

13:30:19 1 **THE TRIBUNAL RESUMED FOR THE CLOUGHAN MODULE AT 2 PM AS FOLLOWS:**

2
3 MR. QUINN: Good afternoon sir. Mr. Niall Kenny please. Mr. Kenny is
4 already sworn.

14:04:04 5
6 CHAIRMAN: All right.

7
8 **MR. NIALL KENNY, PREVIOUSLY SWORN, CONTINUES TO BE QUESTIONED**

9 **BY MR. QUINN**

14:04:15 10
11 CHAIRMAN: Good afternoon, Mr. Kenny.

12 Q. 1 MR. QUINN: Good afternoon, Mr. Kenny. Mr. Kenny, you were last here on
13 the 9th November 2006 --

14
15 CHAIRMAN: Mr. Quinn is asking you the questions.

16 A. Oh I see, I'm sorry.

17 Q. 2 MR. QUINN: Sorry, Mr. Kenny, I'll start again. You were last here I
18 think on 9th November 2006, and on that occasion I think there was some
19 difficulty with the documentation which had been supplied and I think
20 there were certain documents that you hadn't seen in advance, and your
21 evidence was postponed and regrettably we haven't been able to get to it
22 before now. So I am going to take up, effectively, where we left off on
23 the previous occasion, if I may.

24 A. Yes.

14:04:55 25 Q. 3 Just to put matters in context, I think yourself, Mr. Williams and
26 Mr. Butler were involved in a project, which involved the acquisition of
27 lands in North County Dublin, the lands at Cloughran, isn't that correct?

28 A. That's correct.

29 Q. 4 And I think those lands were originally owned by Mr. Molloy and
14:05:12 30 Mr. Morgan?

- 14:05:13 1 A. That's correct.
- 2 Q. 5 And I think that you were a friend of Mr. Dillon's and Mr. Dillon was
3 involved in sourcing property for you in Glasnevin which fell through, and
4 I think he was involved in negotiating the acquisition of the Molloy lands
14:05:27 5 for you, is that right?
- 6 A. No, that's not right.
- 7 Q. 6 Okay.
- 8 A. He was involved in finding the property in Glasnevin all right, but my
9 memory of the land at Cloughran is that it was Tim Rowe of Pilgrim
14:05:44 10 architects who introduced us to that property.
- 11 Q. 7 Yes. Did Mr. Tim Collins have any involvement in introducing you to that
12 property?
- 13 A. The person that I remember is Tim Rowe, but Tim Collins would have been a
14 partner of Tim Rowe's.
- 14:06:04 15 Q. 8 Yes. I think Mr. Collins was a friend of Mr. Butler's and was known to
16 Mr. Butler, is that correct?
- 17 A. I think so, yes. I believe so.
- 18 Q. 9 And Mr. Butler has given evidence that Mr. Collins sourced the lands, you
19 thought it was Mr. Rowe, but would you accept it may have been
14:06:21 20 Mr. Collins?
- 21 A. They were a partnership.
- 22 Q. 10 But either way, would you agree with me that your friend Mr. Dillon
23 submitted an invoice in relation to the lands also, isn't that correct?
- 24 A. He did, yes.
- 14:06:33 25 Q. 11 And I think in fact he wrote to Mr. Kean your solicitors on the 13th
26 September '89 at 533, advising that the lands had been purchased subject
27 to contract for a sum of 165,000 pounds, those are the Molloy lands, is
28 that right?
- 29 A. I believe that's correct, yes.
- 14:06:50 30 Q. 12 We can see that. And I think in time Mr. Dillon was also involved in the

- 14:06:53 1 sale of the combined lands in 1996, isn't that correct?
- 2 A. He was, yes.
- 3 Q. 13 Now, did you have any meetings or negotiations and discussions with
- 4 Mr. Collins in 1989?
- 14:07:06 5 A. No.
- 6 Q. 14 And who retained the services of Mr. Collins in 1989?
- 7 A. I believe it was John Butler.
- 8 Q. 15 Yes. On what basis was Mr. Collins retained?
- 9 A. Purely to find the land, to find -- his original brief I think was to,
- 14:07:24 10 that he was to find somewhere where we could develop another Courtyard
- 11 Restaurant.
- 12 Q. 16 I think you were of the view that the site in Cloughran, whilst it was
- 13 suitable for an hotel development, was unsuitable for a restaurant
- 14 development?
- 14:07:41 15 A. At the very first when I saw it I thought it was just a wonderful place
- 16 for a restaurant because it had very attractive stone buildings on it and
- 17 very extensive barns and other stuff that you would expect to find at a
- 18 horse stud farm. And I thought it would convert nicely into a very
- 19 atmospheric type of restaurant, it was only later, and I suppose I should
- 14:08:14 20 have done the homework beforehand, that I realised it was so far from
- 21 chimney pots or houses, that it would be difficult to get a market to stir
- 22 up a market for the restaurant. So we shifted our attention to the
- 23 possibility of an hotel.
- 24 Q. 17 Did you retain the firm of architects, Pilgrim Architects at that time to
- 14:08:39 25 provide a planning report?
- 26 A. We did, yes.
- 27 Q. 18 And subsequently did Mr. Rowe and/or Mr. Collins involve themselves in
- 28 providing plans for an application for an hotel on the site together with
- 29 ancillary development?
- 14:08:55 30 A. We never made the application.

14:08:56 1 Q. 19 I accept that but plans were prepared I think in 1991?
2 A. Yes, quite detailed plans.
3 Q. 20 At some stage there was some negotiations and discussions between
4 yourselves and the adjoining landowners, Aer Rianta or Aer Lingus and I
14:09:10 5 think it was brought to your attention that any application for permission
6 would be opposed?
7 A. Yes, I believe John --
8 Q. 21 Yes. And I think at some stage then, either in late '92 or early '93 a
9 decision was made that you would revise or attempt to revise the zoning on
14:09:27 10 the land?
11 A. Yes.
12 Q. 22 And I think the existing zoning, the agricultural zoning which would
13 provide or allow open for consideration the development of an hotel
14 wasn't, in your opinion, sufficient and you decided you'd improve the
14:09:43 15 value of the lands by getting an industrial zoning on the lands if you
16 could?
17 A. Well, you see there was a lapsed planning permission for warehousing on
18 that land also.
19 Q. 23 Why didn't you apply for the hotel, make the planning application for the
14:09:57 20 hotel?
21 A. The reason for us not applying was I went with Tony Lawton who was the
22 engineer for the project, to meet some of the officials in Dublin County
23 Council and we were -- in order to build the hotel we would have to get a
24 sewerage connection into the Baskin Lane sewer. So we were in to
14:10:28 25 negotiate getting that connection and we were told that even if the
26 connection existed we still wouldn't be granted planning permission for a
27 hotel because the sewage treatment works at, I think it was Malahide, were
28 not sufficient, that they simply were overloaded at that stage, and while
29 an upgrade was in the pipeline, it would be many years before it would be
14:10:58 30 carried out. And that particularly just put an end to the possibility of

- 14:11:06 1 us being granted a planning permission.
- 2 Q. 24 So the change in zoning had nothing got to do with a continuation of a
3 desire to put an hotel on the site, you were merely improving the value of
4 the site by improving the zoning on the site, would that be fair?
- 14:11:23 5 A. Well we had to, we had to look to some methodology of recovering the cash
6 that had been put into the site, and we decided, at the time there was a
7 zoning round going on and I think it was either Tim Rowe or Tim Collins
8 suggested that we should avail of the opportunity to get a planning, get
9 zoning.
- 14:11:47 10 Q. 25 So it was in that context that you got yourself involved in the zoning
11 process in '93, is it?
- 12 A. Yeah but not to the exclusion of an hotel.
- 13 Q. 26 Yes. Now, in that regard I think you had been advised by Pilgrim or by
14 1993, I think they were known as Project Architects and you were being
14:12:03 15 advised by Mr. Collins and Mr. Rowe within that firm, is that fair to say?
- 16 A. In the main, any dealings I had were with Mr. Tim Rowe.
- 17 Q. 27 Yes but Mr. Collins was also involved, isn't that right?
- 18 A. He was a partner of Mr. Rowe, yes.
- 19 Q. 28 And Mr. Butler has given evidence that at a meeting in Ambrose Kelly's
14:12:20 20 office in early '93, he was introduced by Mr. Collins to Mr. Frank Dunlop
21 and that that introduction was in the context of Mr. Dunlop being of
22 assistance in lobbying of councillors or identifying councillors or
23 helping with the lobbying that would be necessary to have the lands
24 rezoned?
- 14:12:40 25 A. That may well be correct, but I wasn't there, so --
- 26 Q. 29 Yes, but Mr. Butler went on to say that he then reported back to his
27 partners, yourself and Mr. Williams, and that he then having discussed it
28 with you went on to have a meeting with Mr. Dunlop in the Royal Dublin
29 Hotel?
- 14:12:59 30 A. He did come and speak to us about it all right.

- 14:13:02 1 Q. 30 Yes, and what did he say to you, when he did speak to you about it?
- 2 A. He said that he had been advised that this person, Mr. Dunlop, would be of
- 3 great value to us in putting together an application for the rezoning of
- 4 the lands, that he was an expert in that field, had been through the
- 14:13:28 5 process very often and could help us and orchestrate us.
- 6 Q. 31 Did he tell who had so advised him?
- 7 A. I don't believe so.
- 8 Q. 32 And had you taken any steps prior to that conversation with Mr. Butler, to
- 9 have the lands rezoned?
- 14:13:51 10 A. No, I hadn't, but I had taken steps to see what might be possible and I
- 11 had open discussions with another consultant altogether about the
- 12 possibility of him assisting us to get a planning permission for an hotel,
- 13 and he said he would have to research whether or not he could be of any
- 14 benefit and he came back to say that he thought he could.
- 14:14:19 15 Q. 33 This is another consultant that you, I think you advised the Tribunal of
- 16 those contacts when you came to your private interview, and that private
- 17 interview I think is in the brief?
- 18 A. Yes.
- 19 Q. 34 Can I ask you, Mr. Kenny, that when you discussed Mr. Dunlop with
- 14:14:40 20 Mr. Butler, was Mr. Butler in a position to advise you as to how much Mr.
- 21 Dunlop's involvement would cost the consortium?
- 22 A. Well, I believe so.
- 23 Q. 35 What did he say?
- 24 A. I believe he said he quoted some figure of around 20,000 pounds.
- 14:14:59 25 Q. 36 And what was your reaction to that?
- 26 A. Well, I had had a very similar figure quoted to me by the other
- 27 consultant.
- 28 Q. 37 Yes.
- 29 A. So I said that that's probably the market price, but I did say that we
- 14:15:12 30 should check Mr. Dunlop out and John Butler said that he had already done

14:15:19 1 that and he was perfectly satisfied he was the right man to hire.

2 Q. 38 Yes. So when Mr. Butler spoke with you he spoke with you about Mr. Dunlop

3 in the context of Mr. Dunlop's involvement costing something in the order

4 of 20,000 pounds?

14:15:34 5 A. I believe so.

6 Q. 39 And I think the other person that you had liaised with or had approached

7 in relation to the matter had mentioned a figure of 15,000 pounds and I

8 think when you met with the Tribunal I think you, the legal team, I think

9 you thought that a somewhat similar figure was being sought by Mr. Dunlop?

14:15:58 10 A. I don't remember.

11 Q. 40 Yes. But in any event it was 15/20,000 pounds that was mentioned and it

12 was mentioned in the context of Mr. Dunlop becoming involved and it was

13 mentioned in the first mention of Mr. Dunlop by Mr. Butler and it was put

14 to you as a figure that had been sought or mentioned by Mr. Dunlop by way

14:16:17 15 of remuneration for becoming involved?

16 A. I believe so.

17 Q. 41 Yes. And then I think at some subsequent occasion you, all three, agreed

18 that Mr. Dunlop would be involved and Mr. Butler says he went back and had

19 a meeting in the Royal Dublin Hotel with Mr. Dunlop, he received from Mr.

14:16:34 20 Dunlop a series of names and addresses and telephone numbers of

21 councillors. I think there were 78 in all involved, and you set about,

22 Mr. Dunlop in accordance with his agreement, set about arranging meetings

23 with those councillors for you, is that correct?

24 A. No.

14:16:53 25 Q. 42 You better tell the Tribunal your recollection of what happened?

26 A. Well, my recollection of it is that John did go back and see Dunlop having

27 spoken to us and that having then come back to us again he said that we

28 should go and see Mr. Dunlop also, and my memory is that Tom Williams and

29 I went to see Mr. Dunlop in his office, and that at that meeting he had

14:17:31 30 already been retained by John, he gave us the same kind of information

14:17:39 1 that he had already given John Butler, namely the sheets with photographs
2 of the councillors on it and all their contact details, but he never
3 arranged a meeting. Every meeting I had with a councillor I arranged
4 myself. I should rephrase that, he never arranged a meeting for me.

14:18:09 5 Q. 43 What were Mr. Dunlop's obligations to the consortium having supplied the
6 details of the councillors?

7 A. He took us through, well first of all he arranged to break up the
8 councillors into areas and that each one of us was to take an area and go
9 off and meet those particular councillors and lobby them as best we could,
10 to vote in our favour. But he also assisted us in the drafting of a
11 number of single page information sheets on different aspects of the, of
12 what we proposed to do and how he proposed to go about it.

13 Q. 44 Did you ever have a discussion with Mr. Dunlop in relation to his fees or
14 charges?

14:19:04 15 A. No.

16 Q. 45 At that time, at that stage or at any stage was there ever any mention of
17 money between yourself and Mr. Dunlop?

18 A. I don't remember ever discussing fees with Mr. Dunlop.

19 Q. 46 Mr. Dunlop. Or payments of any kind to Mr. Dunlop?

14:19:18 20 A. No, oh I do, there is one payment. At the meeting that we were in with --
21 I was with Tom in Mr. Dunlop's office, he said that he would require some
22 funds to support the councillor's favourite charities and projects and so
23 on, such as buying a set of jerseys for a football team or something like
24 that, and that he needed 2,500 for that, and I believe he sent an invoice
14:20:01 25 for that.

26 Q. 47 If we can have 1489 please, there is an invoice in the circulated brief
27 dated 29th January '93, it was paid on that date and it's for a sum of
28 3,025 pounds, is that the -- are those the monies to which you refer?

29 A. I suppose so.

14:20:22 30 Q. 48 So you are meeting with Mr. Dunlop would have taken place prior to the

14:20:25 1 29th January and those payments, that payment of 3,000 pounds odd payment
2 was a payment to put Mr. Dunlop in funds so that he could make
3 disbursements towards councillor's favourite charities as you describe it?
4 A. I believe so, yes.

14:20:44 5 Q. 49 But other than the, your discussions in relation do that payment you had
6 no other discussion with Mr. Dunlop and the discussions and the engagement
7 of Mr. Dunlop were all done through Mr. Butler, is that your evidence?
8 A. I believe so, yes.

9 Q. 50 And in relation to the 20,000 which Mr. Dunlop was entitled, when was that
10 to be paid?
11 A. Well, I know that in my first interview with the Tribunal that I said
12 everybody was paid after the land was sold, but that's now patently not
13 right. But certainly after the land was sold there were, there was a big
14 long list of people whose fees were paid and I became confused and thought
14:21:03 15 that Mr. Dunlop was part of that. It was, after all, many years ago. But
16 he certainly was paid.

17 Q. 51 We know from the discovery made by the bank that there were a series of
18 payments by Blackfern Limited to Frank Dunlop & Associates and that's
19 discovery that has come in I think since your statement and since your
14:21:35 20 interview, isn't that correct?
21 A. That's right.

22 Q. 52 And you will accept I take it, that all of those payments were in fact
23 made?
24 A. Oh, yes and Mr. Montgomery our solicitor set out all that have in a letter
14:22:13 25 for the Tribunal.

26 Q. 53 Yes but that was reviewing the documentation which had been furnished by
27 third parties on discovery, isn't that right?
28 A. Yes, that's correct.

29 Q. 54 But when you came to meet with the Tribunal legal team and when you
14:22:24 30 supplied your statement to the Tribunal in March of 2006 at 361, I think

14:22:31 1 you were of the opinion that the payments to Mr. Dunlop were all made
2 after the property was sold, isn't that right, and that they were paid
3 from the proceeds of sale?
4 A. That was my incorrect memory at that time.

14:22:44 5 Q. 55 I think in fact that they were paid by Coopers & Lybrand. If we look at
6 the document on screen, do you see the very last sentence "The courtyard
7 paid the 2,500 pounds and the fees were paid by Coopers & Lybrand by
8 cheque" do you see that?
9 A. Yes.

14:22:59 10 Q. 56 So you had a recollection up to 2006, that in fact Mr. Dunlop's payments
11 were made by Coopers & Lybrand and made after the sale of the property and
12 out of the proceeds of sale?
13 A. Yes.

14 Q. 57 But that is clearly incorrect now, isn't that right?
14:23:13 15 A. Oh it is incorrect, yes.

16 Q. 58 Now, in relation to the actual payments, there is no doubt but that Mr.
17 Dunlop supplied an invoice after the first vote in April of '93, if we can
18 have 902, and I think that's an invoice for 10,000 pounds and VAT, isn't
19 that right?
14:23:35 20 A. Yeah, that's a pro forma invoice.

21 Q. 59 Yes, did you know that invoice had been delivered?
22 A. No, no. I had nothing to do with any of these payments, they were all
23 either handled by Johnnie and Tom and any of the monies that were paid out
24 of The Courtyard would have been paid by Tom.

14:23:52 25 Q. 60 Do you see the reference in that invoice to the "agreed fees"?
26 A. To "agreed fees", yes, I do.

27 Q. 61 Mr. Dunlop was of the view that he had looked for 20,000 pounds but that
28 he had agreed a fee of 10,000 pounds with a view perhaps to negotiating a
29 success fee at a later stage, your recollection is that it was 20,000
14:24:16 30 pounds from the outset?

- 14:24:21 1 A. That's what I believe, yes.
- 2 Q. 62 Was there any mention of a postponement of those fees until the lands were
3 developed or sold?
- 4 A. I don't remember anything of that nature.
- 14:24:33 5 Q. 63 Would it be fair to say that it was your recollection up until the
6 documentation, the discovered documentation came to hand, that in fact Mr.
7 Dunlop had waited for his fees from 1993 until 1996?
- 8 A. Yes, that's what I thought.
- 9 Q. 64 And why did you think that Mr. Dunlop had not been paid between the time
14:24:54 10 he carried out his works for the consortium and the sale of the lands?
- 11 A. Why did I think he had not been paid?
- 12 Q. 65 Yes, why did you think he had received no payment in '93/'94/'95, not
13 until 1996?
- 14 A. I simply got confused, because there were quite a few of our advisers and
14:25:17 15 solicitors and so on, who waited until the lands was sold to get their
16 fees.
- 17 Q. 66 Well, were you negotiating with your professional advisers throughout,
18 from 1989 forward, that they would all have to await the sale of the lands
19 for payment of their fees?
- 14:25:33 20 A. No, I don't remember any such negotiation but they did.
- 21 Q. 67 Yes. For example Dillon & Associates were paid, if we can have 1275
22 please? Out of the proceeds of sale, if we look at a cheque dated 19th
23 July '96 at 2137, you will see the bottom?
- 24 A. Yeah.
- 14:26:14 25 Q. 68 Now, is that Lawtons or is it -- or Dillon?
- 26 A. It could be Lawton Associates.
- 27 Q. 69 Yes. If we just increase the document on screen please, I think Ambrose
28 Kelly was paid, sorry Hamilton Osborne, was that in relation to the sale
29 of the lands?
- 14:26:45 30 A. That's right, that was their fee in relation to the sale.

- 14:26:55 1 Q. 70 If we can revert perhaps to 1275 please? I think we see that Project
2 Architects received 33,880 pounds on the 19th July '96, when did Project
3 supply their services to the consortium?
4 A. Pilgrim were subsumed into Project Architects.
- 14:27:14 5 Q. 71 Yes, but Pilgrim's work I think was done in 1991?
6 A. Oh no, Pilgrim's work continued. Well, Tim Rowe's work, under either
7 Pilgrim or Project continued right through until the end of the rezoning.
- 8 Q. 72 That would have been, I think the second confirmation vote was in
9 September or sorry early October, 1993?
- 14:27:43 10 A. I don't know if he was involved from the first to the second vote but he
11 certainly was heavily involved in the first vote.
- 12 Q. 73 Which would have been in the 1st April '93.
13 A. Yes.
- 14 Q. 74 It may have ended after that, do you think?
14:27:55 15 A. It may have.
- 16 Q. 75 Between early '93, April or September '93 and 1996 Mr. Rowe, Pilgrim or
17 Project had to wait their fees until lands were sold?
18 A. Yes.
- 19 Q. 76 And was that by agreement?
14:28:12 20 A. I presume it was by agreement.
- 21 Q. 77 And Mr. Rowe's works I think extended back to a report I think initially
22 in October 1989, but the majority of his work in relation to the plans for
23 the hotel etcetera, I think were done throughout 1991?
24 A. I wouldn't remember exactly.
- 14:28:31 25 Q. 78 We can call up the documentation in -- it might be preferable if I did.
26 If we could have 1385, this is a report by Pilgrim Associates Architects
27 Designers at 1386 we see it's an outline planning report for the
28 development of the lands and it's dated August 1991, do you see that?
29 A. I do.
- 14:29:00 30 Q. 79 And at the very end if you go to 1402, you will see that the plans are

14:29:05 1 dated February 1991, the client is described as Mr. Murnaghan, do you see
2 that?
3 A. Yes.
4 Q. 80 So can the Tribunal take it that right through, from at least 1991 to 1993
14:29:25 5 and beyond, there was an understanding or an agreement between yourselves
6 and Pilgrim and subsequently Project, that fees would be payable when the
7 lands were sold?
8 A. If I remember correctly there were several payments to Pilgrim prior to
9 that.
14:29:45 10 Q. 81 So are you saying that the payments at 1275 to Pilgrim Architects in the
11 sum of 19,700 pounds which we see at document number 2137, on the 19th
12 July '96, you see it -- sorry maybe it's 1938, perhaps if I can have 1938?
13 Sorry 2138 apologise, you see the Project fees?
14 A. Yeah.
14:30:30 15 Q. 82 They are definitely paid in July '96?
16 A. Yes.
17 Q. 83 And are you saying that the 19,700 paid to Pilgrim had been paid over the
18 years up to '96?
19 A. I think so, yeah.
14:30:45 20 Q. 84 And were included in the '96 final account?
21 A. Yes.
22 Q. 85 What about the fees to Collins Consulting Services of 29,613 pounds?
23 A. Well, I was absolutely staggered by that.
24 Q. 86 If I could have 2137 please, you see those fees?
14:31:10 25 A. Yes, I do.
26 Q. 87 Are they fees to Mr. Tim Collins or his company?
27 A. They are, yeah.
28 Q. 88 Mr. Butler was of the view that you rang him in, I think he was involved
29 with the Olympics in America and you asked him to pay that account to
14:31:28 30 Mr. Collins?

- 14:31:29 1 A. I certainly didn't. I rang John Butler to complain about this.
- 2 Q. 89 What were these fees in connection with?
- 3 A. At the time I spoke to John Butler, my recollection of the conversation
- 4 was that that was an agreed fee with Tim Collins and would have to be
- 14:31:50 5 paid.
- 6 Q. 90 You told him it was an agreed fee?
- 7 A. I certainly didn't tell him it was agreed fee. It wasn't agreed with me.
- 8 I was outraged by it because I thought that Tim Collins had been
- 9 adequately paid by the payments to Pilgrim and to Project.
- 14:32:12 10 Q. 91 And what did Mr. Butler say to you?
- 11 A. He said it was an agreed fee with Tim Collins and it would have to be
- 12 paid.
- 13 Q. 92 And what was it in respect of?
- 14 A. I don't know.
- 14:32:25 15 Q. 93 Whilst giving evidence yesterday, Mr. Kenny, if I could have day 902 and
- 16 if we can get question 360, I don't know if you are familiar with the
- 17 evidence given yesterday by Mr. Butler? Perhaps we can take it at
- 18 question 359.
- 19
- 14:33:03 20 Mr. Butler is giving evidence and he is being asks "Who would have carried
- 21 out those negotiations and what about the negotiations with Mr. Collins
- 22 for the sum of 29,000 in relation to Collins Consulting Services?
- 23 Answer: I am saying this on all these, you know, with Mr. Collins, with
- 24 Mr. -- with the Lawton & Associates, the engineers with Frank Dunlop, with
- 14:33:22 25 Pilgrim, with Dillon, and as I say the 1455, I don't know what that was in
- 26 connection with at all.
- 27 Question: So is it your evidence to the Tribunal, Mr. Butler, that you
- 28 never agreed a payment to Mr. Collins?
- 29 Answer: Yes.
- 14:33:37 30 Question: You never agreed a finder's fee for Mr. Collins or with

14:33:42 1 Mr. Collins?

2 Answer: No, that was all Niall Kenny. When I say Niall Kenny and Tom

3 Williams, but Niall had been the fore runner, that in my opinion --

4 Question: Mr. Kenny is the person who would have negotiated the fees?

14:33:54 5 Answer: Mr. Kenny is the thing who would have knocked the fees down to

6 whatever". You see that?

7 A. I do, yes.

8 Q. 94 Would you agree with me that that's evidence that suggests that you are

9 the person who would have negotiated the fees and agreed the fees with

14:34:11 10 Mr. Collins?

11 A. That does say that, yes.

12 Q. 95 And is it -- do you query or do you take issue with that evidence?

13 A. I totally dispute it.

14 Q. 96 Is it your evidence to the Tribunal that it was Mr. Butler who agreed the

14:34:28 15 fee with Mr. Collins?

16 A. Mr. Collins and Mr. Dunlop were introduced to Tom Williams and I by

17 Mr. Butler. All dealings with both of them, to my recollection were

18 carried out by Mr. Butler. I had very detailed meetings with Tim Rowe of

19 Pilgrim, purely to do with the construction of an hotel and a restaurant.

14:35:05 20 Q. 97 Did Mr. Butler tell you why he was suggesting, or insisting, that

21 Mr. Collins be paid 29,000 pounds?

22 A. He simply said it was an agreed fee and it would have to be paid.

23 Q. 98 Did he tell you when it was agreed?

24 A. He didn't.

14:35:22 25 Q. 99 Did he tell you what it was in respect of?

26 A. No.

27 Q. 100 Did you ask him?

28 A. I don't recall the conversation that well, except that I was furious about

29 the fee and I rang Johnnie and I believe he was in Atlanta at the time for

14:35:37 30 constructing the stages for the Olympics, and Johnnie has a way when he

14:35:46 1 wants, he doesn't want to get involved in a conversation of saying that
2 he's extremely busy and he has to get off and he can't -- it would have
3 been that kind of conversation, just get rid of it as quickly as possible.

4 Q. 101 But did he tell you what Mr. Collins had done to deserve a fee of 29,000
14:36:06 5 or 23,000 -- 29,000 pounds?
6 A. No, he did not.

7 Q. 102 Obviously any architectural advice given was given by Mr. Rowe, because
8 Mr. Rowe is an architect I think by training?
9 A. That's absolutely right, yes.

14:36:21 10 Q. 103 And you paid for your architectural advice in that you paid both Pilgrim
11 and Project Architects?
12 A. That's right.

13 Q. 104 So would it be fair to say Mr. Collins wasn't being paid for architectural
14 advice?
14:36:35 15 A. I disputed this payment with John Butler because I didn't believe it was
16 -- I didn't believe it should be paid.

17 Q. 105 Now --
18 A. And I didn't, if I didn't believe it shouldn't be paid I must have assumed
19 that it wasn't for -- I didn't see or know of any work that was done for
14:36:57 20 it.
21 Q. 106 Yes.
22 A. But I assumed it must have been some kind of finder's fee that John had
23 agreed with Tim Collins.

24 Q. 107 Well, the lands had been found I think as far back as 1989?
14:37:10 25 A. That's right, and I believed that both Tim Collins and Tim Rowe had been
26 well paid in the fees they were paid over as architectural fees.

27 Q. 108 I suggest to you that if it were a finder's fee then it was a fee that was
28 carried from 1989 right through to 1996?
29 A. Mr. Quinn, I am not saying it was a finder's fee, I am saying that I don't
14:37:30 30 know what it was for, I am saying that I disputed it.

- 14:37:34 1 Q. 109 But did Mr. Collins give you any assistance in having the lands rezoned
2 for example?
3 A. Not that I am aware of.
- 4 Q. 110 Well, did you suspect that maybe this fee related to assistance given in
14:37:46 5 the rezoning of the lands?
6 A. No, I have just said I didn't know what it was for, I disputed it, I was
7 outraged by it.
- 8 Q. 111 Yourself and your colleague Mr. Williams were between you paying two
9 thirds of this fee, isn't that right?
14:38:00 10 A. That's right.
- 11 Q. 112 You had never known of an agreement to pay Mr. Collins?
12 A. No.
- 13 Q. 113 Had such an agreement been made to pay him a finder's fee that agreement
14 would have dated back to some time in 1989?
14:38:13 15 A. I suppose, yes.
- 16 Q. 114 Prior to September 1989, because I think the Molloy lands, as we saw on
17 the documentation a moment ago, was sold in 19 -- in September 1989, isn't
18 that right?
19 A. I'm sure it's on the documents, so if it's September 1989 that's it.
- 14:38:35 20 Q. 115 And between September 1989 and March 1996, had Mr. Butler ever indicated
21 to yourself and your colleague that there would be a fee payable to
22 Mr. Collins?
23 A. Well, I'm not -- I can't speak for Tom Williams, but he certainly never
24 said it to me.
- 14:38:54 25 Q. 116 When he raised the issue, was it -- how did you come to realise that it
26 was proposed to pay Collins Consulting Services 29,630 pounds?
27 A. I got a list from Jim Mullarney in Coopers & Lybrand.
- 28 Q. 117 Were there invoices backing up that list?
29 A. No there was just simply a list that was supplied to me.
- 14:39:15 30 Q. 118 Yes but who had provided the information to Mr. Mullarney?

- 14:39:19 1 A. I presume Tom and John.
- 2 Q. 119 For example who had provided Mr. Mullarney with the information that Frank
3 Dunlop public relations consultant should be paid 23,025 pounds?
- 4 A. I presume that was Jim Mullarney and his team extraction from the books of
14:39:37 5 The Courtyard.
- 6 Q. 120 If I could have 1275 please? Are you saying that Mr. Mullarney and his
7 team would have come upon invoices from Frank Dunlop & Associates or they
8 would have come upon return paid cheques from the Courtyard Restaurant
9 totalling 23,025 pounds?
- 14:40:00 10 A. Not 53, 23.
- 11 Q. 121 No that's what I said 23?
- 12 A. 23. No I am not saying anything, I'm presuming that's where it came from.
- 13 Q. 122 Did you ever query any of the payments to Mr. Dunlop?
- 14 A. No, I never queried any of the payments to Mr. Dunlop.
- 14:40:17 15 Q. 123 Were you aware the payments were being made on an ongoing basis?
- 16 A. No, I wasn't aware they were being paid on an ongoing basis.
- 17 Q. 124 All of the payments that we have been able to discover on third party
18 discovery from banks etcetera were made prior to the confirmation vote in
19 October '93?
- 14:40:38 20 A. Yes.
- 21 Q. 125 In other words apart from the 2,500 pounds payable, paid in late January
22 '93, the other payments appear to have been made some time between the 1st
23 April and I think July '93 insofar as we have been able to discover them?
- 24 A. That I think concurs with the letter that Mr. Montgomery sent to the
14:40:59 25 Tribunal.
- 26 Q. 126 Yes. Do you know if Mr. Dunlop received any payments after the
27 confirmation vote?
- 28 A. I'm not aware. I'm only aware of this 23,025.
- 29 Q. 127 Did you query that payment with Mr. Butler or Mr. Williams?
- 14:41:15 30 A. No, I didn't because it was close to what I had believed we were to pay.

- 14:41:20 1 Q. 128 There are entries in Mr. Dunlop's telephone attendances for phone calls
2 from a Mr. Niall Kenny, would you have from time to time rang Mr. Dunlop
3 in his offices, for example if we look at 853 please, there is an entry in
4 a telephone message of 10th March '93 for 9.15 telephone message "Niall
14:41:40 5 Kenny" and a number given, "wants to talk to you this morning", then if
6 you just go down to 11.50 underneath Mr. Butler's entry you see "Niall
7 Kenny-zoning is E"?
- 8 A. Yes.
- 9 Q. 129 Could you have been attempting to relay on to Mr. Dunlop in March 1993
14:42:00 10 that the required zoning for the lands was an industrial zoning, an E
11 zoning?
- 12 A. It could be, yeah.
- 13 Q. 130 Yes. Did you speak to any councillors, Mr. Kenny?
- 14 A. I did.
- 14:42:15 15 Q. 131 Was Mr. Dunlop present at any of them?
- 16 A. He was not.
- 17 Q. 132 Did you have any discussion with Mr. Collins about the rezoning of the
18 lands?
- 19 A. None whatsoever but I had many discussions with his partner, Tim Rowe.
- 14:42:31 20 Q. 133 Yes. There is other messages recorded in Mr. Dunlop's telephone
21 attendances, for example on the 15th March '93 at 869 there is a 10.05
22 phone message, "Niall Kenny" do you see that?
- 23 A. I do.
- 24 Q. 134 Could that be a correct entry, could you have been seeking Mr. Dunlop in
14:42:51 25 March '93?
- 26 A. Oh, yes.
- 27 Q. 135 Now, there is an entry of Mr. Dunlop's diary for the 16th March at 871 of
28 a 12 o'clock meeting "Niall Kenny/J Butler", do you see that, a Wednesday
29 meeting, a Tuesday meeting?
- 14:43:07 30 A. I do.

- 14:43:08 1 Q. 136 Do you recall ever attending Mr. Dunlop or speaking to Mr. Dunlop in
2 relation to, or being in his offices with Mr. Butler or your colleague
3 Mr. Williams?
- 4 A. I was with Tom Williams in Frank Dunlop's offices immediately after John
14:43:26 5 had confirmed to him that we were going to use his services. Now, it's
6 entirely possible that I did meet him again with John Butler but I don't
7 remember it.
- 8 Q. 137 There is a further entry for a similar meeting on the 25th March at 881,
9 it's an 8 o'clock entry, Thursday 25th, bottom left hand corner, "Niall
14:43:50 10 Kenny/J Butler", do you see that?
- 11 A. Is that 8 o'clock in the morning?
- 12 Q. 138 I suspect so, yes.
- 13 A. Right, that would be very unusual.
- 14 Q. 139 Yes. If you look at Wednesday 24th March, do you see 12.30 "Niall Kenny
14:44:06 15 to ring", do you see that? Now that could be an entry made by Mr. Dunlop
16 to remind him to contact you?
- 17 A. It could be.
- 18 Q. 140 And if we go to the prefers day, the Tuesday the 23rd there is a 12
19 o'clock entry "noon N Kenny" do you see that?
- 14:44:27 20 A. I do.
- 21 Q. 141 Was there quite a bit of contact between yourself and Mr. Dunlop and Mr.
22 Dunlop's office in the lead up to the first vote in April '93?
- 23 A. No, there wouldn't have been a lot of contact between me and Mr. Dunlop in
24 his office, but I certainly did call him on several occasions, and it was
14:44:46 25 to do with the list of councillors that were my responsibility to arrange
26 meetings with and have discussions with.
- 27 Q. 142 Would you have been relaying back to Mr. Dunlop your, the outcome of those
28 meetings?
- 29 A. That is my, the best of my memory.
- 14:45:10 30 Q. 143 Yes. Now, there was some confusion from Mr. Butler yesterday when I put

14:45:15 1 on screen a number of attendances which had a mobile telephone number
2 beside them and if I could perhaps, in fairness to Mr. Butler, if I could
3 show you an entry for the 31st March '93 at 894, it's a 2.40 entry. There
4 is a mobile number given, do you see that, 2.40 it's just about, a third
14:45:45 5 up from the end?
6 A. I do.
7 Q. 144 Do you recognise -- I don't want to you read out the number, but do you
8 recognise the number?
9 A. I don't.
14:45:52 10 Q. 145 You don't recognise that mobile number?
11 A. I don't, no I didn't have a mobile phone in those days.
12 Q. 146 Okay, perhaps if I take you to 1025 this is an entry for the 14th
13 September '93, 11.50 from Mr. John Butler and again there is a number
14 given and again I don't want you to read out the number but is that a
14:46:10 15 number you were familiar with?
16 A. Sorry, I have just realised that I have left my mobile on, I will turn it
17 off. Could you ask me the question again?
18 Q. 147 Yes, sorry. Do you see the entry for 14th September, 11.50 John Butler
19 and a mobile number given?
14:46:26 20 A. Yes.
21 Q. 148 Do you recognise that number?
22 A. No.
23 Q. 149 Did you ever have occasion --
24 A. Is that the same as the other number.
14:46:34 25 Q. 150 No it's not?
26 A. All right.
27 Q. 151 Did you ever have occasion to ring Mr. Butler on his mobile?
28 A. Oh I did, yeah.
29 Q. 152 Can the Tribunal take it that that's not Mr. Butler's mobile number?
14:46:47 30 A. No you can't. I don't know whose number that is.

14:46:50 1 Q. 153 But you were familiar presumably and would have been familiar with
2 Mr. Butler's number having rang him on it.
3
4 CHAIRMAN: 15 years ago.

14:47:00 5 A. I'm afraid it's too many years ago.

6 Q. 154 MR. QUINN: Okay. In any event you can't tell the.
7
8 MR. DOHERTY: I can advise that we are making inquiries or rather
9 Mr. Butler is making inquiries to see as to whether he had a number at
10 that time, he doesn't believe so, but he is making inquiries.
11
12 CHAIRMAN: All right.

13 Q. 155 MR. QUINN: If we revert to 894, you can confirm that the number at 894 is
14 not your mobile number?

14:47:25 15 A. I can confirm that.

16 Q. 156 Yes. Evidence has been given, Mr. Kenny, by Mr. Murnaghan solicitor,
17 Mr. Murnaghan I think acted on your behalf in relation to the Morgan
18 lands?

19 A. He did, yes.

14:47:45 20 Q. 157 AND Mr. Murnaghan has advised the Tribunal that he was told by either
21 yourself or Mr. Butler, he can't remember which of you, that Mr. Dunlop
22 was involved, and that he was, as your solicitor, moved to advise against
23 his retention and when he queried it, either yourself or Mr. Butler said
24 that you were in too far?

14:48:06 25 A. Well he certainly raised the issue with me.

26 Q. 158 Yes.

27 A. But it would have been very modest, it certainly wouldn't -- I wouldn't
28 have used the words "in too far".

29 Q. 159 Yes but he certainly raised with you, cautioned you against using Mr.
14:48:27 30 Dunlop?

14:48:27 1 A. He did, but when I queried him about that he didn't have any foundation.

2 Q. 160 I'm not --

3 A. Except that he said that he had heard a rumour.

4 Q. 161 Yes. And did he tell what you the rumour was?

14:48:38 5 A. No, he didn't.

6 Q. 162 But his advices were not to use Mr. Dunlop, is that it?

7 A. Yes but we had already engaged Mr. Dunlop and we were already working on

8 his advice.

9 Q. 163 Thank you very much, Mr. Kenny.

14:48:55 10

11 CHAIRMAN: Do you want to ask any questions

12

13 MR DOHERTY: I have no questions, Chairman.

14

14:49:02 15 JUDGE FAHERTY: Just one matter, Mr. Kenny, did you know anything about

16 invoices that were being sent to Scafform or to Mr. Butler care of

17 Scafform, in June of 1993?

18 A. I only know it from the documentation that has been produced to us from

19 the Tribunal.

14:49:21 20

21 JUDGE FAHERTY: Mr. Quinn will correct me, I can't lay my hands on it, but

22 we know that two cheques were, certainly one cheque was paid on the 17th

23 June, or marked paid at least according to Mr. Dunlop.

24

14:49:39 25 MR. QUINN: 1887.

26

27 JUDGE FAHERTY: In fact two cheques were paid because Mr. Dunlop's records

28 record payments. Thank you, Mr. Quinn. And Mr. Quinn will correct me,

29 these came out of Blackfern

14:49:52 30 A. They would have been --

14:49:53 1 JUDGE FAHERTY: I wasn't suggesting anything to Mr. Kenny that was
2 incorrect Mr. Quinn? I believe they were paid by Blackfern Limited.
3
4 MR. QUINN: Yes, that 5,100 cheque from Blackfern is 2114. We don't have
14:50:11 5 any cheque in relation to the --
6
7 JUDGE FAHERTY: Thank you. Blackfern was a company associated with The
8 Courtyard.
9 A. Yes, Blackfern was the operating company.
14:50:20 10
11 JUDGE FAHERTY: Do I take it that Blackfern was a company that would pay
12 creditors whatever creditors you had, the company used in -- for the
13 running of the business?
14 A. Yes.
14:50:30 15
16 JUDGE FAHERTY: And it is Mr. Williams' signature I think that's on that,
17 in fairness.
18 A. It looks like it.
19
14:50:38 20 JUDGE FAHERTY: Yes, it looks like Mr. Williams, were you involved in the
21 business on a -- Mr. Kenny
22 A. Oh, I was yes, it was my idea to set it up.
23
24 JUDGE FAHERTY: That's what I understood. Mr. Butler told us yesterday
14:50:50 25 that you negotiated a lot of that, you would be the one to negotiate
26 payments or to -- well to, I took it that you would have an interest in
27 what the company was paying out or what the business was costing you.
28 A. Oh absolutely.
29
14:51:07 30 JUDGE FAHERTY: Would that be fair, like a businessman, absolutely.

14:51:09 1 A. Oh absolutely.
2
3 JUDGE FAHERTY: And certainly that one that is correct cheque is paid by
4 Blackfern, isn't that correct?

14:51:16 5 A. It is.
6
7 JUDGE FAHERTY: And I think if memory serves me correctly, Mr. Dunlop's
8 firm's books shows receipt of two payments, the other payment as a
9 Blackfern or as a payment that came from the company also. I understand
10 that to the best of my knowledge I accept we have no cheque.

14:51:33 10
11 A. Yes, we are trying to find that.
12
13 JUDGE FAHERTY: Absolutely. So we look, we know that certainly in mid 1993
14 in excess of 11,000 pounds is paid to Mr. Dunlop.

14:51:49 15 A. Yes.
16
17 JUDGE FAHERTY: And I think there is another cheque of 7,000 pounds was
18 paid, I think might have been signed by Mr. Williams.
19

14:51:58 20 MR. QUINN: 2112.
21 A. It's contained in the letter from Mr. Montgomery to the Tribunal.
22
23 JUDGE FAHERTY: Yes, absolutely. But I just want to ask you, Mr. Kenny,
24 when you come and you say that you looked at Mr. -- you queried
14:52:14 25 Mr. Collins' Consultancy Services payment in 1996, you wondered what it
26 was for, I think Mr. Dunlop said he was paid in excess of 23,000 in 1996.
27 Given that you were involved in the running of the business and it was a
28 couple of years after the, you had engaged Mr. Dunlop, where do you think
29 that figure came from, that appeared on the list?

14:52:43 30 A. Which?

14:52:44 1 JUDGE FAHERTY: This is the figure now 1996. I understand Mr. Dunlop was
2 paid 23,000 odd in 1996, or it's recorded on the Coopers list, the Coopers
3 & Lybrand list.

4 A. That was the question that Mr. Quinn asked me earlier.

14:52:57 5

6 JUDGE FAHERTY: Yes.

7 A. And I said I presumed it was arrived at in a trawl through the books of
8 The Courtyard Restaurant.

9

14:53:07 10 JUDGE FAHERTY: That's exactly what I want to ask you about, yes?

11 A. By Jim Mullarney of Coopers & Lybrand and his team.

12

13 JUDGE FAHERTY: Yes. Now, do I understand from that answer that -- well a
14 trawl through, can I put it this way, a trawl through the books of The
14:53:26 15 Courtyard presumably if it was done, would also have shown that payments
16 were made to Mr. Dunlop because we know at least two cheques went into his
17 accounts and three in fairness.

18 A. Yes.

19

14:53:39 20 JUDGE FAHERTY: And you do you know who --

21 A. Pilgrim Architects cheques would have come through on that trawl as well.

22

23 JUDGE FAHERTY: Yes, but as I understand it, this was money that you were,
24 if you like paying to Mr. Dunlop in 1996?

14:53:57 25 A. No. Prior to 1996.

26

27 JUDGE FAHERTY: That wasn't paid in 1996?

28 A. They were paid prior.

29

14:54:06 30 JUDGE FAHERTY: You are saying that that was --

14:54:09 1 A. This one looks like 1993.
2
3 JUDGE FAHERTY: Was any payment made to Mr. Dunlop in 1996, that's what I
4 want to ask you?
14:54:16 5 A. Apparently not.
6
7 JUDGE FAHERTY: So you are saying, that's what I want to ask you, is the
8 sum that you say is reflected in the accounts in 1996 an accumulation of
9 the payments that were made to Mr. Dunlop?
14:54:28 10 A. That's right.
11
12 JUDGE FAHERTY: Or is it a single payment to Mr. Dunlop, that's what I want
13 to ask you?
14 A. No, it's an accumulation of the payments made to Mr. Dunlop.
14:54:36 15
16 JUDGE FAHERTY: I see. Very well that's what I wanted to clarify.
17
18 CHAIRMAN: All right. Thank you very much, Mr. Kenny.
19 A. Thank you.
14:54:43 20
21 CHAIRMAN: That concludes the hearings this week, I think we are sitting
22 on Tuesday.
23
24 MR. QUINN: At 2 o'clock for Mr. O'Callaghan.
14:54:52 25
26 CHAIRMAN: Thank you.
27
28 **THE TRIBUNAL THEN ADJOURNED TO THE FOLLOWING WEEK,**
29 **TUESDAY 30TH SEPTEMBER 2008 AT 2 PM.**
30