 Mr. Caldwell, on the Paisley Park side of things. Is there anything, in your
9 opinion, that you have seen in any of these documents that would tell you or
11:20:18 10 could indicate to you that Mr. Charlton was not acting on behalf of the company
11 in relation to the purchase of the Carrickmines lands?

12 A. No, on the contrary. Anything that I have seen would indicate that he was
13 acting on behalf of the company.

14 Q. 39 You see in the document we are considering at the moment, No. 153, the telex, I
11:20:57 15 think it was from Mr. Bullock to Mr. Charlton, the reference in the final
16 sentence to an arrangement for the transfer of monies. Do you see that Mr.
17 Friel?

18 A. I do.

19 Q. 40 And that money is deposit money, a balance of deposit money. Would you agree
11:21:36 20 that it is particularly consistent with and characteristic of the role of a
21 solicitor acting for a purchaser in a purchase that deposit monies should be
22 sent to that solicitor?

23 A. Totally appropriate.

24 Q. 41 Totally appropriate.

11:22:02 25 A. Yes.

26 Q. 42 Could I ask you, Mr. Charlton (SIC) then please to -- I'm terribly sorry.

27 A. It's understandable.

28 Q. 43 Shows you the distractions that I'm subject to. I'm sorry, Mr. Friel. Could
29 you ever please now look at page 163. It appears to be a letter of the 23rd
11:23:05 30 of June. It should be -- perhaps pause for completeness, Mr. Friel, to ask

11:23:13 1 you to agree that, all of the documents that I have opened to you this morning
2 are sequential, isn't that so, gone through a sequence in time, isn't that so?
3 A. That is so, yes.
4 Q. 44 This is the 23rd of June, 1988. A letter from Paisley Park Investments
11:23:41 5 Limited. Again, from Mr. Bullock, on behalf of that company and it's to
6 Mr. Charlton in the following terms.
7
8 "Dear Mr. Charlton. Cabinteely lands.
9 Further to our recent exchange of telexes, I am now enclosing our draft for
11:24:03 10 10,000 Irish pounds in respect of the balance of deposit monies."
11
12 Once again, Mr. Friel, in your opinion, is that letter from Mr. Bullock to
13 Mr. Charlton entirely consistent with the role of Mr. Charlton as the solicitor
14 acting in the purchase for Paisley Park?
11:24:36 15 A. It is entirely consistent, yes.
16 Q. 45 If for a moment I think put you in the shoes of the recipient of that letter, a
17 conveyancing solicitor. Not now merely being corresponded with, but perhaps
18 more significantly now being put in funds, a substantial sum of money, 10,000
19 pounds Irish in 1988.
11:25:31 20
21 If you had been sent monies by a person in the terms of this letter, stated to
22 be in respect of the balance of deposit monies. And you were not acting for
23 that person in respect of the purchase the subject matter of the deposit and
24 therefore the monies. What would you have done?
11:26:08 25 A. Return it.
26 Q. 46 We will turn now to see what did in fact happen following that letter, Mr.
27 Friel, that appears at page 179.
28
29 It's letter of the 6th of July, 1988, Mr. Friel. From Mr. Charlton to
11:27:16 30 Mr. Bullock, do you see that?

11:27:19 1 A. I do indeed, yes.

2 Q. 47 And it appears to be a direct reply to the letter we just looked at, because it

3 refers to the letter of the 23rd of June.

4 A. Yes.

11:27:33 5 Q. 48 And it's in the following terms.

6 "Re lands at Cabinteely.

7 Dear Mr. Bullock, many thanks for your letter of the 23rd of June, 1988,

8 enclosing draft for 10,000 pounds which we have placed to credit here.

9

11:27:50 10 We are presently investigating documentation. We have had a meeting with

11 Mr. John Caldwell yesterday and have furnished him with title. We will advise

12 you of developments.

13

14 Yours sincerely." And there appears to be a post script at bottom "7th of July

11:28:14 15 our telephone call today refer."

16

17 Once again, you see what that letter says, Mr. Friel. If you were a

18 conveyancing solicitor, would you have accepted the draft in question on foot

19 of the letter that we saw of the 23rd of June and placed it to credit,

11:28:46 20 presumably in a client account, if you were not acting for Paisley Park, the

21 sender of the monies, in relation to the purchase in question?

22 A. I would not have placed it in a client account, if I wasn't acting for the

23 company.

24 Q. 49 We've looked just now, Mr. Friel, at a sequence of documents, essentially

11:29:43 25 correspondence, and in certain cases attendance notes, covering a period of a

26 couple of months during the late spring and summer of 1988, haven't we?

27 A. Yeah.

28 Q. 50 I think in all we've looked at perhaps 12 documents, you can take it that it's

29 approximately 12 documents. And if we just pause for a moment at the date of

11:30:24 30 the last document we've looked at, which is the 6th of July 1988. Can I take

11:30:30 1 it from the views that you've expressed, as of that date, and during the period
2 which the correspondence covered that we've looked at, during all of that
3 period. Mr. Bullock and Mr. Caldwell, having regard to the correspondence,
4 were perfectly entitled to act on the basis that Mr. Charlton was acting as
11:31:20 5 solicitor in the purchase for Paisley Park?

6 A. They were perfectly entitled to assume that, yes.

7 Q. 51 Now, you may or may not have devined this morning why I've shown you these
8 letters. I wish, in case you haven't, to just explain briefly why. It's in
9 the following context, for completeness, Mr. Friel.

11:32:07 10
11 During your examination by Counsel for the Tribunal, certain other
12 correspondence and documents were put to you. None, I believe, none at all of
13 the ones we've just seen were reviewed by you at that time. And we can go
14 back to the detail if necessary, but if I may attempt to summarise it in this
11:32:46 15 way.

16
17 Subsequent to the documents we have looked at this morning, subsequent in time,
18 Mr. Charlton adopted a position which was at odds with the position you have
19 identified this morning in your evidence. Stop me if you don't follow me.

11:33:12 20 A. No, I can't recall the dates of the subsequent --

21 Q. 52 Don't worry about the dates. But just take it for the moment that the
22 evidence before the Tribunal is to the following effect. That subsequent to
23 this date, subsequent to the 6th of July '88 or a little bit later, that
24 Mr. Charlton adopted a different position and maintained that he was not acting
11:33:50 25 for Paisley Park in the purchase and had never so acted. Just if I may,
26 assume that to be a correct account of what occurred. When you last gave
27 evidence -- sorry, that's not strictly correct. The penultimate time that you
28 gave evidence. Not when I was asking you questions before --

29 A. I think it was in May.

11:34:20 30 Q. 53 Yes, early on in the year. At that stage when you gave evidence you were

11:34:23 1 asked to review and comment on some of the later documents from the period when
2 Mr. Charlton was maintaining that he was not the solicitor for Paisley Park and
3 had never acted for Paisley Park in the purchase. And against the background
4 of only those documents, which indicated that position on behalf of
11:34:58 5 Mr. Charlton, you were also asked about the -- an affidavit which was lodged, I
6 think it was support of caution. I think it may have been in support of a
7 caution. And you may or may not recollect that that affidavit refers to the
8 purchase of the lands in Cabinteely, the lands we're discussing, Mr. Tracey's
9 lands, by Mr. Charlton's interest?

11:35:42 10 A. Yes.

11 Q. 54 And that was the subject matter in effect of the caution. That's why the
12 caution or relevant notice was registered. And you had a part in that
13 actually at the time.

14 A. That's correct.

11:36:00 15 Q. 55 And you were asked about that affidavit and you were asked about the affidavit,
16 the contents of the affidavit in the light of the correspondence in which
17 Mr. Charlton maintained that he wasn't acting for and had never acted for
18 Paisley Park. You may recollect broadly that that happened?

19 A. I think my recollection was that he was acting as agent for Paisley Park, not
11:36:44 20 as a solicitor.

21 Q. 56 Yes. The essential point is that he claimed that he was not and had never
22 acted for Paisley Park in relation to the purchase. That is correct?
23

24 MR. O'NEILL: With respect I think for accuracy, sir, the issue was whether or
11:37:07 25 not Mr. Charlton was acting in the capacity as a trustee for Paisley Park at
26 the time of his acquisition of the property. The affidavit was specific, that
27 is Mr. Bullock's affidavit, that the property had been purchased in trust for
28 Paisley Park Limited by Gerald Charlton as trustee and that was a matter which
29 was not accepted by Mr. Charlton at any time. That he had so purchased the
11:37:33 30 property in trust for Paisley Park. It's not a question of whether he acted

11:37:38 1 for agent or whether he acted for solicitor or didn't act as solicitor, but
2 whether the contract for purchase, the written agreement for purchase, was one
3 completed by him as trustee for Paisley Park. He had stated, as I'm sure
4 Mr. Finlay will get to, in correspondence with Mr. Caldwell. And prior to the
11:38:01 5 swearing of that affidavit that he had not so acted.
6
7 MR. FINLAY: At question 115 on Day 453, Mr. O'Neill, who has just intervened
8 in my cross-examination, put the following to you, Mr. Friel.
9
11:38:29 10 Having shown you the correspondence to you which alluded, but not showing you
11 the correspondence that you saw this morning, do you follow me?
12 A. I do, yes.
13 Q. 57 And he said to you, "you now learn" this is to you, "you now learn that Reddy
14 Charlton and McKnight were at all times the solicitors acting on behalf of the
11:38:50 15 purchaser. That Paisley Park was not the client of Binchy & Solicitors in
16 this acquisition, isn't that right?
17 A: That is correct.
18 Q: That is acknowledged by Mr. Caldwell in his exchange with Reddy Charlton,
19 who were the solicitors.
11:39:11 20 A: That is correct.
21 Q: Does that strike you as extraordinary?
22 A: It does but it has achieved its purpose from the point of view of Paisley
23 Park Investments, they secure their position,
24 Q: Though Mr. Stanley who is in the middle, is not referred to as being a
11:39:23 25 party whose interest is noticed on the folio.
26 A: It does and I think if it was planned in that way, unbelievably devious."
27
28 And you told Mr. O'Neill as follows, in response to question 105:
29 "Had you been aware of the exchange which had taken place between Mr. Caldwell
11:39:55 30 and Mr. Charlton regarding his capacity, whether it be as trustee or otherwise

11:40:00 1 I take it you would not have drafted the affidavit in this format.
2 A: I couldn't have." You said at question 105.
3
4 "So you were being misled Mr. Friel." And you answered, perhaps
11:40:13 5 understandably, "Well from what I have seen there, yes." Do you see that
6 answer?
7 A. I do, yes.
8 Q. 58 "Well from what I have seen there, yes."
9 The point is this, Mr. Friel. When you were asked those questions and
11:40:31 10 indicated that from what you had seen you thought you had been misled regarding
11 the capacity of Mr. Charlton, whether as a trustee or otherwise. I just want
12 you to confirm that you had not seen any of the correspondence which you seen
13 this morning.
14 A. I had not seen any of the correspondence, no.
11:40:57 15 Q. 59 And that in your opinion, having seen that correspondence that that
16 correspondence, today's correspondence, unequivocally demonstrates that
17 Mr. Charlton was acting as the solicitor for Paisley Park in the purchase of
18 Mr. Tracey's lands?
19 A. He was, yes.
11:41:28 20 Q. 60 There was nothing --
21
22 MR. O'NEILL: I have to interrupt, sir, regrettably at this point. If my
23 friend is going to put selective correspondence to this witness and invite him
24 to conclude what Mr. Charlton thought on receipt of a limited amount of
11:41:43 25 correspondence. And then to use that as a conclusion to try and go behind
26 other correspondence which comes from Mr. Charlton. It is a most improper and
27 unfair procedure.
28
29 If what is intended to be achieved is to say that Mr. Charlton actually knew
11:42:01 30 that he was the client of Paisley Park. It would be appropriate to put the

11:42:08 1 entire of the correspondence to this witness, and that correspondence would
2 include correspondence between Mr. Charlton and Mr. Stanley, who was at the
3 time the client of Mr. Charlton. And it affords an explanation which is an
4 alternative explanation to the one which Mr.-- which this witness Mr. Friel,
11:42:35 5 has been asked to accept.

6
7 Mr. Friel can never tell us what it is was in the mind of Mr. Charlton. But
8 he is being asked to put himself in the position of a conveyancing solicitor
9 who, presented with a limited form of documentation, would reach a certain
11:42:44 10 conclusion and that conclusion, correctly, as Mr. Friel says, if he had only
11 that documentation. He would then assume that Mr. Charlton was acting as the
12 solicitor for Paisley Park.

13
14 But to allow the Tribunal to proceed on that basis, in the knowledge that the
11:43:00 15 documentation suggests otherwise, that is the documentation of Mr. Charlton to
16 his then client, Mr. Stanley, would, in my respective submission, be misleading
17 to the Tribunal to proceed on that basis.

18
19 And I would ask Mr. Finlay to go back and deal with the correspondence.
11:43:19 20 Firstly, which set out Mr. Charlton's relationship with his then client
21 Mr. Stanley, and then to detail the correspondence which was the response by
22 Mr. Charlton to a suggestion that he was acting on behalf of Paisley Park. I
23 have absolutely no quarrel with the fact that inference could be drawn from
24 each of the items of correspondence which has been put to the witness, which
11:43:48 25 would allow a person without the full knowledge, to believe that Mr. Charlton
26 was acting as the solicitor for and on behalf of Paisley Park.

27
28 But that is clearly an erroneous impression given the correspondence which we
29 know exists and which affords certainly, the possibility of another
11:44:08 30 explanation, and I think that should be put to the witness rather than

11:44:13 1 proceeding on a limited basis which has been done to this time.

2

3 CHAIRMAN: Well is there any point in possibly Mr. Friel being given an
4 opportunity to see the whole of the correspondence?

11:44:24 5

6 MR. O'NEILL: Mr. Friel has seen the whole of the brief. As far as I know he
7 was circulated with that brief in advance of giving evidence before the
8 Tribunal.

9

11:44:32 10 CHAIRMAN: I don't know whether he has had an opportunity in recent times to

11 --

12

13 MR. O'NEILL: I can't say that sir, but certainly to proceed on the current
14 basis where a selective body of material has been extracted without reference
11:44:45 15 to contemporaneous documentation between Mr. Charlton and his own client,
16 Mr. Stanley, allows for a false impression to be created.

17

18 JUDGE FAHERTY: Mr. O'Neill, it might be helpful for Mr. Finlay. Mr. Finlay
19 questioned this witness on the basis that there was documentation up to the
11:45:05 20 first week in July, correspondence between Paisley Park, Mr. Bullock and the
21 company, to suggest that to Mr. Friel, as a conveyancing solicitor that Paisley
22 was the client of Mr. Charlton. There is correspondence in the same week, as
23 I understand it, that was opened in Mr. Charlton's evidence, where there is
24 reference, correspondence to a mutual client and a response from Mr. Charlton.

11:45:28 25

26 MR. O'NEILL: Yes.

27

28 JUDGE FAHERTY: Is that what you're talking about?

29

11:45:32 30 MR. O'NEILL: Certainly it would appear that the correspondence which emanated

11:45:37 1 from Mr. Bullock and from Mr. Caldwell to Mr. Charlton was copied by
2 Mr. Charlton to Mr. Stanley, asking for his instructions as to what he should
3 do in relation to this correspondence. So that it seems clear from that,
4 though it wouldn't appear from the face of the documentation which was sent by
11:45:58 5 Mr. Caldwell or Mr. Bullock to Mr. Charlton, that Mr. Stanley was in fact the
6 client at that time, and to proceed without reference to that, in my respectful
7 submission, allows for the Tribunal to be misled seriously.

8
9 MR. FINLAY: Chairman and Members of the Tribunal, I wonder if I can help to
11:46:23 10 shorten this matter, because I believe it can be shortened significantly. My
11 examination this morning was only intended to be an hour and I am effectively
12 at the end of it, subject to this interruption. I want to say the following,
13 because it's very important.

14
11:46:33 15 In my respectful submission and absolutely no criticism is intended of anyone.
16 My very respectful submission. Mr. Friel should, never ever have been invited
17 by Counsel for the Tribunal to do what he was invited to do, namely, to
18 comment, comment, on third party correspondence to which he was not a party.
19 But that is what he was asked to do by Mr. O'Neill extensively, extensively,
11:47:02 20 again, again and again. Documents were put to him of which he had no personal
21 knowledge and to which he was a stranger and he was invited to comment on them.
22 In my respectful submission that is an inappropriate and irrelevant procedure
23 but having gone down that road, which I believe was wrong, I have merely sought
24 to correct the balance by inviting Mr. Friel to do precisely the same and no
11:47:28 25 more, but in respect of the documents that Mr. O'Neill failed to put to him.
26 I have done no more than that and where Mr. O'Neill is fundamentally mistaken
27 is this.

28
29 He has suggested that it is wrong to ask Mr. Friel what Mr. Charlton knew or
11:47:44 30 did not know, because he cannot know what Mr. Charlton knew or did not know.

11:47:49 1 Of course he cannot know, and that is why the exercise in my respectful
2 submission is pointless.

3
4 But what I have asked Mr. Friel to do, is not to say what Mr. Charlton knew or
11:47:58 5 didn't know, because he cannot know that. I have merely asked him to comment
6 from a purely objective standpoint, the standpoint of an outside witness,
7 possibly an expert, his status has never been defined by the Tribunal, despite
8 correspondence in that regard, possibly as an expert in conveyancing, to
9 comment merely on the face of the record, on the face of the documents, no
11:48:21 10 more. I'm not asking him to enter Mr. Charlton's mind. I'm asking him if he
11 was a conveyancing solicitor, and he received this letter, what would he have
12 done, or if he was the author of this letter what would he have understood. I
13 don't believe in general this process is one which is helpful to the Tribunal.
14 I don't believe it should ever have been embarked upon in the first place.

11:48:44 15 because Mr. Friel cannot say, in the end of the day, what was in the mind of
16 anybody. It is for the witnesses to give direct evidence of that.

17
18 But having gone down that road, what Mr. O'Neill did was to omit to put to Mr.
19 Friel, 11 sequential documents which are crystal clear on their face, crystal
11:49:02 20 clear on their face, and if this witness is being asked to comment on
21 documents, which is all he is being asked to do. Then he should have been
22 asked to see those documents and no witness, nobody reading those 11 documents
23 could ever say, ever say, that as of the beginning of July 1988, Mr. Bullock or
24 Mr. Caldwell could have had any misunderstanding as to the role of Mr. Charlton
11:49:25 25 as acting for the purchaser. The correspondence is crystal clear, you don't
26 need to be a conveyancing expert to understand that.

27
28 All I'm say is that, if there has been selectivity in this process, the
29 selectivity was when the 11 documents I opened this morning were not put to Mr.
11:49:43 30 Friel earlier in the year and that is all that I have sought to do. Add to his

11:49:47 1 commentary, and it's no more than a commentary, the 11 documents in question.
2 I respectfully submit that at the end of the day, with great respect, the
3 relevant evidence, on all of this, should be the evidence of the parties,
4 should be the evidence of Mr. Charlton, Mr. Stanley, Mr. Caldwell or whatever.

11:50:05 5 And with the very, very greatest of respect to the Tribunal and of course to
6 Mr. Friel. I don't -- I submit that his external commentary cannot really be
7 of great assistance to the Tribunal and it's for that reason that I believe
8 this can be shortened. The idea of exploring Mr. Charlton's mind is not an
9 issue for Mr. Friel and shouldn't be embarked on today.

11:50:30 10
11 I am perfectly happy -- it will take me at least a day, if not two days, to go
12 back into all of the Charlton correspondence. I reviewed it all yesterday and
13 all over the weekend. I chose only to put to Mr. Friel the documents that
14 Mr. O'Neill chose not to put. Mr. O'Neill had the opportunity of putting
11:50:45 15 every bit of this correspondence to Mr. Friel, he chose not to. I thought that
16 the Tribunal members ought to see his commentary on the 11 documents that he
17 hadn't seen before.

18
19 CHAIRMAN: Well Mr. Finlay, are you satisfied at this stage that we have,
11:51:00 20 between the evidence today and on the previous occasion, insofar as Mr. Friel
21 is concerned, all of the --

22
23 MR. FINLAY: Commentary that you require.

24
11:51:10 25 CHAIRMAN: Yes.

26
27 MR. FINLAY: Absolutely. I am satisfied that insofar as Mr. Friel's
28 commentary on documents is relevant to the processes of the Tribunal, I am
29 personally satisfied that you now have, from Mr. Friel, everything that the
11:51:26 30 Tribunal might require. I am prepared to conclude. Unless the Tribunal

11:51:30 1 wishes me to do otherwise.

2

3 CHAIRMAN: Do you have any difficulty?

4

11:51:35 5 MR. O'NEILL: I have none. Safe to say that since Mr. Finlay embarked on the
6 process of putting documents to the witness, despite the fact that he doesn't
7 believe that it has merit in its ultimate value, once he had embarked on that
8 process, I say that it is incumbent on him to put all of the documents, rather
9 than seek an opinion from the witness on a limited amount of documents --

11:52:00 10

11 CHAIRMAN: At this stage we have all of the documentation.

12

13 MR. O'NEILL: Yes and we can say that Mr. Friel has had all of these documents
14 since the beginning, so that in answering any question which was put to him by

11:52:14 15 me in examination, by reference to particular documents. It was at all times
16 open to him to qualify his response by reference to any of the other documents
17 in the brief, which had been furnished to him in advance of his giving

18 evidence. It's not a matter of the Tribunal in some sense taking a deliberate
19 decision to either conceal documents from the witness or to be selective in the

11:52:38 20 examination, of necessity, there is a process which involves a focus on
21 particular documents, but the entire sequence insofar as it's documented has
22 been furnished to this witness in advance.

23

24 CHAIRMAN: Can we continue then on that basis?

11:52:55 25

26 MR. FINLAY: Continue in the sense of concluding if you wish, Chairman. I am
27 perfectly happy to conclude at this juncture. If the Tribunal members are so.

28

29 CHAIRMAN: Do you have any further questions for Mr. Friel?

11:53:07 30

11:53:07 1 MR. FINLAY: None.

2

3 MR. O'NEILL: I'm not sure if anybody else has questions of Mr. Friel.

4

11:53:16 5 **THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. LAWLOR:**

6

7 MR. LAWLOR: Mr. Friel, I'm not absolutely clear, in what capacity did you act

8 in this whole matter?

9 A. I acted as the solicitor for the liquidator of Paisley Park Limited -- sorry.

11:53:30 10 I was the solicitor, sorry, did I say -- solicitor for the accountant who was

11 liquidating the company.

12 Q. 61 Just to try and help the Tribunal because it has been widely written that I was

13 supposed to have some direct, indirect or other, interest in lands or

14 companies. Did you ever, under any guise, ever come to that conclusion or

11:53:53 15 ever hear my name or involvement or any capacity what so ever?

16 A. I never met you. I never heard your name mentioned during the whole

17 transaction, no. Like, I can't put it, as complete as I can say it.

18 Q. 62 Would your function have established who were the parties involved?

19 A. It would not necessarily, no.

11:54:18 20 Q. 63 So you can tell the Tribunal that as far as you're aware I had never any

21 involvement in this matter?

22 A. Well your name never -- as absolute as I can say. I never heard your name.

23 I never met you. I never heard your name mentioned in any part of the -- in

24 my total dealings with the thing, with the transaction, I don't see how I can

11:54:42 25 put it any stronger than that.

26

27 **THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. O'NEILL:**

28

29 MR. O'NEILL: Just arising out of that last questioning of you by Mr. Lawlor,

11:54:53 30 Mr. Friel. Is it also the case that you were unaware of any interest being

11:54:57 1 held in these lands by Mr. John Caldwell?
2 A. That is correct.
3 Q. 64 And is it also the case that you were unaware of the fact that Mr. Jim Kennedy
4 apparently had ownership interest in this?

11:55:11 5 A. That's correct.
6 Q. 65 So the interest of those two parties apparently acknowledge an interest in the
7 lands, so that you in effect did not know who you were acting for, save that
8 you were receiving instructions from the liquidator of an Isle of Man company?

9 A. That is correct.

11:55:26 10 Q. 66 Thank you.
11

12 MR. LAWLOR: Sorry, in pursuance of that now Chairman, so you have since,
13 having read the brief, come into the knowledge now of the parties mentioned by
14 Mr. O'Neill as having an involvement, is that right?

11:55:39 15
16 CHAIRMAN: Sorry, Mr. Lawlor. The question that you put to Mr. Friel was, at
17 the time that he was doing his work in relation to these lands, did he in any
18 way come across your name or anything to suggest that you had a connection to
19 the lands. And his answer was quite clear. That you he didn't in any way
11:55:57 20 see a reference or come across a reference to Mr. Lawlor.
21

22 **THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. LAWLOR:**
23

24 MR. LAWLOR: In follow-up to Mr. O'Neill's question. That it has now been
11:56:07 25 established. Is that right, Mr. Friel, that the parties referred to, and
26 extensively referred to, in the brief that you have had from the Tribunal has
27 helped clarify some of the unknowns that you were dealing with at the time,
28 would you agree with that?

29 A. I wouldn't no, because my function is nothing whatsoever -- I am here as a
11:56:27 30 witness to state what I did at the time, not to come to any conclusions about

11:56:33 1 what I read in any subsequent briefs or in newspapers or anything like that.

2 Q. 67 But Mr. O'Neill has just put it to you that these other two parties have now
3 had some established connection.

4

11:56:47 5 CHAIRMAN: But Mr. Lawlor. Mr. Caldwell's involvement, Mr. Caldwell has an
6 interest in the lands.

7

8 MR. LAWLOR: Mr. O'Neill has flogged a dead horse from my point of view. And
9 it's time wasting, and the goings on that has gone on and continues to go on.

11:57:18 10

11 CHAIRMAN: There is nobody flogging a dead horse. You asked Mr. Friel, did
12 he come across your name in any way, as a possible owner of the lands.

13

14 MR. LAWLOR: We've asked everybody --

11:57:32 15

16 CHAIRMAN: Just to explain this and Mr. O'Neill simply then, in order to
17 clarify the position, asked Mr. Friel did he come across Mr. Caldwell's name or
18 Mr. Kennedy's name as a possible owner and he said that he didn't come across
19 their names in that capacity either. So the position is now clear. Thank you
20 Mr. Friel. Thank you for attending. And we will rise for a few minutes.

21

22 **THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK.**

23

24

11:58:08 25

26

27

28

29

11:58:08 30

11:58:08 1

THE TRIBUNAL RESUMED AS FOLLOWS:

2

3

MR. O'NEILL: The next witness, sir, will be Mr. Tommy Grimes. Mr. Grimes, will you come to the witness box, please?

4

12:16:23 5

6

MR. MALONEY: Liam Maloney instructed by Mr. Grimes and Richard Lynn witnesses today. I wonder could I apply for representation for both those gentlemen, please?

7

8

9

12:16:33 10

CHAIRMAN: That's fine. Granted. Limited.

11

12

MR. GRIMES, HAVING BEEN SWORN, WAS EXAMINED

13

AS FOLLOWS BY MS. COUGHLAN:

14

12:16:57 15

MS. COUGHLAN: Mr. Grimes.

16

17

A. Ms. Coughlan.

18

Q. 68 Good afternoon, Mr. Grimes.

19

A. Good afternoon.

12:17:06 20

Q. 69 Is it fair to describe you as an agriculture contractor, Mr. Grimes?

21

A. Yes.

22

Q. 70 I believe that you were in a conacre letting out at lands at Carrickmines, which were formally in the ownership of Robert Tracey?

23

24

A. Yes.

12:17:19 25

Q. 71 How did you even know that the lands were up for letting?

26

A. I met -- there was, a digger was for sale and that's how I got to know about the lands.

27

28

Q. 72 Sorry, there was a digger for sale?

29

A. In McCormack McNaughtons.

12:17:36 30

Q. 73 That's the premises out on the Naas Road.

12:17:39 1 A. Yes.

2 Q. 74 And they would be the main dealership in caterpillars and large machinery.

3 A. That's right.

4 Q. 75 And you saw this digger and what's the connection?

12:17:47 5 A. In connection with the digger I found out that Mr. Kennedy owned the digger,
6 and in conversation it came up that there was lands in Carrickmines for rent.

7 Q. 76 If we go back. So you were looking at this digger out in the Naas Road, and
8 you were told that the digger was owned by Mr. James Kennedy.

9 A. That's right.

12:18:06 10 Q. 77 And did they give you his phone number, or how did you contact Mr. Kennedy?

11 A. I didn't get it off the dealer, I got it through the low loader man that moved
12 the digger there.

13 Q. 78 I see. So you knew the man who bought the digger there.

14 A. That's right.

12:18:16 15 Q. 79 Did he give you Mr. Kennedy's phone number to contact?

16 A. Yes.

17 Q. 80 Did you do a deal with Mr. Kennedy in relation to the digger?

18 A. Yes.

19 Q. 81 So you had agreed a purchase price. So you obviously spoke to Mr. Kennedy on
12:18:28 20 the phone then.

21 A. A few times.

22 Q. 82 And when you were speaking to Mr. Kennedy had you agreed a price on the digger?

23 A. Yes.

24 Q. 83 And did you pay a deposit on it?

12:18:37 25 A. No.

26 Q. 84 So you had agreed a purchase price. You had actually taken the digger I
27 think?

28 A. Before we buy a digger we always check with our finance that we can get
29 approval or whatever. So we would go off and checkout, but the money was
12:18:52 30 there, if we see a digger we'd just go and get it, you know.

- 12:18:57 1 Q. 85 In your discussions with Mr. Kennedy on the phone. Did you meet him in person
2 at this time?
- 3 A. I don't remember. I think it was phone.
- 4 Q. 86 Okay. Well in your conversation with Mr. James Kennedy on the telephone, did
12:19:12 5 you discuss, how did it come up that he had lands out in Carrickmines?
- 6 A. Because we described ourselves as agriculture and plant hire and what sort of
7 work we were doing and it came up then.
- 8 Q. 87 Did he say that you had lands and would you be interested or did you say to him
9 did he have any lands or how did it arise that he offered lands out in
12:19:32 10 Carrickmines?
- 11 A. It just come up in conversation that there was lands to be taken in
12 Carrickmines, and we were actually looking for lands at the time.
- 13 Q. 88 You were looking for lands at the time.
- 14 A. Yeah.
- 12:19:42 15 Q. 89 And when he mentioned to you that he had these lands, did he say to you do you
16 want to go and look at them and come back to you or can you recall much about
17 the conversation?
- 18 A. Well he told me where they were, described the place but I knew the area very
19 well, I was working in the area.
- 12:19:58 20 Q. 90 You were working out in Carrickmines at the time.
- 21 A. We do subcontract work for the council and the particular lands he described,
22 we were actually parking on it.
- 23 Q. 91 You were actually parking a digger or machinery out on the Carrickmines farm?
- 24 A. Yeah.
- 12:20:12 25 Q. 92 And what year can you recall did this occur?
- 26 A. I'm not sure now what year it was.
- 27 Q. 93 We will try and put that in place with a document in a few minutes. Just to
28 establish, you had some phone calls, maybe you met him in person, but you
29 can't recollect, with Mr. James Kennedy, and you're not sure of the year at
12:20:26 30 the moment. While you were trying to purchase a digger from him.

12:20:33 1 A. Yeah.

2 Q. 94 He raised the issue that he had lands for letting in Carrickmines.

3 A. Yeah.

4 Q. 95 Did he show you the lands?

12:20:40 5 A. No, he never showed it to me.

6 Q. 96 He never physically went to the Carrickmines lands with you?

7 A. No, he described where it was. And I knew the area very well so I wouldn't

8 have got lost finding it.

9 Q. 97 You say because you had a digger already parked on the farm.

12:20:55 10 A. Yeah.

11 Q. 98 Whose farm was that and whose yard was it that you were parking on?

12 A. I didn't know who owned the land at the time, it's just that the council when

13 they are working in an area to try and get local parking. They cleaned up a

14 little spot so that they could park their hut, their canteen and their roller.

12:21:17 15 We got permission off the man who had the yard rented there.

16 Q. 99 Did Mr. Kennedy give you a map of these lands or was it a pure description that

17 they were beside the golf club?

18 A. They were in stubble so there was no bother finding them.

19 Q. 100 Did you mention to him when he raised with you that he had these lands in

12:21:32 20 Carrickmines, did you mention to him that you were already parking your digger

21 out there?

22 A. Yes.

23 Q. 101 Had you ever discussed with the man that had the yard where you were parking

24 your digger, did you ever discuss with him that Mr. Kennedy had mentioned to

12:21:44 25 you about renting the lands?

26 A. No, no.

27 Q. 102 So Mr. Kennedy physically describes the lands to you. You had no issue as to

28 where they were because you knew them very well because you were already out in

29 the area.

12:21:55 30 A. Yeah.

- 12:21:56 1 Q. 103 When did you go and look at these lands?
- 2 A. I'd say it was probably the following Sunday.
- 3 Q. 104 The following Sunday.
- 4 A. Yeah.
- 12:22:03 5 Q. 105 And did you go on your own to view the lands?
- 6 A. No. I'm sure Mr. Hill would have come along, because it was a joint venture.
- 7 Q. 106 Sorry, you had a joint venture with somebody else?
- 8 A. Mr. Alex Hill.
- 9 Q. 107 And did you and Alex Hill go together to view the lands?
- 12:22:22 10 A. I'm not sure. I wouldn't have went on my own.
- 11 Q. 108 You wouldn't have went on your own. When you said to Mr. Hill, "I was trying
- 12 to buy a digger off James Kennedy or in negotiation to buy a digger and
- 13 Mr. Kennedy mentioned these lands to me." Did you say to Alex Hill that you
- 14 had been talking to James Kennedy and he told you that he had the lands?
- 12:22:38 15 A. That would have been around what came out alright.
- 16 Q. 109 So when you and Mr. Hill viewed the lands, did you then ring James Kennedy and
- 17 say "yes we're interested in these lands" or what was the next step that you
- 18 made?
- 19 A. I'm not sure what way we contacted him after that.
- 12:22:55 20 Q. 110 Did Mr. Kennedy give you the name of his solicitor or did he give any
- 21 documentation as to who you could ring?
- 22 A. As far as I'm aware he gave us some name of a solicitor.
- 23 Q. 111 He gave you the name of a solicitor. Did he write this down on a piece of paper
- 24 or did you write it down or how did you know who to contact afterwards?
- 12:23:11 25 A. I'm not sure what way. Whether he had it wrote out or whether I wrote it down
- 26 or what.
- 27 Q. 112 And who was this solicitor that he first put you in contact with?
- 28 A. I can't remember, just that I think it wasn't an Irish solicitor.
- 29 Q. 113 You can't recollect who Mr. James Kennedy first told you or put you in contact
- 12:23:29 30 with, but it wasn't an Irish solicitor.

12:23:32 1 A. I don't think so.

2 Q. 114 And where do you think this person was based?

3 A. Oh, I thought that there was, a foreign, outside of England anyway. It wasn't

4 an Irish one.

12:23:41 5 Q. 115 It wasn't Irish and he wasn't in England. So it was somewhere in the Channel

6 Islands maybe?

7 A. Somewhere different anyway. It seemed to stick in my head that it wasn't a

8 local one anyway.

9 Q. 116 It wasn't a local one. Can I just maybe use a document to try and put a time

12:23:58 10 on this so then maybe we can --

11 A. Yeah.

12 Q. 117 If you can put on screen page 2339, please. This in fact is a document which

13 is dated the 13th of March 1995, but it's a document that encloses a cheque for

14 5,320 being the amount due for the rental for spring/autumn 1994. Would this

12:24:28 15 imply that you were certainly out on the lands in the spring of 1994, if you

16 were paying a rental, there was a cheque in fact signed by yourself on the

17 joint account with Mr. Hill?

18 A. As far as I'm aware you normally pay half and half.

19 Q. 118 From the records that the Tribunal has seen, it seems that you paid rearily in

12:24:45 20 arrears, for example the next contract for the conacre letting was paid at the

21 end of September of '95, and the period went from February '95 through to

22 September '95.

23 A. Again, I didn't really look after in a end of it.

24 Q. 119 Who looked after that end of it?

12:24:59 25 A. Mr. Hill.

26 Q. 120 So just to try and put a date on when you were out ploughing the land to sew. I

27 think it was linseed, was it?

28 A. Yeah.

29 Q. 121 Would you accept that if you paid a cheque for the rental for spring/autumn

12:25:12 30 '94, that it's probable that in the spring of '94, probably February, you were

- 12:25:17 1 ploughing the land to sew the linseed?
- 2 A. Yeah.
- 3 Q. 122 So if we just take it that you were probably purchasing your digger from
- 4 Mr. Kennedy in maybe January '94.
- 12:25:27 5 A. I'm not sure.
- 6 Q. 123 It was during these discussions that you came to learn or was it in '93?
- 7 A. Probably months before, I don't think I would be buying a digger that early in
- 8 the year.
- 9 Q. 124 Do you think it might have been in the autumn of '93?
- 12:25:41 10 A. I'd say it was September that the digger was probably bought.
- 11 Q. 125 That you were dealing with Mr. Kennedy with regard to the digger?
- 12 A. Yeah.
- 13 Q. 126 And so that might be September of '93 then?
- 14 A. Yes.
- 12:26:05 15 Q. 127 And after you viewed the lands, which you say was a Sunday, and you viewed them
- 16 with Mr. Hill, you phoned Mr. Kennedy was it or did you phone this Channel
- 17 Island solicitor or who did you phone to negotiate the rent?
- 18 A. Well we knew what the rent was.
- 19 Q. 128 How did you know what the rent was?
- 12:26:12 20 A. As far as I'm aware 100 pounds an acre.
- 21 Q. 129 Well based on that document that's on screen. That works out that it was 70
- 22 pounds for 76 acres. Just the calculation on that particular document there.
- 23 A. Yeah.
- 24 Q. 130 But if you're talking to Mr. James Kennedy in the autumn of '93 and he mentions
- 12:26:32 25 that he has these lands.
- 26 A. Uh-uh.
- 27 Q. 131 Somebody had to ring him to negotiate with him that it was going to be 70
- 28 pounds for 76 acres.
- 29 A. Well before we went out to look at it we would have wanted to know what it was.
- 12:26:45 30 Q. 132 Do you think Mr. Kennedy told you this before he sent you out to look at the

12:26:49 1 lands?

2 A. Yeah.

3 Q. 133 So he said probably then that "I have lands out in Carrickmines and this is the

4 rental." Would you have done any negotiation with him over the rental? Would

12:26:56 5 you have said that was too much because you were probably renting other lands?

6 A. We were taking lands so he would have known, if he had said 100 to 150 we would

7 have known there was no profit in it for us. If it was 100 pounds we were

8 probably happy with that, we had other lands taken at that. We knew our

9 margin.

12:27:12 10 Q. 134 You knew your margin. If he had said to you it was 70 pounds, you were

11 agreeable to that. That seems to be the rental you paid for the spring/autumn

12 1994 period.?

13 A. Yeah.

14 Q. 135 So you think it was -- was there any negotiation or did you just accept the

12:27:29 15 price?

16 A. When you're told to go out and look at land you want to know what it is, no

17 point wasting a Sunday, if it's going to be 200 pound an acre. I would have

18 said what are you expecting to get for it or --

19 Q. 136 So he obviously then gave you the price.

12:27:44 20 A. Yeah.

21 Q. 137 It was agreeable to you and you said you would view the lands.

22 A. Yeah.

23 Q. 138 And you either got back on to Mr. James Kennedy to say that the lands were

24 acceptable or you rang this unidentified person somewhere in the Channel

12:27:59 25 Islands?

26 A. Yeah.

27 Q. 139 Was that a solicitor or an agent of Mr. Kennedy's or?

28 A. No, it was a solicitor.

29 Q. 140 That was your belief at the time?

12:28:06 30 A. Yeah.

- 12:28:06 1 Q. 141 Are you sure it was a solicitor?
- 2 A. Oh, it was a solicitor, yeah.
- 3 Q. 142 And were you initially then dealing with this solicitor?
- 4 A. Well I never dealt, I never rang the solicitor. My end of it was to do the
- 12:28:18 5 work and Alex Hill was to look after the paperwork and --
- 6 Q. 143 So when you met Mr. Hill, whom you were already in partnership with, you were
- 7 already working with him on other lands.
- 8 A. Yeah.
- 9 Q. 144 So when you met Mr. Hill and you went out to view the Carrickmines lands you
- 12:28:36 10 explained to him that you met James Kennedy, he offered these lands to you and
- 11 this was the price.
- 12 A. Yeah.
- 13 Q. 145 And did you pass on to Alex Hill the phone number and name of --
- 14 A. I'm not sure if I had the phone number on me. I could have had the phone
- 12:28:50 15 number for Mr. Kennedy and gave it to Alex, I'm not sure.
- 16 Q. 146 You could have given Mr. Hill, James Kennedy's phone number?
- 17 A. I'm not sure.
- 18 Q. 147 You did also have the information of some offshore solicitor?
- 19 A. Yes.
- 12:29:01 20 Q. 148 So it's one or other of those two?
- 21 A. Uh-uh.
- 22 Q. 149 You say that the point you had already agreed the rent and you were happy.
- 23 A. Uh-uh.
- 24 Q. 150 If you were sewing linseed, that you would be sewing it in February or what
- 12:29:15 25 month would you sew it?
- 26 A. I think it was closer to May.
- 27 Q. 151 And when would you be ploughing?
- 28 A. It would all depend on the weather conditions. If the machine was free we'd
- 29 probably get stuck into it.
- 12:29:25 30 Q. 152 You are likely to have been out there by March of 1994?

- 12:29:29 1 A. I'd say March.
- 2 Q. 153 Did you have any other conversations with James Kennedy?
- 3 A. Not that I can recollect at all.
- 4 Q. 154 So is it your evidence that only dealings with Mr. Kennedy that you had, was in
12:29:43 5 relation to the purchase of a digger with Mr. Kennedy and then subsequently --
6 arising out of your negotiations to purchase the digger, that you entered into
7 this agreement to rent a conacre letting of lands in Carrickmines?
- 8 A. Yes.
- 9 Q. 155 When you arrived at the lands in Carrickmines you say you were in stubble, does
12:30:07 10 that mean that there was a crop planted on it the year earlier?
- 11 A. Yes.
- 12 Q. 156 Do you know who was renting ahead of you on the lands, let's say in 1993?
- 13 A. I can't recall who was on it before.
- 14 Q. 157 You do recall there was somebody there who had tilled --
- 12:30:20 15 A. The land that the other man had taken where we were parking the digger, that
16 was a green belt, grass, it was easy to identify the other fields they were in
17 stubble.
- 18 Q. 158 Did you keep the piece of paper where you wrote down the name of the solicitor
19 and the phone number of these Channel Islands solicitor?
- 12:30:46 20 A. I can't remember what I done with it.
- 21 Q. 159 When you were discussing with James Kennedy about the lands in Carrickmines
22 you, I presume you mentioned to him that you were already parking your digger
23 on his lands?
- 24 A. That's right.
- 12:31:07 25 Q. 160 And what did he say about that?
- 26 A. He didn't say anything about it at all. He just said you know where to go.
- 27 Q. 161 So you had complete understanding of his lands and where they were.
- 28 A. Yeah.
- 29 Q. 162 Was it your understanding that Mr. Kennedy owned the lands, from your dealings?
- 12:31:22 30 A. I wasn't sure who owned that land.

- 12:31:25 1 Q. 163 But Mr. Grimes, if you're negotiating the purchase of a digger from Mr. Kennedy
2 and he says to you that there are lands in Carrickmines for letting and here is
3 the rental price and if you get back on to me or this solicitor, is it not
4 probable that you believed at the time that it was Mr. Kennedy you were dealing
12:31:44 5 with?
- 6 A. I wasn't sure, I didn't know who owned it, he could have been acting as an
7 agent.
- 8 Q. 164 Who did you tell Mr. Hill you were going to be renting from when you passed on
9 this information?
- 12:31:52 10 A. Well, Mr. Kennedy just told that he had land out there, I just passed it on.
11 Who owned it, I didn't mind who owned it.
- 12 Q. 165 But if you're renting land I presume you would want to know something about who
13 you are renting it from.
- 14 A. Well again that wasn't my end. It was up to Mr. Hill then to pay the money or
12:32:07 15 negotiate, I wasn't going to do anything after that.
- 16 Q. 166 But you had negotiated the price, not Mr. Hill?
- 17 A. I had found out the price of what they wanted for it. We went up and looked
18 at the land, after that if I had a number I would have passed it on to Alex.
- 19 Q. 167 So then you were leaving it up to Alex Hill to do some further negotiation on
12:32:26 20 the price?
- 21 A. I would have been checked out.
- 22 Q. 168 Just in regard to your statement, which you gave to the Tribunal, and it's
23 dated the 15th of January 2004. It's page 2142.
24
- 12:32:53 25 With regard to the solicitors that you mention in the Channel Islands I see in
26 your statement you say:
27 "Alex and I had a joint bank account and Alex looked after the rental payments.
28 My recollection in relation to renting the land was that we were given the name
29 of a solicitor to contact. I believe the solicitor was based in Jersey, but I
12:33:17 30 cannot be certain", why did you say "Jersey" in your statement, Mr. Grimes?

- 12:33:23 1 A. Well that just seems to cropping up in my head. I don't think it was a Dublin
2 based solicitor. It was -- somebody mentioned Jersey. It just sticks in my
3 head.
- 4 Q. 169 So it might have been Jersey, but it could have been Guernsey or the Isle of
12:33:39 5 Man or another one of those islands, could it?
- 6 A. That one just seems to stick in my head.
- 7 Q. 170 But you're sure it wasn't a Dublin solicitor or a solicitor in the UK?
- 8 A. That's my recollection.
- 9 Q. 171 Did you have discussions with Mr. Hill about Mr. Kennedy's ownership of the
12:34:11 10 lands, when you were out there renting it? Did you know whether Mr. Hill had
11 any contact with Mr. Kennedy?
- 12 A. I don't think we discussed who owned the lands at all.
- 13 Q. 172 Well apart from your initial discussions, when you're viewing the lands you
14 said that you told Mr. Hill that it was James Kennedy who put you in touch with
12:34:30 15 these lands, he said that he had lands out there and here is a phone number for
16 someone to ring. You don't just rent lands without knowing or is it just that
17 you were happy to leave that to Mr. Alex Hill to take care of?
- 18 A. Well the land, if Alex had have said that he didn't want the land I wouldn't
19 have been able to take it. I wouldn't have been interested in it.
- 12:34:54 20 Q. 173 Can I just take you back to when you were purchasing the digger, and you were
21 in negotiations to purchase the digger from Mr. Kennedy, which we seem to think
22 was in September of 1993, because you say that's the time that you would have
23 likely to have been purchasing a digger?
- 24 A. Yes.
- 12:35:24 25 Q. 174 And you say it was probably the next Sunday that you viewed the lands. So I
26 take it on that basis that you viewed the lands in September '93?
- 27 A. Yes.
- 28 Q. 175 And then following on from that, the agreement to take the lands for the
29 following spring was probably -- you probably agreed it in or about 1993,
12:35:47 30 around September/November?

12:35:53 1 A. Yeah.

2 Q. 176 Thank you Mr. Grimes. If anybody else has any questions.

3

4 CHAIRMAN: Mr. Finlay, do you want to ask any questions?

12:36:01 5

6 MR. FINLAY: No, thank you, Chairman

7

8 CHAIRMAN: Thank you very much, Mr. Grimes.

9

12:36:07 10 **THE WITNESS WITHDREW.**

11

12 MR. O'NEILL: Mr. Alex Hill, please.

13

14

12:36:11 15 **MR. ALEX HILL, HAVING BEEN SWORN, WAS EXAMINED**

16 **AS FOLLOWS BY MR. O'NEILL:**

17

18 CHAIRMAN: Sit down, Mr. Hill.

19

12:36:55 20 MR. O'NEILL: Good afternoon, Mr. Hill. You were in partnership with the

21 former or the last witness, Mr. Grimes, in connection with certain agricultural

22 lands, including those at Carrickmines, isn't that so?

23 A. Correct.

24 Q. 177 And you are aware that and have been for some time that the Tribunal has been

12:37:17 25 enquiring into the ownership of these particular lands. And in the course of

26 doing so, it contacted you and interviewed you in relation to any knowledge

27 that you may have had of the ownership of these lands, isn't that so?

28 A. Correct.

29 Q. 178 Yeah, from what we hear from Mr. Grimes, it appears that the initial contact

12:37:38 30 with these lands was contact which came through Mr. Grimes, rather than

- 12:37:44 1 yourself.
- 2 A. Yes, that's correct.
- 3 Q. 179 At that time, Mr. Grimes was carrying out the actual physical work of the
- 4 contracting business and you were more responsible for the book-keeping and
- 12:38:00 5 organisation of the work. Is that fair commentary of the work that you and he
- 6 did?
- 7 A. That's fair, that's correct.
- 8 Q. 180 Have you a recollection of when it was exactly, that the first mention of the
- 9 Carrickmines lands being available for tillage purposes came to your knowledge?
- 12:38:28 10 A. I would say it was the autumn of '93.
- 11 Q. 181 Yes. At that time, Mr. Grimes apparently was contracting in that area for the
- 12 local authority and had local knowledge of these lands.
- 13 A. Correct.
- 14 Q. 182 Did you yourself know of the lands or of the acreage or ownership of the lands,
- 12:38:54 15 prior to Mr. Grimes informing you about it?
- 16 A. I knew nothing of the lands until Tommy told me about them.
- 17 Q. 183 And we know that the area which was farmed by you and Mr. Grimes amounted to
- 18 approximately 76 acres, or thereabouts, isn't that right?
- 19 A. Correct.
- 12:39:17 20 Q. 184 And that land was in tillage whilst you had an involvement with it, isn't that
- 21 correct?
- 22 A. Correct.
- 23 Q. 185 Is it correct to say that Mr. Grimes and yourself initially operated a conacre
- 24 agreement in relation to these lands for possibly two or three years and
- 12:39:37 25 thereafter you entered into a partnership arrangement with the owners of the
- 26 land, is that so?
- 27 A. Not quite. The first couple of years, Mr. Grimes and myself operated on a
- 28 conacre basis. Then I was employed, if you like, by Mr. Miley to operate the
- 29 lands on behalf of Jackson Way Properties.
- 12:40:03 30 Q. 186 Right, and in what capacity do you say you were employed?

- 12:40:09 1 A. As a manager, if you like.
- 2 Q. 187 Yes. And were you then responsible for the tillage arrangements of the lands
3 until such time as that tillage ceased, I think probably in the late 1980s or
4 probably the year 2000?
- 12:40:28 5 A. Yes, correct.
- 6 Q. 188 So that your knowledge of these lands and your dealings with Mr. Miley probably
7 extended over a six-year period, there or thereabouts, is that so, perhaps a
8 little longer?
- 9 A. Approximately, yes.
- 12:40:47 10 Q. 189 During that period, were you aware of the ultimate beneficial ownership of
11 these lands?
- 12 A. Only as far as suggestions and innuendo and various kind of, word getting
13 around, as it were. Not directly. I wasn't.
- 14 Q. 190 You had no direct knowledge of the beneficial ownership, but you had a belief
12:41:16 15 in the ownership, is that the position?
- 16 A. Correct, yes.
- 17 Q. 191 And starting at the very beginning, which I think you date for us as some time
18 in or about autumn of 1993. Who did you believe at that time was the owner of
19 the land?
- 12:41:38 20 A. I would say I believe Mr. Kennedy owned the land. It wasn't an issue of
21 course. Just land, it was land as far as I was concerned. I believed
22 Mr. Kennedy owned the land.
- 23 Q. 192 And was that belief that you had, in other words, from the very inception of
24 your dealings with these lands, you believed that they were lands which were
12:42:00 25 in some way owned by Mr. Kennedy?
- 26 A. Yes, correct.
- 27 Q. 193 And what can you recollect at this point in time was the source of the
28 knowledge that you had, albeit limited, as to what the ownership was?
- 29 A. It would have come from Tommy directly, when he told me about the lands.
- 12:42:22 30 Q. 194 Yes.

- 12:42:24 1 A. And subsequently from talking to other people around the place.
- 2 Q. 195 Right.
- 3 A. Who suspected that he owned the land.
- 4 Q. 196 Well we have heard this morning from Mr. Grimes, who says that his knowledge of
- 12:42:39 5 the lands came through Mr. Kennedy.
- 6 A. Uh-uh.
- 7 Q. 197 And as a result of what Mr. Kennedy said to him, he contacted you, and both of
- 8 you went out and walked the lands to see what was on offer before you
- 9 committed yourself to taking those lands, is that accurate?
- 12:42:59 10 A. That's pretty much what would have happened.
- 11 Q. 198 And apparently an asking price for the acreage had been given to Mr. Grimes by
- 12 Mr. Kennedy.
- 13 A. Possibly so. Yeah.
- 14 Q. 199 You are the man in charge of the finances in this partnership, as I understand?
- 12:43:20 15 A. Correct.
- 16 Q. 200 And presumably, if it came to ascertaining whether or not the amount sought was
- 17 too great, it would have been your function negotiate or to endeavour to
- 18 negotiate a level of rental that would be appropriate, is that right?
- 19 A. Correct. Yes.
- 12:43:36 20 Q. 201 Have you a recollection of following up on the arrangement after you had walked
- 21 the land and satisfied yourself with Mr. Grimes, that it was suitable for your
- 22 purposes?
- 23 A. Could you repeat the question, please?
- 24 Q. 202 Have you a recollection, having walked the lands and satisfied yourself and
- 12:43:55 25 Mr. Grimes that it was suitable for your purposes?
- 26 A. Uh-uh.
- 27 Q. 203 Do you have a recollection of making contact with Mr. Kennedy, or anybody on
- 28 his behalf?
- 29 A. The only person I ever made contact with was Mr. Miley. Yes.
- 12:44:14 30 Q. 204 Well now, we are talking, at this point in time, about the autumn of 1993.

- 12:44:24 1 You've walked the lands. You've satisfied yourself that they are suitable.
- 2 A. Uh-uh.
- 3 Q. 205 Presumably you knew the crop that you intended to plant the following season.
- 4 A. Uh-uh.
- 12:44:37 5 Q. 206 And you set about making an arrangement to take the lands, isn't that so?
- 6 A. Correct.
- 7 Q. 207 The only contact that you had or could have with the person who had control of
- 8 these lands was from what Mr. Grimes told you, isn't that so?
- 9 A. Yes, correct.
- 12:44:54 10 Q. 208 Mr. Grimes has indicated that as far as he recollects, the only person named as
- 11 a contact other than Mr. Kennedy was a solicitor who was abroad.
- 12 A. I'm afraid my recollection would differ from Mr. Grimes in this particular
- 13 instance. This was my first introduction to the land, and Tommy must have
- 14 told me that you have to deal with a solicitor, Mr. Miley from Miley & Mileys,
- 12:45:28 15 because that was my only -- that's my only recollection of it. I don't
- 16 remember ever being told about any other solicitor in relation to the lands.
- 17 Q. 209 Well firstly, your response suggests that you never made direct contact at that
- 18 point with Mr. Kennedy at that point, is that correct?
- 19 A. That is perfectly correct.
- 12:45:50 20 Q. 210 So you say that your first contact was one with Mr. Miley.
- 21 A. Correct.
- 22 Q. 211 And you are in agreement with the fact that the work on the land commenced in
- 23 the spring of 1994.
- 24 A. It was that harvest, yes.
- 12:46:05 25 Q. 212 The ultimate harvest would have been at the end of that year, in September.
- 26 A. Yes.
- 27 Q. 213 But what you were harvesting was a crop which had been planted in the spring of
- 28 that year.
- 29 A. Yes.
- 12:46:17 30 Q. 214 You see, I have to put it to you, Mr. Hill, that it could not be accurate that

12:46:26 1 your contact was with Mr. Miley, because Mr. Miley did not become the solicitor
2 dealing with these particular lands until the end of 1994. He was not engaged
3 to act on behalf of the owner until October of 1994, and obviously, for you to
4 be in possession of the lands it would have to be on foot of an arrangement or
12:46:54 5 an agreement which had been reached prior to the spring of the same year. Do
6 you understand the proposition that I'm advancing to you?
7 A. Yes, I do.
8 Q. 215 Jackson Way contacted Mr. Miley on the 6th of October 1994, through
9 Mr. Nicholas Morgan, a solicitor in Jersey, to instruct him to act on behalf of
12:47:19 10 Jackson Way.
11 A. Uh-uh.
12 Q. 216 But until that point Mr. Miley had no function, good, bad or indifferent, in
13 relation to these lands.
14 A. If the clip I saw on the screen was correct. My first harvest was in '95.
12:47:38 15 Which would have been the year after Stephen Miley took charge of the lands.
16 So in that sense '93 may not be the correct year. It must have been '94.
17 Q. 217 We will put the document on screen for you now. It's page 2239 -- sorry 2339.
18 This is in your handwriting, Mr. Hill, isn't that right?
19 A. That's correct.
12:48:11 20 Q. 218 Yes, and it's from your home address, and you're writing to Miley & Miley.
21 The date of the letter is the 13th of March 1995. And it reads.
22 "Dear Stephen. Enclosed is a cheque for 5,320, being the amount due for
23 rental spring/autumn '94. Best wishes Alex Hill."
24 A. That's correct.
12:48:37 25 Q. 219 What that tells us, if it's accurate, is that firstly, you were paying in
26 arrears, is that correct? You were paying in the spring of 1995 for the rental
27 which commenced in 1994, the spring of that year, isn't that so?
28 A. Well, yes, in the autumn of that year. Yes.
29 Q. 220 Well that gets us back, Mr. Hill, to the fact that since Mr. Miley was not
12:48:59 30 engaged until October of 1994, and since this document evidences the fact that

- 12:49:17 1 you were in possession of the lands since the spring of the same year. Your
2 initial contact could not have been with Mr. Stephen Miley.
- 3 A. No. We sew winter wheat and that's sown in autumn. So the autumn of 1994
4 would have possibly been the time that we intended to plant it. In that case
12:49:34 5 wouldn't Mr. Miley have been in charge of the negotiations.
- 6 Q. 221 Mr. Grimes, you heard the evidence of Mr. Hill -- sorry. Mr. Hill, you heard
7 the evidence of Mr. Grimes this morning?
- 8 A. That's right.
- 9 Q. 222 That he planted the spring crop probably in, he thought maybe May, by the time
12:49:54 10 it was planted, but they would have ploughed or he would have ploughed the
11 land probably in March or earlier, depending on the season and the weather,
12 and that seems to be confirmed by this document, which is not talking about an
13 amount due for autumn '94 and spring '95, but rather for spring and autumn of
14 1994. Isn't that perfectly apparent from the document?
- 12:50:29 15 A. Spring autumn '94, yes.
- 16 Q. 223 Sorry, spring '94 and autumn '94?
- 17 A. Uh-uh.
- 18 Q. 224 That is what you were paying 5,320 pounds for.
- 19 A. That's right.
- 12:50:44 20 Q. 225 It follows that you were in occupation for, and paying a rental for these lands
21 from spring of 1994.
- 22 A. No, because the letting season in land. I mean, I think we're getting into
23 pedantics here, the letting season for land can be in the autumn to autumn and
24 it's considered of that year.
- 12:51:05 25 Q. 226 Whilst it can be --
- 26 A. And it's '94 we're talking about.
- 27 Q. 227 If we look to document 2338. This is a letter which was in response possibly
28 to your letter of the 13th -- sorry, it's in anticipation of that. It's on
29 the 2nd of March of 1995. It reads.
- 12:51:32 30 "Dear Mr. Hill. I refer to our various telephone conversations recently and

- 12:51:36 1 as arranged will be obliged if you will now be kind enough to send me a cheque
2 for 5,320 pounds in respect of the agreed conacre lands for the last year".
- 3 A. 1994.
- 4 Q. 228 Exactly. So he's asking to be paid for the 1994 year not for 1995, isn't that
12:52:00 5 right?
- 6 A. Correct.
- 7 Q. 229 Does that confirm to you that what you were paying for was spring and autumn of
8 1994 and not 1995?
- 9 A. No, no. If we planted an autumn plant. If we took it for the autumn of that
12:52:13 10 year, it would be autumn '94.
- 11 Q. 230 Right. We'll go on with the letter then and see how that develops.
12
- 13 "This as you are aware was calculated on the basis of 76 acres at 70 pounds per
14 acre. I expect this letter will be sufficiently adequate for you to use as an
12:52:33 15 invoice. I also confirm that my clients are agreeable in principle, to let
16 the same lands to you for the current year on a conacre agreement for tillage
17 purposes from say the 1st of February last until say the 30th of September
18 next. The rate will be the same as last year and a condition will attach to
19 it to the effect that he will spray the 6 acre field, etc." Again, doesn't
12:53:00 20 that clearly indicate that for 1995, the period was going to commence on the
21 1st of May 1995 and run from February to September?
- 22 A. Uh-uh.
- 23 Q. 231 So no part of the 5,320 pounds that you were paying in March was in respect of
24 1995, isn't that so?
- 12:53:22 25 A. No what I was paying for was the autumn sewing, it must have been. The autumn
26 sewing in '94. I was paying that in '95. This must have been, I mean, I
27 can't understand what you're trying to get it at. Did I meet somebody else?
28 I've already said that I didn't.
- 29 Q. 232 Yes.
- 12:53:49 30 A. And so, I mean, what are you trying to get me to say?

- 12:53:53 1 Q. 233 Well I'm trying to ask you, Mr. Hill, to give an accurate account insofar as
2 you can, the events which we are concerned with, which touch upon the rental of
3 these lands and the identity of the person with whom you had dealings. Now --
4 A. Yes, I have no doubt.
- 12:54:11 5 Q. 234 You understand?
6 A. The person I had dealings with, it was Stephen Miley from Miley & Mileys. The
7 first and only person I negotiated these deals with. That's my recollection,
8 that's actually what happened. I didn't meet anybody else, I didn't hear of
9 initial else from any other solicitors from any other islands, anything else.
12:54:43 10 That's all to do with machinery, that's all to do with a background of
11 Mr. Grimes.
12 Q. 235 You were first asked to recall these events in the course of an interview which
13 took place with you in October of 2002, isn't that right?
14 A. Yeah.
- 12:54:55 15 Q. 236 At the Tribunal, you remember?
16 A. Yes.
17 Q. 237 Attending a meeting at the Tribunal you were asked what your recollection was
18 of these lands, isn't that so?
19 A. Correct.
- 12:55:03 20 Q. 238 And at that time your recollection to the Tribunal was that your involvement in
21 these lands commenced in 1996 or thereabouts, do you remember that? Do you
22 remember that that is what you indicated?
23 A. If I said that and it's written, then I did.
24 Q. 239 Yes. But that wasn't correct.
12:55:26 25 A. No, it wasn't correct.
26 Q. 240 And you were asked with whom you had had dealings in respect of these lands and
27 as you are doing today, you indicated that the only contact that you had in
28 relation to these lands, was with Mr. Stephen Miley, isn't that so?
29 A. Correct, yes.
12:55:45 30 Q. 241 And you were asked whether or not you had had any contact in relation to these

- 12:55:51 1 lands with Mr. Jim Kennedy, isn't that so?
- 2 A. Correct, yes.
- 3 Q. 242 Your response was that you hadn't and that you did not know of the involvement
- 4 of Mr. Kennedy with these lands until it became a matter of public knowledge or
- 12:56:08 5 concern, isn't that so?
- 6 A. Correct, yes.
- 7 Q. 243 But in fact that is not the case because you knew from your initial dealings
- 8 with these lands through Mr. Grimes that Mr. Jim Kennedy was the person who was
- 9 the contact in respect of the lands, isn't that so?
- 12:56:27 10 A. No. As far as I was concerned, Mr. Grimes told me if you want this land you
- 11 must contact Miley & Miley, I'm sure, I mean, at the time it wasn't very
- 12 important.
- 13 Q. 244 No, I'm asking you specifically Mr. Hill, about the interview which you
- 14 attended at the Tribunal, when you were asked whether or not you knew of any
- 12:56:50 15 involvement of Mr. Jim Kennedy with the lands, and you indicated that as much
- 16 as you knew was what had come into the public domain through the Tribunal,
- 17 isn't that a fair summary of what you said, at the time?
- 18 A. Not quite. Because there was a lot of suggestions as to who owned it,
- 19 because my neighbours dealt with Mr. Miley also, and I met them.
- 12:57:19 20 Q. 245 Mr. Hill --
- 21 A. The Sands family, and that's as far as my involvement directly with
- 22 Mr. Kennedy was at that time.
- 23 Q. 246 Mr. Hill, your evidence today is that from the moment you became aware of these
- 24 lands you also became aware of an involvement of Mr. James Kennedy, isn't that
- 12:57:38 25 an accurate summary?
- 26 A. That's correct, yes.
- 27 Q. 247 I'm putting to you that when you were asked about a possible involvement of
- 28 Mr. Kennedy at an interview with the Tribunal, your evidence was not that you
- 29 learned of Mr. Kennedy at the same time as you learned of the lands themselves,
- 12:57:55 30 but rather that you heard at a later stage, through innuendo and in the public

12:58:00 1 domain through the affairs of the Tribunal, that Mr. Kennedy was involved,
2 isn't that an accurate summation of what you said at your interview?
3 A. I'm not sure if I would read that into it.
4 Q. 248 Very good.
12:58:17 5 A. Because --
6 Q. 249 Sorry, I don't mean to cut you short. If you want to elaborate, please do.?
7 A. To come back to your original point. I first heard of the lands from
8 Mr. Grimes. Who must have told me that Jim Kennedy told him about him. I
9 would have to deal with him through a solicitor, and that's exactly what I did.
12:58:37 10 Q. 250 I accept of course, Mr. Hill, that that is what your statement to the Tribunal
11 now says.
12 A. Yes.
13 Q. 251 And that is what your testimony to the Tribunal is.
14 A. Correct.
12:58:46 15 Q. 252 I'm merely putting to you that at an earlier stage, on the first occasion you
16 were asked about this by the Tribunal, you did not make reference to the fact
17 that you knew of Mr. Kennedy's involvement from the moment that you walked the
18 lands, which seems to be your present evidence.
19 A. Uh-uh.
12:59:05 20 Q. 253 Do you understand?
21 A. Yes, correct.
22 Q. 254 Do you agree with that? That you did not tell the Tribunal initially of your
23 connection or your knowledge, however limited, of Mr. Jim Kennedy at the time
24 that you took the lands?
12:59:18 25 A. I'm sure if that question had come up I would have said exactly the same thing
26 as I'm saying today, maybe I wasn't asked that question.
27 Q. 255 You were asked how it was that you came to contact Mr. Miley and you indicated
28 that it was probably through learning of his connection with the lands through
29 one of the adjoining neighbours, possibly Mr. Sands, who was taking what has
12:59:47 30 been described as the Greenfield part of the lands, isn't that so? Isn't that

- 12:59:47 1 the explanation you gave as to how you contacted Mr. Miley?
- 2 A. No, I don't think so.
- 3 Q. 256 You don't believe.
- 4 A. No, I believe Mr. Grimes told me I would have to contact Mr. Miley.
- 12:59:58 5 Q. 257 I know that is the current position. I'm putting to you at upon being asked
6 that at interview you did not say that Mr. Grimes was the source of the
7 information.
- 8 A. I didn't say he wasn't.
- 9 Q. 258 I'm not saying that you didn't say that he wasn't. I'm saying you were asked
10 as to how you came to know to contact Mr. Miley in relation to the lands, and
11 you gave us an explanation that it was from the neighbours in the area that you
12 had learned that Mr. Miley was the person to contact. Whereas in fact your
13 evidence today is that you were told this by Mr. Grimes, would you appreciate
14 that there is a difference?
- 13:00:15 15 A. Sure, but it would be ridiculous to go to my neighbours to find out who to rent
16 the land from.
- 17 Q. 259 That is what you indicated to the Tribunal at the time, I suggest?
- 18 A. It -- there may be something that's called mature reflection.
- 19 Q. 260 Very good.
- 13:00:53 20 A. I must say that to be called into this Tribunal was quite nerve wrecking. I'm
21 not into that kind of thing, I did have to think about my evidence and contact
22 the Tribunal at a later stage.
- 23 Q. 261 In the course of the evidence it was indicated to you that you had written a
24 letter to the Tribunal -- I beg your pardon. A letter to Mr. Miley in 1995,
13:01:19 25 which contained a specific reference to Mr. Kennedy and his role in the land,
26 isn't that so?
- 27 A. Correct.
- 28 Q. 262 And if you look at that letter. It's at page 1990.
- 29 A. Uh-uh.
- 13:01:39 30 Q. 263 It's a letter dated the 20th of December of 1995. Addressed to Mr. Miley.

13:01:45 1 It reads.
2 "Dear Mr. Miley. I have been reflecting on the matter of Jackson Way
3 Properties and believe further clarification may be necessary.
4 Up-to-date all hedges have been trimmed and breasted only (contractors receipts
13:01:59 5 available). In most cases one foot of scrub has been removed. If the work
6 done is not what Mr. Kennedy had in mind, would he or his representatives meet
7 me on site to clear the matter up. I would really like to have a long-term
8 understanding up to the time of development if possible, in which case we can
9 both plan ahead and be able to carry on without any further misunderstandings.
13:02:25 10 Looking forward to an early reply. Yours sincerely Alex Hill."
11
12 That letter was shown to you at the interview, isn't that right?
13 A. Yes.
14 Q. 264 And it's apparent from that letter in 1995, certainly before the Tribunal came
13:02:40 15 into being, you were aware of Mr. Kennedy and of his connection with these
16 lands, isn't that so?
17 A. Yes. Yes, in 1997 -- in December 1995.
18 Q. 265 In December 1995, yes. And that the role which you see here is that
19 Mr. Kennedy had a wish, which you were implementing in relation to the hedging
13:03:05 20 and the maintenance of the lands, isn't that so?
21 A. Correct.
22 Q. 266 Can you recollect the circumstances in which you came to write this letter?
23 There seems to have been perhaps a misunderstanding. A reference is made here
24 to a wish not to have any further misunderstandings?
13:03:25 25 A. I suppose the misunderstandings would have been in relation to some trees that
26 is were left uncut.
27 Q. 267 And who did that misunderstanding arise between, obviously you were the one
28 party because you are writing to make your point here.
29 A. Uh-uh.
13:03:42 30 Q. 268 Who contacted you to indicate that whatever you had done did not, apparently,

- 13:03:48 1 comply with their understanding of what was to be done?
- 2 A. Who contacted me initially?
- 3 Q. 269 In relation to the misunderstanding which you're addressing here.
- 4 A. Yes.
- 13:04:02 5 Q. 270 You express a wish that there should be no further misunderstandings.
- 6 A. Uh-uh.
- 7 Q. 271 You indicate that there was some form of a dispute or a misunderstanding as to
- 8 whether or not your hedging activities were adequate or inadequate.
- 9 A. Yes.
- 13:04:18 10 Q. 272 We may take it from this letter that you believe that what you had done was
- 11 adequate and that it was in accordance with the contractors receipts, etc.
- 12 whereas somebody else was dissatisfied with what was to be done. I would like
- 13 to know who that other person was, how they contacted you in relation to --
- 14 from whom did you gets your instruction in the first instance that you should
- 13:04:43 15 do the work and who expressed dissatisfaction with the work which was actually
- 16 done?
- 17 A. Mr. Kennedy.
- 18 Q. 273 Yeah.
- 19
- 13:04:55 20 CHAIRMAN: All right. It's one o'clock now.
- 21
- 22 MR. O'NEILL: Thank you. We will resume --
- 23
- 24 CHAIRMAN: Two o'clock, Mr. Hill. Is that alright?
- 13:05:02 25 A. Yes.
- 26
- 27 **THE TRIBUNAL THEN ADJOURNED FOR LUNCH.**
- 28
- 29
- 13:05:17 30 **THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:**

14:00:18 1

2

MR. O'NEILL: Mr. Hill, please.

3

4

CONTINUATION OF QUESTIONING OF MR. HILL

14:15:12 5

6

BY MR. O'NEILL AS FOLLOWS:

7

MR. O'NEILL: Good afternoon, Mr. Hill. Before the lunch break we were

8

considering a letter which you had written on the 20th of December 1995 to

9

Mr. Stephen Miley, and I think you had faxed that letter to his office. We

14:15:36 10

11

were considering it in the context of it having been shown to you at an

interview of the Tribunal in October of 2002, isn't that right?

12

A. Uh-uh.

13

Q. 274 And I think you agreed with me that to the point that this letter was

14

discussed, your information to the Tribunal was, that you were not aware of

14:15:56 15

16

Mr. James Kennedy's involvement with these lands, save that you heard, by

rumour, when the matter became into the public domain, of his relationship to

17

the lands, is that fair summary of the situation?

18

A. No, I didn't say that was a fair summary.

19

Q. 275 Sorry.

14:16:20 20

21

Q. 276 I'm asking you -- if you wish to qualify any aspect of what I have said, please

22

do so.

23

A. Yes, I have been thinking about it during the break, and '94 was the first

24

year that we heard about it, because we would have contacted Mr. Miley in maybe

14:16:38 25

26

the early autumn of '94, which Mr. Grimes said anyhow in his interview

question 140, when he was interviewed in the Tribunal offices. Now, this

27

issue of the hedges and the cheque would have been paid in the middle of the

28

year the autumn of '94 to '95.

29

Q. 277 Mr. Hill, I'm not asking you about that. I'm asking you what took place at

14:17:04 30

your interview, not at Mr. Grimes' interview. I'm asking you whether or not

- 14:17:10 1 you agree with me that your initial response to questions put to you about a
2 possible involvement of Mr. Jim Kennedy.
- 3 A. Uh-uh.
- 4 Q. 278 Was that you did not know of any contact between Mr. Kennedy and these lands
14:17:23 5 until you learned of it when it came into the public domain by way of rumour at
6 later stage. Do you understand the question?
- 7 A. I do understand the question, yes.
- 8 Q. 279 Right. And is it correct to say that your initial approach was to say that
9 you did not know of any involvement of Mr. Kennedy, that your contact was with
14:17:44 10 Mr. Stephen Miley, and that you learned of Mr. Kennedy's possible involvement
11 only through rumour at a later stage. Do you disagree with any part of that?
- 12 A. Yes, because I had a phone call from Mr. Kennedy in '95.
- 13 Q. 280 Yes.
- 14 A. In the autumn of '95.
- 14:18:00 15 Q. 281 I know that. And that is a matter which became apparent once this letter was
16 produced to you in the interview.
- 17 A. Yes.
- 18 Q. 282 Which confirmed that you had had contact with Mr. Kennedy, isn't that so?
- 19 A. Correct, yes.
- 14:18:13 20 Q. 283 Now, what I want to ask you again is whether or not you agree or disagree with
21 the proposition that I'm putting to you and that is this. That until such
22 time as this letter was produced to you.
- 23 A. Uh-uh.
- 24 Q. 284 Your recollection, insofar as you gave it to the Tribunal, was that you did not
14:18:31 25 know of an involvement of Mr. Kennedy's with this land until you had heard it
26 by way of rumour at later stage. Do you understand?
- 27 A. Uh-uh.
- 28 Q. 285 Is that correct or incorrect?
- 29 A. It's incorrect. It's incorrect.
- 14:18:51 30 Q. 286 So are you saying that upon being asked at the interview before the Tribunal

14:18:57 1 whether you knew of Mr. Kennedy's involvement, that your response was to say
2 "Yes, I knew of Mr. Kennedy's involvement. I knew of it because Mr. Grimes told
3 me of it when we first saw the land and I had contact with Mr. Kennedy by
4 telephone in connection with the complaint about the hedging." Are you saying

14:19:20 5 this that is what you indicated to the Tribunal before this letter was shown to
6 you?

7 A. I indicated to the Tribunal on the next, my next interview that I remembered
8 about this telephone call, and I submitted this evidence to the Tribunal.

9 Q. 287 I'm not asking you about your subsequent interview. I will come to that.

14:19:39 10 I'm talking about your initial interview. I'm putting it to you, Mr. Hill,
11 that in your first interview you were categorical in that you said that your only
12 knowledge of Mr. Kennedy was by way of rumour. Is that correct or incorrect?

13 A. That's incorrect.

14 Q. 288 It's incorrect.

14:20:01 15 A. Yes, it's incorrect. Yes, now, I think I explained that. That when when I
16 was reminded of the letter then I remembered the phone call. And I submitted
17 that in my evidence to the Tribunal. But initially, my initial contact was
18 not with Mr. Miley -- was not with Mr. Kennedy, was not with a solicitor from
19 anywhere else, with Mr. Miley in 1994.

14:20:32 20 Q. 289 The Tribunal has earlier made a ruling in respect of interviews that have been
21 carried out in the private sessions of the Tribunal and has determined that it
22 is only in certain circumstances that reference can be made to these. In
23 other words, where there has been a significant inconsistency between the
24 evidence that's been given by a witness and his prior interview.

14:21:03 25
26 It may be a matter, I suggest, that the Tribunal should consider the content of
27 this interview which I can make available.

28

29 CHAIRMAN: Well we would have to ...

14:21:13 30

14:21:13 1 MR. O'NEILL: And to then determine whether or not it should be opened in the
2 public domain.

3
4 CHAIRMAN: Well, we would want to see it before we would make a ruling,
14:21:24 5 whether that can be done immediately or -- we can rise for a few minutes.

6

7

THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK

8

AND RESUMED AS FOLLOWS:

9

14:21:59 10 CHAIRMAN: Mr. O'Neill, the Tribunal is satisfied that there is, on the face
11 of it, a significant inconsistency between what was said by this witness in
12 private interview with the Tribunal and what is being said in evidence today.
13 So on that basis, and for the purposes of dealing with that you can refer to
14 the necessary extracts or the relevant extracts in the private interview.

14:35:49 15

16 MR. O'NEILL: Very good, sir.

17

18 Q. 290 Mr. Hill, I am going to hand you a copy of the transcript of the interview
19 which was taken in the offices of the Tribunal on the 3rd of October 2002.

14:36:03 20 You already had a copy of this I understand for the purposes of preparing the
21 statement that you provided to the Tribunal, isn't that right?

22 A. That's right.

23 Q. 291 And I intend to read from page 1 of the interview, initially starting at
24 question No. 4, or question No. 3 rather, it reads.

14:36:25 25 "Q. Can you tell me when you first rented the land?

26 A. I think it was in 1996.

27 Q. Would that be October or earlier in 1996?

28 A. It would be in time for the cropping of that year.

29 Q. What crop had you in?

14:36:37 30 A. I had wheat and barley.

14:36:38 1 Q. So that would have been sown in the spring.

2 A. Pardon.

3 Q. You would have sown that in the spring of 1996?

4 A. Yes.

14:36:46 5 Q. And then autumn 1996 or thereabouts you'd have, in the early part of 1996

6 you made an arrangement to rent the land.

7 A. Yes.

8 Q. And who did you make the arrangement with?

9 A. Stephen Miley.

14:36:56 10 Q. Stephen Miley, solicitor of Miley & Miley?

11 A. Yes.

12 Q. And was he the person you went to? How did you come to hear that the land

13 was available?

14 A. I heard it through the grapevine, a guy had cattle in the yards and he told

14:37:11 15 the guy who did my contracting about it, that the land was vacant there and I

16 should go and look about it and Miley was the man who seemed to manage it.

17 Q. Who put you in touch with Stephen Miley?

18 A. It's very hard to remember, but I know Stephen Miley from Miley & Miley.

19 Oh, yes I remember. One their neighbours there knew, had been renting

14:37:28 20 already.

21 Q. From Miley & Miley, knew about it, who was he?

22 A. The house has been knocked down now, would you believe it I can't remember

23 their names. They were an Anglo English couple who had some land and used to

24 keep horses there so when I was looking at the land. From memory, it was

14:37:52 25 generally known that Miley and Miley was representing the owners of it.

26 Q. And was Mr. Stephen Miley the only person you ever dealt with in connection

27 with that land?

28 A. Yes, yes.

29 Q. You never dealt with anybody else in connection with it?

14:38:07 30 A. No, I never saw anybody else.

14:38:08 1 Q. Did you ever meet anybody else?
2 A. Never met anybody else.
3 Q. Did you ever meet a Mr. John Caldwell, for example, in connection with the
4 land?
14:38:19 5 A. Never met him.
6 Q. Did you ever meet Mr. James Kennedy in connection with the land?
7 A. Never.
8 Q. Did you ever know of a Mr. Kennedy or a Mr. Caldwell?
9 A. I knew of a James Kennedy subsequently.
14:38:34 10 Q. How do you mean subsequently?
11 A. Well as a result of all of this, these kind of innuendos that were going
12 around the place, that kind of thing.
13 Q. You mean to do with the Tribunal.
14 A. Yes, I mean it never occurred to me to really question it was just an
14:38:45 15 English company owned it as far as I knew.
16 Q. And you never met anyone else except Mr. Stephen Miley in connection with
17 the land, correct?
18 A. Yes."
19 I turn now to page 4, question 31:
14:38:49 20 "Q. And your only dealings therefore, so that we can be clear on this, were
21 with Mr. Stephen Miley.
22 A. That's correct.
23 Q. You never met Mr. John Caldwell or Mr. Jim Kennedy?
24 A. Never met them.
14:39:05 25 Q. And prior to what has come out in the newspapers with the Tribunal. You
26 never knew that Jim Kennedy or Mr. Caldwell had any involvement in those lands?
27 A. No, I didn't even consider it until, you know, as time went by, there were
28 all these rumours going around, of course I was aware of that, aware of the
29 rumours, but I never met either Mr. Kennedy or Mr. Caldwell on the lands.
14:39:24 30 Never spoke to me on the lands. It was Mr. Miley all the time."

14:39:29 1
2 And then again moving to page no. 5 and question 46. Counsel refers you to
3 the letter that we've already discussed, which was on screen.
4

14:39:37 5 "Q. I referred you, Mr. Hills, to be fair to you, to the fact that the
6 Tribunal has received documentation including copies of the letters that you
7 wrote to Mr. Stephen Miley, and in one of those letters you referred to
8 Mr. Kennedy.

9 A. Oh, yes, because of -- yes."

14:39:54 10 The question goes on to say, "well it's 1995, Mr. Hills, to be fair to yourself.
11 You'll see there that in this letter, which is a document bearing Tribunal
12 reference JC.JW 2.2 page 417, it's a letter from the 20th of December 1995 from
13 you to Mr. Stephen Miley. And in the second paragraph you say, "Up-to-date,
14 all hedges have been trimmed and breasted (contractors receipts available in
15 most cases) and one foot of scrub etc. has been removed. If the work done is
16 not what Mr. Kennedy had in mind, would he or his representative meet me
17 on-site to clear the matter up."

18 A. Yes.

19 Q. So, what Mr. Kennedy are you referring to there?

14:40:39 20 A. Well, I quite often jested to Mr. Miley who owned -- we were discussing who
21 owned the lands and whenever I would say Mr. Kennedy or whoever, he would say I
22 have no idea who owns the lands, they are nothing to do with it. So this is,
23 I suppose, Mr. Miley never admitted who owned the land. It was some English
24 company as far as I know but everybody was surmising it was Mr. Kennedy.

14:41:11 25 Q. Yes, but I mean, this is a letter that you are writing, Mr. Hills, and you
26 are dealing with matters that arise in the partnership and the costs of doing
27 certain work that you were obliged to do under terms of your written agreement,
28 is that right?

29 A. Yes.

14:41:27 30 Q. And there's nothing in that correspondence, I would suggest to you, that

14:41:31 1 indicates the reference to Mr. Kennedy is a joke. It seems to suggest that is
2 true. It seems to suggest, Mr. Hills that, when you wrote that letter on the
3 20th of December 1995, you appeared to be then of the view that a Mr. Kennedy
4 had some interest in the Jackson Way lands.

14:41:55 5 A. Yes, I was of that view. Yes.

6 Q. Well in 1995, Mr. Hills, there was no question of there being any
7 publications in the newspapers about Mr. James Kennedy and Jackson Way because
8 you know the Tribunal wasn't set up until 1997. Perhaps you would like to tell
9 me now how it was that you came to the view in December 1995, that Mr. Kennedy
10 might have some involvement in the Jackson Way lands?

11 A. Oh, it's hard to kind of figure that one out, let me see. I would have to
12 surmise really on this one. Let me think how that came about. If it wasn't
13 that there was rumours that Mr. Kennedy bought it from the previous owners. I
14 don't know how that could have come about because I never met Mr. Kennedy on
15 the lands.

16 Q. Somehow, Mr. Hills, contrary to what you said earlier, you seem to have
17 been of the view that Mr. Kennedy had an involvement to these lands when you
18 wrote that letter.

19 A. Yeah, I must have had some reason to think that. I'd have to think about
20 that really.

14:42:38 21 Q. That's fine. That's all right."

22
23 I am going to stop at that point there, Mr. Hills. Would you agree that is
24 totally contrary to what you have indicated to the Tribunal was your
14:42:49 25 recollection of the interview which took place at the Tribunal's offices in
26 October?

27 A. Yes, I would.

28 Q. 292 It's perfectly clear from this transcript which I have read to you, that when
29 the interview started you were of the view, and you were advancing to the
14:43:06 30 Tribunal that you did not know of a connection with Mr. Jim Kennedy in relation

14:43:12 1 to these lands, isn't that so?

2 A. Correct, yes, and can I add?

3 Q. 293 Of course you can.

4 A. When this letter was presented to me I was quite shocked, because I hadn't

14:43:27 5 remembered the matter. So I had to telephone the Tribunal when I thought

6 about it and inform them of a telephone call that I had had from Mr. Miley.

7 There was no effort to not tell what I knew at the time. It was five years

8 previously, and when all of this was happening there was no suggestion of

9 anything, shall we say an illegal matter, and when I thought about this, and

14:44:03 10 there is another, there is a record that I actually telephoned. Miss Gilvarry

11 came in and made a subsequent statement which actually explained that

12 inconsistency.

13 Q. 294 I was asking you specifically today, both before lunch and immediately after

14 lunch, as to whether or not it was the case that you had given this

14:44:24 15 inconsistent version of events. And you indicated that it was not so. It

16 was for that reason that the transcript was put to you. And I think you now

17 accept that the version which you gave initially to the Tribunal was

18 inconsistent with what you subsequently said. I know you are offering an

19 explanation for that now.

14:44:41 20 A. Of course.

21 Q. 295 I merely want to establish is the fact that you gave an inconsistent response,

22 isn't that so?

23 A. Correct.

24 Q. 296 Now --

14:44:50 25 A. I'm not sure if I would say inconsistent.

26 Q. 297 Well how are they in any possible way consistent, Mr. Hills, if you say on the

27 one hand that you had no knowledge of Mr. Jim Kennedy and his connection with

28 these lands until you learned of it by rumour in the course of the public

29 workings of the Tribunal, when in fact the case was as you say now, you were

14:45:13 30 informed of it on the very day that before you went out to look at the lands.

- 14:45:18 1 You knew of it at the time you looked at the lands. You knew of it at a later
2 stage when you came to honouring your commitment to cut hedges on the grounds.
3 All of those are entirely inconsistent to learning about it through rumour,
4 isn't that so?
- 14:45:35 5 A. You see, the hedge cutting was a different issue. At that stage I had been
6 contacted by Mr. Kennedy.
- 7 Q. 298 We are concerned, Mr. Hills, with the information you are giving to the
8 Tribunal and trying to establish the reasons, why it is, that you did not give
9 the account of events that you now give to the Tribunal when you were initially
10 asked about it, do you understand?
- 11 A. Well if I didn't remember all of the details I apologise to the Tribunal.
- 12 Q. 299 Fine.
- 13 A. But it was no deliberate attempt. There would be no point in my denying it.
- 14 Q. 300 So it was a lack of recollection.
- 14:46:09 15 A. Correct.
- 16 Q. 301 On Mr. Kennedy at the time, is that so?
- 17 A. Of that incident, yes.
- 18 Q. 302 This letter that we referred to here. Your letter of the 20th of December
19 1995, indicated that there was seemingly a dispute as to the adequacy or
14:46:29 20 otherwise of the works which you had carried out on the lands, isn't that
21 correct?
- 22 A. Correct.
- 23 Q. 303 And I was asking you before we broke for lunch who it was who contacted you to
24 highlight the misunderstanding, as you describe it in your letter, to you?
- 14:46:44 25 A. This is the phone call I received from Mr. Kennedy.
- 26 Q. 304 Well you tell us about the phone call. Mr. Kennedy telephoned you, did he?
- 27 A. Yes.
- 28 Q. 305 When did he telephone you? Was it before this letter of the 20th of December?
- 29 A. Of course. It must have been.
- 14:46:58 30 Q. 306 Fine. How did he get your number to telephone you?

- 14:47:01 1 A. Well he must have had my telephone call. I explained to the Tribunal that I
2 had been in contact with him about other lands I had.
- 3 Q. 307 Right.
- 4 A. And he may have got it from there.
- 14:47:12 5 Q. 308 So that whereas you had indicated in your statement initially that you did not
6 know of Mr. Kennedy, in fact you had met with Mr. Kennedy in connection with
7 other lands, is that so?
- 8 A. Correct. Pardon me. Can I suggest. When I went to the interview, I
9 answered the questions in relation to Jackson Way Property. They were the
10 questions I was asked, and I suppose I just didn't want to be involved, I mean,
11 I didn't want to be involved in the whole thing because I was just a farmer
12 renting the land, the whole thing seemed to be a gross imposition on me. And
13 I suppose I was reluctant really to be, you know, I had no intention to not
14 tell the truth or anything like that. There was just a lot of stuff I didn't
15 want to be involved in.
- 16 Q. 309 I had understood from your earlier answer, Mr. Hills, that your reason for not
17 giving a full account to the Tribunal of your knowledge of Mr. Kennedy's
18 involvement, was that you had forgotten about it.
- 19 A. Yes.
- 14:48:15 20 Q. 310 Do I take from your last answer that it was as a result of a conscious decision
21 taken by you, not to answer questions other than those specifically put to you
22 so that you would not become involved in the Tribunal, is that the real reason
23 why you did not give a full account of your knowledge of Mr. Kennedy at the
24 time?
- 14:48:40 25 A. I suppose subliminally I did not want to be involved in all of this.
- 26 Q. 311 And did that subliminal thinking translate into your being economic with the
27 information you were providing to the Tribunal?
- 28 A. Possibly so, yes.
- 29 Q. 312 I see. So that you knew that Mr. Kennedy was at all times involved in the
14:49:02 30 lands, you chose not to tell the Tribunal about it for your own reasons.

14:49:07 1 A. No, I did tell the Tribunal about it.

2 Q. 313 We've already read at length --

3 A. Yes, there was a subsequent letter of mine which I submitted freely to the

4 Tribunal explaining that. So it wasn't that I misled -- I added -- I

14:49:24 5 complemented my first interview with this extra knowledge after being

6 confronted with this letter. I had to go back home and think how did this all

7 happen.

8 Q. 314 Now, in relation to this particular letter. You wrote to Mr. Miley in the

9 terms here which appear to confirm your belief that Mr. Kennedy was the person

14:49:45 10 who had to be satisfied about what was going on with the lands. He was the

11 apparent owner as far as you were concerned.

12 A. Exactly, yes.

13 Q. 315 And you received a response to this letter from Mr. Miley, isn't that so?

14 A. Correct, yes.

14:50:02 15 Q. 316 If we put that on screen. It's page 1991, it's a letter of the 12th of

16 January 1996.

17

18 MR. FINLAY: Just while that's being done, Chairman. Just one request.

19 Given the references to Mr. Miley and Mr. Caldwell in the passage which

14:50:22 20 appeared on the screen from the transcript. It wasn't possible to take a

21 complete note of that as it went through rapidly, it would be obviously helpful

22 to have a copy of that section of the transcript that was opened and would be

23 in the transcript of the day, obviously I don't have the transcript of today

24 yet.

14:50:40 25

26 CHAIRMAN: We will make arrangements for you to have the extract.

27

28 MR. FINLAY: Most obliged, Chairman.

29

14:50:46 30 MR. O'NEILL: On screen before you a letter of the 12th of January 1996 from

- 14:50:51 1 Miley & Miley Solicitors directed to you. It says.
2 "Dear Mr. Hill. I refer to your faxes of the 19th and 20th." One of which
3 is the letter that was already on screen, "regret the delay in responding to
4 you. I should however first advise you that I do not know of any Mr. Kennedy
14:51:06 5 to whom you refer in your correspondence. As previously mentioned I receive
6 my instructions from Jackson Way Properties Limited.
7
8 With regard to your correspondence, however, my clients are now arranging for a
9 further inspection of the property to be made and I will return to you in
14:51:22 10 relation to the matter as soon as I receive further instructions with kind
11 regards. Yours Sincerely, Stephen Miley." You received that letter.
12 A. Yes.
13 Q. 317 And what did you do on receipt of it?
14 A. I think in the meantime I had actually cut down the trees or I had been
14:51:38 15 instructed to do by Mr. Kennedy.
16 Q. 318 Yes.
17 A. And -- so that's all I done. There was no further actions necessary. I was
18 told to cut down some trees that had remained on the land, in the phone call,
19 which I did.
14:52:00 20 Q. 319 Did it strike you as unusual that you were being informed by Mr. Miley that
21 Mr. Kennedy was unknown to him, albeit that he was the person who had
22 specifically given you the instructions in relation to cutting the trees?
23 A. No, it didn't, in the sense that -- as I said in my statement to the Tribunal,
24 that I had often jested with Mr. Miley when I would be in his office about
14:52:34 25 Mr. Kennedy, and he always denied knowing Mr. Kennedy. He said he operated
26 for Jackson Way Properties, that used to be, you know, just in passing type of
27 thing. There was nothing sinister about it or anything like that, and Mr.
28 Miley always maintained that he was acting on behalf of Jackson Way Properties.
29 Eventually the matter was dropped. There was no big deal at the time.
14:52:59 30 Q. 320 Here is a very specific reference to Mr. Kennedy. You had written in terms

- 14:53:03 1 believing that the work you were going to do on this land, which involved
2 cutting down, as I understand, a large number of trees that were on the land.
3 This had been carried out at the instruction of Mr. Kennedy?
- 4 A. Yes.
- 14:53:16 5 Q. 321 And now the solicitor who is acting for the owners tells you that he knows
6 nothing of any Mr. Kennedy. Did that not put you in some fear that you might
7 have done something in relation to the lands which were entirely unauthorised.
8 Because the solicitor who was dealing with the land apparently didn't even know
9 of the person involved, who had given you the instruction.
- 14:53:38 10 A. Such a conflict never occurred to me.
- 11 Q. 322 It never occurred to you?
- 12 A. Mr. Miley was acting on behalf of the people who run the land and I believed
13 that to be Mr. Kennedy.
- 14 Q. 323 That was being denied to you here in the clearest possible terms and if this
14:53:54 15 was true, the consequence of this was that you had carried out an amount of
16 work cutting down a large number of trees on these lands, which you had no
17 authority to do whatsoever, if this is correct, isn't that so?
- 18 A. That would be correct, if I didn't believe that Mr. Kennedy owned the land.
- 19 Q. 324 So you did believe that Mr. Kennedy owned the land.
- 14:54:13 20 A. I did after the telephone call. I did at all times I suppose.
- 21 Q. 325 Did you not react to this letter by getting in touch with Mr. Miley and saying
22 "Mr. Miley, I'm sorry, you've got it wrong. Mr. Kennedy has been in touch
23 with me on occasion in connection with these lands and I am carrying out his
24 specific instructions in doing the work on the land?"
- 14:54:34 25 A. No, I didn't do it.
- 26 Q. 326 Why not?
- 27 A. It didn't occur to me, because Mr. Miley had always denied his knowledge of
28 Mr. Kennedy.
- 29 Q. 327 He had always denied it?
- 14:54:47 30 A. Yes. He was working on behalf of Jackson Way Properties, and the matter was

14:54:52 1 left at that, but I suppose I kind of thought secretly "oh, well he knows", but
2 he's a professional, a professional person. So I won't embarrass him anymore
3 by mentioning it I'll just leave it. And there was no problem subsequently,
4 I did what I was requested to do.

14:55:18 5 Q. 328 The instructions he received from Mr. Kennedy came to you, I think, whilst you
6 were on the lands and working on a particular day. They came on your mobile
7 phone.

8 A. Uh-uh.

9 Q. 329 And you returned the call to his mobile phone or perhaps to his office.

14:55:33 10 A. No, to his mobile phone.

11 Q. 330 And you received your instructions from him?

12 A. Uh-uh.

13 Q. 331 And I think that at the conclusion of the interview which you had with the
14 Tribunal on the 3rd of October, as you were leaving the building you indicated
15 that in fact you knew Mr. Kennedy, albeit slightly.

16 A. Yes, correct.

17 Q. 332 You hadn't mentioned that at any time in the course of the interview, but at
18 the conclusion of the interview when you were leaving the building that was
19 said by you, isn't that right?

14:56:05 20 A. Correct.

21 Q. 333 And the interview was then reconvened.

22 A. Correct.

23 Q. 334 And on the interview being reconvened you indicated that you had contacted
24 Mr. Kennedy in the hope that he could assist you in the sale of certain
14:56:19 25 property that you had in Saggart and that you had discussed that matter with
26 him whilst you were in his gaming hall premises in Westmoreland Street.

27 A. Correct.

28 Q. 335 Nothing came of that arrangement, because he wasn't interested in it.

29 A. Correct.

14:56:37 30 Q. 336 This was a matter which came to you only after the interview had been

14:56:40 1 concluded.

2 A. Yes, I had nothing to do with the Jackson Way Properties. And this is

3 additional information which I thought I might give in an effort to be totally

4 up front. I had nothing to hide, and I just submitted that freely.

14:56:54 5 Q. 337 And when it came to the second interview then, which was conducted with you --

6 sorry, an interview on a second date. There were in all three interviews.

7 A. Which was at my request.

8 Q. 338 Which was at your request --

9 A. So that I could submit more of my thoughts on the matter, yes.

14:57:14 10 Q. 339 On that occasion you gave details of how it was that Mr. Kennedy had contacted

11 you in the course of the hedge cutting operation -- or in relation to the hedge

12 cutting operation.

13 A. Yes, yes.

14 Q. 340 And equally, on that occasion for the first time, you indicated that it was

14:57:33 15 probably through Mr. Tommy Grimes that you learned of Mr. Kennedy's

16 involvement, isn't that so?

17 A. I would have reiterated that because that's what I said in the first interview.

18 Q. 341 That wasn't what you said on the first instance. On the first instance you

19 indicated that you learned of it through neighbours, possibly what you

14:57:55 20 described as the anglo English couple who lived locally or perhaps the person

21 who kept cattle in the yard, who may have informed your contractor that he

22 should contact Mr. Miley. That was what you said in your first interview.

23 A. I mean, in my first interview I said Mr. Grimes introduced me to the land

24 originally.

14:58:18 25 Q. 342 Yes.

26 A. And that's exactly what happened, and that's where I learned I had to contact

27 Mr. Miley. Of course there were all of these extra-curricular references, if

28 you like, there was this mysterious company that Mr. Miley acted for. So that

29 was -- that was the scene at the time.

14:58:52 30 Q. 343 To revert to when you occupied these lands first. Would you agree with me

14:58:53 1 that the first crop that was planted here was a crop of linseed. It was
2 planted for you by Mr. Grimes, the last witness and that was his evidence?
3 A. If we planted linseed. I can't remember exactly what it was.
4 Q. 344 And if you plant linseed you do so in the spring and not in the autumn.
14:59:06 5 A. Correct, but it may not have been linseed, it could have been wheat or barley.
6 Q. 345 You just agreed with me.
7 A. I said it may have been. If I contacted Mr. Miley in 1994, I would have
8 planted the first crop in the autumn of that year.
9 Q. 346 Yes. You would --
14:59:24 10 A. And then he would have got his cheque in the January of the next year. And
11 the crop would have been -- the crop of wheat or barley would have been
12 harvested in August and tree felling would have been subsequent to -- the hedge
13 trimming would have been subsequent to having the crop removed. That I think
14 would have been that sequence of events. Not '93. I think in '93, it's not
14:59:51 15 the correct date that we entered into this agreement it was '94.
16 Q. 347 If it was '94, I suggest to you whatever written communications you had with
17 Mr. Miley do not bear that out, isn't that so?
18 A. No.
19 Q. 348 Is there any particular reason at this point in time Mr. Hill, why it is that
15:00:12 20 you seem to have been somewhat coy about disclosing your knowledge and
21 information to the Tribunal of your dealings with these lands and the extent to
22 which you are aware of Mr. Kennedy's involvement in the lands?
23 A. I don't think "coy" is the right -- I wouldn't use that word, I'd say -- I'm
24 here reluctantly today --
15:00:37 25 Q. 349 Is that a reason for being less than frank?
26 A. No, it's not. I must say this, it was the first interview. While everybody
27 was perfectly correct with me I was quite nervous. You are doing this every
28 day, I'm not. If you were a layman it's quite a daunting prospect of sitting
29 in front of Senior Counsels, etc. And without endeavouring to mislead anybody,
15:01:05 30 you might forget something, or get some of your facts mixed up, but there is no

15:01:12 1 suggestion of any plan to deliberately mislead anybody.

2 Q. 350 Thank you, Mr. Hill.

3 A. Pardon me. If you refer to this statement, letter to the Tribunal of the 17th

4 of January '03, I think it's a very accurate summation of what happened. Have

15:01:33 5 you got that?

6 Q. 351 I have, indeed. It could be put on record, if you wish me to formally read it

7 into the record, I would be more than happy to do so?

8 A. I don't mind.

9 Q. 352 I am suggesting to you that it is something which is not consistent with what

15:01:49 10 you initially indicated to the Tribunal, and that it was prepared ultimately on

11 information being provided to you by the Tribunal, including the transcript of

12 your interviews.

13 A. Exactly, yes, it was. Pardon me, could I -- I'm not so familiar with this kind

14 of thing to know whether I should have representation, because I came in here

15:02:20 15 as a witness and I actually feel I'm being cross-examined as a possible guilty

16 person or being complicity in something. Now, I'm not quite sure whether I as

17 a lay person am equipped to deal with these questions which seem -- put me in a

18 very bad light.

19

15:02:38 20 CHAIRMAN: The questions are fairly straight forward. It was the --

21 Mr. O'Neill was simply contrasting evidence which you gave here under oath and

22 what you told the Tribunal at an early stage in the interviews. It's not a

23 matter that necessarily requires any legal representation. It's not a

24 difficult issue. It's simply comparing what was said then and what was said

15:03:06 25 subsequently and what was said here under oath. There's no trick questions or

26 anything of that nature involved. It's simply so that the Tribunal is fully

27 aware of what was said initially in those interviews and what was said

28 subsequently by you.

29 A. But just -- it seems as if the learned gentleman doesn't refer to my next

15:03:34 30 letter which explains these seeming anomalies -- when I voluntarily rang up the

15:03:44 1 Tribunal. "I said can I come in? I've put more thought into this matter.
2 And this is now how I see things." How they happened.

3

4

CHAIRMAN: Well we are aware of that fact.

15:03:57 5 A. Thank you.

6

7

CHAIRMAN: But it still was necessary that the Tribunal should be informed as
8 to what was said by you in the course of the interviews. We are aware what
9 was said by you subsequently.

15:04:19 10 A. Thank you very much. It just seemed quite unfair to me, I was impugned as --
11 it seemed to me as if I was accused of telling lies, which I never set out and
12 didn't.

13

14

CHAIRMAN: Well it --

15:04:22 15 A. The extra evidence was more a detailed response to things that had been
16 presented to me.

17

18

CHAIRMAN: We have your explanation.

19

A. Thank you very much.

15:04:33 20

21 MR. O'NEILL: I think I should just formally put to you, Mr. Hill. There are
22 a number of differences between your account of events and that given by
23 Mr. Grimes. We have covered them in evidence, I will just outline some of
24 them in case you wish to add to them.

15:04:45 25 A. Yes.

26

Q. 353 Firstly. The evidence of Mr. Grimes is that the lands were seen first in
27 1993, and at the time you were made aware that Mr. Kennedy was a person who had
28 some involvement with the land. And subsequent to that meeting, that the name
29 of a solicitor, or some other legal person outside the jurisdiction, was given
30 as the contact. Now, you don't accept that, isn't that right?

15:05:16 30

- 15:05:19 1 A. No, I don't. Because Mr. Grimes also said. I quoted to you in his evidence
2 in question 140 that it was in '94. I don't think he was quite sure which
3 year it was.
- 4 Q. 354 Irrespective of the year there is an issue as to whether or not it was an
15:05:34 5 English solicitor -- sorry, a Channel Islands solicitor who was the first
6 contact or Mr. Miley. I'm just identifying the differences. You can comment
7 in a moment.
- 8 A. All right.
- 9 Q. 355 The second issue is whether or not entry on the lands was made in spring of
15:05:52 10 1994 or whether it was in the autumn of 1994, isn't that so?
- 11 A. Correct, yes.
- 12 Q. 356 The next issue is whether or not Mr. Grimes planted, as he says, a crop of
13 linseed which would involve a spring planting or whether a wheat planting took
14 place in the autumn of that year for winter, isn't that so?
- 15:06:16 15 A. He was very foggy about all of those issues.
- 16 Q. 357 They are the areas in which --
- 17 A. Fair enough.
- 18 Q. 358 I think all that is against a background where it appears that Mr. Stephen
19 Miley was not engaged to act on behalf of Jackson Way until the 6th of October
15:06:34 20 1994, and therefore could not have been a party to any negotiation of terms of
21 entry, if in fact you were negotiating in 1993 or at any time prior to October
22 of 1994. I think -- I'm just identifying where the issues in dispute are
23 between the parties, and perhaps you might indicate whether you accept they are
24 in dispute. If you wish to add anything on that or to clarify your point,
15:07:04 25 please do so?
- 26 A. It's not an issue for me because it would had to be in '94. In the autumn of
27 '94. If Mr. Grimes said there was stubble on the land. Obviously another
28 crop had been cut from it and the other reason why I know it was then, because
29 the only person I ever contacted was Mr. Stephen Miley about that land. I did
15:07:24 30 not even refer to anybody, any previous conversations about the land in any way

15:07:30 1 to Mr. Miley because I didn't have any, because -- so it was in 1994. The
2 autumn of that year when I contacted Mr. Miley. And it was in 1994 that the
3 crop, Mr. Grimes sewed it and it was in the next autumn that we reaped the
4 harvest. So I agree with you, there is a difference between the actual year,
15:07:53 5 but this is -- I know what happened and I know when the first cheque was paid,
6 in 1995.

7 Q. 359 Just one last question I have to ask you, Mr. Hill and it's this. Have you
8 discussed the contents of your interview with the Tribunal or any of your
9 interviews with the Tribunal with Mr. Kennedy or with any other person since
15:08:15 10 those interviews took place?

11 A. Certainly not. I have had nothing to do with Mr. Kennedy.

12
13 CHAIRMAN: All right. Do you wish to ask any questions, Mr. Finlay?

14
15:08:26 15 MR. FINLAY: I doubt it very much. As I mentioned earlier I have not seen in
16 any detail the material which was opened to him by Mr. O'Neill. I doubt very
17 much that there's anything in it that requires me to ask any questions.

18
19 CHAIRMAN: If anything does arise you can deal with that subsequently.

15:08:42 20
21 MR. FINLAY: It's most unlikely --

22
23 CHAIRMAN: Mr. Maloney, have you any questions.

24
15:08:47 25 MR. MALONEY: No.

26
27 CHAIRMAN: Thank you very much, Mr. Hill. You are free to stand down now.
28 Thank you for attending.

29 A. Thank you. Can I ask the bench, am I finished with this?

15:09:00 30

15:09:00 1 CHAIRMAN: Yes. Unless some issue that arises which needs clarification, at
2 which case the Tribunal would contact you. If that was to happen it would
3 only be in relation to a very short matter. So for the moment you are
4 finished.

15:09:16 5 A. Thank you.

6
7 CHAIRMAN: Thank you very much.

8
9 **THE WITNESS THEN WITHDREW.**

15:09:18 10
11 MR. O'NEILL: Mr. Gerald Sands, please.

12
13 CHAIRMAN: Would you be happy to simply affirm?

14 A. I will, sir.

15:10:39 15
16 **MR. GERALD SANDS, HAVING BEEN AFFIRMED, WAS EXAMINED**

17 **AS FOLLOWS BY MR. O'NEILL:**

18
19 MR. O'NEILL: Good afternoon Mr. Sands.

15:10:57 20 A. Good afternoon.

21 Q. 360 You used to live in a house called Hinchogue House which was in Carrickmines,
22 County Dublin. I think it's since been demolished as part of the motorway
23 development in Carrickmines.

24 A. That's correct.

15:11:11 25 Q. 361 I think you had a long association with those lands, commencing in about 1974,
26 isn't that so?

27 A. With the Hinchogue lands?

28 Q. 362 Yes. And I think that that house may have been historically connecting with
29 the Tracey farm.

15:11:31 30 A. It was the farm.

- 15:11:32 1 Q. 363 It was the farm?
- 2 A. At some stage in time 1920s.
- 3 Q. 364 And from the time of your occupation in 1974, you occupied it your with your
4 wife, isn't that correct?
- 15:11:46 5 A. Yes.
- 6 Q. 365 The adjoining lands known as the Tracey farm, I think at the time that you
7 arrived were owned possibly by the uncle of Mr. Robert Tracey --
- 8 A. I believe so.
- 9 Q. 366 -- who was a witness before the Tribunal, isn't that so? Ultimately, they fell
15:12:03 10 in to Mr. Robert Tracey, and I think that for a long period of time your wife
11 and you leased or had the use of about 13 acres of that land for horses, is
12 that so?
- 13 A. Yes.
- 14 Q. 367 Did that start shortly after you had taken up residency?
- 15:12:27 15 A. I think it started approximately in 1987, I think.
- 16 Q. 368 Right. And from that time onward you were taking the lands from Mr. Tracey,
17 is that so?
- 18 A. Yes.
- 19 Q. 369 That's Mr. Bob Tracey.
- 15:12:45 20 A. Yes.
- 21 Q. 370 And in the course of that, and Mr. Tracey being a neighbour of your's, did you
22 come to know of plans which he had or certainly approaches made to him to sell
23 his lands?
- 24 A. Yes.
- 15:12:57 25 Q. 371 His lands are now the subject of this inquiry as the Jackson Way lands, they
26 are called. They are approximately 108 acres. I think you are familiar with
27 the boundaries of those lands.
- 28 A. I am.
- 29 Q. 372 What did you learn of Mr. Tracey's plans to sell the lands and of any approach
15:13:20 30 made by any particular individual to him to sell his lands?

- 15:13:26 1 A. I didn't know of any plans of his to sell, but I did know that overtures were
2 being made to him over a considerable period of time. What period, I'm not
3 quite sure.
- 4 Q. 373 Did you learn whether or not those overtures had been successful?
- 15:13:42 5 A. I learnt ultimately that they had been, yes.
- 6 Q. 374 Did Mr. Tracey indicate to you the name of the person who was seeking to
7 purchase the lands from him over that period of time?
- 8 A. He did.
- 9 Q. 375 And what was the name of that person?
- 15:13:55 10 A. Kennedy.
- 11 Q. 376 Kennedy. Did he tell you the first name?
- 12 A. I think not, no.
- 13 Q. 377 Right. And can you indicate to the Tribunal for approximately what period of
14 time you were aware that these overtures were being made?
- 15:14:14 15 A. I think I previously told you, Mr. O'Neill, it's a matter of years. But how
16 many years I really cannot be certain.
- 17 Q. 378 Right. In any event, you may not be aware of the precise detail of it, but we
18 can establish from the documentation made available to the Tribunal, that as of
19 the 9th of March of 1988, a gentleman called Sam Stanley was given an
15:14:41 20 irrevocable authority by Mr. Bob Tracey to sell these lands in trust. You
21 mightn't have been made aware of this, but that was the first step in what was
22 to be the acquisition of these lands ultimately by a company called Paisley
23 Park Investments Limited. And on the 15th of November of 1989, a contract was
24 reached, which was a second contract, between Mr. Bob Tracey and Paisley Park
15:15:18 25 Investments Limited under which this company was to purchase the lands from
26 Mr. Tracey for some 700,000 pounds. Again, I don't expect you to have been
27 aware of the detail of that. But one of the conditions of that contract,
28 which we will see at page 701 of the documentation, is that the vendor of the
29 lands, the vendor of the lands was to be entitled to retain possession until
15:15:55 30 the 31st of October of 1991, you might see at paragraph 7 of the document on

15:16:03 1 the screen in front of you. "The purchaser was to facilitate the vendor in
2 respect of any crops he may have on the lands at the closing date, it is agreed
3 that the vendor shall hand over, and the purchaser shall only be entitled to
4 vacant possession of the subject property on the 31st of October 1991."

15:16:31 5
6 So that whilst there were stages leading to a contract for sale, which was
7 concluded in 1989. The actual passing of the lands was not intended to take
8 place until the 31st of October 1991.

15:16:42 10 I think during that period you remained in possession of the lands and you
11 remained in possession thereafter, isn't that so?

12 A. That is so -- well part of the lands.

13 Q. 379 I'm talking now about the 13 or so acres which had been used as paddocks by
14 your wife for blood stock purposes, isn't that right? Now, the change of

15:17:12 15 ownership of these lands, I believe, is not something that was formally
16 notified to you but you observed physical change in your immediate
17 surroundings, is that so? In the sense of a contractor seeking to plough the
18 land.

19 A. Yes. Well this didn't actually happen, we managed to arrest that.

15:17:36 20 Q. 380 I appreciate that it didn't ultimately happen, but leading to the circumstances
21 in which this came to pass. You'll see from a document at page 1068? 1068 is
22 a document where a Mr. James Kennedy is writing to Mr. Martin Bullock in the
23 Isle of Man, Paisley Park Investments Limited. And at the end it indicates
24 that "Monarch Properties have inquired whether your company would be interested
15:18:19 25 in letting the property to Gary Grant of Dundalk for a sum in the region of
26 7,000 pounds every 11 months."

27
28 Did you subsequent to that date, the 19th of November 1991, have occasion to
29 meet with this gentleman, Mr. Gary Grant?

15:18:42 30 A. My evidence to you will give you the date. I don't know the date off the top

- 15:18:45 1 of my head, but certainly I did meet with Mr. Grant once to my knowledge.
- 2 Q. 381 And is it correct to say that Mr. Grant's intention was to plough up the lands
- 3 which had been formally pasture?
- 4 A. Everything he could lay his hands on, yes.
- 15:19:03 5 Q. 382 I take it that would not have been in accordance with your wishes or that of
- 6 your wife and would not have been compatible with any horse raising activity?
- 7 A. You may take that.
- 8 Q. 383 Now, as a result of that did you make contact with any person?
- 9 A. Yes, I eventually rang Phil Monaghan of Monarch Properties, who controlled the
- 15:19:26 10 other patch of land which Grant had taken and made representations on my and my
- 11 wife's behalf. And Mr. Monaghan sorted the matter out and Mr. Grant did not
- 12 eventually --
- 13 Q. 384 The gentleman that you referred to Mr. Phil Monaghan, held an interest in the
- 14 company called Monarch Properties Limited.
- 15:19:48 15 A. So I gather.
- 16 Q. 385 And that company in turn was the owner of approximately, I think, 240 acres
- 17 which adjoined the lands which you were taking from Mr. Tracey initially, isn't
- 18 that so?
- 19 A. The former Galvin lands.
- 15:20:06 20 Q. 386 The former Galvin lands which passed to Monarch Properties.
- 21 A. Which was purchased by them, yes.
- 22 Q. 387 So was it the case that from your discussion with Mr. Grant you established
- 23 that he was going to plough, not only the Monarch property, but also the 108
- 24 acres of the former Tracey property?
- 15:20:30 25 A. Yes.
- 26 Q. 388 Was it as a result of his identifying Mr. Monaghan to you, that you saw
- 27 Mr. Monaghan as the person who you should make representations to?
- 28 A. That I wouldn't be certain, one knew that Monarch controlled the lands, one
- 29 knew that Monaghan controlled Monarch this is public knowledge and therefore
- 15:20:57 30 there is no point in messing around with small fry, you go to the top.

- 15:21:02 1 Q. 389 Did you believe at that time or did you think that Monarch actually had
2 acquired the Tracey lands or were you aware from your discussions with
3 Mr. Tracey, who the purchaser of the Tracey lands was?
4 A. No, neither I think. I assumed that Monarch or Phil Monaghan had done a deal
15:21:26 5 with whoever owned the Tracey lands for a larger block of tillage.
6 Q. 390 I'm sorry.
7 A. I assumed that Monaghan or Monarch had done a deal simply to make larger the
8 area that could be tilled, by doing a deal with whoever did own the former
9 Tracey lands.
15:21:47 10 Q. 391 All right. When you made contact with Mr. Phil Monaghan you explained your
11 position, that you had been the occupier of these lands with the consent of
12 Mr. Tracey for some many years and you wished to continue to do so, isn't that
13 correct?
14 A. Correct.
15:22:04 15 Q. 392 And did he indicate to you that he would see what could be done to arrange that
16 for you?
17 A. He said he would do it.
18 Q. 393 Did he make any specific reference to you about having to consult with
19 Mr. Kennedy or any other named individual to do so?
15:22:23 20 A. No.
21 Q. 394 As a result of that did you have contact with a Mr. Richard Lynn, a
22 representative of Monarch Properties in 1991?
23 A. If that is the date that I told you, yes.
24 Q. 395 Did that contact include your attending a meeting at the offices of Monarch
15:22:47 25 Properties Limited, in the former Harcourt Railway station?
26 A. It certainly does although Mr. Lynn, I notice, doesn't recollect this.
27 Q. 396 Now, what can you tell us about the meeting in Harcourt Street?
28 A. Mr. Lynn contacted either myself or my wife and arranged a meeting, with the
29 say so of Mr. Monaghan. We attended the meeting. We explained our
15:23:16 30 predicament. We reached a continuing agreement for the continued rental for

- 15:23:20 1 this piece of land and we went away contented.
- 2 Q. 397 Subsequent to that meeting, which was I think prior to Christmas of 1991, you
- 3 received a letter on the 6th of January 1992, which is at page 1069. And this
- 4 is a document from Monarch Properties Services Limited, of Monarch House, 57
- 15:23:56 5 Harcourt Street, Dublin 2, addressed to you and to your wife.
- 6 A. Yes.
- 7 Q. 398 Dated the 6th of January. And it reads.
- 8 "Dear Mr. and Mrs. Sands. I refer to our conversations prior to Christmas and
- 9 now have pleasure in enclosing two copies of agreement for completion and
- 15:24:11 10 return in duplicate, together with your cheque, in the sum of 1500 pounds made
- 11 payable to James Kennedy.
- 12
- 13 I will return one copy of the completed agreement when James Kennedy has
- 14 received payment and appends his signature thereto.
- 15:24:27 15
- 16 Looking forward to hearing from you. Yours sincerely, Richard M Lynn for
- 17 Monarch Properties Services Limited."
- 18
- 19 Can you recollect, Mr. Sands when you received this letter, had there been a
- 15:24:46 20 discussion as to the involvement of Mr. Kennedy at the meeting which had taken
- 21 place in December?
- 22 A. I think not.
- 23 Q. 399 Now, you had heard from your evidence so far of the existence of a Mr. Kennedy
- 24 in connection with his acquisition of the lands of Mr. Tracey over a number of
- 15:25:09 25 years, isn't that so?
- 26 A. Yes.
- 27 Q. 400 And what did you understand this letter to mean in the context of the then
- 28 current ownership of the Jackson, what were to be the Jackson Way lands?
- 29 A. Were they then the Jackson Way lands?
- 15:25:29 30 Q. 401 They were'nt then, but what were to be. If we refer to the 108 acres in

15:25:31 1 particular your own interest in it. What did you understand the position of
2 Mr. Kennedy was in this letting that was to take place?
3 A. I presumed that he had some involvement in the lands.
4 Q. 402 Well prior to his -- prior to Mr. Tracey disposing of his interest obviously
15:25:50 5 Mr. Kennedy had no interest, isn't that right?
6 A. Yes.
7 Q. 403 And we know that as and from the 31st of October of 1991, possession of the
8 lands was delivered up to the new owner under the contract that we've just
9 seen.
10 A. You know that, I didn't know that at the time.
11 Q. 404 But at some point between the 31st of October and Christmas, the meeting with
12 Mr. Gary Grant took place, which gave you to understand that there was a change
13 in ownership?
14 A. Clearly. But I think we knew that there had been a change of ownership prior
15:26:28 15 to that, or an effective change of ownership was taking place, considerably
16 prior to that, I think.
17 Q. 405 Yes.
18 A. It was en train, if you like.
19 Q. 406 Sorry.
15:26:40 20 A. It was en train if you like, it was in progress.
21 Q. 407 Yes. En train effectively since March of 1988.
22 A. This is when we got wind of there being a potential change of ownership. That
23 sort of period.
24 Q. 408 You heard about it --
15:26:57 25 A. From Tracey. Exactly when, I don't know.
26 Q. 409 Right. Insofar as you can the estimate it, you think it was in and about '88
27 or '89?
28 A. Yes, I have already told you this.
29 Q. 410 Now, on receipt of this letter, I think we see some calculations in manuscript
15:27:22 30 on the copy that's on screen before you?

- 15:27:25 1 A. Yes, very difficult to read. I do have a transcript of what I told you
2 earlier which I think translates it, can you tell me what page it is on?
- 3 Q. 411 Sorry?
- 4 A. Can you tell me what page of this transcript that particular piece because I
15:27:37 5 did translate it for you at the time?
- 6 Q. 412 You are referring to the copy of the transcript of the interview which took
7 place?
- 8 A. Yes.
- 9 Q. 413 Well I don't think we have to refer to that at the moment?
- 15:27:47 10 A. Well if I refer to it I can actually read what I translated at the time, what
11 the scriblings say, because this is actually illegible.
12
- 13 CHAIRMAN: Mr. Sands just wants to refresh his memory as to what, how he
14 interpreted the --
- 15:28:03 15 A. I interpreted it for you from the piece of paper in question, face to face.
16
- 17 CHAIRMAN: Well he can certainly be given --
- 18 A. I'm sorry. I'm just trying to clarify.
19
- 15:28:34 20 MR. O'NEILL: Sure. I think it's at page 6, Mr. Sands, question no. 36.
21 The question numbers are on the left hand margin.
- 22 A. Unfortunately page 6 only runs to 30 in this particular copy. Yes.
- 23 Q. 414 I think this is an aide to deciphering the manuscript note which is in poor
24 copy on the --
- 15:30:03 25 A. Well the first little bit of, "13 acres at 1500 equals 115 per acre" is legible
26 and "13 acres at 1,450." I think, "1,430", these are simply calculations as to
27 how little I could get away with paying them, how much we were prepared to pay
28 them. What else do you wish to know?
- 29 Q. 415 Towards the end of it then I think there is a reference to "by courier, 21st of
15:30:25 30 May 1992 requesting cheque made out to Binchys. Return cheque with same

- 15:30:30 1 courier. Letter signed John Caldwell. Binchys telephone number phone JCs
2 secretary 21st of May, 4.30 cheque and then enclosed etc."
- 3 A. Yes, I think so. Presumably the cheque was re issued.
- 4 Q. 416 So the intention was in January of 1992 that you would have an agreement to
15:31:00 5 occupy the 13 acres, that it would be subject to payment of 1,500 pounds?
6 A. As it had been until then.
- 7 Q. 417 Yes. That the sum would be payable to Mr. James Kennedy. And as a result of
8 that I think your wife prepared a cheque, and we'll see it at page No. 1082,
9 the cheque drawn on the Ulster Bank account Limited, Blackrock in the sum of
15:31:26 10 1,500 pounds. The signatory I think is your wife Sarah Sands. It's made
11 payable to James Kennedy, isn't that so?
12 A. Yes, at the request of Richard Lynn, from my recollection.
- 13 Q. 418 I think that that cheque in that form was not acceptable to the recipients, and
14 a subsequent letter is written to your wife which we see at page 1100 from
15:32:03 15 Binchy Solicitors, Fitzwilliam Square in Dublin and signed by Mr. John
16 Caldwell. At the bottom of that you will see the same cheque but it has been
17 amended by the striking out of Mr. James Kennedy's name and the substitution by
18 your wife of Binchy's and she authorises that substitution at the top of the
19 cheque, isn't this right?
- 15:32:31 20 A. Correct.
- 21 Q. 419 She did so in response to the request which is contained in the letter here
22 which says, "We have been given your letter to Mr. Lynn, together with your
23 cheque. We return herewith the cheque in the amount of 1,500 pounds. We
24 would be obliged if you would please re issue the cheque to this firm."
- 15:32:54 25
26 And she did so, isn't that right?
- 27 A. She amended the cheque.
- 28 Q. 420 Do you know of any reason, was any reason subsequently offered to you as to why
29 it was that Binchys were not happy to accept a cheque made payable to James
15:33:14 30 Kennedy?

- 15:33:14 1 A. I don't think we were ever told. We were simply told that the they wanted the
2 cheque to be made payable to somebody else, in other words, to them.
- 3 Q. 421 Now, from 1991 onwards then or perhaps 1992 onward, you had relationships with
4 the new owners of the lands rather than Mr. Tracey, who had been the former
15:33:42 5 owner of the land?
- 6 A. We never had any relationships with any owners subsequent to Mr. Tracey.
- 7 Q. 422 How, it was done through agents, isn't that so?
- 8 A. Mostly solicitors. Always solicitors apart from the contact with Mr. Lynn,
9 who is not a solicitor.
- 15:33:58 10 Q. 423 You had dealings, once you were contacted, by Mr. Frank Friel who is a
11 solicitor in Dundrum who was acting on behalf of a firm called Paisley Park
12 Investments Limited.
- 13 A. Yes.
- 14 Q. 424 He, Mr. Friel, wrote to you on some occasions and I'll just ask you to look at
15:34:21 15 a document at page 1149. Which is a letter from a Mr. Harker, a chartered
16 accountant in Havelock, Douglas, Isle of Man which is written to Mr. Frank
17 Friel and concerned your occupation of your lands. And involves a direction
18 from Mr. Harker that a letter should be written to you on terms which are
19 specifically set out by Mr. Harker, do you see that?
- 15:34:56 20 A. Yes.
- 21 Q. 425 Now, the next letter I would ask you to look at is no. 1150. Which is a
22 letter apparently sent to you by registered post on the 22nd of October 1992.
23 8 days after Mr. Harker had written to Mr. Friel. You will see that that is a
24 verbatim letter, which transcribes in effect what was directed of Mr. Friel by
15:35:28 25 Mr. Harker, and I think you might confirm that that was received by you?
- 26 A. That is the letter we received, yes.
- 27 Q. 426 And you note at the top of it there. Perhaps your writing, I'm not sure.
28 "NB. This was a registered letter."
- 29 A. Precisely. And there is a note at bottom which contradicts what they were
15:36:03 30 asserting.

- 15:36:03 1 Q. 427 There was a complaint contained in that letter that you had opened a new door
2 and window onto a lane running adjacent to the property, a matter which you did
3 not accept. But insofar as this indicates the relationship which existed
4 between Mr. Harker and Mr. Friel. That is not something of which you were
15:36:13 5 aware of at any time, isn't that correct?
6 A. I'd never heard of Mr. Harker.
7 Q. 428 You'd never heard of Mr. Harker.
8 A. Not until you produced his name from somewhere.
9 Q. 429 So your dealings were initially with Mr. Friel, as the solicitor acting on
15:36:29 10 behalf of Paisley Park Investments, and subsequently, did you learn that this
11 company, Paisley Park Investments, was going into voluntary liquidation, and
12 that a new owner of the property is coming into being, that is Jackson Way
13 Property?
14 A. We didn't know about that. We were informed at the time by somebody.
15:36:54 15 Q. 430 Right. Were you ever told of what connection there was as between, if any,
16 between Jackson Way Properties and Paisley Park Investments Limited, the
17 company which you had dealings with through Mr. Harker -- I beg your pardon,
18 through Mr. Friel?
19 A. I think not. I think perhaps we assumed that they were the same thing under a
15:37:24 20 different name. But there was no evidence one way or another.
21 Q. 431 Right. Now, at some point in time did you learn of an involvement of
22 Mr. Caldwell with the lands?
23 A. Clearly, yes, but after Caldwell and Binchys contacted us and asked us to make
24 the cheque out to Binchys.
15:37:45 25 Q. 432 Were Binchys the solicitors you then dealt with in relation to the lands or did
26 a third firm of solicitors come into deal with the lands?
27 A. A third firm. We had one contact I think with Binchys, the one that you just
28 produced.
29 Q. 433 That contact I think was limited to dealing with the re issuing of the cheque
15:38:08 30 which had formerly gone to Mr. Kennedy. I think you were then contacted by

- 15:38:14 1 Miley & Miley Solicitors, isn't that correct?
- 2 A. Correct --
- 3 Q. 434 Is that correct?
- 4 A. Yes.
- 15:38:19 5 Q. 435 Did you come to meet Mr. John Caldwell or any other members of his family in
6 connection with your occupation of the lands?
- 7 A. In my statement to you I said I thought not, but on subsequent reflection my
8 wife says that in fact John Caldwell did call to our house. I have discussed
9 this matter with my wife obviously you understand and it was, Caldwell
10 certainly was seen around the place and certainly did actually call to our
11 house on more than one occasion I gather, but I don't personally recall it.
- 12 Q. 436 And did you have meetings or dealings with a Mr. Charles Caldwell or Charlie
13 Caldwell?
- 14 A. The father, yes.
- 15:39:01 15 Q. 437 He was Mr. Caldwell's father?
- 16 A. One gather's, he was a representative as such.
- 17 Q. 438 And what dealings did he have in relation to the land or what role did he play
18 in relation to these lands?
- 19 A. He had his eyes upon it.
- 15:39:18 20 Q. 439 Sorry?
- 21 A. He had his eye upon it.
- 22 Q. 440 He had his eye upon it?
- 23 A. For his own use.
- 24 Q. 441 The Tribunal has received information that, to the effect that he had the
15:39:28 25 grazing of part of the lands themselves.
- 26 A. He did for a short period, yes.
- 27 Q. 442 Yes. And that came to naught, is that right?
- 28 A. Came to?
- 29 Q. 443 To naught. It terminated.
- 15:39:43 30 A. It terminated. It wasn't naught for a while, but it was a bloody nuisance for

- 15:39:48 1 quite a long time.
- 2 Q. 444 And how long was he there?
- 3 A. Briefly.
- 4 Q. 445 Now, what dealings did you have with Mr. Stephen Miley in relation to the
- 15:40:00 5 lands?
- 6 A. Formal agreements as to letting -- sorry, renting the land on successive years
- 7 and the occasional perfectly cordial meeting in his offices.
- 8 Q. 446 At any time in any of these discussions, was the question of the ownership of
- 9 the lands raised with Mr. Miley by you or in your presence?
- 15:40:31 10 A. By me, yes, certainly. As indeed by me with Mr. Friel.
- 11 Q. 447 Yes. And what did you raise and what responses did you receive?
- 12 A. None.
- 13 Q. 448 What did you want to know?
- 14 A. Simply if they knew what they were working for. And they always denied all
- 15:40:51 15 knowledge, both Friel and Mr. Miley, they did not know who their client was.
- 16 Q. 449 Are you talking about their individual client or their corporate client or did
- 17 they distinguish one or the other?
- 18 A. Who their corporate client was in actual fact. Which individuals their
- 19 corporate client might have been.
- 15:41:07 20 Q. 450 And on how many occasions did you raise the issue as to whether either Mr.
- 21 Friel or Mr. Cald -- Mr. Miley -- knew of the identity of the individuals
- 22 behind the corporate structures that you were dealing with?
- 23 A. I didn't raise this matter because they both denied that they knew who the
- 24 individuals were.
- 15:41:41 25 Q. 451 And obviously they couldn't deny it until you raised it?
- 26 A. I simply asked the question had they any idea who the owner was and the answer
- 27 was no.
- 28 Q. 452 Now, did you have your own view as to who it was or your own suspicion as to
- 29 who it was involved as owner of the lands and if so did you mention those names
- 15:41:51 30 to either Mr. Friel or to Mr. Miley in the course of your discussions?

- 15:41:56 1 A. I would imagine so.
- 2 Q. 453 At any time who did you believe was in fact behind the ownership of these
3 lands?
- 4 A. One knew by hearsay that Kennedy was behind the purchase of the lands. Though
15:42:12 5 at the time that the purchase was taking place it was considered that he wasn't
6 really in the running for that sort of sums of money. His name would have been
7 raised. I think Mr. Caldwell's name would have been raised with Mr. Friel
8 perhaps, and there was a builder's name, who I completely forget, from Lucan
9 who somebody had suggested might have been behind it and his name was also
10 raised by me. There is -- this is referred to in my previous interview
11 with -- somewhere.
- 12 Q. 454 I think in time your interest in the lands extended insofar as you moved to
13 take over portions of the land with the consent of the owners over and above
14 the initial 13 or so acres that you had, is that right?
- 15:43:02 15 A. We acquired, acquired isn't the word. We obtained the use of some farm
16 buildings mainly and of the 6 acre field and a 2 acre paddock in addition to
17 the 13 acres.
- 18 Q. 455 I think in time as various gas pipelines and other wayleaves that were executed
19 through the lands, they became unsuited for your purposes, is that right?
- 15:43:32 20 A. They became very difficult to do anything useful with them.
- 21 Q. 456 And subsequently your own interest has ceased to large extent in the area.
22 You retained part of the lands you originally owned in your own right. But
23 you were CPOed in respect of other parts, is that right?
- 24 A. In respect of my dwelling house, yes.
- 15:43:54 25 Q. 457 Which was demolished subsequently.
- 26 A. Exactly.
- 27 Q. 458 Just in relation to the dates of your dealings with the various solicitors. I
28 think you say in your statement, and you might just confirm that, that from
29 October of 1992 until March of 1995 your dealings were solely with Mr. Frank
15:44:25 30 Friel.

15:44:25 1 A. Of the top of my head I don't know. But at the time that you conducted the
2 interview, if that's what I said, that is the case because I had the
3 documentation in front of me at the time.

4 Q. 459 We might just then to avoid any ambiguity if there is any --

15:44:37 5 A. There is no ambiguity.

6 Q. 460 Your statement is on page 2133. You might just read through it and we'll
7 identify it for you in the 6th paragraph of your statement to the Tribunal,
8 your references to your dealings with Mr. Friel. "You say that from October
9 1992 to March 1995 our dealings as to our tenancies of the lands were solely
10 with Frank Friel of Dundrum. Firstly on behalf of Paisley Park investments
11 Limited and from December 1993 on behalf of Jackson Way Properties Limited.
12 Albeit that I also received one letter dated March 1994 from Fishers Surveyors
13 and Property Managers of Birmingham stating that they represented the new
14 owners of the land."

15:45:29 15 A. Correct.

16 Q. 461 So far as you were informed Fishers through Stephen Miley of Miley & Miley were
17 dealing with the land on behalf of whoever the owners were.

18 A. I think we received the letters from Fishers directly not through anybody else.

19 Q. 462 Insofar as you subsequently had dealings with the land. They were through
15:45:54 20 Mr. Miley?

21 A. We had no dealings with Fishers period.

22 Q. 463 Thank you, Mr. Sands.

23

24 CHAIRMAN: Mr. Finlay, do you want to ask anything?

15:46:05 25

26 MR. FINLAY: No, thank you Mr. Chairman.

27

28 CHAIRMAN: Do you want to ask --

29

15:46:09 30 MR. MALONEY: I have no questions.

15:46:11 1
2 CHAIRMAN: Thank you very much, Mr. Sands, for attending. Thank you very
3 much.

15:46:16 5 **THE WITNESS THEN WITHDREW.**

6
7 CHAIRMAN: That concludes today.

8
9 MR. O'NEILL: We have Mr. Richard Lynn.

15:46:23 10
11 CHAIRMAN: Is Mr. Lynn here?

12
13 MR. O'NEILL: Yes.

14
15:46:47 15 A. Mr. Chairman, am I likely to be required again?

16
17 CHAIRMAN: Unlikely.

18
19 **MR. RICHARD LYNN, HAVING BEEN SWORN, WAS EXAMINED**

15:46:54 20 **AS FOLLOWS BY MR. O'NEILL:**

21
22 CHAIRMAN: Sit down, Mr. Lynn.

23
24 MR. O'NEILL: Mr. Lynn, I think that in 1989 you were employed by a company
15:47:15 25 called Monarch Property Services Limited in the capacity of the Project
26 Co-ordinator or co-coordinator perhaps more accurately for its intended
27 development at lands at Cherrywood, is that correct?

28 A. That's correct.

29 Q. 464 Briefly, those lands involved a development or an intended development of a
15:47:38 30 large acreage approximately 240 acres or so, perhaps slightly larger, is that

- 15:47:45 1 right?
- 2 A. 234 acres.
- 3 Q. 465 234.
- 4 A. Uh-uh.
- 15:47:57 5 Q. 466 It was to be a very substantial development, isn't that so?
- 6 A. That's correct.
- 7 Q. 467 And it was one which I think was controversial in terms of local opposition for
- 8 a number of reasons?
- 9 A. That's quite right.
- 15:48:04 10 Q. 468 The lands in question I think had formerly been the property of the Galvin
- 11 family, isn't that right?
- 12 A. That's correct.
- 13 Q. 469 And Mr. Phil Monaghan, who is now deceased, was the principal of Monarch
- 14 Property Services Limited and very active in that capacity, isn't that so?
- 15:48:25 15 A. That's correct.
- 16 Q. 470 Your functions included, I take it, establishing whether there were other
- 17 persons in the vicinity who would support the plans of the Monarch scheme as
- 18 well as identifying persons who might be anti the project, isn't that so?
- 19 A. Certainly for support for our scheme. Yes, generally, yes.
- 15:48:56 20 Q. 471 I mean, as part of your job I take it you would reference the immediate
- 21 adjoining properties and try and establish whether or not there was common
- 22 interest between your company and others with a view to development of the
- 23 lands, isn't that correct?
- 24 A. Yes.
- 15:49:14 25 Q. 472 Jointly or otherwise, isn't that correct?
- 26 A. That is correct.
- 27 Q. 473 Was it in the beginning of 1989 that you set about establishing who the owners
- 28 of adjacent properties were to the original Galvin lands or were you already
- 29 aware of that before 1989?
- 15:49:36 30 A. Because of certain land registry and we had a detailed map of all land holdings

- 15:49:44 1 from the N11 up to the mountainside, and that would have been done in the very
2 early days of my appointment.
- 3 Q. 474 And did you establish who the owners of the 108 acres, formerly Mr. Tracey's
4 lands, were?
- 15:50:08 5 A. From the land registry my recollection is that they were still registered in
6 the name of Mr. Tracey, the Tracey family, I think was the number of folios
7 involved.
- 8 Q. 475 So that didn't give you a guide as to who actually owned it, is that right?
- 9 A. No.
- 15:50:28 10 Q. 476 Do you remember what steps were taken, if any, by you, to establish who the
11 actual owner of the former Tracey lands were?
- 12 A. Only insofar as I was directed at a particular point to make contact with Jim
13 Kennedy, who said he was the owner of the 108 acres, the former Tracey lands.
- 14 Q. 477 Now, insofar as you could consult any public document up until the date of
15:51:04 15 registration of Paisley Park Investments Limited as the registered owner of the
16 lands or as a person seeking registration of the lands. You would not have
17 known of anybody other than Mr. Tracey being the owner, isn't that right?
- 18 A. From public documents?
- 19 Q. 478 From public documents, yes.
- 15:51:24 20 A. No. They were still registered, as my recollection anyway, they were still
21 registered in the Tracey family.
- 22 Q. 479 And can you say through what process you established that Mr. Jim Kennedy was a
23 person who was an owner of the land?
- 24 A. Well locally it was said that he was the one acquiring, Traceys were selling
15:51:46 25 and he was the acquiring person. And I suppose the best source of that would
26 have been the unfortunate late Mr. Tom Carroll who was the farm manager of,
27 I've forgotten who he bought the lands from.
- 28 Q. 480 Galvin.
- 29 A. I beg your pardon. The Galvins, who appeared to know the buying and selling
15:52:14 30 of land locally.

- 15:52:15 1 Q. 481 So as far as you can recollect, your contact as far as identifying Mr. Kennedy
2 was concerned, was Mr. Carroll, now deceased?
- 3 A. Initially I would have heard it from Mr. Carroll. I would assume, yes.
- 4 Q. 482 And can you indicate to the Tribunal, what contact you made with Mr. Kennedy,
15:52:43 5 approximately when it was made and how you made that contact, whether
6 personally by personal contact, by telephone or by visiting him?
- 7 A. I was instructed by Mr. Monaghan to make contact with Mr. Kennedy on the
8 occasion after the County Manager had made a proposal in October 1990, which
9 wasn't well received. And in discussions with other landowners and agents,
15:53:15 10 Monarch felt that unless a compromise was reached that would somewhat mitigate
11 the controversy, we had no likelihood of having our lands rezoned and other
12 lands rezoned. So I would have made contact with Mr. Kennedy. I think the
13 October 1990 report came to the members in November, I know that they had a
14 field trip. That controversy was in the newspapers. So I would imagine
15:53:53 15 November/December 1990.
- 16 Q. 483 Right.
- 17 A. And I visited Mr. Kennedy twice in his offices in Westmoreland Street.
- 18 Q. 484 Now, at that point in time, of course Mr. Kennedy, was not registered as the
19 owner of these lands, the registration of the company with which he had been
15:54:15 20 connected, Paisley Park, did not take place until February of 1992. So what
21 did -- and indeed the completion of the contract between Mr. Tracey and
22 Mr. Kennedy did not take place until mid 1991. The June of 1991.
- 23 A. I wouldn't be privy to dates as to when.
- 24 Q. 485 Sure. But it seems, if you were meeting him in November, it was at a time
15:54:42 25 when he had yet to pay for the land other than making --
- 26 A. Yes, it would be appear to be, that is so.
- 27 Q. 486 Did he tell you what the nature of his ownership of the land was. Whether it
28 was individually, jointly with others, through a company, through a foreign
29 company, through a trust or otherwise?
- 15:55:03 30 A. We dealt strictly with the matter in hand, which was the attempt to have

15:55:10 1 proposals for rezoning accepted and acceptable to the council because the
2 review needed for the plan was then ongoing.

3 Q. 487 But obviously you would have had to satisfy yourself that you were dealing with
4 somebody who had a real interest in the land rather than somebody who might
15:55:29 5 claim that he had an interest in the lands.

6 A. No, I mean I was directed by the late Phil Monaghan.

7 Q. 488 I see.

8 A. And it's through that direction that I made contact with Mr. Kennedy.

9 Q. 489 So it wasn't so much as a result of individual investigations followed up by
15:55:47 10 yourself that led to your going to Mr. Kennedy, but rather as Mr. Monaghan was
11 in a position to tell you that this man is the man to talk to, is that correct?

12 A. That is correct.

13 Q. 490 Did Mr. Monaghan ever tell you how he came to learn that Mr. Kennedy was the
14 man to deal within relation to the Jackson Way land?

15:56:10 15 A. No.

16 Q. 491 Mr. Monaghan deceased, he was obviously a very astute businessman and had his
17 finger on the pulse of all property deals I would say in that area, wouldn't
18 that be correct?

19 A. That would be correct.

15:56:28 20 Q. 492 And a wide range of contacts through all spheres in connection with properties?

21 A. Correct.

22 Q. 493 And he was satisfied, as far as you were concerned, that Mr. Kennedy was the
23 person to deal with in relation with those lands?

24 A. That's correct.

15:56:46 25 Q. 494 You were never to know or perhaps if you do know perhaps you can tell us. Do
26 you know how Mr. Monaghan came to find out that Mr. Kennedy was the person to
27 deal with?

28 A. No.

29 Q. 495 We know from the documentation provided to the Tribunal from various sources
15:57:06 30 that Mr. Monaghan wrote -- Mr. Monaghan wrote to Mr. Kennedy on the 14th of

15:57:19 1 August of 1991. To put this in context. It's at a date after he had, he,
2 Mr. Kennedy's company, had closed the sale of the lands from Mr. Tracey, and it
3 was prior to the date on which vacant possession would become due under the
4 contract. Vacant possession was to come on the 31st of October of 1991. You
15:57:42 5 will see at page 1055, a letter from Monarch Properties Limited of the 14th of
6 August 1991. It's addressed to "Mr. Jimmy Kennedy 22 Weston Park, Lucan,
7 County Dublin." It reads.

8 "Dear Mr. Kennedy, with Dear Jim underneath it Carrickmines valley. As you
9 are aware we are the owners of a large tract of land in the Carrickmines
15:58:12 10 valley. We understand that you are also an owner.

11 I should like to arrange a get together of all the owners in the area to
12 exchange views and I should be pleased if you would contact me at a Dublin
13 number with a view to indicating when it might be convenient for you to attend
14 such a meeting.

15:58:31 15
16 I feel that we all have to go forward on a united front. I look forward to
17 hearing from you at your earliest convenience. This seems to post date your
18 meeting with Mr. Kennedy.

19 A. Yes, it does. If you had -- I beg your pardon. The local elections were --
15:58:51 20 the Development Plan was finalised in May of 1991 the local elections were in
21 June of 1991.

22
23 JUDGE FAHERTY: June of 1991.

24 A. The outcome of the Development Plan in May of 1991 was that the council decided
15:59:10 25 to revert to the 1983 Development Plan proposals. So no changes occurred on
26 anybody's lands in the Carrickmines area.

27
28 MR. O'NEILL: Right. The question of Mr. Carey then coming in to farm, not
29 only the Cherrywood lands, but also the lands at Carrickmines belonging to
15:59:51 30 Mr. Tracey originally and subsequently companies connected with Mr. Kennedy,

15:59:56 1 was also a matter which was raised by Mr. Monaghan. Are you aware of that?

2 A. That's Mr. Grant. That's correct.

3 Q. 496 The coming in?

4 A. I was again directed by Phil to let our own lands, and as he would have

16:00:11 5 referred to them as Kennedy's lands, to Mr. Gary Grant in whatever that period

6 of time was in 1991.

7 Q. 497 We know --

8 A. Which I did.

9 Q. 498 And that having happened, apparently it was envisaged that the entire parcel of

16:00:40 10 lands would be let, that is Mr. Kennedy's?

11 A. Yes.

12 Q. 499 Do you remember discussing that with Mr. Kennedy before you --

13 A. No.

14 Q. 500 -- made the arrangement with Mr. Grant?

16:00:53 15 A. Oh, no. I didn't discuss the land letting with Mr. Kennedy at all. Is my

16 recollection of the -- the only thing I discussed with Mr. Kennedy in our two

17 meetings was to try and reach a compromise to mitigate the furore as it

18 occurred on the publication of the manager's proposal for the Development Plan

19 in October 1990.

16:01:22 20 Q. 501 I just want you to refer you to your statement which you provided on the 4th of

21 April, Mr. Lynn, where you say in the first paragraph of it, "I was requested

22 by the late Phil Monaghan to jointly let the Cherrywood and Paisley Park lands

23 to a Mr. Gary Grant, farmer from County Louth from 1991 season."

24 A. Oh, yes, that is correct.

16:01:48 25 Q. 502 Right. And I take it that you would not have done that unless you were

26 satisfied that the, what you describe here is the Paisley Park lands, could be

27 included in the take which Mr. Grant was to take, isn't that so?

28 A. Well if, as happened, Mr. Monaghan directed me to let the lands. These lands

29 plus the -- they are the Paisley Park lands, but would be known as the Kennedy

16:02:17 30 lands. I would have just accepted and did accept that direction and went

- 16:02:21 1 along with it.
- 2 Q. 503 Right. So does it follow from that that it was Mr. Monaghan who had made the
- 3 agreement with Mr. Kennedy to allow Mr. Kennedy's lands to be included in the
- 4 take, rather than you?
- 16:02:37 5 A. Certainly I didn't. Certainly my direction, I was presented with Gary Grant
- 6 and I was to let the Cherrywood lands and the Kennedy lands.
- 7
- 8 JUDGE FAHERTY: When did you get this direction from --
- 9 A. From Mr. Monaghan?
- 16:02:53 10
- 11 JUDGE FAHERTY: Yes.
- 12 A. It would have been prior to the letting of the lands.
- 13
- 14 JUDGE FAHERTY: In the context of the managers report in November 1990. Was
- 16:03:02 15 it before or after the publication of the first plan?
- 16 A. They're not in any way connected. The manager made a report to the council in
- 17 October 1990. That then concluded, if you like, in May 1991.
- 18
- 19 JUDGE FAHERTY: That's right.
- 16:03:21 20 A. The land lettings would have occurred in the autumn of 1991.
- 21
- 22 JUDGE FAHERTY: Yes.
- 23 A. Not for the calendar year. You can see from the Sands letter, that I met them
- 24 in December 1991 and corresponded with them I think in January 1992.
- 16:03:37 25
- 26 JUDGE FAHERTY: That's what I'm asking you. At some point Mr. Monaghan
- 27 directed you.
- 28 A. Yes.
- 29
- 16:03:43 30 JUDGE FAHERTY: When did he direct you to let the lands to Mr. Grant?

16:03:49 1 A. I'd imagine in the autumn of 1991.
2
3 JUDGE FAHERTY: Right.
4
16:03:56 5 MR. O'NEILL: So it follows at some time prior to that he, Mr. Monaghan, and
6 Mr. Kennedy, had discussed the lands in question and in particular the question
7 of letting them for conacre or for tillage purposes on an 11 month basis for a
8 period of time.
9 A. I would assume so, yes.
16:04:22 10 Q. 504 To that extent there was a joint interest in the lands.
11 A. Yes, yes.
12 Q. 505 To that extent. But obviously it follows that both parties knew each other
13 and knew each other's roles in relation to the lands.
14 A. I would assume so, yes.
16:04:38 15 Q. 506 Were you ever -- was it ever indicated to you by Mr. Monaghan, for example,
16 that Mr. Kennedy was to act in the capacity as an auctioneer or a letting agent
17 or anything of that nature?
18 A. No, no.
19 Q. 507 And as far as you are concerned, what do you understand Mr. Kennedy's role to
16:05:03 20 have been in 1991 in relation to what we call the Paisley Park/Jackson Way
21 lands?
22 A. I would have assumed that he was either the owner or would have had the
23 controlling interest, if it was being bought through a company, he would have
24 been the controlling interest, that would have been my assumption.
16:05:30 25 Q. 508 Right. Just look at a document now, page 1065.
26 It appears to be a draft of what was to be a legitimate letting between Jim
27 Kennedy and Gary Grant. It reads "I Gary Grant of Tallonstown Dundalk (in the
28 an next conditions called the licensee) hereby agree to take for the season
29 ending 7th of October 1992 at 70 pounds per statue acre, and subject to the
16:06:29 30 conditions, all of the lands at Cabinteely, in the County of Dublin in the

16:06:37 1 possession of Jim Kennedy (herein after called the owner) containing C. 100
2 acres, statue measure, or thereabouts and to pay the sum of blank pounds on the
3 signing of this agreement by way of deposit, the balance of the account
4 amounting to blank pounds should be paid on blank date or in the case of crops,
16:06:53 5 before the crop is removed, whichever is the sooner" and then there is room for
6 signature by licensee and owner, etc. Does that jog your memory, Mr. Lynn, at
7 all about the agreement that was to take place. Firstly, is that in the
8 format of the agreement that your company, Monarch, equally was entering into?
9 A. Yes, that's very similar to --
16:07:07 10 Q. 509 Do you think this is probably your draft or your company's draft?
11 A. It looks like my draft.
12 Q. 510 There are some handwritten additions on it. They would appear to be Mr. John
13 Caldwell. Certainly the reference to Una here, is I think, to his secretary
14 Una Cahill. And there are other references here. Do you identify any of
16:07:30 15 these manuscript entries as your own?
16 A. Any of the writings?
17 Q. 511 Yes.
18 A. No, there's none of my writing on it at all. I would think that that's my
19 draft of the agreement.
16:07:44 20 Q. 512 I'm not sure. We will be some more time.
21
22 CHAIRMAN: All right. We will adjourn until tomorrow. Would it suit you to
23 come back tomorrow?
24 A. My appointment is for today into tomorrow.
16:08:08 25
26 CHAIRMAN: What sort of time would you --
27
28 MR. O'NEILL: I would say it wouldn't take more than half an hour. I can't
29 say. I doubt if there is any significant cross-examination.
16:08:21 30

- 16:08:21 1 CHAIRMAN: If we say half ten tomorrow and we'll deal with it as quickly as
2 possible.
- 3 A. If we can just go on. I can't say how many more questions you have for me.
4
- 16:08:37 5 MR. O'NEILL: Sure.
- 6 Q. 513 You think it likely, Mr. Lynn, that the agreement that was shown on screen here
7 was one prepared by you?
- 8 A. Yes, I think it is.
- 9 Q. 514 And I take it that you are used to drawing such agreements firstly and ensuring
16:09:01 10 that such agreements are in place before persons come on to land on temporary
11 basis, isn't that right?
- 12 A. Yes, this would be a pro forma, a form we would have used for the various
13 parcels of land in Monarch.
- 14 Q. 515 Yes. But certainly you wouldn't allow people in on the lands without there
16:09:21 15 being a signed agreement in advance of their being on the lands?
- 16 A. I would certainly hope not.
- 17 Q. 516 In this instance it seems that for some reason you took on board, not only the
18 process of letting the Cherrywood lands and also the lands of Mr. Kennedy to
19 Mr. Grant, isn't that right?
- 16:09:47 20 A. That's right.
- 21 Q. 517 We've heard from the last witness, Mr. Sands, that Mr. Grant believed, must
22 have believed, that he was entitled to plough not only the former tillage
23 lands, but also the grass lands which formed part of the 100 acres statute
24 measure approximately, which comprised of it, isn't that right?
- 16:10:11 25 A. Yes.
- 26 Q. 518 And it seems from Mr. Sands' account of events, that he stopped this from
27 happening as regards the 13 or so acres that was in grass land by directly
28 contacting Mr. Phil Monaghan and expressing his concern about the loss of
29 grazing etc.
- 16:10:29 30 A. That's correct.

- 16:10:29 1 Q. 519 Do you have any recollection yourself at this point in time of receiving a
2 direction from Mr. Monaghan to in effect either renegotiate the terms with
3 Mr. Carey or alternatively ensure that Mr. Carey did not in fact exercise his
4 right to plough these particular lands?
- 16:10:53 5 A. I think it's Mr. Grant.
- 6 Q. 520 Sorry, Mr. Grant.
- 7 A. I fully accept what Mr. Sands has said. It's only when I saw him here in the
8 witness box that I recollected himself. The correspondence is quite clear.
9 There is 13 odd acres included that he wished not to be included. I must have
16:11:16 10 altered the contract with Mr. Grant and let separately the 13 acres. I fully
11 accept that I did that.
- 12 Q. 521 Do you have any recollection, firstly, of being contacted by Mr. Monaghan to
13 tell you that this should happen, obviously you would not do it of your own
14 volition?
- 16:11:39 15 A. I don't have any direct recollection, but I fully accept that he must have done
16 so.
- 17 Q. 522 Again, since you were dealing with lands which were not in the ownership of
18 Monarch. The decision as to whether or not the lands should be let entirely
19 in tillage or alternatively hived off as between 13 and a half acres or so for
16:12:02 20 grazing and the rest for tillage, was ultimately a decision to be made by the
21 owners of the Carrickmines lands other than Mr. Monaghan, isn't that right? It
22 was a Kennedy decision?
- 23 A. Oh, absolutely.
- 24 Q. 523 And a Paisley Park decision, isn't that right?
- 16:12:19 25 A. Again, if I got a direction from Mr. Monaghan that this was to be resolved, I
26 just resolved it.
- 27 Q. 524 Well are you saying that again you did not contact Mr. Kennedy to establish
28 whether he would be prepared to accede to the request which was being made,
29 made by Mr. Sands to Mr. Monaghan, but that you took a direction from
16:12:42 30 Mr. Monaghan to so act.

- 16:12:44 1 A. I took the direction from Mr. Monaghan and I did not make contact with
2 Mr. Kennedy. The last time I spoke to Mr. Kennedy would have been at the last
3 meeting that I had had in November/December 1990.
- 4 Q. 525 And this of course is a relatively minor matter in the context of the size of
16:13:07 5 the proposed development that was intended to be carried out here by Monarch
6 Properties and its partners. And it's something in the normal course one
7 wouldn't expect somebody at the top of the hierarchy, the chain of command of
8 Monarch Properties to be involved in, is that right?
- 9 A. I wouldn't agree with you.
- 16:13:30 10 Q. 526 I see.
- 11 A. It's the personality of Mr. Monaghan. He was inclined to get involved in some
12 minutae. So I wouldn't have been surprised.
- 13 Q. 527 Did it ever occur to you to ask Mr. Monaghan how it was or why it was that he
14 was in direct contact with Mr. Kennedy on these issues rather than dispatching
16:13:58 15 you to deal with them?
- 16 A. No.
- 17 Q. 528 In any event, you were satisfied, as proved to be the case, that Mr. Kennedy,
18 or certainly Mr. Monaghan was correct insofar as he could say that Mr. Kennedy
19 was the person who could authorise this type of user of the land, isn't that
16:14:17 20 right?
- 21 A. Yes.
- 22 Q. 529 When you had the meeting in December of 1991 with Mr. and Mrs. Sands. And I
23 accept of course that at this moment or until this moment you've had no
24 recollection of meeting with Mr. Sands. I think you now accept that such a
16:14:40 25 meeting did in fact take place?
- 26 A. Oh, I accepted that from the beginning.
- 27 Q. 530 You have always accepted that.
- 28 A. Yes, I have always accept that.
- 29 Q. 531 On seeing the correspondence?
- 16:14:49 30 A. Yes.

16:14:50 1 Q. 532 Without the correspondence you have no recollection of ever having held a
2 meeting in the presence of Monarch premises in Harcourt Street with these
3 individuals?
4 A. That's right.

16:15:00 5 Q. 533 Has your memory been jogged at all by the presence of Mr. Sands here today as
6 to the detail of that meeting or the consequences of the meeting?
7 A. It's just that I recognised Mr. Sands.

8 Q. 534 Right.
9 A. When he was here today.

16:15:17 10 Q. 535 It seems obvious that there wasn't any great negotiation as to terms, is that
11 right?
12 A. No.

13 Q. 536 Can you remember what the purpose of the meeting was, rather than merely
14 sending out a pro forma document, such as the one that was sent out to
16:15:35 15 Mr. Grant, for example?
16 A. I would say the purpose of the meeting was to satisfy Mr. and Mrs. Sands that
17 the lands, that they would remain tenants of the lands.

18 Q. 537 Right.
19 A. And I assured them that would happen. And I would en train whatever was
16:16:01 20 necessary to ensure that it did happen.

21 Q. 538 And that included, I think we can assume from your letter of the 6th of
22 January, it included the preparation of an agreement under which they would
23 hold the land, a formal written agreement in other words?
24 A. I would presume it was very similar to what you see there still on the screen.

16:16:23 25 Q. 539 Yes. You enclosed with your letter of the 6th of January two copies of the
26 agreement for completion and for return in duplicate?
27 A. That's right.

28 Q. 540 So short of a signature on the part of the contracting parties, you were in a
29 position to know all of the terms of the agreement, isn't that right? There
16:16:49 30 were no blanks to be filled in?

- 16:16:51 1 A. Absolutely, yes.
- 2 Q. 541 Both as regards the duration, the amount of rent and the size of the lands, the
3 map of the property itself, all of that was within your knowledge.
- 4 A. That's right.
- 16:17:05 5 Q. 542 And you say that you received all of that information sufficient to allow you
6 to prepare that document without recourse to Mr. Kennedy.
- 7 A. That is correct.
- 8 Q. 543 You received it from Mr. Monaghan?
- 9 A. That's correct.
- 16:17:21 10 Q. 544 Did it involve assumptions on your part, then as regards precisely the --
- 11 A. One of the meetings with the Sands was to delineate the particular lands that
12 were to be retained by them.
- 13 Q. 545 Mr. Monaghan obviously had then already discussed with Mr. Kennedy the amount
14 of the rental that would be acceptable to him. Or did you pick a figure or --
- 16:17:52 15 A. I would imagine -- I'm almost certain that the negotiations with, between Phil
16 Monaghan and Mr. Grant. They were concluded by Mr. Monaghan. So the rate
17 per acre had been determined. I would think that I just applied that rate to
18 the retained acreage of 13 acres. That is how the sum of money was arrived
19 at, I would imagine.
- 16:18:26 20 Q. 546 Right. Obviously, the identity of the contracting parties is an essential
21 element of any document or any agreement, isn't that correct?
- 22 A. That is correct.
- 23 Q. 547 And if we see the document in the form of the document sent to Mr. Grant, and
24 on your evidence we assume that a similar document was sent to Mr. and Mrs.
16:18:49 25 Sands. We may take it that this also identified Mr. James Kennedy as the
26 owner of the lands, is that correct?
- 27 A. That's correct.
- 28 Q. 548 And since you were not in direct contact with Mr. Kennedy on this issue, we can
29 only assume that was because Mr. Monaghan indicated to you that Mr. Kennedy is
16:19:13 30 the owner?

- 16:19:14 1 A. That is correct.
- 2 Q. 549 Do you know whether or not a copy of this correspondence in relation to this
3 letting was sent by you to Mr. Kennedy by way of confirmation of what his
4 relationship was to be with his tenants, Mr. and Mrs. Sands, for the duration
16:19:37 5 of the agreement?
- 6 A. I think from the correspondence that the Sands have provided. That what I
7 requested was that they would return the documentation to me with the cheque
8 for 1,500 made payable to James Kennedy. I would then have sent that on
9 directly to James Kennedy.
- 16:19:59 10 Q. 550 Yes.
- 11 A. And asked him to sign at least one copy and return it to me for my returning it
12 to the Sands.
- 13 Q. 551 Right. Do you have a recollection of receiving the signed copy back from
14 Mr. Kennedy?
- 16:20:15 15 A. No.
- 16 Q. 552 Do you have any recollection of Mr. Kennedy replying to you to indicate that it
17 was erroneous to describe him as an owner of the lands in this document?
- 18 A. I never recollect receiving any communication from Mr. Kennedy.
- 19 Q. 553 Well are you satisfied that would you, as a matter of course, having received a
16:20:39 20 signed document, as requested from the Sands, this you would have forwarded
21 that to Mr. Kennedy?
- 22 A. Yes.
- 23 Q. 554 You have no doubt about that.
- 24 A. I have no -- I presume that the Sands did what was here. They must because
16:20:54 25 the 1,500 was paid and I presume they returned it to me, and it would have been
26 forwarded on to James Kennedy.
- 27 Q. 555 I take it that if there was an issue between Mr. Kennedy and yourself as to
28 your authority to have drafted such an arrangement or to have entered into such
29 an agreement on his behalf, you would have learned about it pretty fast?
- 16:21:14 30 A. I presume so.

- 16:21:15 1 Q. 556 Would you recollect, I accept that you have no direct recollection of sending
2 him the agreement but if there had been a dispute of any sort regarding this
3 transaction, would that stick in your memory if it had happened?
4 A. All I can say is that I hope that it would have. That's all I can say.
- 16:21:40 5 Q. 557 Certainly --
6 A. I am fairly certain that I did not receive any returning correspondence or
7 contact or any comment. The only other way it would have come back is, say,
8 through Phil Monaghan but nothing came back through Phil Monaghan either that I
9 know of.
- 16:22:03 10 Q. 558 And you know of no dispute after the entry of this agreement between Mr. Sands
11 --
12 A. No.
- 13 Q. 559 -- and whoever the party to the agreement was for that year, namely,
14 Mr. Kennedy?
15 A. No.
- 16 Q. 560 Were you aware, Mr. Lynn, that there was subsequent correspondence between
17 Binchy Solicitors, Mr. Caldwell of that firm, and the Sands, regarding the
18 cheque which had been drawn by Mrs. Sands for payment?
19 A. No.
- 16:22:40 20 Q. 561 Obviously, as far as you were concerned, the appropriate person to whom the
21 cheque should be sent was Mr. James Kennedy. And the cheque received appears
22 to comply with the direction that you have given to the Sands, isn't that
23 right?
24 A. That is correct.
- 16:22:56 25 Q. 562 Do you know of any reason why the cheque would be unacceptable to Binchys in
26 the form of a cheque made payable to Mr. Kennedy in circumstances where the
27 cheque was being paid in respect of an agreement which Mr. Kennedy was
28 described as the owner and they as the licensees?
29 A. Well, I wouldn't know.
- 16:23:24 30 Q. 563 It would appear to be in conformity with what was requested of them in the

- 16:23:27 1 letter sent by you.
- 2 A. The Sands responded in the way that I requested.
- 3 Q. 564 Yes.
- 4 A. I can only surmise what Binchys -- I don't know.
- 16:23:43 5 Q. 565 The company Monarch Properties, the company didn't develop the property itself,
6 it ultimately went on to other ownership, isn't that right?
- 7 A. This is the Cherrywood lands?
- 8 Q. 566 Yes.
- 9 A. Those assets were sold on to Dunloe Ewart Plc.
- 16:24:14 10 Q. 567 And did you remain on with Monarch or did you go to Dunloe Ewart?
- 11 A. No, I formed my own company in 1997 when those assets were being acquired.
12 But I was retained by Dunloe to represent them on the Cherrywood lands for
13 future activity.
- 14 Q. 568 So you came to the Dunloe Ewart organisation, effectively, in a consultantancy
16:24:41 15 capacity, but bringing with you all the knowledge that you had gleaned from
16 1989 in respect of the surrounding lands and in particular in relation to any
17 dealings which Mr. Kennedy may have had with you in your capacity as
18 co-ordinator of the intended plans for Monarch in 1989 onward, isn't that
19 right?
- 16:25:06 20 A. That is correct.
- 21 Q. 569 And including the short leasing agreements that took place in these years?
- 22 A. That's correct.
- 23 Q. 570 For what they're worth.
- 24 A. For what they're worth, yes.
- 16:25:31 25 Q. 571 The involvement of Mr. Grant with these lands I think was somewhat an unhappy
26 one, isn't that right? Were your company ever paid for the use of the land?
- 27 A. I don't know. It wouldn't be my function to follow-up. My function was
28 getting a deposit, which I presume I got, and it would be up to then the
29 accounts section to follow-up.
- 16:25:56 30 Q. 572 Right. Do you remember discussing with Mr. John Caldwell or responding to

16:26:01 1 Mr. John Caldwell in connection with his endeavours to follow-up with Mr. Grant
2 the payment of the amounts which might be due, amounts which might be due to
3 Mr. Kennedy or a Kennedy company?

4 A. I have a recollection that a firm of solicitors made contact with me to get a
16:26:20 5 telephone number for Mr. Grant because the monies hadn't been paid. Whether
6 that was Mr. Caldwell or not I wouldn't know.

7 Q. 573 The firm that contacted you, I think you identify in your statement at
8 paragraph 1 as Binchys, isn't that right?

9 A. I hope I say, it could have been Binchys.

16:26:46 10 Q. 574 It may have been Binchys.

11 A. It may have been Binchys.

12 Q. 575 If I can just refer to page 2260. In relation to a specific query put to you
13 by the Tribunal in relation to Mr. Caldwell. You respond "I have no
14 recollection of meeting Mr. Caldwell. I may have dealt with Mr. Caldwell on
16:27:04 15 the phone when Mr. Grant was slow in paying for his land letting. I have no
16 recollection of passing on Mr. Grant's address and possibly his telephone
17 number -- I have a recollection of passing on Mr. Grant's address and possibly
18 his telephone number to a firm of solicitors which may have been Binchys other
19 than possibility, other than that possibility I have had no contact with
16:27:30 20 Mr. Caldwell."

21
22 If we refer back then to a document at page 1065.

23
24 You might perhaps confirm from your knowledge of Dundalk that it's prefix is
16:27:47 25 042 and in the top corner in manuscript there, there appears to be two
26 telephone numbers, which seem to be Dundalk telephone numbers.

27 A. That is correct.

28 Q. 576 And beneath it a direction, "Una get me a telephone number."

29 A. Yes, I can see that.

16:28:06 30 Q. 577 So this may be a record of the telephone number given by you of Mr. Grant's

16:28:13 1 phone number in Dundalk?

2 A. It certainly looks like that.

3 Q. 578 Thank you Mr. Lynn.

4

16:28:21 5 CHAIRMAN: Mr. Finlay, do you want to ask anything?

6

7 MR. FINLAY: Thank you, Chairman, I have no questions.

8

9 MR. MALONEY: Thank you, Chairman, no questions.

16:28:29 10

11 CHAIRMAN: Do you want to ask any questions?

12

13 JUDGE FAHERTY: I have just one question, Mr. Monaghan. You said to us

14 earlier that you were directed by Mr. Monaghan to make contact with

16:28:39 15 Mr. Kennedy.

16 A. That's right.

17

18 JUDGE FAHERTY: In the first instance. And you said to us that was after the

19 city manager's proposal in October November 1990.

16:28:49 20 A. That's right.

21

22 JUDGE FAHERTY: That was the first direction that you got to make contact with

23 Mr. Kennedy.

24 A. That's right.

16:28:55 25

26 JUDGE FAHERTY: Why was Mr. Monaghan directing you to contact Mr. Kennedy at

27 that juncture?

28 A. Because the manager's proposal of October 1990 had been received fairly badly

29 in the press and by the members. We were facing into the last run of the

16:29:16 30 review of the Development Plan. The local elections were to be held in June

16:29:22 1 1991, and Monarch came to the opinion that unless a compromise of the managers
2 proposal, acceptable locally and to the locals and acceptable to the majority
3 of the members was put forward. The likelihood was, that lands would not be
4 rezoned, and that is what happened. So that's why we were instrumental in
16:29:52 5 trying to get a compromise proposal acceptable to everybody. But it didn't
6 work.

7
8 CHAIRMAN: All right. Thank you. Thank you very much.

9 A. Thank you.

16:30:02 10
11 CHAIRMAN: Thank you very much for attending, Mr. Lynn. Half ten tomorrow.

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13
14 **THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,**
16:31:36 15 **WEDNESDAY 13TH OCTOBER 2004, AT 10.30 A.M.**

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