

1 PLANNING TRIBUNAL - DAY 301

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3 THE TRIBUNAL RESUMED AS FOLLOWS ON THE 4TH OF OCTOBER,

4 2001, AT 10:30 A.M.

5 .

6 CHAIRMAN: Good morning everyone.

7 .

8 MR. JOSEPH MCGOWAN RETURNED TO THE WITNESS-BOX AND

9 CONTINUED TO BE EXAMINED BY MR. HAYDEN AS FOLLOWS:

10 .

11 MS. DILLON: Morning, Sir.

12 .

13 1 Q. MR. HAYDEN: Sorry, Sir, about that.

14 .

15 I think, Mr. McGowan, yesterday I was just asking you

16 about a memo of Mr. Russell's, on the 9th of November

17 of 1984. This was in the lead-up to the draw down of

18 the loan on the 22nd or the 24th of November, 1984.

19 Perhaps, just to rush your memory, if I could ask you

20 to look at page - sorry, yes. Page 751, I think.

21 .

22 As we see from that, it states that on the 9th of

23 November, Mr. Finnegan was actually in contact with Mr.

24 Russell, and it states that:

25 .

26 "Attended on John Finnegan, auctioneer, by telephone

27 when he stated that he was aware of the arrangements

28 being made with Joe McGowan."

29 .

30 Then it goes on and it says: "In regard to the loan,

1 he was instructing Mr. David Barry who was appointed a
2 director of Canio to look after his interest in the
3 matter, and the fact of the matter is that one-third of
4 whatever loan is obtained will belong to him, John
5 Finnegan."

6 A. Yes.

7 2 Q. That seems to suggest that, Mr. McGowan, that Mr.
8 Finnegan was well up to speed with the sequence of
9 events, and the fact that there was a loan being made
10 and that it was on - about to mature, so-to-speak?

11 A. That's correct.

12 3 Q. There is a second memo of Mr. Russell's on the same
13 day, of the 9th of November, 1984. That is at page
14 750.

15 .
16 And that states that - it is: "Attending on John
17 Finnegan, when I read to him the letter I proposed
18 should be written by Kilnamanagh Estates Limited to
19 Canio Limited, and he agreed to this."

20 .
21 I will bring you to that letter in moment. That seems
22 to be a letter whereby Kilnamanagh were to enter into
23 the contract to purchase the land, isn't that correct?

24 A. That's correct.

25 4 Q. And that was part of the pre - that was a precondition
26 or part of the facilities required by Lombard and
27 Ulster?

28 A. One of the requirements.

29 5 Q. Yes. So it will appear that that letter that is being
30 referred to in the memo is the letter from Kilnamanagh

1 Estates to Canio, and that is referred to subsequently
2 in a letter by Mr. Wheeler to Mr. Barry, which I will
3 bring you to in a moment.

4 .

5 "Subsequently attending on Mr. David Barry on the
6 telephone when he stated, in addition, he would like
7 that, on the draw down of the money from Lombard and
8 Ulster Limited, that there should be a solicitor's
9 undertaking to pay one-third thereof to Canio Limited,
10 and that this undertaking should be given either by
11 myself or by Bedell & Cristin Solicitors, Jersey"?

12 A. I see.

13 6 Q. "And I stated I would take instructions to this latter
14 point and let him know."

15 .

16 But it already seemed that Mr. Barry was ahead of that
17 conversation, because it appears, on the 8th of
18 November, 1984, Mr. Barry had already written to Mr.
19 Wheeler, and that is at page 749.

20 .

21 And it appears that Mr. Finnegan had already been in
22 contact prior to the 9th of November, '84 with Mr.
23 Barry, because Mr. Barry already sought the very thing
24 that he had told Mr. Russell about, namely, the
25 undertaking being required. And we see that in insert
26 two?

27 A. I see that.

28 7 Q. Also, it indicates that the monies, a precondition of
29 Mr. Barry consenting on behalf of Foxtown, was that the
30 monies would be taken into the client account of Bedell

1 & Cristin. Do you see that?

2 A. I see that on the document, yes.

3 8 Q. Therefore, am I correct in that, from the point of view
4 of the money, as it arrived over to Bedell & Cristin,
5 was it the agreement of the parties that the monies
6 would be taken into the client account of Bedell &
7 Cristin, and then each party would take its one-third
8 share, less any agreed deductions?

9 A. Well, that is what I had thought, but I had no
10 communication at any time with Mr. Barry.

11 9 Q. If you stick with the questions, you probably wouldn't
12 have to worry - I didn't ask you had you communications
13 with Mr. Barry.

14 .
15 I think the next letter I would like you to look at,
16 and again, as I pointed out to you yesterday, in the
17 letter of the 8th of November, '84, it is, in fact, Mr.
18 Barry who is furnishing to Mr. Wheeler the sanction
19 letter from Lombard and Ulster. We see that in the
20 first paragraph.

21 A. Yes.

22 10 Q. If I could ask you to look at page 756.

23 .
24 Mr. Wheeler is acknowledging receipt of the Offer
25 Letter, the facility letter in the first paragraph of
26 that.

27 A. I see that.

28 11 Q. So it seems, at least on the paper trail, Mr. Finnegan,
29 and Mr. Finnegan's side, were well acquainted with all
30 of the details pertaining to this loan?

1 A. That's correct.

2 12 Q. And, in fact, it is Mr. Barry's - Mr. Finnegan's man,
3 Mr. Barry, who furnishes the Offer Letter to Mr.
4 Wheeler, who is the actual addressee of the letter
5 itself, of the - well, that letter we are talking
6 about, is, I think, the version of the 25th of October,
7 which is at page 735, the addressee of which being the
8 Secretary of Canio Investments Limited, Normandy House,
9 St. Helier, Jersey.

10 .

11 That letter that I've referred you to of the 14th of
12 November, '84 to Mr. Barry, confirms that - sorry, it
13 is at page 756.

14 .

15 That confirms the receipt of the letter, and also goes
16 on to confirm in writing Mr. Barry's authority to Mr.
17 Wheeler that he could execute the contract in favour of
18 Kilnamanagh. Do you see that?

19 A. I do.

20 13 Q. "I executed a contract for the sale of 43 acres of the
21 land belonging to the company to Kilnamanagh Estates
22 Limited for 1.5 million, which you confirmed to me on
23 the telephone was approved by Foxtown"?

24 A. Yes.

25 14 Q. So that approval, that contract had already been seen
26 by Foxtown, approved by Foxtown, and then if you look
27 at Insert 2: "Receipt of a letter from Kilnamanagh
28 Estates Limited, whereby that contract agrees to
29 release Canio from the contract and demand copy
30 enclosed."

1 .

2 You see that insert at No. 2?

3 A. I do.

4 15 Q. That would appear to be the letter referred to, the

5 draft of the letter referred to in the memo of the 9th

6 of November, 1984, on which the attendance of Mr.

7 Russell refers, which is at page 750, where he

8 indicates:

9 .

10 "Attending on Mr. John Finnegan, when I read to him a

11 letter I proposed should be written by Kilnamanagh

12 Estates to Canio Limited, and he agreed to this."

13 A. Yes.

14 16 Q. So as we were coming up to this draw down date, it

15 seems Mr. Finnegan is aware, clearly, that there is a

16 loan being drawn down; is aware, clearly, of the

17 purpose that the loan is being drawn, as indicated on

18 the Draft Offer Letter of the 25th of October, "UK

19 property and other payments". There is no mention of

20 Mr. Wreford at this stage. So clearly that issue, in

21 relation to the acquisition of one-third shareholding,

22 certainly Mr. Finnegan seems to be aware that that is

23 not an issue, at least on the basis of the Offer Letter

24 that his representatives furnished to Mr. Wheeler, and

25 is also aware of the arrangement and agreement in

26 relation to the acquisition of the land by Kilnamanagh,

27 and the letter from Kilnamanagh confirming that it

28 would release the contract on demand.

29 A. Yes.

30 .

1 MR. HUSSEY: I am sorry, I just interject here. The
2 suggestion by Mr. Hayden that Mr. Finnegan, or indeed
3 Mr. Barry, was aware of the conditions of the loan
4 arrangement is patently untrue, as acknowledged by this
5 witness earlier. And I think if Mr. Hayden would
6 clarify that Mr. Barry was aware of the loan
7 arrangements in October and November, but he wasn't
8 aware of the hidden guarantee by Mr. Brennan and
9 Mr. McGowan to Lombard and Ulster in respect of the
10 Canio borrowings, but to suggest that Mr. Finnegan or
11 Mr. Barry was aware of everything to do with this
12 transaction is just too simplistic and unfair, I think,
13 on my client. Just to keep the record straight.

14 .

15 MR. HAYDEN: My difficulty, Sir - well, the position,
16 as see it, Sir, is that on such documents as Mr.
17 Finnegan has seen fit, has furnished to the Tribunal,
18 and I have had the benefit of sight of, it is clear
19 that certainly there was a situation in place where the
20 offer letters, or an offer letter at least, has gone to
21 Mr. Barry first, before it goes to the Secretary of
22 Canio. That is in the documents we see here.

23 .

24 I put to this witness yesterday the sequence of offer
25 letters, the first of which being that of the - the
26 first of which being July, I think it is the 5th of
27 July, whereby the guarantees of Mr. McGowan and Mr.
28 Brennan is specifically stated. Now, that requirement
29 under the security drops out of the security
30 requirements in the Offer Letter of the 25th of

1 October, '84, and similarly doesn't appear in the final
2 Offer Letter of the 16th of November, 84.

3 .

4 That's as far as I can put it from that point of view.

5 It is for Mr. Finnegan to say whether he - his
6 position, obviously, when he comes. All I am putting
7 to this witness is on the documents that we have, it
8 certainly seems that the detail was being obtained by
9 Mr. Finnegan, and he wasn't being kept in the dark,
10 which was my understanding of what Mr. Hussey's
11 position was, that he was seeking to put to this
12 witness yesterday.

13 .

14 MR. HUSSEY: I am sorry, Sir. What was presented to
15 Mr. Barry was a loan offer of the 24th of October, 24th
16 or 25th of October, which did not disclose the hidden
17 guarantee which was given by Messrs. Brennan and
18 McGowan on that same day. So it is not that Mr. Barry
19 or Mr. Finnegan were kept informed of the conditions of
20 the loan application.

21 .

22 MR. HAYDEN: Sir, Mr. Hussey, on a number of occasions,
23 has indicated that his client had no recollection of
24 many of these events. In fact, I can get the excerpts
25 from the transcript. I could take no instructions from
26 his client on transactions because his client had no
27 recollection of them. He now seems to have a
28 recollection of a sequence of events relating to the
29 fact that he got one Offer Letter not other Offer
30 Letters. I am wondering when that came to Mr. Hussey's

1 attention from his client?

2 .

3 MR. HUSSEY: I am sorry, it has always been Mr.
4 Finnegan's position that he was aware that a loan was
5 being extracted from Lombard and Ulster. However, the
6 fact that that particular, that particular conditions
7 of that loan and circumstances surrounding the giving
8 of that loan was not known by Mr. Finnegan, and as this
9 witness has already admitted, was deliberately kept
10 away from Mr. Finnegan.

11 .

12 MR. HAYDEN: Well, Sir, we see now an attendance from
13 Mr. Russell, where Mr. Finnegan confirms, on the 9th of
14 November, that he is aware of the arrangements, and the
15 sentence is disjunctive. He is aware of the
16 arrangements, and Mr. Barry - it is the other one, it
17 is either 750 or 751.

18 .

19 MR. HUSSEY: These attendances merely show that Mr.
20 Finnegan was informed of what Messrs. Brennan and
21 McGowan or Mr. Russell chose to tell him, or chose to
22 tell Mr. Barry. It is quite clear, and indeed this
23 witness has already admitted, as indeed Mr. Brennan has
24 already admitted, that the personal guarantees, which
25 was a condition of the loan, were given and then they
26 were taken away, taken out of the loan offer paper, in
27 order, I would suggest, to mislead Mr. Barry and Mr.
28 Finnegan, and maybe indeed Mr. Russell, for all I know,
29 as to the exact circumstances of the loan.

30 .

1 So to suggest that Mr. Finnegan, because of these
2 attendances, was kept informed, is really to
3 misinterpret the direct evidence of these, both Mr.
4 Brennan and Mr. McGowan, the signatories of the
5 guarantees.

6 .

7 So I think it is unfair for Mr. Hayden to suggest,
8 arising out of these attendances, that Mr. Finnegan and
9 Mr. Barry were kept informed, and when it is patently
10 obvious, and indeed these witnesses have already
11 admitted that, in fact, the record, the loan offer was,
12 in fact, a misleading document designed to mislead
13 whoever it was published to.

14 .

15 CHAIRMAN: I note your submissions.

16 .

17 MS. DILLON: These submissions would seem to be
18 submissions that go to the weight to be attached to the
19 evidence, and at the conclusion of the module the
20 parties will be requested, and if they wish, they may
21 make written submissions to you in relation to the
22 weight or otherwise that should be attached to any
23 document.

24 .

25 The objection that Mr. Hussey makes in relation to the
26 question that was asked, could, I suggest, be got
27 around if Mr. Hayden were to ask this witness what
28 arrangements were made with Mr. Finnegan that are
29 referred to in the attendance that is on screen.

30 .

1 CHAIRMAN: That would appear to be a reasonable
2 approach.

3 .

4 MR. HAYDEN: Yes, Sir. And I have no difficulty with
5 that. Just so that, for fear of anybody suggesting I
6 was misquoting --

7 .

8 CHAIRMAN: Let's get down to asking the question, and
9 let's leave the rest to be considered at another time.

10 .

11 17 Q. MR. HAYDEN: Yes, Sir. As I say, it was Mr. Hussey, on
12 page 123 of Day 294, who clearly sets out what his
13 client's understanding was of the transactions.

14 .

15 He could give no information other than the documents.

16 .

17 Sorry, Mr. McGowan, it appears that there was a letter
18 agreed, as we saw on the transcript, on the attendance
19 from Mr. Barry, or from Mr. Russell, for Kilnarnagh to
20 release the contract on demand. That was part of the
21 arrangements in relation to the signing of the
22 contract, was it?

23 A. Well, as far as I can recollect, that was the case.

24 18 Q. And that letter is confirmed to Mr. Barry on the 14th
25 of November, 1984?

26 A. Yes, I saw that.

27 19 Q. At page 756, at Insert 2, it says:

28 .

29 "Receipt of a letter from Kilnarnagh Estates Limited
30 whereby the contract agrees to be released to Canio

1 Limited from the contract on demand copy enclosed."

2 .

3 Do you see that?

4 A. Yes, I do.

5 20 Q. It shows at the bottom of that letter, on the 14th of

6 November, 1984, the following:

7 .

8 "Although the Lombard and Ulster facility was not dealt

9 with yesterday, since I understand that the

10 arrangements between Canio and Kilnamanagh are a

11 precondition, Mr. McGowan did indicate that the 420

12 advanced by Lombard and Ulster could be paid to this

13 firm. When the question of the retention has been

14 resolved, I hope to be able to give you the undertaking

15 you require."

16 .

17 A. Yes, I see that.

18 21 Q. And, obviously, that was in relation to what Mr.

19 Finnegan wished, or Mr. Barry on his behalf, in the

20 letter of the 8th of November, in order to ensure that

21 Foxtown's position was protected, the monies were to be

22 paid to be Bedell & Cristin?

23 A. Well, there was never any doubt about that, because --

24 22 Q. In order for Foxtown's position to be protected,

25 according to Mr. Barry, the monies were to be paid to

26 Bedell & Cristin, isn't - that is what the letter of

27 the 8th of November, '84 - it needn't be put up.

28 A. Yes.

29 23 Q. That is confirming that you had so agreed that the

30 monies, on your behalf, you had so agreed that the

1 monies should be paid to the Bedell & Cristin client
2 account?

3 A. That is my understanding of it.

4 24 Q. When the monies came into Bedell & Cristin, it was into
5 Bedell Cristin's client account, and that was subject
6 to and governed by the instructions received on the 8th
7 of November, '84 from Mr. Barry?

8 A. That's correct.

9 25 Q. We then - Mr. Barry does in that letter identify that
10 there was not - that he had not reached agreement, or
11 that agreement - or Mr. Wheeler confirms in that letter
12 that agreement had not been reached. Mr. Barry was not
13 consenting to any deduction from the monies, the
14 20,000. We see that in paragraph 4.

15 A. 60,000, yes.

16 26 Q. Well, Mr. Barry wasn't agreeing.

17 .

18 "So far as the undertaking which you require from me
19 has been complicated by the apparent lack of agreement
20 concerning the retention of the ú60,000."

21 A. Yes.

22 27 Q. And that, in fact, had already been - well, I am not
23 sure which in time, but on the same day, at page 755, a
24 telex had already been sent to Mr. Owens from Mr.
25 Wheeler indicating that this issue had arisen after
26 your discussion with Mr. Wheeler. And Mr. Wheeler
27 asked Mr. Owens then to go about resolving the apparent
28 difficulties?

29 A. Yes.

30 28 Q. That seems to have, at least from the documentary,

1 document trail, that issue of a sum seems to have been
2 finalised by the 16th of November, when Mr. Owens, at
3 page 757, sends a telex. I won't dwell on it. We have
4 been over it a few times, but all three parties agreed
5 to the 10?

6 A. That's correct.

7 29 Q. The monies were drawn down thereafter, and I think
8 arrived in the Bedell & Cristin client account, and Mr.
9 Howard has gone through it, and the Tribunal team have
10 gone through it. Monies were divided and letters were
11 sent confirming sums were TT'd to the various parties
12 or - I think in your case and Mr. Brennan's case, they
13 were retained in a client account at Bedell & Cristin?

14 A. Yes.

15 30 Q. Again, if I could look at page 782. This is the
16 handwritten note, as I understand it, of Mr. Wheeler's.

17 .

18 MS. DILLON: There is a better copy of that. I think
19 it is 1865, 1863.

20 .

21 31 Q. MR. HAYDEN: And that is undated, as I understand it.

22 So, when it actually came into existence for the
23 purposes of the division of the sums, I am not aware,
24 but there is a number of, or not a number, but there is
25 certainly a position set out thereon, that, in fact,
26 didn't happen, in that you see at Insert 3:
27 "Remainder on seven day call deposit."

28 .

29 It appears clear now that what happened with the
30 monies, on the 21st of November, when they arrived in

1 Bedell & Cristin, wasn't that the remainder, i.e. the
2 sums, the loan less the amounts, the ú60,000, and less
3 the ú58,000 referred to pursuant to the authority of
4 J Caldwell, did not, in fact - were not, in fact, put
5 on a seven day call deposit, but were, in fact - the
6 balancing sums were immediately distributed amongst the
7 three parties?

8 A. I see.

9 32 Q. So, when Mr. Wheeler was originally putting this
10 document, scribbling out this document for the purposes
11 of, I presume, putting it into effect, his instructions
12 or whatever the first - when he was originally putting
13 this together, it seemed that he first understood that
14 the remainder of the sum was to be put on a seven day
15 call deposit, but obviously events overtook that,
16 because what he did in fact do was transfer the monies,
17 each share to each of the parties.

18 .

19 MS. DILLON: With respect to Mr. Hayden, I am not sure
20 that the basis on which Mr. Hayden put that question is
21 correct, because if the document is scrolled down, and
22 as I understood the evidence from the Bedell & Cristin
23 client account - if we go down to the bottom of the
24 document.

25 .

26 The seven day call deposit that is referred to there,
27 did, in fact, occur, and that sum of ú164,872.21, which
28 is the joint monies that were standing to the credit of
29 Mr. McGowan's share and Mr. Brennan's share, after the
30 distributions had taken place, did, in fact, go, as I

1 understood the evidence from Mr. Howard, on to a call
2 deposit account, and were subsequently transferred the
3 following year to a different designation, the transfer
4 to Liechtenstein of ú115,000 came out of that, that sum
5 of money.

6 .

7 So I don't understand the basis that Mr. Hayden
8 suggests that the earlier part of the document was not,
9 in fact, implemented.

10 .

11 MR. HAYDEN: No. All I am saying is that what the
12 document says, whatever date it came into existence,
13 says two things: Points 1 and 2, then, says,
14 "remainder on seven day call deposit." That, in fact,
15 did not happen. What, in fact, did happen was Items 1
16 and 2 occurred. The sum of 126,436.16 was sent to
17 Foxtown, and then the balance, which was the 2 - 164, I
18 think, was put on a seven day call deposit. Whereas
19 the document - again, Sir, you can read it and - the
20 difficulty is obviously trying to understand at this
21 remove what were obviously jotted down thoughts of Mr.
22 Wheeler at the time. But certainly on the document,
23 when one initially looks at it, Item 1 was an event to
24 occur. Item 2 was an event to occur, but, in fact,
25 Item 3 didn't happen, as suggested on that document.
26 .
27 A further sum was deducted from the remainder, i.e.
28 Foxtown's one-third share, and sent to Foxtown, and
29 then the following, balancing figures were put on
30 deposit.

1 .
2 De bene esse, that is all I am saying in the context of
3 what this document has assumed - this document has
4 assumed a certain involvement in this entire
5 transaction. The individual who put it together isn't
6 here. All I am saying, from the point of view of
7 looking at it, there certainly was a suggestion, on one
8 interpretation of that document, that less the two
9 figures mentioned at 1 and 2, the balance was to be put
10 on a seven day call deposit. That didn't happen, as we
11 know.

12 .
13 So just as much as we have, Sir, a telex from Mr.
14 Wheeler to Mr. Barry saying the £10,000 was put on
15 deposit, we know that didn't happen. And the only
16 point I am making is that whatever date this document
17 came into being, it seemed, and I can do no more than
18 that, it seems that events changed.

19 .
20 The then the unenviable task rests with you, Sir, to
21 understand what it means.

22 .
23 CHAIRMAN: I obviously have to sort it out bit-by-bit.
24 There is a degree of confusion, all right, between your
25 statement and the statement on the screen. We will
26 have to sort it out.

27 .
28 MR. HUSSEY: Yes, but --

29 .
30 MR. HAYDEN: Sir, yesterday you rightly said that I

1 should let Mr. Hussey get on with it. If it is a
2 submission, fair enough, but he can't be objecting to
3 me, because I haven't even asked a question.

4 .

5 MR. HUSSEY: Sorry, I am not making any objection at
6 all to any question that Mr. Hayden is asking. He has
7 drawn some comparison or some comparative analysis
8 between this document, which is a memo of Mr. Wheeler
9 to himself, with a communication from Mr. Wheeler to
10 Mr. Barry, confirming that something had been done,
11 when Mr. Hayden now seems to accept that that hadn't
12 been done. That is a completely different thing to
13 suggest, that a handwritten scribbled memo, as Mr.
14 Hayden puts it, is somehow to be put on par with an
15 actual communication confirming that something had been
16 done, already been done, which Mr. Hayden now accepts
17 wasn't done. It is a completely different basis.

18 .

19 MR. HAYDEN: Well, I don't know where My Friend is
20 coming from --

21 .

22 CHAIRMAN: It is not going to be resolved here. It is
23 going to have to be resolved by looking at the evidence
24 and looking at a mature conclusion. That is all I can
25 do about it.

26 .

27 33 Q. MR. HAYDEN: In any event, what occurs, then, is the
28 division of the funds, Mr. McGowan, and I think, in
29 relation to that sum, did you regard - once the loan
30 was obtained and divided amongst the - sorry, the loan

1 was obtained and divided amongst the shareholders, was
2 that your intention?

3 A. That was our intention, yes.

4 34 Q. So each shareholder had its entitlement, and out of it
5 could do with the funds as it pleased?

6 A. That's correct.

7 35 Q. And as we know, you made your contributions and the
8 sums involved. Thereafter, those funds, whilst I think
9 Mr. Howard has given evidence or has confirmed that the
10 documents suggest that they remained on a Canio
11 reference, I think it is the case, or is it the case
12 that those funds, that represented Gasche's share and
13 Mr. Brennan's, Kalabraki's share, were, in fact, held
14 by Bedell & Cristin for and on behalf of Kalabraki, and
15 Gasche, not as a entitlement of Canio?

16 A. That's my - that's the way it was done, yes.

17 36 Q. And I think, in fact, if one looks at a memo on the
18 22nd of January, 1985, which is at page 802, from Mr.
19 Wheeler to Mr. Owens, it is indicated there, in Part 3:
20 .
21 "I am holding two deposit accounts, one of which was
22 originally a sum of less than 165, and the other was
23 originally a sum of 50. I have a feeling that I am
24 holding the larger sum to Joe's order and the smaller
25 to Tom's. Please confirm."

26 .
27 I think that is subsequently confirmed in relation to
28 that, isn't that correct, by Mr. Owens, of which you
29 had the - which company had the entitlement?

30 A. I see.

1 37 Q. Isn't that correct?

2 A. It is.

3 38 Q. In relation to the investment or in relation to how its
4 monies were obtained for the purposes of Canio
5 acquiring the lands in Sandyford, was it your view that
6 each party contributed one-third towards the
7 acquisition of the lands in Canio?

8 A. Positively.

9 39 Q. And did you always regard it or did you regard it as an
10 investment or a loan to the company, to Canio?

11 A. My share was always as an investment.

12 40 Q. And I think, in fact, in relation to the position
13 represented, the Lombard and Ulster, I think if you
14 look at page 783, which is a letter of Mr. O'Neill's,
15 of the 22nd of November, 1984. On the bottom of that
16 page, Insert H, Mr. O'Neill was acting on behalf of
17 Lombard and Ulster. It states:

18 .
19 "I received a certificate from the company's
20 accountants to the effect that no loans have been made
21 by the directors, shareholders to Canio Limited."

22 .

23 A. I see that.

24 41 Q. And I think subsequently Mr. Owens confirmed, when
25 asked for a breakdown of figures, that the original sum
26 was an investment by the three parties. I think I will
27 just find that letter for you.

28 .

29 It is page 726.

30 .

1 And that states, "Original investment, 660," and at the
2 bottom, "All money paid was paid equally by the three
3 shareholders of the original investment. 300 had been
4 invested in December '78 by a company called Green
5 Trees Limited. This money was transferred in May '79
6 and was used to pay the deposit on Sandyford. In
7 February, 1980, a total of 150 was paid from Jersey,
8 and in November, 1980, a total of 210 was paid."

9 .
10 So the 150, I think, would have represented, and the
11 210, additional payments isn't that correct?

12 A. That is what the document says, yes.

13 42 Q. I think subsequently, when it came to Mr. Finnegan
14 acquiring or Foxtown selling its share of its interest
15 in Canio, I think certainly the position we've seen
16 from the memos of Kennedy McGonagle, was that they were
17 of the impression that the monies had been contributed
18 equally by the three investors, by the three parties?

19 A. That is what I always thought.

20 43 Q. Yes. And in relation to that, in the context of Mr. -
21 of Foxtown selling its shares, which I think became an
22 issue in 1989, or that's when the discussions took
23 place in relation to Foxtown's interest being acquired
24 by the other two, I think through the vehicle of Rush
25 Cliff. At that stage, or at any stage during the
26 valuation, or process whereby Foxtown's share was being
27 bought for, did Mr. Finnegan or anybody on his part
28 ever again seek the return of the ú10,000, or taking -
29 asked to take the ú10,000 that had been deducted on the
30 21st of November, 1984, into account?

1 A. No, there was never any discussion about that.

2 44 Q. And as we have seen on the day, or not on the day,
3 prior to the draw down of the loan, Kilnamanagh had
4 already executed a contract, and had any additional
5 expenses been incurred that would have given rise to
6 those monies, if, as Mr. Finnegan says, these monies
7 were supposedly to cover any additional expenses, were
8 any such additional expenses actually incurred between
9 '84 and '89?

10 A. No.

11 45 Q. So from the point of view of Mr. Finnegan, when it came
12 to doing his calculations in 1989, there had been, on
13 your evidence, there had been no additional costs in
14 the context of what might have been the purpose for
15 this fund, according to Mr. Finnegan. And when it came
16 to the sale, Mr. Finnegan actually never looked for the
17 money back?

18 A. No, he did not.

19 46 Q. And I think, in the context of doing his valuation for
20 the purposes of acquiring the - or sorry, not
21 acquiring, selling his share, I think he, in fact, was
22 to get the Foxtown and Canio accounts, and that seems
23 to be the position as set out in a handwritten memo of
24 the 29th of November, 1989 at page 1374.

25 .

26 And you see that, at the top, "John J Finnegan call D
27 Traynor re Sandyford land." Do you see that?

28 A. I do, yes.

29 47 Q. And you see there on the left-hand side, these are - I
30 am not sure who is the author of these, of this note,

1 in relation to it.

2 .

3 MS. DILLON: I think Mr. O'Shea said the author of the

4 note was the late Mr. Liam D McGonagle.

5 .

6 MR. HAYDEN: All right. Thank you.

7 .

8 You see on the left-hand side, Mr. McGowan, down the

9 bottom of the left-hand side, "John to get Foxtown

10 accounts in Canio."

11 A. I do.

12 48 Q. And then reference is made to Sovereign, down at the

13 bottom. And there seems to be on that document the

14 bones of how Mr. Finnegan or Foxtown was to sell its

15 interest. But it certainly seems to be the case that

16 in 1989 Mr. Finnegan was seeking the Foxtown's accounts

17 and the Canio accounts, isn't that correct?

18 A. Well, that is the first time that I have seen that.

19 49 Q. It seems the document suggests that he was looking for

20 them, anyway?

21 A. Yes.

22 50 Q. And since, of course, since 1984 or '85, Kennedy

23 McGonagle had, in fact, been acting for the solicitors

24 for Canio, isn't that --

25 A. Yeah, they took over after, when the disputes were

26 taking place at that time, all the litigation.

27 51 Q. The disputes with AIF and Lombard and Ulster?

28 A. Yes.

29 52 Q. So Mr. Finnegan's - sorry, solicitors acting for

30 Foxtown were the solicitors acting for Canio, from that

1 period on, '85?

2 A. But we --

3 53 Q. Isn't that correct?

4 A. It is, yes.

5 54 Q. And we then have a situation whereby there had been
6 correspondence leading up to that particular memo from
7 Sovereign Management Limited, and that is at page 1371.

8 .

9 And that - I think Sovereign came into - originally Mr.
10 - Foxtown's interest had been represented by Mr. Barry
11 of College Trustees. Are you aware when he stepped out
12 of the picture and Sovereign came in?

13 A. I haven't a - no, I don't.

14 55 Q. Certainly, in any event, Mr. O'Shea from Kennedy
15 McGonagle is getting a letter from Sovereign Management
16 Limited on the 6th of October, 1989, where in it is
17 identified, and I presume this would have been around
18 the time when you were discussing acquiring the
19 one-third share, and it gives the details. It is
20 obviously from Mr. O'Shea. It is giving details of the
21 shareholding. It goes on to say:

22 .

23 "The above shareholders are holding the shares as
24 nominee for Sovereign Trustees Limited as trustees of
25 the Amber Trust."

26 .

27 Then it goes on:

28 .

29 "The Amber Trust is a Discretionary Trust, and the
30 current beneficiaries are charitable institutions. The

1 trustees, however, have the power to remove and appoint
2 additional beneficiaries at their discretion."

3 .

4 Then the next page, if I can ask you to look at the
5 penultimate paragraph.

6 .

7 "We further confirm that to the best of our knowledge
8 and belief, Foxtown has no involvement of any kind with
9 the other shareholders of Canio Limited."

10 .

11 Do you see that?

12 A. Do.

13 56 Q. So Kennedy McGonagle are being told by Sovereign
14 Management Limited that Foxtown had no involvement of
15 any kind with the other shareholders of Canio Limited,
16 and, of course, I mean, there had been a long history
17 of a relationship between the parties, hasn't there?

18 A. Yes, that's right. But I know Kennedy McGonagle very
19 well also, very good --

20 57 Q. Yes. Of course, Kennedy McGonagle had acted for
21 Arippe, or Arippe - Arippe, sorry. So even Kennedy
22 McGonagle would have been aware that that particular
23 piece of information wasn't accurate?

24 A. Well, I can't comment on that.

25 .

26 MS. DILLON: With respect, I think Mr. Hayden, in
27 fairness to Kennedy McGonagle Ballagh, should put the
28 basis on which he says that, by virtue of the fact that
29 Kennedy McGonagle Ballagh, acting for Arippe, that they
30 would have been aware that what is contained in that

1 letter is incorrect. In other words, if Mr. Hayden
2 would put the basis on which he suggests that Kennedy
3 McGonagle Ballagh knew that the beneficial owners of
4 Arippe were Messrs. Brennan and McGowan and Finnegan.

5 .

6 MR. HAYDEN: Well, rather than --

7 .

8 MS. DILLON: Rather than putting in inferentially.

9 .

10 MR. HAYDEN: Sorry, as I understood it, it has been
11 accepted that Kennedy McGonagle acted for Arippe, and
12 that they were aware that Arippe was owned, perhaps I
13 am incorrect in this, were aware that Arippe was owned
14 by Foxtown.

15 .

16 MR. HUSSEY: I don't know who accepted that. I don't
17 think Mr. O'Shea was asked anything like that when he
18 was in the witness-box.

19 .

20 MR. HAYDEN: Well, if it is the case that they didn't
21 know that there was any relationship between Foxtown
22 and Gasche and Kalabraki, then I have to accept that.
23 I obviously will take the word of Mr. Hussey to that
24 effect on behalf of Kennedy McGonagle. Perhaps it was
25 an unfortunate assumption on my part, given that they
26 were acting for Mr. Finnegan throughout the entire
27 procedure, that he was aware that, and that --

28 .

29 MR. HUSSEY: Sorry, that is not true. That wasn't Mr.
30 O'Shea's evidence.

1 .
2 MS. DILLON: The premises on foot of which Mr. Hayden
3 put the question to this witness was based on the
4 premises that because the firm of solicitors in
5 question had previously acted for Arippe, they must
6 have been visited with certain knowledge in connection
7 with that transaction.

8 .
9 That is an entirely different matter to suggesting that
10 the solicitors in question knew of the existence of
11 Kalabraki, Gasche or Foxtown Investments.

12 .
13 My objection was based on the fact that I wasn't aware
14 of any assumption or direct evidence from Mr. O'Shea,
15 when he gave evidence, that he was aware of the
16 beneficial ownership of Arippe.

17 .
18 MR. HAYDEN: I accept that, Sir. I withdraw - I accept
19 Ms. Dillon's point in the context - it was an
20 assumption on my part, and I have to accept that, Sir.
21 There was no intention to suggest any wrongdoing.
22 Where I was actually going with it was that Sovereign,
23 who had taken over from College Trustees, clearly were
24 not aware of any prior connection between the parties.
25 It wasn't Kennedy McGonagle I was making any reference
26 in relation to.

27 .
28 In any event, this is something that has come up, and
29 Mr. Hussey has already pointed out that the letter is
30 headed "Draft". It is page 1375. And that identifies

1 - this is a letter seeking a draft. It is entitled,
2 "Draft letter seeking Exchange Control." It is January,
3 1990.
4 .
5 It goes through that, "We act for Foxtown Investments
6 Limited, a company registered in the Channel Islands.
7 The company is ultimately controlled by a trust known
8 as the Amber Trust, which is administered by Sovereign
9 Trustees Limited of Guernsey. None of the
10 beneficiaries or potential beneficiaries of the Amber
11 Trust are resident in Ireland. We are instructed that
12 in 1978/79 Foxtown Investments Limited contributed
13 one-third of the cost of the purchase of certain
14 property in Ireland by a company called Canio
15 Investments Limited, also registered in the Channel
16 Islands. Canio Investments Limited is controlled by a
17 company called Ardcarne Limited, also registered in
18 Jersey, and our client holds one-third of the issued
19 share capital of this company.
20 .
21 The cost of the purchase by Canio of the property in
22 Ireland was approximately ú700,000 of which with
23 ú630,000 was the purchase price paid to the vendor.
24 The balance was made up of expenses."
25 .
26 It goes on as to how the mechanism is intended for the
27 payment by Rush Cliff to Foxtown for the shares.
28 .
29 Now, that, as Mr. Hussey has pointed out, is a draft,
30 but clearly there was Central Bank control permission

1 obtained, and it certainly seems from that letter that
2 in that correspondence Mr. O'Shea was of the opinion --
3 .

4 MR. HUSSEY: I am sorry, that is not correspondence.
5 It is a draft letter. I am quite happy for Mr. Hayden
6 to refer to it on that basis, but to promote it into
7 correspondence when it wasn't --
8 .

9 CHAIRMAN: That is undoubtedly correct. It is a draft
10 letter. It is somebody's belief. As to whether it
11 took place, depends on whether the letter was
12 dispatched and received and accepted.
13 .

14 MR. HUSSEY: Indeed. I am wondering, is Mr. Hayden
15 asking this witness a question on this? He seems to be
16 making submissions which would probably be best left
17 until after the evidence has been heard. Because I
18 haven't heard one question yet, perhaps for the last
19 ten minutes of this witness.

20 .
21 CHAIRMAN: That's true.

22 .
23 MR. HAYDEN: Given that the first I heard of Mr.
24 Finnegan suggesting he didn't pay one-third of it was
25 to this witness last week, I am setting out why - well,
26 you have heard this witness's position on it. And I am
27 going through the documentation with him, so that at
28 least when it comes for you, Sir, to look at the
29 matter, whatever Mr. Finnegan may say now, certainly
30 his advisors then were furnished with a, perhaps not

1 furnished, but were of a different assumption or
2 opinion, and --
3 .

4 MR. HUSSEY: I am sorry, Sir. I think I should clarify
5 Mr. Finnegan's position.

6 .
7 Mr. Finnegan's position was that at all times he
8 thought that he had invested one-third in the Canio
9 lands. He had always thought that. However, the
10 record, as shown through the account of Mr. Owens, I
11 think an account I referred to yesterday - sorry, I beg
12 your pardon. I think it is page 419 referred to a loan
13 from Green Trees, from Green Trees to Canio. That
14 doesn't seem to have been explained away. Certainly
15 there is two different, on the record there is two
16 different explanations of the ú300,000.

17 .
18 Mr. Finnegan had at all times thought that he had
19 invested one-third, and he was a one-third owner of
20 Canio. However, the record, as it came out, as we see
21 it, suggests that while he was a one-third investor,
22 there was also - the purchase of the Canio lands was
23 also funded by a loan from Green Trees. If that is the
24 case, it still wouldn't stop him being a one-third
25 owner of Canio, subject to the repayment of the loan,
26 of course.

27 .
28 But the records show a dichotomy. The explanations, in
29 hindsight, suggest that there was an investment,
30 whereas the record of the time suggests a loan. I am

1 merely saying that that hasn't been clarified. Mr.
2 Finnegan doesn't know the clarification of that. And I
3 had put it to this witness, if he could clarify it
4 either, and he couldn't.

5 .
6 I am not sure - it will be up, of course, to Your
7 Lordship to make a conclusion on this unsatisfactory
8 position.

9 .
10 CHAIRMAN: Very good.

11 .
12 58 Q. MR. HAYDEN: Yes, Sir.

13 .
14 If I could ask you to look at page 1403.

15 .
16 And this is an internal memo, as I understand it, of
17 Kennedy McGonagle, which identifies the details in
18 relation to a proposed sale by Foxtown of its
19 shareholding in Ardcar.

20 .
21 It sets out the parties, the detail that we have seen
22 in the earlier letter from Sovereign Trustees giving
23 the details of the shareholdings.

24 .
25 Then it goes on in Insert 3:

26 .
27 "The above shareholders hold their shares as nominee
28 for Sovereign Trustee Limited, as trustees of the Amber
29 Trust. The Amber Trust is a Discretionary Trust, and
30 the current beneficiaries are charitable institutions.

1 The trustees, however, have power to remove and appoint
2 additional beneficiaries at their discretion. "

3 .

4 That is in accordance with the draft letter that I
5 referred you to earlier to the Central Bank. So
6 certainly it seems, in time, or at least the
7 information as furnished, both in that document and in
8 the document to Mr. Traynor on the 20th of March, 1991,
9 which was at page 1489, gives that self-same
10 information which had emanated from Sovereign Trustees.

11 .

12 Then it goes on at paragraph 4 to indicate at the end:

13 .

14 "Both these payments were in Sterling. These last two
15 payments were matched by loans by the other two
16 shareholders in Ardcar. It is assumed that the
17 300,000 was contributed equally between the three
18 shareholders."

19 .

20 And again, that is in keeping with the letters seeking
21 advices from Mr. Traynor.

22 .

23 Can I ask you, in that memo, at page 1404, reference is
24 made at Insert 7 to, "The vendor will require a release
25 by Ardcar of the loan of 6,426." And that insert on
26 page 1404 comes out of the final paragraph at Section
27 4, at page 1403.

28 .

29 Where you ever asked - you see there at the bottom,
30 "In November 1984 Foxtown received back from Canio

1 ú126,426 Sterling, being its share of the loan arranged
2 through Lombard and Ulster Bank. There is, therefore,
3 an account due Foxtown to Canio/Ardcarn of 6,426."

4 .

5 Do you remember ever being asked to - or did you ever
6 know that there was this view that Foxtown owed --

7 A. No, I did not.

8 59 Q. Yes. So, in the context of where you found yourselves

9 in 1989/1990, the advisors to Foxtown, in the context
10 of the valuation, seemed to have sought and obtained -

11 well, we don't know if they obtained them, but

12 certainly the advices were to seek the accounts of

13 Canio and Foxtown. No request was ever made of you or

14 Mr. Brennan, was there, to account for the ú10,000?

15 A. Certainly not to me, or to Mr. Brennan.

16 60 Q. And, in fact, it appears that the view held by Foxtown

17 was that it owed 6,426, in other words, it appeared

18 that rather than being entitled to 10 back, Foxtown

19 felt - had never looked for the 10 and owed a further

20 6,426?

21 A. Well --

22 61 Q. A swing of 16,000?

23 A. I don't know anything about that 6,426, Mr. Hayden.

24 .

25 MR. HUSSEY: I am sorry, Sir, if I can interject here

26 for a second. Mr. Hayden has put questions to

27 Mr. McGowan on the basis that the three parties or the

28 three companies invested equally into the proceeds into

29 Canio in order to purchase the property.

30 .

1 Those proceeds came about either through Green Trees,
2 as beneficial owners of Green Trees, which is one
3 suggestion, or as a loan to Green Trees, together with
4 a contribution from each of the three shareholders.

5 There is no question but that the sum from each of the
6 three shareholders, the ú120,000 each, contributed by
7 each of them, was an investment. This is an analysis
8 after the event, I think some five years after the
9 event, to try to explain in the books of account where
10 these payments had come from.

11 .

12 There is no question but that the payment by Foxtown of
13 the ú120,000 was an investment. And the payment, the
14 distribution of the Lombard and Ulster money of 126,426
15 was not a repayment of a loan to Canio. It was a
16 distribution to the shareholders.

17 .

18 So, it is obvious, and it is quite clear from Mr.
19 Hayden's questioning, that the ú120,000 was an
20 investment by shareholders, not a loan, and it is quite
21 clear, it is obvious that this is not correct in its
22 analysis in hindsight. And therefore, it wouldn't have
23 been a question of a payment back of money.

24 .

25 To suggest otherwise would be to suggest that the
26 investment made by Foxtown into the Canio lands wasn't
27 an investment at all, it was simply a loan. If he was
28 paid it back, that was the end of his whole involvement
29 in the company. Nobody suggests that.

30 .

1 MR. HAYDEN: I am not suggesting that. I don't know
2 where Mr. Hussey is coming up with that.

3 .

4 Mr. Hussey and Foxtown introduced the concept of the
5 loan. What I have sought to do is to establish it from
6 the point of view of the other two parties, that they
7 always regarded it as an investment and --

8 .

9 MR. HUSSEY: I think, in fact - sorry --

10 .

11 MR. HAYDEN: Ms. Dillon might be prepared to put up
12 with being interjected, but I am not. Mr. Hussey can
13 answer me when I am finished.

14 .

15 On the 11th of September, 1984, Mr. Barry, which is at
16 page 722, Mr. Barry asked Mr. Wheeler to explain the
17 sum, the loan concept. This is Mr. Barry as
18 representative of Foxtown. It states:

19 .

20 "I would like to have a breakdown of the loans from
21 shareholders, totalling 663,743." This is not any
22 retrospectivity on my part, that was what Mr. Barry was
23 talking about back in 1984.

24 .

25 The reply, and he says:

26 .

27 "If you prefer, I can write direct, in other words,
28 direct to Mr. Owens."

29 .

30 The reply to that letter, that reference information,

1 is a document of the 9th of October, 1984, from Owens
2 Murray, which is at page 726, giving a breakdown of the
3 663,743. It identifies it as an original investment,
4 660. And all the money paid was paid equally by the
5 three shareholders.

6 .
7 So back in '84 the loan question was raised by Foxtown,
8 back in '84 it was confirmed it was an investment. And
9 on the 22nd of November, 1984, Mr. O'Neill records in
10 his letter to his clients, which is the letter to
11 Lombard and Ulster, which is at page 783, at Insert H,
12 that:

13 .
14 "I received a certificate from the company's
15 accountants to the effect that no loans have been made
16 by the directors/shareholders to Canio Limited."

17 .
18 And if it is the case that assumptions have been made,
19 and they could only have been made having discussed the
20 matter with their client. I have no doubt that Mr.
21 O'Shea accurately records what he was being told in
22 those memos at the time, and I have no doubt but that
23 that was what he was being told, because if one looks
24 at the memo at page 1403, where one goes through the
25 information received, for the purpose of compiling the
26 proposed sale, and if one looks at the original letter
27 from Sovereign Trustees, which is at page 1371, it
28 identifies at the bottom the Amber Trust is a
29 discretionary trust and the current beneficiaries are
30 charitable institutions.

1 .

2 By the time Mr. O'Shea comes around to writing to

3 Mr. Traynor, he clearly has been given further

4 information on that, because if one looks at 1489, one

5 sees the following at Insert 9:

6 .

7 "Canio, a Channel Island company, is a wholly-owned

8 subsidiary of Ardcarne Limited, also a Channel Island

9 company. There are 12 issues in Ardcarne, of which four

10 were held recently by Foxtown Investments Limited.

11 Foxtown Investments Limited is in turn controlled by a

12 Discretionary Trust known as the Amber Trust, the

13 current beneficiaries of which are charities."

14 .

15 Up to that point it is exactly in accordance with what

16 he has been told by Sovereign Trustees on the 6th of

17 October, 1989, but it goes on, "including the World

18 Wildlife Fund". That is nowhere referred to in the

19 documents, by Sovereign Trustees. Obviously Mr. O'Shea

20 has received further information and instructions from

21 his client.

22 .

23 So it is not a question of Mr. O'Shea writing any of

24 these documents, in my submission, Sir, without seeking

25 instructions, or getting information - getting

26 information from his client.

27 .

28 So Mr. Finnegan comes here to say that he, as he is

29 entitled to, that whilst he agreed to the €10,000, he

30 does not agree to what purpose it is for. The

1 documents show that he had a state of mind that
2 suggested that he was allegedly - he was contending
3 that these items were loans, and that it now turns out
4 - well, sorry, it is for you ultimately, Sir, to go
5 through all of this morass of detail, but even up to
6 1989, 1990, 1991, he is setting out a state of affairs
7 that had been clarified as early as '84. He is giving
8 information to his professional advisors in 1989, 1990,
9 1991, for the purposes of valuing his shareholding in a
10 company, Foxtown's shareholding in a company which it
11 was intended to sell, which he had sought the accounts
12 of, which he had the details in relation to, and which
13 his solicitors, Foxtown's solicitors were the
14 solicitors for, throughout the period in which
15 expenses, if expenses there had been, were incurred.
16 .
17 Mr. Hussey now seeks to suggest that the reference to
18 that loan was just - I am not sure what he is
19 suggesting. I know he is suggesting that it doesn't
20 suit the position now that somebody back then, in 1991,
21 was identifying that contrary to what the position now
22 is, the 10 wasn't meant to be gone forever, but was
23 not, was meant to be kept on deposit, and is now
24 suggesting that the ú6,000 that - that Foxtown thought
25 then was due to Ardcar, or to Canio, is not now due,
26 because it is clearly inconsistent, and unfortunately
27 for you, Sir, you must ultimately come to a view on all
28 of these things.
29 .
30 The one fact I have yet to hear from Mr. Hussey on is

1 whether his client at any stage asked for the 10 back.
2 The most that the documents show is that he did not ask
3 for the 10 back, but that he thought he owed another
4 six.

5 .
6 MR. HUSSEY: Is Mr. Hayden finished?

7 .
8 The reason I was interrupting him at the start of that
9 was to clarify that Mr. Hayden seems to have
10 misinterpreted what I am saying, what I have said.

11 .
12 There is a discrepancy in the record as to whether the
13 Green Trees money that came into Canio was by way of
14 loan or investment. I accept that is a discrepancy
15 that has yet to be explained and hasn't yet been
16 explained. But what there seems to be beyond dispute
17 is that the other monies that were put into Canio was
18 put in by way of investment, not by way of loan, and
19 that - it is that side of the bargain that I am now
20 raising.

21 .
22 Mr. Hayden is adamant that I was a one-third owner,
23 which is what I had always thought my position to be.
24 He is now taking solace from these records, which might
25 - which generated after the event, which suggest that
26 the Foxtown's monies, the monies outside of the Green
27 Trees monies was also a loan. I am saying that has
28 never been the position, regardless of what the record
29 shows, because that was always an investment and not a
30 loan.

1 .
2 I think Mr. Hayden is confusing the two ideas of a
3 loan. The Green Trees loan is still open to
4 interpretation. I am not sure what that position is.
5 But the Canio - sorry, the Foxtown money, the ú120,000
6 is not an investment by way of loan, it is an
7 investment in shareholding. And regardless of what the
8 record shows, that seems to be accepted. It seems to
9 be an absolute underlining premise that these were
10 three investors, equal investors in the company. On
11 the one hand, Mr. Hayden is saying, "I am a one-third
12 investor," and on the other hand he is saying that it
13 was a loan. It can't be both. It can't be both.

14 .
15 I suggest that this record, this analysis, in
16 hindsight, is incorrect and it forms no part of the
17 parties' understanding of their position.

18 .
19 MS. DILLON: I don't know whether I am going to be in
20 an approximation to clarify the position. It does
21 appear to be the situation that Mr. Hugh Owens, when he
22 was asked to prepare the balance sheet for Canio
23 Limited for the year ended 31st of December, 1980 -
24 Document 149, please - described the liabilities of
25 Canio Limited as of that state as constituting three
26 payments, the loan via Green Trees, ú300,000, and,
27 presumably, the loan via Ardcarn, ú240,000 Sterling,
28 which presumably represents Mr. McGowan's and Mr.
29 Brennan's investment, and then the loan via Guinness
30 and Mahon, ú120,000 Sterling. There is an Irish

1 conversion, because the ú300,000 was in Irish, the
2 other two figures were in Sterling. And that's then
3 added up to make a figure of ú720,000.
4 .
5 That balance sheet was prepared by Mr. Owens,
6 apparently, and sent to Mr. Michael O'Shea. At some
7 stage subsequently Owens Murray prepared the auditors's
8 report on Canio Limited dated the 2nd of August, 1984.
9 It dealt with the balance sheet as at the 31st of
10 December, 1983. Page 4664, please.
11 .
12 The assets of the company are set out as, "Land at cost
13 at Sandyford", and a figure is given in Irish pounds.
14 Then a Sterling conversion is also given. And when one
15 goes down then to look at the liabilities, and
16 underneath the Net Assets representing issued share
17 capital loans from shareholders, being ú663,743
18 Sterling.
19 .
20 So, in the two sets of accounts that were prepared by
21 Mr. Owens, in relation to Canio Limited, the
22 investments are described as loans.
23 .
24 Now, the evidence of Mr. Brennan has been, the evidence
25 of Mr. McGowan has been, that insofar as the
26 acquisition of the lands were concerned, they were of
27 the view it was a one-third, one-third, one-third
28 investment, and that they were equally with Mr.
29 Finnegan and his company, a one-third owner of the
30 property.

1 .
2 The question as to whether or not the money was put in
3 by way of investment or put in by way of loan, is not a
4 hugely significant issue, until one comes to look at
5 what happened. When the reconciliation was being
6 conducted, when the shares were being - Mr. Finnegan's
7 Foxtown share in Canio was being sold to Rush Cliff,
8 then it becomes an important feature, as to how the
9 calculations were conducted, and what instructions were
10 given in relation to the figures, because the figures
11 would have to take into account, or not, as the case
12 may be, the €10,000 that was originally deducted, and
13 transferred to Caviar Limited. And therefore, in that
14 context, and I would say in no other context is it of
15 any great significance, whether shareholding or the
16 investment was a loan or it was a shareholding,
17 particularly if all three parties are agreed, and it
18 would seem that Mr. Finnegan agrees that he thought he
19 was a one-third owner as well of the property.
20 .
21 What is important is when Rush Cliff came to purchase
22 the shares, what value or allowance was made for the
23 money that had been paid out on foot of the Lombard and
24 Ulster loan? In other words, what credit was given to
25 Mr. Finnegan in connection with that? And whether
26 credit was given for the 10, and I presume whether he
27 sought the €10,000 back? That is the only significance
28 I see to it. Other than that, Sir, that's the only
29 issue on which it becomes important.
30 .

1 MR. HUSSEY: I think that is absolutely correct.

2 .

3 The only thing is that I don't - and I don't know if
4 the Tribunal has the accounts of Canio in 1984, and how
5 that sum of ú10,000 was dealt with in the accounts. I
6 haven't seen any such accounts.

7 .

8 MS. DILLON: If you just - sorry, if you could scroll
9 back to the top of the page of the document that is on
10 screen.

11 .

12 MR. HUSSEY: Yes.

13 .

14 MS. DILLON: I don't think, other than that, that there
15 are any other formal accounts that the Tribunal have.
16 But we will inquire about that. I think those are the
17 only two sets of formal accounts, the two that I have
18 just referred to. But I will check it out and come
19 back.

20 .

21 MR. HUSSEY: Yes. Thank you, Sir.

22 .

23 CHAIRMAN: Well, we might break a little earlier than
24 usual, as we have a complicated matter being
25 considered. Twenty minutes. 12 o'clock.

26 .

27 THE TRIBUNAL THEN ADJOURNED FOR A SHORT RECESS AND
28 RESUMED AGAIN AS FOLLOWS:

29 .

30 CHAIRMAN: Mr. Hayden, while I won't want to in any way

1 put spancils on you, lunchtime would be a very nice
2 time to finish with the present witness. It would be a
3 very nice way to go to lunch. An aperitif, as it were.
4 .

5 MR. HAYDEN: I will make a run for it.

6 .

7 I understand there is - Pagebar is yet to happen.

8 There will be about 15 minutes in that.

9 .

10 CHAIRMAN: I really do. As I say, it is unfair to any
11 counsel to put them under pressure, but I am doing my
12 best to be fair. I do want to get business done.

13 .

14 62 Q. MR. HAYDEN: Yes, Sir.

15 .

16 Just then, Mr. McGowan, in relation to the subsequent
17 action being brought on foot of the undertaking by AIF,
18 when the monies were paid from the Lombard and Ulster
19 facilities, when the monies were obtained and divided
20 between the shareholders and the monies paid at that
21 stage, did you know that there was going to be a claim
22 brought the following year by AIF, or that AIF were
23 going to even look to the Sandyford lands?

24 A. No, I did not.

25 63 Q. So when that happened, it came out of the blue. Not
26 out of the blue, but it came as a shock to you that AIF
27 regarded themselves as having some form of hold or some
28 form of entitlement or claim over the Sandyford lands?

29 A. That's for sure.

30 64 Q. So in the context of how you as a shareholder, a Gasche

1 shareholder, saw the position in late '84, the world
2 changed radically when AIF decided that they would use
3 this undertaking in the way that they did?

4 A. Very much so. That's right.

5 65 Q. And I think, without delaying, you have told the
6 Tribunal already your understanding in relation to the
7 undertaking not covering these lands, but I - it is
8 just in the context of why, or your reaction in
9 November, or your position in November was entirely
10 different to how it transpired with the AIF position
11 the following year?

12 A. That's correct.

13 66 Q. That's correct. In your experience of Mr. Wheeler,
14 would he have, given that there was three entities
15 involved in Canio and that he was acting as Secretary
16 to Canio, and therefore representing each of the
17 parties, was it your experience of him that he would do
18 anything or do something without instruction?

19 A. Certainly I never thought that he would, anyway.

20 67 Q. Yes. And we heard Mr. Howard say that Mr. Barry had
21 eyes like a hawk, the day he was here, so Foxtown's
22 position was furthermore covered by Mr. Barry?

23 A. Well, it was protected the same way as Kalabraki and
24 Gasche.

25 68 Q. Yes. In relation to the personal - to the collections
26 that were made over the years, I think your involvement
27 in the collections was as the organiser of some of the
28 events, was that correct?

29 A. That's correct, and also donating money from the
30 companies.

1 69 Q. Yes. But in the context of your involvement, if it is
2 at a race meeting or whatever, your involvement would
3 have been organising the collection itself, is that it?

4 A. Organising the - well, just organising the location or
5 the venue.

6 70 Q. Yes. Obviously, you would assist on the night, I
7 presume?

8 A. Yes, absolutely.

9 71 Q. You would turn up, anyway. And the funds that were
10 collected by you, they were given to who?

11 A. They were given to my friend Mr. Ottiwell, and he
12 distributed them.

13 72 Q. In relation to the Lansdowne situation, I think
14 Lansdowne subsequently acquired the lands, isn't that
15 correct, got the sites for the building - Monkstown?

16 A. Monkstown, yes, they did.

17 73 Q. I thought you would have - and Lansdowne itself
18 developed the houses on that site?

19 A. They built the houses, but they got somebody else to do
20 the development work, but they built the houses and
21 sold them.

22 74 Q. Yes. And they paid, as we know, the funds that have
23 been identified already. And I think there were 62
24 sites on the, in the eventual planning permission?

25 A. That's right.

26 75 Q. And, in essence, Lansdowne, if one looks at it on a
27 pure simple mathematical basis, paid in the region of
28 $\text{£}10,000$ per site for the 62 sites?

29 A. That's right.

30 76 Q. Do you have any recollection of what the average price

- 1 was of the sale of the houses?
- 2 A. Well, one of Mr. Brennan's friends bought a house
- 3 there, and I think - well, it might be a bit larger
- 4 than the others, but he thinks that the price they paid
- 5 was ú65,000. But I am not sure whether they started at
- 6 45 or 50 or 55, but usually - there is a guide with,
- 7 depending on the location, of course, but the value --
- 8 77 Q. Could we just go back to the question.
- 9 A. Sorry.
- 10 78 Q. Do you have any recollection?
- 11 A. I do, yes.
- 12 79 Q. Could you give us that rather than what the usual
- 13 auctioneering --
- 14 A. The houses sold in the region of ú60,000.
- 15 80 Q. Some less?
- 16 A. Some less, some more.
- 17 81 Q. Yes. And in that context, say if we are talking about
- 18 ú50,000, would a site value, in your experience, as a
- 19 builder, would a site value relative to the overall -
- 20 what would be the ratio between site value to --
- 21 A. There is a guide which the banks and everybody else
- 22 uses for that particular purpose. That is depending,
- 23 again, depending on - it usually is - the site value is
- 24 usually 25 percent of the sale price of the house. Of
- 25 course, in some instances, depending on - it can go
- 26 much higher than that, depending on where it is.
- 27 82 Q. If one takes a ú50,000 average price, you would keep,
- 28 within your experience of what the ratios were, that
- 29 would be in keeping with the ratio of 10?
- 30 A. It would, yes.

1 83 Q. In the context of whatever Lansdowne paid for it, for
2 the site, they made a good profit out of the site?

3 A. That was a particularly good site.

4 84 Q. Yes. In relation to the execution of the document
5 transferring the shares in Worland. It is probably
6 that you have said it already, but if you look at page
7 - sorry about this. Page 367.

8 .
9 That was the documents executed on the 25th of June,
10 1980. I think you have already told the Chairman of
11 the Tribunal that when you signed, Mr. Finnegan's name
12 hadn't been appended to it?

13 A. That is to the best of my recollection. In fact, I am
14 sure it wasn't.

15 85 Q. Do you have any recollection of when you were asked to
16 sign this document, or have you any recollection of
17 Worland at all?

18 A. Well, the only recollection I have is what Tom Brennan
19 reminded me, and I agree with him, that the - Worland
20 substituted Victa, when Victa was struck off, and they
21 had to get it reinstated, and instead - it was a
22 complicated method used.

23 86 Q. I think the Tribunal has heard why. I am just asking
24 you when Worland came in to it?

25 A. Yes.

26 87 Q. Did you understand - what did you understand your
27 position to be in relation to --

28 A. I was out of it at that stage, Mr. Hayden, because I
29 had already, Mr. Finnegan and myself were finished.

30 88 Q. Yes?

1 A. As far as I was concerned.

2 89 Q. So is it your position that such involvement, as any as
3 you had in relation to Worland, was for the purposes of
4 effecting the title as it then --

5 A. Or doing what I was asked to do. Whatever I was asked
6 to sign, I did it, so as they could get on with
7 whatever they were doing, which was with Oakpark and
8 whoever else was - and all of that.

9 90 Q. Have you any recollection at all of why the document of
10 the Declaration of Trust at page 527 was brought into
11 the equation? This is where you and Mr. Brennan
12 declare yourself to be the holders of all the shares.
13 Do you remember any of that or --

14 A. I don't.

15 91 Q. Do you have any memory at all of the events that
16 occurred in 1985? Page 106. Sorry, 1064.

17 .

18 This is the onward transfer of Worland. Do you have
19 any knowledge of any of that?

20 A. That was dealt with by - I have already explained to
21 the Tribunal that I had no further involvement once
22 Victa was out of it.

23 92 Q. I think, in fact, the issue of Worland did come up in
24 this context. If I could look at page 807.

25 .

26 And I think that's a letter to Mr. Barry, but from Mr.
27 Wheeler, re Worland Investments, in - I think that date
28 is 1985. On my copy it isn't, but it isn't on that
29 copy either. But it is: "I am told by Mr. Hugh Owens
30 that your client is responsible for payment of

1 one-third of our account in respect of the above
2 company." Why I say it is '85, if one looks at 803,
3 it talks about monies being due and owing, which is a
4 telex from Mr. Wheeler to Mr. Owens, a telex from Mr.
5 Owens to Mr. Wheeler saying, "I was not aware that the
6 Canio and Ardcarne accounts had been finalised.
7 Barry therefore owes 456.16, being one-third of
8 Worland.
9 Tom owes 1,231.16.
10 And Joe 2,291.16."
11 .
12 Then, Mr. Wheeler, it seems, in response to that, sends
13 the document to Mr. Barry, which as we saw at page 807.
14 .
15 MS. DILLON: With trepidation, Sir, there is a document
16 --
17 .
18 MR. HAYDEN: I am coming to it.
19 .
20 MS. DILLON: You are coming to it. That is okay.
21 ?
22 93 Q. MR. HAYDEN: Honest. If we go to page 1816, then. We
23 have a reply back, which is "I have only just heard
24 from" - that is not it. 816. "I have only just heard
25 from Mr. Barry of College Trustees Limited that he is
26 not aware of the involvement of his client in the above
27 company. He tells me that he has been in touch with
28 his contact in Dublin. He is also unaware of any
29 involvement. Please let me know how I am to proceed."
30 .

1 Do you remember Mr. Finnegan or anybody contacting you
2 in relation to Worland?

3 A. Sorry now, Mr. Hayden. I have got lost here. Who is
4 this letter --

5 94 Q. This is Mr. Wheeler.

6 A. Mmm. Oh, writing to Mr. Owens. Yes.

7 95 Q. Yes. "I have only just heard from Mr. Barry of College
8 Trustees that he is not aware of the involvement of his
9 client in the above company, and he tells me that he
10 has been in touch with his contact in Dublin, who is
11 also unaware of any involvement."

12 .

13 Now, I am not sure of the English of it, whether it is
14 Mr. Barry's client and his contact in Dublin are two
15 separate entities or not, or whatever, but just for the
16 purposes of the record, do you remember ever being
17 asked?

18 A. Do I ever remember being asked, was I involved in
19 Worland?

20 96 Q. Yes.

21 A. Certainly, no, I don't.

22 97 Q. As far as you are aware, Worland was a perfection of
23 title issue rather than any further involvement or
24 entitlement to monies?

25 A. That's correct.

26 98 Q. Just - finally, in relation to the furnishing of the
27 guarantee by you and Mr. Brennan to Lombard and Ulster.
28 I think you actually gave the guarantee, you gave the
29 guarantee, I think, in your own hand, it wasn't even a
30 formal document produced by the bank. Isn't that

1 correct?

2 A. It was --

3 99 Q. A handwritten?

4 A. I was asked - well, I wrote it out with assistance from
5 whoever was in the bank at the time.

6 100 Q. And, I think, you didn't want it to be a matter of
7 general knowledge that you had given the guarantee?

8 A. No, but the pattern, as I said yesterday, the pattern
9 always had been, with the bank, that we would give
10 personal guarantees.

11 101 Q. Mmm. And in relation to Mr. Hussey's position to you
12 yesterday, where he put a proposition to you that the
13 reason why Mr. Finnegan was not told about the
14 guarantee was because if he had been asked to sign a
15 guarantee, he may have had to have gone and found the
16 issue in relation to the AIF undertaking, isn't that
17 correct? Do you remember that?

18 A. Well, that - if that is what Mr. Hussey said, that is
19 not correct, because we just didn't want anybody else
20 to know that we had signed. There was no other reason
21 in it, other than that, that we didn't want it known
22 that we had signed our personal guarantees.

23 102 Q. And, in fact, in relation to whatever Mr. Finnegan says
24 he might have found out had he been asked to sign a
25 guarantee, I think --

26 A. Mr. Finnegan specifically said to me that he didn't
27 want to be involved in any loans or any loan
28 applications or any loans, his name involved. He
29 himself, yes, but not his name.

30 103 Q. Yes?

1 A. And I have explained that already. There was no point
2 in even asking him, because he - well, I don't know,
3 but certainly from my experience Mr. Finnegan has never
4 been involved in that, in personal guarantees.

5 104 Q. Well, just in relation to the loan itself, we saw on
6 the original 5th of July Offer Letter, even though the
7 Lombard and Ulster memo records Mr. Wreford's
8 involvement and attendance and the position in relation
9 to his shares, he wasn't asked to give a guarantee on
10 that occasion. The only stipulation and security was
11 yourself and Mr. Brennan?

12 A. We were the only people that were asked to give the
13 guarantees.

14 105 Q. And that was subsequently --

15 A. Called.

16 106 Q. Given on the 24th of October, '84?

17 A. Whatever date it was.

18 107 Q. Yes. But would it have been your experience of Mr.
19 Finnegan that had he been asked to give a guarantee, he
20 would have given one?

21 A. Highly.

22 .

23 MR. HUSSEY: That is a very hypothetical question.

24 That can't be allowed.

25 .

26 CHAIRMAN: Yes.

27 .

28 MR. HAYDEN: Anyway, of the many reasons why somebody
29 mightn't know about a guarantee --

30 .

1 CHAIRMAN: Again, that is comment.

2 .

3 108 Q. MR. HAYDEN: In any event, you did guarantee it?

4 A. Yes.

5 .

6 CHAIRMAN: Sorry, again, that is a comment. But

7 however, let's get on with it.

8 .

9 109 Q. MR. HAYDEN: Just a final question, I think. In

10 relation to the structures that were put in place

11 during all of the transactions, did you take legal and

12 accountancy advice in relation to those?

13 A. In all instances we did.

14 .

15 MR. HAYDEN: Thank you.

16 .

17 CHAIRMAN: Thank you. Anybody else want to ask any

18 questions before Ms. Dillon takes up the running?

19 .

20 Ms. Dillon.

21 .

22 .

23 .

24 .

25 .

26 .

27 .

28 .

29 THE WITNESS WAS THEN RE-EXAMINED BY MS. DILLON AS

30 FOLLOWS:

1 .

2 110 Q. MS. DILLON: Thank you, Sir.

3 .

4 There are a number of matters that I want to go over
5 with you, Mr. McGowan, and I'll identify them for you,
6 and we will go through them as quickly as we can.

7 .

8 I want to talk to you about the Pagebar issue which we
9 had left over until now, dealing briefly with this
10 Lombard and Ulster question, a question as to whether
11 Mr. Finnegan was or was not present at the draw down of
12 the loan of Lombard and Ulster, and the Capent, Cramer
13 Lane deal, the two Irish transactions that you had
14 involving Mr. Finnegan in Irish lands, which were
15 Herbert Street Plantation and the factory at Cramer
16 Lane?

17 A. Correct.

18 111 Q. All right. Now, the first thing I want to deal with
19 you, because it is a document that touches on the
20 Lombard and Ulster issue, that has been canvassed this
21 morning, and it is a document that hasn't been put to
22 you this morning. And for completeness, I want to put
23 it to you. It is 1072, please.

24 .

25 This is a memorandum of the 27th of September, 1985,
26 and I want to direct your attention to the third
27 paragraph of that. It is a memorandum by Mr. Crookes,
28 who was one of the senior lending managers in Lombard
29 and Ulster. Isn't that right?

30 A. Yes.

1 112 Q. Yes. And you will see at that stage, and this is the
2 27th of September, 1985, that at the third paragraph it
3 says:
4 .
5 "As a matter of interest a third party, unknown to us,
6 a John Barry, has been in touch with Fergus Smith
7 claiming to represent parties interested in the
8 company, and has asked Fergus to agree to meet John
9 Finnegan, auctioneer. You will recall that Mr.
10 Finnegan's name only came into the picture following a
11 very recent discussion I had with Paddy Dowling of AIF.
12 Fergus has agreed to meet Finnegan on the basis that he
13 will merely listen to what he has to say, and as far as
14 we are concerned Finnegan has no connection with Canio
15 and we are not at liberty to divulge any information to
16 him."

17 A. Yes.

18 113 Q. That document suggests that insofar as Lombard and
19 Ulster were concerned, Mr. Finnegan hadn't any
20 connection with Canio?

21 A. Because Mr. Finnegan had specifically said that he
22 didn't want to be associated with the loan, to me, Ms.
23 Dillon.

24 114 Q. Right. So I would suggest that there is one of two
25 reasons for that, Mr. McGowan: Either that Mr.
26 Finnegan didn't want Lombard and Ulster to know that he
27 was involved in the loan transaction, or alternatively,
28 that yourself and Mr. Brennan decided to keep Mr.
29 Finnegan's identity or involvement in Canio a secret
30 from Lombard and Ulster?

1 A. Well, we certainly didn't identify Mr. Finnegan or -
2 Mr. Finnegan's personal name with our discussions with
3 Lombard and Ulster. I can definitely recall that. We
4 didn't.

5 115 Q. And was that because Mr. Finnegan did not want to
6 disclose his involvement to Lombard and Ulster, or was
7 it because, that yourself and Mr. Brennan wanted to
8 keep Mr. Finnegan's involvement from Lombard and
9 Ulster?

10 A. No, Ms. Dillon, definitely not, because there was no
11 point in doing that, because Mr. Finnegan had already
12 said to me that he didn't want his name involved in any
13 loan applications. We never had any - and that is the
14 reason.

15 116 Q. Can you recollect, Mr. McGowan, moving on to another
16 issue now, whether or not Mr. Finnegan was present in
17 Jersey on the draw down of the loan?

18 A. Certainly we were present on one occasion in Jersey
19 when we went to meet Mr. Wheeler, which was, I think,
20 before the draw down of the loan, but to be - I can't
21 recall whether he was there on the actual draw down
22 when the title documents were handed over by Reid and
23 McNabb with Mr. O'Neill and myself, is that the --

24 117 Q. Either at the time of the closing of the Lombard and
25 Ulster loan on the 19th or November, or within a day or
26 two of that, can you recollect whether --

27 A. I can't, but --

28 118 Q. -- Mr. Finnegan was present on the day of the closing?

29 A. I can't.

30 119 Q. I want to draw to your attention the record that was

1 kept of the meeting by Mr. O'Neill, who was the

2 solicitor who went over --

3 A. That's right.

4 120 Q. -- to Lombard and Ulster. It identifies a number of

5 people as being present, Mr. Brennan, Mr. Russell, Mr.

6 Laurence Wheeler and Mr. Michael Bell, and Mr. Joe

7 McGowan?

8 A. Yes.

9 121 Q. Mr. Michael Bell was the authorised official of Circle

10 Advertisers Limited, who was the company who was going

11 to deal with the transactional part of the documents.

12 He was an employee of Bedell & Cristin?

13 A. Oh, I see.

14 122 Q. Mr. George Russell --

15 .

16 MR. HAYDEN: I wonder, could we have the page, in a

17 minute?

18 .

19 123 Q. MS. DILLON: Do you want the page - the page number is

20 3349, in relation to that document.

21 .

22 Mr. Russell prepared a memorandum sometime after the

23 meeting had taken place, and he recorded in that

24 memorandum that Mr. Finnegan was present in Jersey, and

25 that is at page 938.

26 .

27 Now, on the second paragraph of page 938 Mr. George

28 Russell sets out his recollection in relation to what

29 happened on the closing. He says:

30 .

1 "On Monday, the 19th of November, 1984, GAR" - that is
2 George A Russell - "travelled to Jersey with Messrs.
3 Hugh O'Neill of Messrs. Binchys & Partners acting for
4 Lombard and Ulster together with Messrs. Thomas F
5 Brennan and Joseph B McGowan to meet Mr. Wheeler of
6 Messrs. Bedell & Cristin. GAR handed offer all the
7 documents of title to Mr. Hugh O'Neill who handed over
8 the loan cheque. GAR cannot remember whether the loan
9 cheque was handed to him, and he endorsed it over, or
10 whether it was handed directly to Mr. Wheeler. In any
11 case, Mr. Wheeler divided out the loan cheque between
12 Messrs. Brennan and McGowan and Mr. John Finnegan whom
13 GAR now remembers was there also.
14 Mr. John Finnegan is an auctioneer of the firm of
15 Messrs. Finnegan Menton, and is involved financially
16 with Messrs. Brennan and McGowan in some of their
17 ventures."

18 A. Yes.

19 124 Q. Now --

20 A. Yes, I do see that document, but I just don't really
21 know - I can't say for definite. I just don't know
22 whether Mr. Finnegan was there.

23 125 Q. Well, if Mr. Finnegan was there, and was there when the
24 proceeds of the cheque were divided out between the
25 three of you, that would suggest, and I put it no
26 higher than that, that he was present when Mr. Wheeler
27 prepared his handwritten document dealing with the
28 disbursement of the funds?

29 A. Well, I honestly don't know - I just don't know.

30 126 Q. Yes. Mr. Wheeler also refers to a document at page

1 802. And before we come to this document, you will
2 recollect, Mr. McGowan, that one of the deductions that
3 was made from the proceeds of the loan cheque were fees
4 due to Bedell & Cristin in connection with Canio
5 Limited. They were deducted from the Lombard and
6 Ulster --

7 A. Loan.

8 127 Q. -- loan. And this is a telex dated the 22nd of
9 January, 1985, and it is dealing with issues about what
10 monies were due to Bedell & Cristin for on-going fees
11 in connection with companies. But at paragraph 2 it
12 says:

13 .
14 "The Canio and Ardcarne accounts were paid when we
15 received the proceeds of the mortgage in November.
16 This was done on the instructions of all three
17 beneficial owners. Could you please, therefore, let me
18 have revised figures of the contributions from Tom's
19 share and Joe's share. Possibly this information may
20 affect the figures referred to in 1 above."

21 .
22 Now, that suggests, Mr. McGowan, that the instructions
23 to deduct the Bedell & Cristin fees that were due in
24 connection with the operation of the companies was done
25 on the instructions of all three beneficial owners,
26 when the proceeds of the mortgage was received in
27 November of 1984?

28 A. It does.

29 128 Q. And that would suggest that Mr. Finnegan may have been
30 present in Jersey?

1 A. Well, it may, but I genuinely - it would be wrong for
2 me to say, because I don't honestly know.

3 129 Q. All right. If I could turn to ask you about the
4 Pagebar issue, Mr. McGowan, and this is the issue --
5 .

6 MR. WALSH: Sorry, Ms. Dillon.

7 .
8 Just before Ms. Dillon deals with the Pagebar issue, I
9 have one short remark to make, Sir. That is, I want to
10 correct the transcript from Friday last, when this
11 matter was first raised by Ms. Dillon, then she left it
12 over because none of the parties had the documentation
13 in relation to it.

14 .
15 CHAIRMAN: What is incorrect?

16 .
17 MR. WALSH: The correction is very short, Sir.

18 .
19 CHAIRMAN: Short.

20 .
21 MR. WALSH: Yes. It was indicated we already had the
22 documents. We didn't. It was indicated that they
23 would be furnished here on Friday. They weren't. We
24 didn't get them until Monday. We had to stay up all
25 night on Monday, and get them ready for Tuesday, in
26 case they were dealt with on Tuesday.

27 .
28 The next point I want to make is rather alarming.

29 .
30 When we get the documentation, we discover that the

1 Tribunal had them since February of 1998. These
2 documents were referred to on at least three occasions
3 by - or part of them - by Mr. Hanratty, when he was
4 dealing with Mr. Burke, Mr. Esmonde Reilly, Mr. Tom
5 Brennan. On each of those occasions I asked for the
6 documents. I wasn't furnished with them.

7 .

8 We now discover that the Tribunal had them since
9 February 1998. I don't think that is a fair procedure.

10 .

11 The next matter, just as a point of balance. And the
12 first letter on the file is the 28th of April, 1975.

13 It was a letter from the Chief Superintendent to the
14 Commissioner, quoting the DPP's rule, which is that,
15 "I consider that the very thorough and painstaking
16 Garda investigation has not disclosed evidence
17 warranting a prosecution."

18 .

19 Now, that is just to balance matters. That should have
20 been furnished to us, or should have been stated in
21 evidence at some stage when these matters were being
22 dealt with, just rather than cherry pick an item that
23 suits the particular question at the time.

24 .

25 I think it should all have been put in context. And
26 that's the only point I wish to make.

27 .

28 The other thing is that we were writing, and writing, I
29 think, five letters over the summer before we get the
30 file.

1 .

2 I just think it is not really fair.

3 .

4 CHAIRMAN: I note your submissions.

5 .

6 MR. WALSH: Very good, Sir.

7 .

8 MS. DILLON: In reply to that. First of all, there is
9 no question of the Tribunal cherry picking anything.

10 .

11 The Tribunal received a request from Messrs. Shannons
12 Solicitors in connection with the release of the entire
13 of this file. This file was furnished to you, Sir, on
14 foot of a request made by you, to the Gardai, and it
15 was furnished under the usual grounds in connection
16 with confidentiality. It was necessary to obtain the
17 consent of the Gardai to the release of the file, so
18 that it could be furnished to Messrs. Shannons
19 Solicitors.

20 .

21 Most of the matters in the file are not relevant to the
22 particular issue that we are going to deal with, and
23 what Mr. Walsh is seeking to do, under a guise of a
24 submission, is to set on the record that the Gardai
25 decided that there was, or the DPP decided that there
26 was no grounds for a prosecution.

27 .

28 There is no issue about that. There has never been any
29 issue about that. There has never been any suggestion
30 otherwise, in relation to the matter.

1

CHAIRMAN: We will let the matter stand there. I note what has occurred. I regret any unfortunate consequence.

5

6 130 Q. MS. DILLON: The situation, Mr. McGowan, in relation to

7

the Pagebar issue, if we can call it that, is the discovery of a document in the Companies Office, which referred to Ray Burke planning, ú15,000. Okay. You had forgotten, I think, on the last occasion, that you had, in fact, made a statement to the Gardai in which you agreed with the contents of Mr. Thomas Brennan's statement, which was a more detailed statement than the one you made to the Gardai. Okay.

15

Mr. Brennan, in his statement, sets out various matters in relation to the retention of Mr. Burke's company, PJ Burke (Sales) Limited, in connection with the sale of particular lands in North County Dublin, and they were the lands owned by Pagebar. I beg your pardon, they were owned by Dublin Airport Industrial Estates and were being sold to Pagebar?

23 A. Yes.

24 131 Q. Now, can you tell the Sole Member of the Tribunal what

25

you recollect about the retention of Mr. Burke and his company in connection with the sale of the lands, how it arose and matters of that sort?

28

A. PJ Burke Sales had been selling houses for us for many, many years, and then we - we had completed the purchase of that land from - we were about - there were about

30

1 three sections of land involved in total on the
2 Malahide Road, or four sections, and we purchased -
3 sorry, another person had an option on - he introduced
4 us to the lands. He had an option on the land. He
5 asked us, would we be interested in buying the land
6 with him, which we said we would. And then later on
7 there was some more land purchased over the years by
8 Grange Developments, and by - well, I think it was
9 mainly Grange Developments, but the land - I don't
10 think the - there was about - some of the land had been
11 zoned when we purchased it, and some of it, about 20
12 acres had not been zoned when we purchased it. Mr.
13 Langan or the other person was - and we weren't in a
14 financial position to buy the remainder, the remainder
15 of the land, Dublin Airport Industrial Estates.
16 .
17 And then his shareholding was purchased by somebody
18 else, and that really was the end of his involvement in
19 the land transaction.
20 .
21 And then, I don't know how it came about, but - well, I
22 do know how it came about. The land then was zoned for
23 industry, and Pagebar - Mr. Burke introduced Pagebar as
24 a potential purchaser, and they actually exchanged a
25 contract and agreed to buy - it did have planning
26 permission. In fact, I think it had full planning
27 permission for two factories. That was their business.
28 They exchanged contracts, paid a deposit, and the
29 completion was to take place on a certain date, and
30 unfortunately it just - it didn't complete because

1 Pagebar got into difficulties in the UK, and, in fact,
2 the company was - I think it didn't survive.

3 .

4 So then the sale did not materialise, and whatever way
5 the contract was drawn up, at first we thought we would
6 be able to keep the deposit, but, in fact, that wasn't
7 the case. The deposit had to be refunded as well.

8 132 Q. The motions to propose the rezoning of the land
9 originally, according to the statement of Mr. Burke
10 made to the Gardai in the course of those proceedings,
11 were, in the first instance, moved by one person, but
12 seconded by Mr. PJ Burke, Mr. Burke's father - voted,
13 and voted in favour by Mr. Burke.

14 .

15 When it was being rezoned, the motion was again
16 seconded by Mr. PJ Burke, and voted - Mr. Burke voted
17 in favour of it also?

18 A. That could be the case, yes.

19 133 Q. Did you approach Mr. PJ Burke in connection with
20 achieving the rezoning of this land?

21 A. I did not.

22 134 Q. Did you have any discussions with Mr. Ray Burke in
23 connection with the rezoning of this land?

24 A. In fact, I think it was Mr. Langan that was dealing
25 with all of that, because he had the option on the
26 land, Ms. Dillon, because I think - I am not quite sure
27 whether we had entered into the scheme before or after
28 the zoning had taken place, but it was Mr. Langan who
29 dealt, who was dealing with all of that, but that was
30 only - as I said, part of the land, I think it was

1 Dickies' land wasn't zoned, but the rest of it had
2 already been zoned before we entered into any contracts
3 to purchase.

4 135 Q. Mr. Burke says that the land wasn't, in his statement
5 to the Gardai made at the time, that the land had been
6 rezoned before he had any financial interest in the
7 lands, insofar as he was retained as an estate agent in
8 connection with the lands?

9 A. I don't think Mr. Burke was retained as the estate
10 agent. Mr. Burke introduced Pagebar and said, "Well,
11 this company will buy the land," and that's how that
12 came about.

13 136 Q. Mr. Burke says in his statement that he was approached
14 by Mr. Tom Brennan, a Director of Dublin Airport
15 Industrial Estates, "who appointed me sole agent for
16 the sale or lease of any premises built or lands sold
17 on this portion which had previously been owned by two
18 named individuals."

19 A. Yes.

20 137 Q. So it would appear that Mr. Burke --

21 A. It would, yes.

22 138 Q. -- that he was appointed sole agent?

23 A. Sole agent.

24 139 Q. Yes. -- in connection with it. But that prior to his
25 appointment as sole agent in connection with the lands
26 there had been a number of motions for rezoning of
27 lands, including the lands the subject matter of the
28 Pagebar transaction?

29 A. Correct.

30 140 Q. In which the motions appear to have been seconded in

1 all cases by Mr. Burke's father, and that Mr. Burke
2 voted in favour of it?

3 A. Yes.

4 141 Q. Now, was it the position, then, that nobody on behalf
5 of Dublin Airport Industrial Estates approached Mr.
6 Burke or Mr. Burke's father in connection with the
7 rezoning of this land?

8 A. Oh, I don't know.

9 142 Q. Did you?

10 A. I didn't.

11 143 Q. All right. Now, Mr. Burke says in his statement that a
12 contract was signed with Pagebar for which he was to
13 receive €15,000 for being the sole agent?

14 A. That would have represented about 2 percent of the sale
15 price. About two and a half percent.

16 144 Q. If we could have page 4016, please. This is the
17 document about which all the trouble was, Mr. McGowan,
18 in the newspaper?

19 A. That's right.

20 145 Q. You will see there set out at the top of it,.

21 "Ray Burke planning, €15,000.

22 Des McCarthy, engineer, €4,000.

23 Patrick Langan, balance due €10,000.

24 Accountants and tax advisors 1,825.

25 Totalling 30,825."

26 A. I see that.

27 146 Q. If we move down through the document, you will see that
28 the contract price was €403,800?

29 A. That's correct.

30 147 Q. All right. So by reference to that, presumably, the

1 fee of ú15,000 was agreed with Mr. Burke?

2 A. It would have been, yes.

3 148 Q. Yes. So how was the figure of ú15,000 calculated?

4 A. Well, I would imagine it was on a percentage basis.

5 149 Q. It is 3.71 percent of ú403,800?

6 A. Well, whatever percentage it is, that would have been -

7 I would have thought it was about - I didn't realise,

8 but - is ú15,000 3.7 percent?

9 150 Q. 3.71 percent of ú403,800.

10 A. That must have been what was agreed.

11 151 Q. 3.71 percent, Mr. McGowan, I suggest, isn't normally

12 the sort of figure an estate agent would apply in

13 charging --

14 .

15 MR. HAYDEN: I wonder, Sir, might I object on this

16 basis - maybe not object. Will the Tribunal be

17 adducing evidence of what the average price of an

18 auctioneer is going to be? Because if My Friend is

19 going to do that, so-be-it.

20 .

21 MS. DILLON: We can ask Mr. Burke when he comes back.

22 He was an auctioneer for years.

23 .

24 CHAIRMAN: The best probable source of information on

25 this subject, on this occasion, put it that way.

26 .

27 152 Q. MS. DILLON: I want to know, Mr. McGowan, how a

28 percentage of the figure, if he was retained as an

29 estate agent to act on behalf of Dublin Airport

30 Industrial Estates, the figure that is allocated to Mr.

1 Burke is €15,000, which is 3.71 percent of the contract
2 price that is referred to in the document?

3 A. That's correct.

4 153 Q. Now, I want you to explain to the Sole Member of the
5 Tribunal how that figure was calculated and arrived at
6 with Mr. Burke.

7 A. Well, I would imagine that, Mr. Chairman, that it was
8 on the basis, and the figure may very well have been
9 rounded off, but it was on the basis of a percentage of
10 the selling price, which is normally - normally it
11 varies between two and a half and 5 percent, but on a
12 private transaction it is usually - it is usually two
13 and a half percent, but I don't know why it was 3.7
14 percent, or why it was, perhaps, rounded off at that
15 figure. But the fact is that he didn't get any of the
16 money, anyway, because it wasn't - the transaction
17 didn't go through and there was no payment made.

18 154 Q. This was a document, according to the letter that Mr.
19 Owens wrote to the Gardai, that was prepared in
20 anticipation?

21 A. Exactly.

22 155 Q. Of a sale?

23 A. Of a sale.

24 156 Q. And when the proceeds came in, this is how they were
25 going to be disbursed?

26 A. Correct.

27 157 Q. And the professional fees are set out, as we see them
28 there: Mr. Burke, Mr. McCarthy, Mr. Langan, and
29 accountants and tax advisors?

30 A. That's correct.

1 158 Q. And there was going to be an apportionment to banks
2 under the second schedule, income tax, and the purpose
3 of the exercise was to end up, as we see at the bottom
4 of the page, the net proceeds that would be available
5 for distribution, presumably to the shareholders of
6 Dublin Airport Industrial Estates?

7 A. That's right.

8 159 Q. So it is a document that is prepared in anticipation?

9 A. Of a sale to Pagebar.

10 160 Q. And it was anticipated, therefore, that Mr. Burke would
11 get €15,000 out of the sale?

12 A. That is correct.

13 161 Q. Mr. Brennan told the Gardai, and Mr. Burke told the
14 Gardai, that they were fees for, estate agency fees for
15 €15,000 for being sole agent?

16 A. Yes, he did.

17 162 Q. All right. Now, on that basis, how was the figure of
18 €15,000 calculated?

19 A. I would imagine by a percentage, and then perhaps it
20 was rounded off in some manner, but it would have been
21 a percentage of the sale price, Ms. Dillon.

22 163 Q. Percentage of the sale price?

23 A. Correct.

24 164 Q. So that there was - you suggest this figure was arrived
25 at by a negotiation between - did the negotiation
26 involve you?

27 A. I can't remember.

28 165 Q. Okay. Because Mr. Burke says in his statement that he
29 was approached by Mr. Tom Brennan, who appointed him
30 sole agent for the sale of the premises?

1 A. Mmm.

2 166 Q. He doesn't indicate in his statement that he was
3 approached by you.

4 A. I see.

5 167 Q. I am not suggesting that you didn't approach him.

6 A. I wouldn't disagree with that amount, because it was a
7 very good, a very good price for the land at that
8 particular time. It was an exceptional price, and it
9 was also before Capital Gains Tax was introduced as
10 well. I think they were buying the shares, so it would
11 - it just didn't happen.

12 168 Q. You see, Mr. Brennan said in his statement to the
13 Gardai, in the first statement that he made, he said
14 that "I can categorically state that none of the
15 €15,000 shown as due to Ray Burke is for anything else
16 other than normal commission on the sale land"?

17 A. That is my understanding of it.

18 169 Q. The normal commission, as I understand estate agents,
19 they charge a percentage?

20 A. That's correct.

21 170 Q. And that percentage, again, normally, is two, two and a
22 half, 5 percent?

23 A. Between two and a half and 5 percent.

24 171 Q. Yes. So would 3.71 percent be, in your experience, a
25 normal percentage for an estate agent to charge?

26 A. No, it would not.

27 172 Q. No. That would suggest that the figure of €15,000 was
28 therefore calculated by reference to something else,
29 other than normal estate agency charges?

30 A. No, I wouldn't agree with that. I would say that if

1 the figure came in at ú14,700, or something like that,
2 or 14,300, that it could very well have been agreed to
3 just buy, to round them off at the figure of ú15,000.

4 173 Q. Or the figure of ú15,000 could have been a figure that
5 was calculated, not by reference to a percentage, but
6 by reference, say, to being a flat fee, for example.

7 .
8 MR. HAYDEN: Sir, in all fairness to the witness, he
9 said he doesn't remember. I mean, apart from
10 conjecture, I don't see how he can add anything.

11 .
12 CHAIRMAN: I think we are getting into the world of
13 conjecture.

14 .
15 MS. DILLON: This witness has said 3.71 percent would
16 not be the normal percentage fee charged by an estate
17 agent. On that basis, I am just suggesting to the
18 witness that it is possible, it is no more than that,
19 that a flat fee was agreed.

20 .
21 MR. HAYDEN: And, Sir, he also said two and a half to 5
22 percent, it could have been rounded up to the 15. So,
23 I mean, it is between, as I understand it, 3.71 percent
24 is between two and a half and 5 percent.

25 .
26 174 Q. MS. DILLON: Okay. Is two and a half percent a normal
27 estate agency charge?

28 A. It is.

29 175 Q. Is 5 percent a normal estate agency price?

30 A. It is.

1 176 Q. Is 3.71 percent?

2 A. It is unusual.

3 177 Q. Okay. Thank you very much.

4 .

5 Now, if I could ask you, then, to deal with the last
6 issue, which are the two land transactions which
7 apparently involved Mr. Finnegan and did not apparently
8 involve any Jersey element, which were the two
9 transactions you identified in your direct evidence,
10 which was the Cramer Lane property?

11 A. And the one I forgot.

12 178 Q. The Herbert Street Plantation. Okay. First of all,
13 can you explain generally the Cramer Lane property,
14 what type of property it was, when you bought it, how
15 much you paid for it?

16 A. It was an industrial unit, and I - from recollection I
17 know, I think that the plantation came together with
18 Cramer Lane, that it was part and parcel of one
19 transaction. I know that the plantation came in as an
20 addition, to one addition to one transaction. I am
21 nearly sure it was Cramer Lane. But Cramer Lane was
22 purchased, I am nearly sure the two were purchased in
23 the one transaction, for the one amount of money. How
24 the money was divided up, I still don't know, but to
25 describe them to you: Cramer Lane had an industrial
26 unit on it, which was about 20 - I think it was about
27 14 or 15,000 square feet, and it was producing an
28 income with a very good tenant with - and the parent
29 company was actually a Smurfit company, I think, a
30 Smurfit company, which guaranteed the Danish company

1 were making types of containers. Then, the money was
2 borrowed from, I think all of the money for Cramer Lane
3 was borrowed, and the income went very close to
4 covering the borrowing until such a time as the
5 interest rates were increased quite dramatically. And
6 then it was at that stage that Cramer Lane, it was
7 decided to sell Cramer Lane. I am not quite sure at
8 what period of time it was after the purchase.

9 179 Q. The company, there was a company that owned Cramer
10 Lane, is that correct?

11 A. Capent.

12 180 Q. Capent. And who were the beneficial owners of Capent,
13 who owned Capent?

14 A. Well, we might - Mr. Brennan and myself might have been
15 down as the directors of Capent. I am not quite sure
16 whether Mr. Finnegan was a director of Capent or not,
17 but the same understanding was there, that the three of
18 us shared in whatever, in our involvement in Capent.

19 181 Q. Was any of the purchase price of the premises at Cramer
20 Lane put up by the three, the three persons involved?

21 A. I don't think so, but I think Mr. Brennan and myself
22 might have put up the money for the plantation.

23 182 Q. We will come on to deal with the plantation in a
24 minute. If we just stay with Cramer Lane at the
25 moment. From whom did you buy Cramer Lane?

26 A. The vendor was a Dutch company, a subsidiary of the
27 Smurfit Group.

28 183 Q. How did you come to hear of it?

29 A. I am sure it was Finnegan Menton who told us about the
30 property.

1 184 Q. Were they selling it?

2 A. They were. Again, I am not sure whether they were
3 selling it or not, but certainly it was - that's how we
4 heard about the property.

5 185 Q. Yes. Industrial factory premises was not a normal or a
6 usual type of Brennan and McGowan transaction?

7 A. It wasn't, no. The idea was eventually, probably, to
8 find a more suitable place for them to - while they
9 were good tenants and the income was good, I suppose
10 what we had at the back of our minds would have been,
11 what would have ultimately happened with the other
12 people that purchased from us and sold on again and
13 sold on again, and the end result is that the last time
14 it was sold, it was sold for in excess of ú3 million
15 for residential development.

16 186 Q. Did you have occasion to apply for planning permission
17 at any stage while you were owners or after you had
18 agreed to buy the Cramer Lane property?

19 A. I can't remember. I don't know. I don't think so.

20 187 Q. And when you sold the Cramer Lane property, is it your
21 recollection that there were no funds left to
22 distribute?

23 A. Definitely not.

24 188 Q. But if there had been funds left to distribute, it
25 would have been distributed equally between the three
26 of you?

27 A. Between the three of us.

28 189 Q. The plantation, what type of a property was that?

29 A. That was a very long - it was a narrow piece of land
30 with - it had car park use on part of it, and that came

1 in - I am almost certain came in with the Cramer Lane,

2 the two came together.

3 190 Q. Was it also industrial premises?

4 A. No, it wasn't. It was purely, almost like - it was

5 just a field, a tiny, a long narrow field.

6 191 Q. And where was it situate?

7 A. Off Baggot street.

8 192 Q. Okay. From whom did you buy it?

9 A. The Pembroke Estates.

10 193 Q. How did you come to hear about it?

11 A. We heard about it through Mr. Finnegan, because as I

12 say, it definitely - it came with another property, I

13 am not sure whether it was Cramer Lane or not. I am

14 nearly sure the two were amalgamated together and

15 that's how we purchased that.

16 194 Q. Is it possible that you purchased it with a cottage?

17 A. I don't think there was a cottage on it.

18 195 Q. No, a separate purchase?

19 A. Oh, another purchase?

20 196 Q. That the Herbert Street property purchase was in

21 conjunction with a cottage?

22 A. It was in conjunction with something, Ms. Dillon, it

23 was.

24 197 Q. And you think it was the Capent property, but you are

25 not sure?

26 A. I thought it was.

27 198 Q. Okay. Did you apply for planning permission for that

28 property?

29 A. We did.

30 199 Q. Who did you apply to?

1 A. Dublin Corporation.

2 200 Q. Did you get it?

3 A. We - I think we got some residential on it, but we
4 didn't get the commercial that has since been built on
5 it.

6 201 Q. Did the Corporation grant you planning permission?

7 A. To the best of my recollection, they did not.

8 202 Q. They refused you?

9 A. They refused planning permission.

10 203 Q. What did you do when they refused you?

11 A. We appealed it.

12 204 Q. To An Bord Pleanala?

13 A. The Department of Local Government. Well, Bord
14 Pleanala, whichever one of them was there at the time.

15 205 Q. And did Bord Pleanala, if it was An Bord Pleanala,
16 grant you planning permission?

17 A. We got planning permission for the residential content,
18 but we didn't get planning permission for the
19 commercial one, which is where Mattheson Ormsby
20 Prentice are now. When we sold that on, we sold it on
21 with the benefit of the planning permission that we got
22 to the Green Property Company. And then they got
23 offices - I think they had to retain a certain amount
24 of the residential, but they certainly got offices and
25 - and more offices.

26 206 Q. Right. Can you recollect how much you paid for it when
27 you bought it?

28 A. I think it was in the region of ú40,000.

29 207 Q. And how much did you sell it for?

30 A. Slightly in excess of 200,000.

1 208 Q. 261,000?

2 A. Was it 261?

3 209 Q. I am asking.

4 A. I didn't think it was as much as that, but it may very
5 well have been.

6 210 Q. And how were the proceeds divided?

7 A. They were - I think there was quite a borrowing on that
8 at the time, and I am not sure there was that much left
9 to divide up, because there was quite an amount of
10 borrowings related to that particular property.

11 211 Q. With what bank?

12 A. It could have been the - I think it was the Chase Bank.
13 And all I can tell you is that - the borrowings, I
14 can't tell you exactly what the borrowings were, but I
15 do know that they were fairly substantial.

16 212 Q. Would the borrowings have been with Bank of Ireland,
17 the Rotunda Branch?

18 A. You are absolutely right. That is exactly where they
19 were.

20 213 Q. Not with the Chase Bank?

21 A. Not with the Chase Bank. You are right.

22 214 Q. Was there an undertaking with the Bank of Ireland at
23 the Rotunda Branch to lodge the net proceeds of sale?

24 A. That's correct, there was.

25 215 Q. And was the agreement in connection with the Herbert
26 Street Plantation, was this again from the start a
27 property that was owned jointly between yourself, Mr.
28 Brennan, and Mr. Finnegan?

29 A. Well, that was the understanding, yes.

30 216 Q. That it was owned equally between the three of you?

1 A. Correct.

2 217 Q. Do you know whether Mr. Finnegan invested any money in
3 that property, in the purchase of it?

4 A. I can't be sure about that. I just don't know.

5 218 Q. Did you and Mr. Brennan invest any money in the
6 purchase of the property?

7 A. We did.

8 219 Q. Can you recollect how much that was?

9 A. The purchase price.

10 220 Q. Which you think was around ú40,000?

11 A. That's what I think.

12 221 Q. Yes. And you think yourself and Mr. Brennan put up
13 that money?

14 A. That's what I thought, yes.

15 222 Q. Mm-hmm. And why was Mr. Finnegan involved in this
16 transaction, if yourself and Mr. Brennan were putting
17 up all the money? If you are correct, and Mr. Finnegan
18 didn't put up any money, what was Mr. Finnegan's
19 contribution to the transaction?

20 A. Well, he recognised the opportunity that was there.
21 Well, of course, unfortunately we weren't in a
22 financial position to hold on to it long enough to see
23 the same as Cramer Lane, to see the end result. When
24 we had our difficulties at that time, it was part - it
25 was sold on.

26 223 Q. The property, when you bought it, was a green field
27 site with no planning or zoning?

28 A. Yes, absolutely.

29 224 Q. Right. You applied to the Corporation for planning
30 permission and you were turned down, and you appealed

1 it. And you were granted a type of planning permission
2 for residential purposes.

3 A. Correct.

4 225 Q. And you ultimately sold it at around the time that you
5 had had the Canio difficulties?

6 A. Correct.

7 226 Q. For 261,000?

8 A. That's correct.

9 227 Q. Were there any funds disbursed out of that sale to the
10 three of you, when the sale finally closed?

11 A. I think most of the money went to the Bank of Ireland,
12 and to the best of my recollection, Mr. Brennan and
13 myself - I can't remember exactly, but we worked out an
14 understanding with Mr. Finnegan whereby he got a
15 certain amount of money from his share, because it was
16 a bit complicated with the borrowings with the Bank of
17 Ireland. And I can't remember now the exact, how that
18 was done, unless you can help me.

19 228 Q. When the difficulties arose with Mr. Finnegan, did Mr.
20 Finnegan have the title deeds of the Herbert Street
21 Plantation?

22 A. Well, not Mr. Finnegan, but certainly the Pembroke
23 Estates would, might have had them.

24 229 Q. No. After you had purchased the property - was the
25 Herbert Street Plantation property produced to yourself
26 and Mr. Brennan through Mr. Finnegan?

27 A. Yes, it was.

28 230 Q. And was this a property that was sold, again, by either
29 Herbert Properties Limited or Herbert Estates Limited?

30 A. I thought it was the Pembroke Estate.

1 231 Q. Well, they are the companies through which, as in
2 Sandymount, that the Herbert, the Pembroke Estate does
3 its business?

4 A. That's right.

5 232 Q. Do you know whether the property was being offered for
6 sale on the open market when you bought it?

7 A. I don't know.

8 233 Q. All right. When you came to sell it, to sell the
9 property --

10 A. Yes.

11 234 Q. -- Mr. Russell was your solicitor, Reid and McNabb?

12 A. They were.

13 235 Q. Did Mr. Finnegan have the title deeds?

14 A. Well, I can't say whether it was Mr. Finnegan. Perhaps
15 it was the Pembroke Estates that had them. I thought
16 we had paid for them at that stage.

17 236 Q. If you had paid for them, the Pembroke Estate wouldn't
18 have the title deeds, isn't that right?

19 A. That's correct.

20 237 Q. Okay. When you came to sell it, Mr. Finnegan
21 apparently had the title deeds and was holding on to
22 the title deeds because he said that he hadn't been
23 paid?

24 A. His share.

25 238 Q. His share.

26 A. Correct. Now I am --

27 239 Q. It is coming back to you?

28 A. Yes.

29 240 Q. That Mr. Finnegan held on to the title deeds, or was
30 given the title deeds of the Herbert Street Plantation

1 because he was entitled some share and he wasn't being

2 paid?

3 A. That's correct.

4 241 Q. And you agreed to pay Mr. Finnegan?

5 A. We did.

6 242 Q. How much?

7 A. I think it was - I think it could have been, from

8 recollection, ú50,000.

9 243 Q. Mm-hmm. You gave a personal agreement to pay Mr.

10 Finnegan, ú50,000?

11 A. That's correct. That's right.

12 244 Q. And if we could have Document 887, please

13 .

14 Now, Mr. Finnegan had the title deeds of the property.

15 He was refusing to release the title deeds of the

16 property until he got paid?

17 A. That's correct.

18 245 Q. You signed this document on the 7th of May, 1985. If

19 you scroll to the bottom. That is your signature,

20 isn't it, in the presence of Thomas Brennan?

21 A. It is.

22 246 Q. So, if you go back to the top of the document.

23 .

24 "One month after the date hereof, I promise to pay to

25 John Finnegan of 17 Merrion Row, Dublin 2, or to his

26 order the sum of ú50,000 value receiving, and failing

27 such payment, to pay to the said John Finnegan,

28 interest on such sum at the rate of 20 percent per

29 annum from the said date up to the date of actual

30 payment thereof.

1 .
2 As a director of Criteria Developments Limited, I
3 hereby acknowledge the agreement of that company that
4 Mr. Finnegan should hold the deeds of that company's
5 property known as The Plantation, Herbert Street,
6 Dublin, as security for my payment of the said sum of
7 ú50,000, and on the understanding that on the payment
8 of the said sum by me, Mr. Finnegan will release the
9 said deeds to the solicitors for the said Criteria
10 Developments Limited to enable them to complete the
11 sale of that company's property.

12 .
13 I further promise and undertake to secure an
14 undertaking from the solicitors for Criteria
15 Developments Limited to discharge to Mr. Finnegan his
16 fees and expenses, amounting to ú12,000, arising out of
17 the sale of the said property known as The Plantation,
18 Herbert Street"?

19 A. I see that.

20 247 Q. Okay. Did Mr. Finnegan sell the plantation for you?

21 A. He didn't, no. We were approached by Palmer McCormack,
22 and I - in fact, I think it was Mr. Brennan that had
23 more contact with the agents than I had, and it was
24 agreed to sell, but I am - maybe - I am not sure
25 whether Finnegan Menton negotiated with Palmer
26 McCormack or not, but to the best of my recollection.
27 I can't be sure of that.

28 248 Q. It would seem, Mr. McGowan, that by the 25th of March,
29 1985, you had received a deposit from Arthur Cox & Co
30 in connection with the sale, a sum of 21,600 being 10

1 percent?

2 A. Yes.

3 249 Q. But that there was a problem, because Mr. Finnegan had

4 the title deeds?

5 A. Yes.

6 250 Q. Okay. Mr. Russell discussed this matter on the 19th of

7 April, '85, with Mr. Finnegan. If we could have page

8 825, please.

9 .

10 And the first memo is: "Attending on Mr. John Finnegan

11 when he stated that he would come back to me in the

12 morning about the arrangements he had with Joe McGowan

13 and Tom Brennan."

14 .

15 If we move down the page, you will see a second

16 attendance dated the 19th April:

17 .

18 "Attending on Mr. John Finnegan when he telephoned and

19 stated that he had agreed with Joe McGowan that he

20 should get ú50,000 out of the sale, or out of some

21 other property. ú3,560 outlay, advertising etc..

22 ú5,000 outlay for planning application, and 5 percent

23 fees, and that he would be holding the deeds until he

24 got this money. I informed him that I had given an

25 undertaking to the bank, and obviously this would have

26 to be sorted out. I gave this on the understanding

27 that the deeds were not subject to any equitable

28 charge, as I had been told that you held the deeds, but

29 no charge on them."

30 .

1 Right.

2 .

3 That document suggests that Mr. Finnegan was looking
4 for ú50,000 out of the sale, together with expenses,
5 outlay, advertising, and a percentage of fees?

6 A. That's what the document says.

7 251 Q. And he was looking for a ú5,000 outlay for the planning
8 application?

9 A. Yes.

10 252 Q. Had Mr. Finnegan been the person who applied for the
11 planning on the Herbert Street Plantation?

12 A. God, I will have to check - I don't know.

13 253 Q. All right. Because if we go back to the document,
14 where you promised to pay him, which is at page 887,
15 Mr. McGowan, in addition to agreeing to pay him the
16 ú50,000, you also agree in the last paragraph to get an
17 undertaking from your solicitors to discharge his fees
18 and expenses, amounting to ú12,000, arising out of the
19 sale of the property known as The Plantation, Herbert
20 Street?

21 A. Yes.

22 254 Q. Now, the property had been agreed to be sold at this
23 stage, because you had got in a deposit from Arthur Cox
24 & Co.

25 A. I see.

26 255 Q. And your recollection is not that Mr. Finnegan was
27 retained to sell it, you thought it was Palmer and
28 McCormack?

29 .

30 MR. HUSSEY: No.

- 1 .
- 2 A. Palmer and McCormack acted for the purchaser. I am
- 3 sorry.
- 4 .
- 5 256 Q. MS. DILLON: The question I meant to put to you was:
- 6 Did Mr. Finnegan act for yourself, for the three of
- 7 you, or for Criteria, the company, in selling the
- 8 property?
- 9 A. He certainly must. He did, but I can't remember
- 10 exactly the details. I know that I met with Mr. - or
- 11 with Palmer McCormack on one occasion, and then Mr.
- 12 Brennan, but it could very well have been Finnegan
- 13 Menton who dealt with it.
- 14 257 Q. But why were you giving Mr. Finnegan a personal
- 15 guarantee?
- 16 A. Because that was his share in the land transaction.
- 17 258 Q. But why wasn't Mr. Brennan giving him a personal
- 18 guarantee also?
- 19 A. Well, there was certainly some confusion about the
- 20 loan, and that - I wouldn't have given that unless Mr.
- 21 Finnegan was owed that amount of money, which would
- 22 have been his share, Ms. Dillon.
- 23 259 Q. Are you saying that Mr. Finnegan's profit out of the
- 24 sale of the plantation was ú50,000?
- 25 A. I am.
- 26 260 Q. Right. If you go back to the top of the document, you
- 27 are agreeing to pay him ú50,000 for value received. So
- 28 what value had you got for the ú50,000, Mr. McGowan?
- 29 A. Well, that he introduced the property and that we were
- 30 to share a third, a third, a third on the end result.

1 261 Q. Did Mr. Finnegan put up any money for the purchase of

2 Herbert Street Plantation?

3 A. I don't think so, but I can't be one hundred percent

4 sure.

5 262 Q. So why is he getting €50,000?

6 A. Because it was the same arrangement as we had with our

7 other property transactions, that he was to get a third

8 of the profits because there would have been a profit,

9 and there should have been a profit on the site. That

10 is how, obviously, we calculated it, at 50,000.

11 263 Q. If the sale price was 261,000?

12 A. Yes. The purchase price might have been more than

13 40,000, I can't - but that is what I thought it was.

14 264 Q. If the sale price was €261,000 --

15 A. Correct.

16 265 Q. -- and if this is representative of Mr. Finnegan's

17 one-third profit, then the profit factor on the

18 transaction was €150,000?

19 A. That's correct.

20 266 Q. Okay. So, is that the position, that there was

21 €150,000 profit on the Herbert Street Plantation sale?

22 A. Well, that is what it would appear.

23 267 Q. There was an undertaking to the bank, the Bank of

24 Ireland, Rotunda?

25 A. That's correct.

26 268 Q. You have seen that Mr. Russell referred to it

27 previously?

28 A. Correct, that's right.

29 269 Q. Do you know how much that was?

30 A. Oh, I don't. I don't, Ms. Dillon.

1 270 Q. Was it over ú100,000?

2 A. I just don't know.

3 .

4 MS. DILLON: It is after one o'clock, Sir. I have
5 about another 10 or 15 minutes left of this. It might
6 be as well to leave it until after lunch.

7 .

8 CHAIRMAN: I understood that Mr. Finnegan wanted to get
9 away, but --

10 .

11 MS. DILLON: Mr. McGowan.

12 .

13 CHAIRMAN: I beg your pardon, Mr. McGowan I meant to
14 say.

15 .

16 MR. HAYDEN: It is so, Sir.

17 .

18 MS. DILLON: That is fine. I will go on.

19 .

20 CHAIRMAN: Wait now. We will try to facilitate him.
21 We will either take a very short lunch break - we will
22 go on now for half an hour or a quarter --

23 .

24 MR. HUSSEY: I am sorry, Sir, also arising out of these
25 new matters, I will have some questions for
26 Mr. McGowan. These are matters that hadn't been
27 canvassed before, and I will require --

28 .

29 CHAIRMAN: How long do you anticipate?

30 .

1 MR. HUSSEY: Not very long. Just essentially two
2 matters. This Cramer Lane transaction hadn't been
3 canvassed heavily before.

4 .

5 CHAIRMAN: Before?

6 .

7 MR. HUSSEY: It took me by surprise.

8 .

9 CHAIRMAN: Mr. McGowan has been in the witness-box for
10 a long time. He deserves that much courtesy, to be
11 facilitated.

12 .

13 CHAIRMAN: Carry on. But I do expect you to be brief.

14 .

15 MR. HUSSEY: Very brief.

16 .

17 MS. DILLON: All of these documents, Sir, have been
18 circulated to everybody.

19 .

20 CHAIRMAN: To everybody.

21 .

22 271 Q. MS. DILLON: And for a very long period of time.

23 .

24 Do you have any idea at all, Mr. McGowan, how much was
25 owed to the Bank of Ireland, Rotunda?

26 A. I don't.

27 272 Q. So that in agreeing to pay Mr. Finnegan ú50,000, if

28 there was an undertaking to the bank, then this

29 agreement would have to rank after the undertaking to

30 pay the bank, isn't that right? If the solicitor had

1 given an undertaking to lodge the proceeds with the
2 bank, this would have to come after that, as it were,
3 unless the bank agreed that Mr. Finnegan could get his
4 ú50,000?

5 A. Depending on how much was owed to the bank, Ms. Dillon.

6 273 Q. Depending on how much was owed to the bank. It may or
7 may not arise, depending on how much was owed to the
8 bank?

9 A. That's it.

10 274 Q. If the bank was owed over ú200,000, for example, or
11 ú300,000, and I am not suggesting they are the figures,
12 but I am saying "if", then it would be necessary to get
13 the consent of the bank before Mr. Finnegan could be
14 paid?

15 A. Or that I pay him, that he would be paid - exactly.

16 275 Q. In July of 1985, Mr. McGowan, there is another
17 attendance on Mr. Finnegan. It is at page 966, and it
18 is in connection with Criteria Developments Limited and
19 Canio Limited. And in this attendance Mr. Russell
20 notes that he attended on John Finnegan when he
21 telephoned him, and he stated that Mr. McGowan had told
22 him he would not be able to pay the ú50,000 out of
23 Criteria, as he is waiting for two sales to close, and
24 it would be about ten days' time.

25 .

26 "I asked Mr. Finnegan if Joe McGowan had been in touch
27 with him regarding payment of his share of Canio
28 Limited. He said he was in touch with him, all right,
29 but no sum or any sum was arranged for payment."

30 .

1 A. Yes.

2 276 Q. This is an attendance of the 5th of July, 1985,

3 Mr. McGowan. The Lombard and Ulster loan had been

4 drawn down and paid in November of 1984?

5 A. Yes.

6 277 Q. What share, what payment was due to Mr. Finnegan of his

7 share of Canio Limited?

8 A. None at all at that stage.

9 278 Q. So can you assist at all as to this comment or remark

10 of Mr. Russell's in this document?

11 A. Regarding payment --

12 279 Q. It seems to suggest that there were other funds due, or

13 that there was some other arrangement between yourself

14 and Mr. Finnegan in connection with the Canio share?

15 A. Oh, we had been talking about selling the land in Canio

16 to Kilnamanagh Estates, but that is the only

17 discussions that had been - had taken place, as far as

18 I can recollect.

19 280 Q. Well, it is more definite than that, than a discussion,

20 because it seems that Mr. Russell asked Mr. Finnegan a

21 specific question: Was Joe McGowan in touch with him

22 regarding payment of his share of Canio Limited?

23 A. My God, that's - I don't have any idea about that, Ms.

24 Dillon.

25 281 Q. Because Mr. Finnegan appears to have responded and said

26 that he was in touch with you, but that no sum or any

27 sum had been arranged for payment. So it appears as if

28 - Mr. Finnegan appears to have been of the view also at

29 that time that there was some payment due to him?

30 A. In relation to Canio?

1 282 Q. So it would appear, according to the document.

2 A. No. No, we all got our - got our share when the loan
3 was taken down from the Lombard and Ulster Bank, Ms.
4 Dillon, and that was the end of the matter until it
5 came to sale later on.

6 283 Q. There is a subsequent meeting attendance on Mr.
7 Finnegan at page 973, where Mr. Finnegan says that you
8 were with him for an hour yesterday, and told him
9 various things were coming off, but did not mention any
10 particular case. "And he also mentioned there would be
11 a sale shortly of the Sandyford lands, and Mr. Finnegan
12 stated that he would telephone me on Friday as to the
13 situation."

14 .
15 And that's - while it talks about the Sandyford lands,
16 it is headed up "re Criteria Developments, Herbert
17 Street Plantation"?

18 A. I thought discussions on the sale of Sandyford lands
19 had finished until about two or three years later.

20 284 Q. Was it the position that throughout 1985 that Mr.
21 Finnegan was retaining the title deeds of the Herbert
22 Street Plantation against the money that you had agreed
23 to pay him?

24 A. That is correct.

25 285 Q. If we could look at page 1012. We see that by July of
26 1985 Mr. Finnegan still had the deeds?

27 A. Yes.

28 286 Q. "Attending on John Finnegan when we discussed this
29 matter, and he stated there was no question but that he
30 would come up with the deeds and that he would see me"

1 - "he would not see me at any loss in the matter, and
2 he agreed that he did not hold the deed as a lien, but
3 he wanted to try and hold out as long as he could so
4 that he could get his ú50,000 off Joe McGowan and Tom
5 Brennan. He will keep in touch with me, and as he is
6 going away for a few days, if there was any development
7 I could telephone to his secretary, Susan O'Neill or
8 Hugh Comiskey."

9 A. Yes.

10 287 Q. It would appear that Mr. Finnegan was holding onto the
11 title deeds in order to get his ú50,000?

12 A. Which was his share.

13 288 Q. You say that was one-third of the profit that was
14 generated on the Herbert Street Plantation sale?

15 A. That would be - that would have been correct.

16 289 Q. Reid and McNabb wrote several letters to Mr. Finnegan,
17 they are at pages 1039 and 1051, with an increasing
18 level of urgency about obtaining the fees, because they
19 weren't able to progress the sale without having the
20 money, without having the title deeds?

21 A. I see that.

22 290 Q. Was Mr. Finnegan ultimately paid his money?

23 A. As far as I recollect he was.

24 291 Q. Was he paid ú50,000?

25 A. Well, as far as I can recollect he was. Maybe not all
26 at once, but he certainly would have been paid.

27 292 Q. And did you make any money out of the Herbert Street
28 Plantation sale?

29 A. Mr. Brennan and myself, no. Well, we did, but it was a
30 bit confusing. There would have been a profit, but I

1 think there was some money borrowed on the land and - I
2 am not sure. I don't think we did. We just cleared
3 off whatever borrowings were there.

4 293 Q. So why would Mr. Finnegan, if he was a one-third
5 partner, be entitled money out of this deal, if
6 yourself and Mr. Brennan weren't getting money out of
7 it?

8 A. Well, certainly that's the way it was calculated, on
9 the basis that the profit would have been three 50's,
10 but I can't remember whether - how the initial money -
11 I thought the initial money was put up, or it could
12 very well have been put up by the Bank of Ireland, for
13 the original purchase price.

14 294 Q. But if the position was, Mr. McGowan, that you were
15 equal one-third partners in the transaction --

16 A. Yes.

17 295 Q. -- and the documents indicate that you agreed to pay
18 ú50,000, plus arrange another ú12,000 for Mr. Finnegan,
19 for fees and expenses in connection with the Herbert
20 Street Plantation, and if that ú50,000 is
21 representative of the one-third profit on the deal, how
22 come yourself and Mr. Brennan didn't get any money out
23 of it?

24 A. We may very well have, which went to the Bank of
25 Ireland. Under an agreement we probably said, "Well,
26 we have money coming out of this venture when we sell
27 it", and we agreed to give our money, our profit to the
28 Bank of Ireland.

29 296 Q. And was that loan in the bank secured on the lands, as
30 it were, secured on the title deeds of the lands?

1 A. Not to my knowledge.

2 297 Q. But haven't we seen the correspondence --

3 A. From Mr. Russell I have seen it, yes.

4 298 Q. Where Mr. Russell had given an undertaking to lodge the
5 net proceeds. He couldn't give Mr. Finnegan or agree
6 to give Mr. Finnegan his ú50,000 because that
7 undertaking was there?

8 A. Correct, that's right. Well, we must have undertaken
9 to give our share to the Bank of Ireland, our profit.

10 299 Q. So if Mr. Finnegan was a one-third owner, why was he
11 holding the title deeds?

12 A. Because he - I can't remember. I thought it would have
13 been once the money was paid that it would have been
14 Mr. Russell that was holding the title deeds, but
15 obviously not.

16 300 Q. Well, it appears, Mr. McGowan, that Mr. Russell tried
17 to reconstitute the title deeds because he thought the
18 title deeds were lost, but that, in fact, Mr. Finnegan
19 had them, and you knew that he had them?

20 A. Well, from that correspondence, yes.

21 301 Q. Yes. So if Mr. Finnegan is only a one-third owner in
22 this transaction, why does Mr. Finnegan have the title
23 deeds; why doesn't the solicitor for the company have
24 the title deeds?

25 A. Well, that is the normal thing.

26 302 Q. Yes. Were they given to Mr. Finnegan as security
27 against him being paid, so that he would have something
28 to hold over you, as it were?

29 A. Well now, I can't remember the details of that.

30 303 Q. But you do acknowledge where you say that you will pay

1 him ú50,000, you acknowledge that he is entitled to
2 hold on to the title deeds?

3 A. I have, yes.

4 304 Q. Yes. And you do so on behalf of Criteria Developments
5 Limited, the company?

6 A. Yes.

7 305 Q. And Mr. Finnegan wasn't a one-third - he wasn't a
8 director or a shareholder of Criteria Developments
9 Limited, was he?

10 A. But he did have a third share in the uplift of the
11 property, the same as any other of the properties.

12 306 Q. At page 1079, Mr. McGowan, there is another attendance
13 on Mr. Finnegan, where it is noted that, "...Tom
14 Brennan was arranging something. He understood it
15 would be another ten days before the matter could be
16 finally resolved. He pointed out that he was as
17 anxious as anybody to have the matter resolved, and he
18 saw this holding onto the title deeds as his only
19 chance to be paid. He said also that the purchasers
20 were in quite regular contact with him, and he did not
21 think they were putting on a lot of pressure at the
22 moment. I told him it was the Bank of Ireland that I
23 was concerned about, as they were putting us under
24 considerable pressure. I told Mr. Finnegan again that
25 we had no contact personally with Brennan and McGowan.
26 He merely reiterated that he appreciated the position,
27 but that he was in an awkward situation also."

28 A. That's right.

29 307 Q. So if he was a one-third partner with the two of you,
30 why was there any necessity for him to hold on to the

1 title deeds to make sure he was going to get paid?

2 A. Well, we must have calculated that was the - the
3 ú50,000 must have been arrived at between consultation
4 or agreement between Mr. Finnegan, Mr. Brennan and
5 myself, and then Mr. Brennan and myself must have - we
6 obviously had some - I don't know how much the initial
7 purchase of the land, whether it was put up or borrowed
8 from the Bank of Ireland, but we had obviously agreed
9 to pay our profit on the transaction to the Bank of
10 Ireland.

11 308 Q. Mr. Finnegan is not on the title deeds. Mr. Finnegan
12 is not a director of the company. Mr. Finnegan is not
13 a shareholder of the company. Mr. Finnegan did not put
14 up any money?

15 A. Correct.

16 309 Q. Did Mr. Finnegan spend ú50,000 on behalf of you?

17 A. No, he did not.

18 310 Q. Okay. So why, in all those circumstances, is Mr.
19 Finnegan looking for his ú50,000 and at the same time
20 holding the title deeds, which he won't release to
21 complete the sale so that he makes sure that he gets
22 his money?

23 A. That's correct.

24 311 Q. Why, if he was a one-third partner?

25 A. Well, because he was entitled to his one-third, Ms.
26 Dillon, and that is why.

27 312 Q. If you look at Document 1090, which is another
28 attendance, this time with the Bank of Ireland, Rotunda
29 Branch, in relation to Criteria Developments Limited.
30 And this is an attendance again, either by - it is by

1 Mr. Philip Russell. And he sets out that he attended
2 with Peter Prentice, that was his solicitor, I think,
3 that was acting for him. "... On Mr. Denis McAdams of
4 the Bank of Ireland, Rotunda Branch, in Cavendish Row.
5 Mr. Prentice gave Mr. McAdams a copy of the Mareava
6 Injunctive Order of Mr. Justice Barron of the 2nd of
7 August. He pointed out also to Mr. McAdams that we
8 held a deposit, ú26,0000 or thereabouts, as
9 stakeholder, but that this would have to be released if
10 the vendors and purchasers agreed to appoint an
11 alternative stakeholder. Mr. McAdams seems to have
12 been aware that the deeds are with John Finnegan. At
13 the beginning of the interview he commented that he was
14 sure that Tom Brennan was showing good faith, and the
15 he would have the matter sorted out shortly. An
16 indication of the change of his attitude throughout the
17 interview was his comments towards the end, that
18 Brennan and McGowan were the type of fellows who, if
19 they wanted the deeds badly enough, would wreck John
20 Finnegan's office in order to obtain them. Mr. McAdams
21 appeared to accept Mr. Prentice's suggestion that the
22 Bank of Ireland be more active in pursuing the deeds,
23 but that there was no point in pursuing us as it was
24 solely within the power of Brennan and McGowan to
25 obtain the deeds from John Finnegan, so that the sale
26 could be closed and monies handed over to the bank.
27 Mr. Prentice also explained that at one stage we were
28 making declarations of lost deeds and reconstructing
29 the title while Brennan and McGowan clearly knew that
30 the deeds were with John Finnegan. Mr. McAdams asked

1 if we thought that this was fraud. He took the point
2 that it was difficult to find an alternative
3 description if fraud was not an applicable one. I think
4 Mr. McAdams is now going to contact the Bank of
5 Ireland's solicitors and at least threaten proceedings.
6 Mr. Prentice painted for him a brief picture of the
7 scene of confusion being left by Brennan and McGowan
8 amongst the banking community, and impressed on Mr.
9 McAdams that the problem of Herbert Street was merely
10 one of a number of similar matters, and that there were
11 about 50 companies in the Brennan and McGowan Group.

12 .

13 We assured Mr. McAdams that he had our full cooperation
14 to finalise this matter."

15 .

16 And then there is a note dated the 9th of 10th, '85.

17 .

18 "GAR" - that is George Russell - "told me today that
19 John Finnegan is an authorised signatory/director for
20 the Pembroke Estates Jersey Company, Herbert Properties
21 Limited, from which Brennan and McGowan purchased the
22 Herbert Street property originally"?

23 A. Yes.

24 313 Q. Right. Now, if you, Mr. Brennan, and Mr. Finnegan were
25 partners in this transaction, you were partners in this
26 transaction in your personal capacity, because there
27 were no companies, there was no Jersey companies as
28 there was in Jersey?

29 A. As in Jersey.

30 314 Q. If there was a partnership transaction involved in the

1 Herbert Street Plantation it was between the three of
2 you equally?

3 A. Correct.

4 315 Q. In those circumstances, then, why did Mr. Finnegan feel
5 the necessity that he had to retain the title deeds of
6 the Herbert Street Plantation property, of which he
7 was, on your evidence, a one-third owner, in order to
8 secure the money that was due to him?

9 A. Well, I can't answer that, other than that he was
10 entitled to his ú50,000, which was his share of the
11 profits of the venture, and he - I can now see that he
12 had the title deeds, and also I can see there 50
13 companies. We never were involved in 50 companies.

14 316 Q. But he had the title deeds. You knew he had the title
15 deeds, according to this document, but Reid and McNabb
16 were trying to reconstruct the title because they
17 thought the deeds were lost.

18 .

19 MR. HAYDEN: No, Sir. What the memo has said - My
20 Friend has brought this witness through the memos. It
21 is quite clear that Mr. George Russell was well aware
22 of the position. We have opened up - My Friend has
23 even opened up the earlier memos.

24 .

25 MS. DILLON: I have opened up all of the memos.

26 .

27 MR. HAYDEN: In all of the memos it is clear that Mr.
28 George Russell was aware that the title deeds were with
29 Mr. Finnegan, and there was an issue to be resolved
30 between the parties.

1 .
2 MS. DILLON: This document states that, "Mr. Prentice
3 explained that at one stage we were making declarations
4 of lost deeds and reconstructing the title, while
5 Brennan and McGowan knew the deeds were with Mr. John
6 Finnegan."

7 .
8 MR. HAYDEN: My Friend knows exactly the objection I
9 have made.

10 .
11 CHAIRMAN: That is recorded in the memo, and it is -
12 whether it is right or wrong is a matter to be teased
13 out, but it is there.

14 .
15 MR. HAYDEN: It is a memo of Philip Russell.

16 .
17 CHAIRMAN: Yes, Philip Russell is available.

18 .
19 MR. HAYDEN: It is his memo, but --

20 .
21 CHAIRMAN: Philip is the --

22 .
23 MR. HAYDEN: The son, yes. And George Russell - the
24 earlier memos clearly show that Mr. George Russell was
25 aware of the position in relation to the whereabouts of
26 the deeds. I am not sure what turns on it. I don't
27 make any comment, and I don't wish to make any comment
28 in relation to Mr. Russell. I just think in fairness
29 to the witness, he has said on a number of occasions
30 that Mr. Finnegan had the title deeds, he had the title

1 deeds and he wanted his ú50,000. I am not sure how
2 many more times he has to say that. Whether My Friend
3 accepts it or not is another thing, but his answer - he
4 has answered it the same way on a number of occasions.
5 Really, from here on in, perhaps a more appropriate
6 course would be to ask Mr. Finnegan why he felt he had
7 to keep them.

8 .

9 317 Q. MS. DILLON: Page 787. This is an attendance dated the
10 previous December, 1984. And it is Mr. George Russell,
11 about the Herbert Street Plantation.

12 .

13 "... That they were going to see what further offers
14 they could obtain for the plantation as McInerneys were
15 very interested in the property and would sign a
16 contract, and it was suggested that if they signed a
17 contract that time should be made of the essence of the
18 contract, so that they would forfeit the deposit if
19 they did not pay up on time.

20 .

21 I produced a letter dated the 10th of December, 1984,
22 which I had received from John Finnegan, and in which
23 he stated that he had located the deeds of the
24 plantation. And I asked Mr. McGowan how Mr. Finnegan
25 would have got these and he was unable to answer that
26 question, but I did tell him that I had a note on my
27 file, that he, Mr. McGowan, had taken up the deeds from
28 me, and it was suggested that I should not mention this
29 matter to John Finnegan, and they would speak to him
30 about the matter. Later at lunch I was again told that

1 they would see Mr. Finnegan tomorrow and discuss the
2 matter.

3 .

4 The position, as far as Brennan and McGowan are
5 concerned, is that John Finnegan is part owner of
6 Herbert Street Plantation and Cramer Lane, and their
7 attitude is that they had borrowed on both properties
8 and whatever was over after the two properties were
9 sold would be divided between John Finnegan and
10 themselves, and that they would not be dealt with
11 separately. They will discuss the matter with John
12 Finnegan."

13 .

14 That memorandum, in December 1984, suggests that up to
15 that point that there was some confusion in Mr.
16 Russell's mind as to where the deeds were?

17 A. It does.

18 318 Q. It indicates that he had received a letter indicating
19 that he, John Finnegan, had the deeds?

20 A. It does.

21 319 Q. It also appears that Mr. Russell appears to be of the
22 view then that Mr. Finnegan got the deeds from you?

23 A. It is certainly not the case.

24 320 Q. You didn't give him the deeds?

25 A. That is definitely not the case. I never handled deeds
26 in my life. I definitely - whoever wrote that is not
27 correct. I find that very, very terrible, because I
28 never did that.

29 321 Q. And was it the position that insofar as Cramer Lane and
30 the Herbert Street Plantation were concerned, at the

1 date of this memorandum in December 1984, that he was a
2 part owner of the Herbert Street Plantation and Cramer
3 Lane?

4 A. Mr. Finnegan was, as I have said, was always a third in
5 Cramer Lane, and the plantation, as with all the other
6 transactions that we did together.

7 322 Q. I would like you to explain, Mr. McGowan, to the Sole
8 Member of the Tribunal how somebody becomes a one-third
9 shareholder or owner in a property without making any
10 financial contribution to the purchase of it?

11 A. Mr. Chairman, it happens quite often, if somebody, if
12 somebody introduces a property, or a transaction, or a
13 whatever, especially - well, I can only speak about
14 property. And if, if they say that this is a good
15 opportunity, and it happens quite a lot, that you say,
16 "Right, we will provide the finance, you know where the
17 opportunities are, if you provide the opportunities,
18 then we will provide the finance, and we'll see what
19 happens from there." And in these cases, we were lucky
20 because the transactions that we have just talked
21 about, was when the - it was only from here onwards,
22 from 1985 onwards, that the market - we were certainly,
23 we would certainly not have been able to make the same
24 profits on the transactions that we had previously
25 made, in the period from '85 onwards, because the
26 property - the land and property prices just collapsed.
27 And it is not unusual, it happens quite a lot. And
28 that - where if somebody provides an opportunity for
29 somebody else, then the people - it has happened to me
30 on the reverse side, where I have provided

1 opportunities for people and I haven't put in any
2 finance and I have shared in the profits also.

3 323 Q. So Mr. Finnegan becomes entitled to a share of the
4 profits in these two properties and these two
5 transactions because he introduced the property?

6 A. I am not sure whether he introduced any money to it, to
7 my recollection he didn't, but he introduced the
8 properties, Ms. Dillon, that's right.

9 324 Q. It would seem ultimately that Mr. Finnegan agreed to
10 take €20,000 on the Herbert Street Plantation
11 transaction. And 1241, please, is a letter from Mr.
12 Finnegan's solicitor to Mr. Stephen Miley in 1984. And
13 in that it says, "John Finnegan has passed me a copy of
14 your letter. And also sent me the title deeds of the
15 property."

16 .
17 So up to February of 1986 Mr. Finnegan still had the
18 title deeds of the Herbert Street Plantation.

19 .
20 "He has asked me to advise you that the proposal set
21 out in your said letter is acceptable, provided the
22 agreement relating to the Canio shares is finalised at
23 the same time. As you know, it was always John's
24 requirement that the Canio situation be resolved
25 before, or at same time as the plantation, and he is
26 extremely upset that successive promises in relation to
27 the Canio situation have not been honoured.

28 .
29 As you know, John has received very strong advices from
30 his advisors in Jersey to take proceedings there, and

1 because of the advices I have given to him to hold such
2 action, I am also extremely embarrassed by the failure
3 to fulfill promises in relation to Canio."

4 .

5 And that is entitled "re Mimeg M-I-M-E-G Limited to
6 Criteria."

7 .

8 So presumably Mimeg Limited were the purchasers of the
9 Herbert Street Plantation from Criteria Developments
10 Limited?

11 .

12 MR. HAYDEN: I don't know how My Friend makes that
13 assumption.

14 .

15 MS. DILLON: Sorry, Mimeg verses Criteria Developments.

16 .

17 MR. HAYDEN: I can read. I don't know how that works
18 out, that that is the purchaser.

19 .

20 325 Q. MS. DILLON: Whoever they are. If somebody wants to

21 clarify it and state precisely who they are. It seems

22 to me if there had been a contract entered into for the

23 sale of the property there would have been a vendor and

24 the purchaser.

25 .

26 The owner was Criteria, isn't that right, Mr. McGowan?

27 A. The owner was Criteria, that may very well have been a

28 subsidiary of the Green Property Company, but it was

29 the Green Property Company who purchased the

30 plantation.

1 .
2 MR. HUSSEY: I beg your pardon, I thought that Ms.
3 Dillon had preceded the question on this correspondence
4 with a statement that Mr. Finnegan had accepted
5 ú20,000.

6 .
7 MS. DILLON: I have, I am coming to that.

8 .
9 MR. HUSSEY: I beg your pardon. Proceed.

10 .
11 326 Q. MS. DILLON: The letter that is referred to there, that
12 "John Finnegan has passed me a copy of the letter of
13 the 10th of February", is a letter of the 10th of
14 February from Steven Miley of Miley & Miley Solicitors
15 to John Finnegan. It is at page 4826.

16 .
17 And he sets out - it is addressed to Mr. John Finnegan.
18 It is "re Memig Limited verses Criteria Developments
19 Limited." It gives the High Court record number.

20 .
21 I understand the situation has now been reached with
22 the Bank of Ireland, where they are prepared to agree
23 to a payment of ú20,000 being made to you out of the
24 proceeds of sale. On the assumption this is acceptable
25 to you I think the sale can now be proceeded with and
26 closed.

27 .
28 I am not sure whether you were aware or not that a
29 Plenary Summons has been issued by the purchaser
30 claiming Specific Performance." That would mean that

1 Memig Limited who are the, appear to be the plaintiffs,
2 would have been the purchasers.

3 .

4 "The intention is that this firm will take over the
5 carriage of sale and complete it as soon as possible,
6 paying you a sum of ú20,000, and paying the balance
7 less the legal costs involved to the Bank of Ireland.

8 .

9 I understand you are holding the original title
10 documents, and of course the foregoing proposal is
11 conditional upon you making these available to me so
12 that the sale can be completed."

13 .

14 MR. HAYDEN: 4826, I don't seem to have received a
15 circularised copy. Is a copy available?

16 .

17 327 Q. MS. DILLON: If you don't have a copy we will make one
18 available now, one available now to everybody.

19 .

20 "I will be obliged if you would confirm that this
21 proposal is acceptable to you, and when I have received
22 formal approval from all the parties involved, I will
23 let you have my undertaking in relation to the sum of
24 ú20,000."

25 .

26 If you scroll down the page you will see that that is
27 addressed to John Finnegan Esquire. And that appears
28 to be the letter to which the letter at 1241 is a
29 reply?

30 A. Yes.

1 328 Q. In which John - in which Messrs. Kennedy McGonagle
2 Ballagh, on behalf of John Finnegan say that they have
3 now got the title deeds, and that Mr. Finnegan agrees
4 or accepts the proposal set out in the letter?

5 A. Mm-hmm.

6 329 Q. So that ultimately it would appear that Mr. Finnegan
7 agreed to take ú20,000?

8 .

9 CHAIRMAN: Sorry, can I just interrupt for one moment.

10 The stenographer must be changed, she is just very,
11 very tired. So can you just take two or three minutes
12 while the stenographer changes.

13 .

14 THE TRIBUNAL THEN ADJOURNED FOR A SHORT RECESS AND

15 RESUMED AGAIN AS FOLLOWS:

16 .

17 CHAIRMAN: Hold on.

18 .

19 330 Q. MS. DILLON: It would appear, Mr. McGowan, if that
20 correspondence is correct - we have no sound.

21 .

22 CHAIRMAN: We have sound coming up now. We'll just
23 take a moment. She will come back in a moment. Just a
24 short delay.

25 .

26 331 Q. MS. DILLON: That correspondence suggests that Mr.
27 Finnegan agreed to take ú20,000 by February of 1986,
28 and that he agreed to release the title deeds of the
29 Herbert Street Plantation property so the sale could be
30 completed?

1 A. Yes.

2 332 Q. And it would appear that by that stage the purchaser,
3 Mimeg Limited, had issued Specific Performance
4 proceedings to enforce the contract that they had?

5 A. That's what the document says.

6 333 Q. If the profit was ú50,000, as you've told us, and if
7 Mr. Finnegan was entitled to - if the profit was
8 ú150,000, if Mr. Finnegan's share was ú100,000 of the
9 profit, why would Mr. Finnegan agree to take ú20,000?

10 A. Because, as I've already explained, Ms. Dillon, the two
11 properties came together, and this is just
12 recollection, and there is no doubt that - if you add
13 the two properties together, because there was
14 definitely, in the Capent, and I'll have to check this
15 out, but to my recollection in the Capent one there had
16 been an accumulated interest when that was sold on.
17 And if you added the two properties together, we must
18 have arrived at that figure of ú20,000, rather than the
19 50,000, because there was a loss situation in the
20 Criteria.

21 334 Q. Mr. Finnegan was being paid out of the proceeds of sale
22 of the Herbert Street Plantation property?

23 A. Correct.

24 335 Q. Okay. This money that was coming in had nothing to do
25 with Cramer Lane --

26 .

27 MR. HUSSEY: Sorry, that's not fair.

28 .

29 A. Well, the two were very linked together, Ms. Dillon, in
30 the purchase. And Cramer Lane, I can check this out

1 for you, but certainly Cramer Lane was - I don't know
2 how much losses were there, but there were a lot of
3 losses there. I also have to check out the price of
4 the plantation as well, and to see how we arrived at
5 this figure of ú20,000.

6 336 Q. Sorry, Mr. McGowan. You've already told us that the
7 figure of ú50,000 was representative of Mr. Finnegan's
8 profit?

9 A. Exactly.

10 337 Q. Mr. Finnegan's share of the profit on the Herbert
11 Street Plantation deal?

12 A. Correct. That's right.

13 338 Q. If you are correct about that, the total profit is
14 ú150,000?

15 A. Correct.

16 339 Q. If Mr. Finnegan was entitled to ú50,000, why is he now
17 getting ú20,000?

18 A. Because there could have been a loss situation in
19 Capent, which was the Cramer Lane site. There could
20 have been a loss there, maybe, of 50 or ú60,000.

21 340 Q. Was Cramer Lane sold at this stage?

22 A. I don't know.

23 341 Q. You are speculating, Mr. McGowan, widely?

24 A. Yes.

25 342 Q. If you look --

26 .

27 MR. HAYDEN: In fairness, Sir.

28 .

29 MR. HUSSEY: He is not the only one speculating widely.

30 .

1 MR. HAYDEN: If I could say this, Sir: This is far
2 from a reply. And the witness is doing his level best
3 to deal with an entire line of questioning that was
4 open to my friend to put to him when he was in his
5 direct evidence, and I could have dealt with, perhaps,
6 in - when I was going over it. And I have purposely
7 not interfered, even though this is way beyond any
8 definition of a reply to any of my questions, or any of
9 the questions of the other parties here.

10 .

11 343 Q. MS. DILLON: 1244, please.

12 .

13 This is the closing statement on the sale of the
14 Herbert Street Plantation. It's dated the 7th of
15 March, 1986. The purchase price is 261,000. The
16 deposit is 26,100. There are certain payments to be
17 made in relation to Corporation rates and litigation
18 costs. And then it sets out a balance due of
19 234,177.10.

20 .

21 And if we go down through how that is going to be
22 broken down: Messrs. Finnegan Menton Auctioneers are
23 getting ú20,000. Reid & McNabb are getting a figure of
24 6,450. Miley & Miley are getting 2,500. And Bank of
25 Ireland are getting ú205,226.69.

26 A. I see that.

27 344 Q. And I am not in a position to say to you, Mr. McGowan,
28 that those drafts were, in fact, paid in that order, or
29 in those amounts, because I don't have them. So all I
30 can say is that this document suggests that on the

1 closing Finnegan Menton Auctioneers were paid ú20,000?

2 A. Yes.

3 345 Q. And that that ú20,000 was the figure Mr. Finnegan had

4 agreed to accept as per his letter of February 1986,

5 and on foot of which he released the title deeds to his

6 solicitor to give to Mr. Miley to close the sale?

7 A. I would imagine so.

8 346 Q. Why was it that Mr. Finnegan felt the necessity of

9 retaining the title deeds against whatever he was owed?

10 A. Well, I think the litigation had started at that time.

11 There was a Mareava Injunction granted against our

12 companies, and probably - I can't explain that, other

13 than a certain amount of circumstances. I am not sure

14 whether that was applied at that time or not.

15 347 Q. Other than the sum of 60,000, 50,000 and ú15,000 that

16 have been the subject matter of inquiry here, do you

17 know of any other sum of money paid to Mr. Burke?

18 A. Through the fundraising, Ms. Dillon?

19 348 Q. This is the - the Ernst Ottiwell fundraising?

20 A. Correct.

21 349 Q. And do you say that those sums are a - or a portion of

22 those sums were, in fact, paid to Mr. Burke?

23 A. I do.

24 350 Q. Did you discuss them with Mr. Burke?

25 A. Well, I met with Mr. Burke occasionally, and with - and

26 sometimes with Ernst Ottiwell.

27 351 Q. Do you know anything about a sum of ú35,000 lodged to

28 Caviar Limited in April of 1984?

29 A. No, I do not. No.

30 .

1 MS. DILLON: I have nothing further, Sir, for this
2 witness. Thank you very much, Mr. McGowan, for your
3 patience.

4 .

5 MR. WALSH: I just have a couple of very brief matters.

6 .

7 CHAIRMAN: Just a moment. We want to find out what the
8 situation is. Mr. McGowan, I understand that you are
9 under some degree of pressure to go. Now, what is the
10 situation?

11 A. A mass at six o'clock. My mother's mass.

12 .

13 CHAIRMAN: First of all, of course - where is that
14 mass?

15 A. In Charlestown.

16 .

17 MR. HAYDEN: I'll say he will make it, all right.

18 A. I'll come back after lunch.

19 .

20 MR. HAYDEN: Unless Mr. Walsh isn't going to be very
21 long?

22 .

23 MR. HUSSEY: I think I'll only be a few minutes as
24 well.

25 .

26 CHAIRMAN: I have every desire to facilitate a witness,
27 but at the same time I do want to be realistic.

28 .

29 Now, brevity is the solo wish in relation to this
30 examination. Now, who is going to go first?

1 Mr. Walsh.

2 .

3 MR. WALSH: I think I might go first.

4 .

5 THE WITNESS WAS THEN RECROSS-EXAMINED BY MR. WALSH AS

6 FOLLOWS:

7 .

8 352 Q. MR. WALSH: Mr. McGowan, I want to ask you two

9 questions on the Pagebar topic.

10 .

11 Is it not, in fact, the case that the Gardai carried

12 out a very intensive, thorough and painstaking

13 investigation at that time, around 1974?

14 A. Mr. Brennan was interviewed several times, to my

15 knowledge.

16 353 Q. Yes. And is it not, in fact, as a result of that

17 investigation that they decided, that's the Gardai, the

18 Attorney General, and the DPP, that there was no

19 evidence to warrant a criminal prosecution?

20 A. Well, that's what - I don't know what appeared in the

21 documents. But certainly there was --

22 354 Q. There is a letter, I don't know if it can be put on the

23 screen? The reference is GI 19742-2.

24 .

25 MS. DILLON: They can't be put on the screen because

26 those documents were circulated to Mr. Walsh, at

27 Mr. Shannon's specific request to be allowed to see the

28 entire of the Garda file, and it was on that basis that

29 we obtained agreement from the Gardai to release the

30 file only to Mr. Shannon.

1 .
2 We have no agreement in relation to publication or
3 circulation, other than the documents that we have
4 circulated. Plus --

5 .
6 CHAIRMAN: Not only that, Mr. Walsh, my recollection is
7 in the last couple of days the statements you are now
8 making were either made by your goodself or by another
9 person. I mean, counsel if says something that - of a
10 matter that took place three or four years ago, five
11 years, ten years ago, and no prosecution did follow, or
12 no - I don't see that there is any need for wasting
13 time on that. No reason impugning the authenticity of
14 what you are saying.

15 .
16 Anybody else? Mr. Hussey?

17 .
18 MS. DILLON: Sorry.

19 .
20 MR. WALSH: Ms. Dillon is fairly saying that I can put
21 to this witness what the conclusion is in the letter?

22 .
23 CHAIRMAN: Quickly.

24 .
25 355 Q. MR. WALSH: The conclusion is, there was no Garda
26 prosecution because there was no evidence of any
27 criminal activity?

28 A. That's correct.

29 .
30 CHAIRMAN: Thank you.

1 .

2 CHAIRMAN: Mr. Hussey?

3 .

4 MR. HUSSEY: I think I should go, perhaps.

5 .

6 THE WITNESS WAS RE-CROSS-EXAMINED BY MR. HUSSEY AS

7 FOLLOWS:

8 .

9 356 Q. MR. HUSSEY: Mr. McGowan, you never paid any monies to

10 Mr. Finnegan in respect of the plantation site, isn't

11 that right?

12 A. Myself personally?

13 357 Q. Yes.

14 A. Not to my recollection.

15 358 Q. Despite the fact that you had given an IOU to Mr.

16 Finnegan that you would pay him ú50,000, personally -

17 you signed a promise to Mr. Finnegan to pay him

18 ú50,000?

19 A. Yes.

20 359 Q. Isn't that right?

21 A. I did.

22 360 Q. You never paid him any money on foot of that promise,

23 isn't that so?

24 A. Not to my recollection.

25 361 Q. In fact, the correspondence suggests that, in fact, it

26 was the Bank of Ireland that agreed to pay the ú20,000

27 ultimately to secure the release of the title deeds,

28 isn't that so?

29 A. Which was our money.

30 362 Q. Well, it was probably the Bank of Ireland's money,

1 actually. They probably took a cut on the ultimate
2 resolution, because it was the Bank of Ireland,
3 according to the letter from Miley & Miley to Mr.
4 Finnegan, it was the Bank of Ireland who agreed to pay
5 ú20,000?

6 A. At our request.

7 363 Q. Well, that isn't clear from the --

8 .

9 CHAIRMAN: I don't think we'll pursue that. Let's get
10 on with it.

11 .

12 364 Q. MR. HUSSEY: It has been put up - the letter has been
13 put up on its own terms. It hasn't been proved in any
14 sense. Ms. Dillon is relying on it. And what it says
15 is, "The Bank of Ireland are prepared to agree to the
16 payment of ú20,000 being made out of the proceeds of
17 sale."

18 .

19 Probably monies that the Bank of Ireland would have
20 been entitled to, in the normal course of a foreclosed
21 sale.

22 .

23 Now, Mr. Finnegan was not a one-third owner of the
24 plantation situation, isn't that right? He didn't get
25 a share of the profits of the - when the sale took
26 place?

27 A. Well, his share had been reduced to the ú20,000.

28 365 Q. No, you've said that a profit of ú150,000 was made?

29 A. But then there was a loss situation on the Cramer Lane.

30 366 Q. Yes. I see. So he didn't take - he didn't get a

1 profit of ú50,000?

2 A. No, he did not.

3 367 Q. Now, in relation to the Cramer Lane situation, that's

4 Capent, Capent was the company?

5 A. Indeed.

6 368 Q. And I think we know that monies were lent from Canio

7 Limited to Capent, something like ú52,000, isn't that

8 so?

9 A. I do remember that, yes.

10 369 Q. I think I'll show it on the screen.

11 A. That's right. You are quite right.

12 370 Q. It's 1832. This seems to have been missed. 1832.

13 It's a letter to Mr. Wheeler from, I think, Mr. Barry.

14 "It would appear that the sum of 52,775, details of

15 which have been sought from Mr. Russell, has, in fact,

16 been lent to Capent Limited, a company which I

17 understand all three gentlemen have an interest in."

18 .

19 So the Canio loan - there is no question but that the

20 three of you, whether through Foxtown, Kalabraki or

21 Gasche were the owners of Canio?

22 A. Yes.

23 371 Q. And a loan from Canio to Capent in respect of the

24 Cramer Lane property would be the equivalent of an

25 investment by the three of you into that situation,

26 isn't that right?

27 A. Yes, it does.

28 372 Q. And any profit or loss situation out of that would be

29 entitled to be divided between the three of you?

30 A. Correct.

1 373 Q. Isn't that so?

2 A. That's correct.

3 374 Q. In any event, whatever agreement was behind your
4 promise to pay Mr. Finnegan ú50,000, in fact he never
5 got that money?

6 A. He did not.

7 375 Q. All right. Now, I just want to revisit one other small
8 matter, Mr. McGowan, and it arises, again, out of
9 matters which haven't been canvassed with you earlier.

10 .

11 In Jersey, in November of 1984, the distribution of the
12 monies, there is a suggestion in an attendance - well,
13 it's not really an attendance, it's a case to counsel
14 by Mr. Russell, prepared a year later, in 1985. There
15 is a suggestion that Mr. Finnegan was present when the
16 money was distributed at the closing of the Lombard &
17 Ulster loan in Jersey.

18 A. That has been said on the document, yes.

19 376 Q. Now, your own recollection was that Mr. Finnegan was
20 not there, but you had a funny feeling that Mr. Barry
21 was there?

22 A. That is my recollection, but I certainly cannot
23 remember Mr. Finnegan being there.

24 377 Q. Yes. Mr. Finnegan's position is that he wasn't there.

25 A. Yes.

26 378 Q. And, indeed, neither was Mr. Barry. And we've seen the
27 contemporaneous note of the attendances by Mr. O'Neill,
28 who was the solicitor for Lombard & Ulster, which
29 indicated that neither Mr. Finnegan nor Mr. Barry were
30 there. Isn't that so?

1 A. Well, that's - yes, I have seen the document.

2 379 Q. And if Mr. Finnegan was to be kept secret to Lombard &
3 Ulster, he wouldn't have been there - he wouldn't have
4 been introduced to the Lombard & Ulster solicitor at
5 the closing, isn't that so? Mr. Finnegan wasn't there,
6 that's his position.

7 A. That's it. Yes.

8 380 Q. I think also Mr. Russell, in his case to counsel, as I
9 say, prepared a year later, suggests that he remembers
10 the title deeds being handed over, and the distribution
11 of cheques to Mr. Finnegan and Mr. Brennan and Mr.
12 McGowan. There was no distribution of cheques. We
13 know exactly how the money was distributed?

14 A. That's right.

15 381 Q. It was distributed by telex transfer?

16 A. Right.

17 382 Q. And we also know that the title deeds were, in fact,
18 handed over in June to Mr. Wheeler, when Mr. Finnegan
19 was, indeed, in Jersey, isn't that right?

20 A. If that's what it says, yes.

21 .

22 MR. HUSSEY: Thank you, Mr. McGowan.

23 A. Thank you.

24 .

25 .

26 .

27 .

28 .

29 .

30 .

1 THE WITNESS WAS THEN RE-EXAMINED BY MR. HAYDEN AS
2 FOLLOWS:

3 .

4 383 Q. MR. HAYDEN: Just quickly, arising out of the new
5 matters.

6 .

7 If I could have Document 825. And the bottom.

8 .

9 I am just wondering what the percentage of fees that
10 were being charged, given that we were talking about
11 fees earlier on. It might have thrown some light on
12 the --

13 .

14 MS. DILLON: That's the best copy that we have, Sir.

15 .

16 MR. HAYDEN: Five percent.

17 .

18 MS. DILLON: I can't say. I can't say.

19 .

20 384 Q. MR. HAYDEN: Anyway, that's by-the-by.

21 .

22 In relation to the situation on the Herbert Street
23 Plantation and Capent; I think - could I ask you to
24 look at Document 787. And this is of the 17th of
25 December, 1984.

26 .

27 And this is an attendance of Mr. Russell on you and Mr.
28 Brennan. And it's the last paragraph I just wish to
29 refer you to.

30 .

1 And it states: "The position as far as Brennan and
2 McGowan are concerned, is that John Finnegan is part
3 owner of the Herbert Street Planation and Cramer Lane,
4 and their attitude is that they have borrowed on both
5 properties, and whatever was over after the two
6 properties were sold will be divided between John
7 Finnegan and themselves, and that they would not be
8 dealt with separately."

9 .

10 That was how you saw it, both Criteria and Capent were
11 seen as one event, isn't that correct?

12 A. I do, yes.

13 385 Q. And you regarded it, in the context of the profit, that
14 it was to be a profit cumulatively between the two as
15 distinct from each individual, each side being treated
16 individually or separately?

17 A. But we always - indeed, we always shared whatever --

18 386 Q. If you could just answer the question. I didn't ask
19 you what you always did. I just asked you in relation
20 to these two.

21 .

22 Did you see them as a joint situation, or did you see
23 them as two individuals?

24 A. As a joint.

25 387 Q. In that regard, I think Cramer Lane turned out not to
26 be the greatest move you ever made. I think it
27 suffered a healthy loss?

28 A. Well, I can't remember exactly what it was.

29 388 Q. I think ultimately you got something in the region of
30 \$271,000 for the proceeds of sale, which, when one took

1 into account the cost, the interest rates - it has been
2 gone out in great detail before. The interest rates,
3 as such, the sale didn't, certainly, cover what losses
4 --

5 A. No.

6 389 Q. And I think the facilities the bank - the issues that
7 developed between yourself - yourselves and Mr.
8 Finnegan, was that Mr. Finnegan regarded each
9 separately, and therefore if there was a profit on
10 Herbert Street, he wanted his share of the profit at
11 Herbert Street, regardless of whatever the position was
12 in regard to Cramer Lane?

13 A. Well, I am still only guessing, Mr. Hayden, because the
14 two properties were always associated together, and, as
15 I said already, whatever profit was to be shared three
16 ways, between the three - between Mr. Finnegan and Mr.
17 Brennan and myself --

18 390 Q. In your agreement with Mr. Finnegan, did you - did you
19 feel that - if there was a loss suffered, would you
20 have had to - if you had to contribute to a loss --

21 A. All three would - yes --

22 391 Q. If there had been a loss, would Mr. Finnegan have had
23 to put his pound into it?

24 A. Oh - yes.

25 392 Q. In relation to Herbert Street, the plantation, it's, as
26 Ms. Dillon has brought you through, at page 1244, the
27 proceeds are identified there, the purchase price less
28 the deposit. So if one took Herbert Street on its own,
29 it certainly showed a good return for the project?

30 A. It would have been more profitable than - yes.

1 393 Q. And was the position between yourselves and Mr.

2 Finnegan one relating to Mr. Finnegan seeing Herbert

3 Street as a profit, and therefore, regardless of

4 whatever happened in Capent, he wanted his share, his

5 one-third share, and that that's where the ú50,000 came

6 from?

7 A. I can't remember the exact details, Mr. Hayden, because

8 - or how the misunderstanding arose, but anyway, the

9 end result is that it was resolved.

10 394 Q. Yes. And I think, in part, that was based upon an

11 arrangement to reach between yourself and Mr. Brennan

12 and the Bank of Ireland, to make available additional

13 funds, or make funds available out of the monies being

14 lodged out of the Herbert Street plantation?

15 A. That's correct.

16 395 Q. And that that ú20,000 referred to on 1244 was the

17 ultimate agreed figure that Mr. Finnegan was happy with

18 in relation to - or Finnegan Menton was happy with in

19 relation to what had originally been the ú50,000?

20 A. Yes.

21 396 Q. And I think the issue in relation to seeking to get

22 facilities from the Bank of Ireland is actually

23 referred to originally at page 1040. I think at that

24 stage you had hoped - you had advised that the Bank of

25 Ireland would have agreed to give you 50,000.

26 Eventually the position was reached that it was 20,

27 isn't that correct?

28 A. It was.

29 397 Q. I think eventually Reid & McNabb wrote to Mr. Finnegan

30 - wrote to Mr. Finnegan, on the 4th of September 1985,

1 that's 1051, and that sets out where his position was
2 in relation to the production of the fees - the title
3 deeds?

4 A. Yes.

5 398 Q. Well, Sir, you've read Mr. Russell's transcripts or
6 attendances, so I think they speak for themselves in
7 relation to the issue on the whereabouts of the title
8 deeds.

9 .

10 CHAIRMAN: Thank you very much.

11 .

12 MR. HAYDEN: Thank you, Sir.

13 .

14 CHAIRMAN: Okay. We'll rise now.

15 .

16 What's the situation in relation to --

17 .

18 MS. DILLON: The next witness is Mr. Finnegan.

19 .

20 MR. HUSSEY: Mr. Finnegan is ready.

21 .

22 MS. DILLON: Three o'clock, Sir, or quarter to three?

23 Is that suitable for Mr. Hussey?

24 .

25 CHAIRMAN: A bit tight for you, is it? All right,

26 three o'clock. Firmly on three o'clock we will be

27 back.

28 .

29 MR. HAYDEN: And thank you, Sir, for sitting through

30 lunch to facilitate Mr. McGowan.

1

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

3

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

5

MR. HANRATTY: Mr. John Finnegan, please.

7

MR. JOHN FINNEGAN, HAVING BEEN SWORN, WAS EXAMINED AS

FOLLOWS BY MR. HANRATTY:

10

11 399 Q. MR. HANRATTY: Good afternoon, Mr. Finnegan.

12 A. Good afternoon.

13 400 Q. Mr. Finnegan, as you are aware, the Tribunal has been

14 in correspondence with your solicitor since March of

15 this year concerning documentation which the Tribunal

16 has been seeking from you. Isn't that right?

17 A. Yes.

18 401 Q. And I take it you are aware that in the course of that

19 correspondence the Tribunal has repeatedly expressed

20 its dissatisfaction with your compliance with the

21 Orders for the Production and Discovery of Documents

22 which it had made. Isn't that right?

23 A. Yes.

24 402 Q. It has, in the course of that correspondence,

25 identified documents and categories of documents which

26 it has indicated to you, through your solicitor, it

27 expected to be produced, but which had not been

28 produced?

29 A. I think we produced all of what we could, Sir.

30 403 Q. Yes. And it has indicated to you, in the course of

1 this correspondence, that before your testimony on the
2 substantive issues under inquiry would be taken, that
3 you would be specifically asked about documentation
4 arising from the Tribunal's dissatisfaction with your
5 Discovery. And I think you have been told that, isn't
6 that right?

7 A. Say that again, please?

8 404 Q. You were informed, in the correspondence, that before
9 you would be examined on the substantive issues, that
10 the Tribunal is inquiring into, you would be
11 specifically examined in relation to the documentation
12 which you have produced or, as the Tribunal has
13 suggested, you have not produced?

14 A. Mm-hmm.

15 405 Q. I am not going to open this correspondence in detail,
16 but just, I think it's - the Tribunal's position is
17 encapsulated in a letter dated the 25th of June, 2001,
18 which - I will open it, albeit that the correspondence
19 continued beyond that date.

20 .

21 On the 25th of June, 2001, the Tribunal wrote to your
22 solicitor, Mr. O'Shea, of Kennedy McGonigal Ballagh in
23 the following terms:

24 .

25 "Dear Mr. O'Shea, I am directed to write to you
26 concerning the above matter.

27 .

28 It is clear from our communications to date, including
29 the private interview with your client, that Foxtown
30 Investments Limited was established for and/or was

1 utilised for some form of legal settlement between your
2 client and that company, whether directly or through a
3 company or companies controlled by your client.

4 .

5 Your client has furnished a small number of documents
6 to the Tribunal on foot of the Order of the 3rd of
7 April, 2001. You have been notified of the Sole
8 Member's view, that compliance with this Order is
9 incomplete.

10 .

11 You have also been notified that it is the intention of
12 the Sole Member that when your client appears to give
13 evidence before the Tribunal in the next week or so, he
14 will be examined in relation to the Order for Discovery
15 of the 3rd of April, 2001, and subsequent Orders.

16 .

17 As you are aware, I have responded with you" - sorry -
18 "a number of times in relation to the absence of
19 documentation in your client's Discovery relating to
20 Foxtown Investments Limited, the one-third shareholder
21 in Ardcarn Limited, which owned Canio Limited.

22 .

23 To date your client has maintained the position, with
24 the Tribunal, that he is unable to produce any
25 documents whatsoever in relation to the affairs of
26 Foxtown Investments, and that the only persons who
27 could produce such documents, i.e. Credit Suisse Trust
28 Limited in Guernsey, are refusing to do so.

29 .

30 The entitlement of your client to obtain documents held

1 by Credit Suisse Trust Limited is a separate matter, in
2 respect of which I have written to you today. However,
3 your client has failed to make a proper Discovery by
4 explaining to the Tribunal what has become of his own
5 documentation relating to Foxtown Investments. These
6 documents should have been listed and properly
7 described in accordance with the Rules of the Superior
8 Courts in the Affidavit of Discovery of your client.

9 If, as he has stated, they are no longer in his
10 possession or power, the documents ought to have been
11 listed in the second schedule to the affidavit.

12 .

13 Such documents as should have been, but have not been
14 discovered and produced to the Tribunal in respect of
15 Foxtown Investments Limited include, but are not
16 limited to:

17 .

18 (a) Documents of incorporation of the company,
19 including the files of the solicitors, accountants and
20 other advisers who assisted Mr. Finnegan in
21 establishing the company.

22 .

23 (b) The Deed of Settlement by which Mr. Finnegan, as
24 settlor, vested or purported to vest in trustees the
25 assets held, and subsequently acquired, in the name of
26 the company.

27 .

28 (c) any agreement between Mr. Finnegan and the
29 trustees relating to the use by Mr. Finnegan of any
30 assets of the trust.

1 .
2 (d) all correspondence between Mr. Finnegan and/or any
3 adviser, representative or agent of Mr. Finnegan and/or
4 any adviser, representative or agent of the trustees.

5 .
6 The Sole Member is at present considering whether or
7 not to commence High Court proceedings in respect of
8 Mr. Finnegan's Discovery."

9 .
10 MR. HUSSEY: I'm sorry, Sir, I must interrupt here.
11 These documents that are mentioned in this document
12 were the subject of a conversation, in the presence of
13 Mr. O'Shea, between myself and Ms. Dillon, which - I
14 have already alerted both Ms. Dillon and Miss
15 Maire-Anne Howard of the contents of that conversation.
16 I don't necessarily wish to now say openly what that
17 conversation was, but I will repeat it to Counsel for
18 the Tribunal, in respect of these particular documents.
19 And I don't think it's fair, in the context of what has
20 already transpired between myself and Counsel for the
21 Tribunal, that this be addressed in this way, as a
22 non-compliant matter.

23 .
24 And if you wish, I will speak with Counsel for the
25 Tribunal, if they wish.

26 .
27 MR. HANRATTY: Ms. Dillon tells me that the
28 conversation related to the Deed of Settlement, which
29 we have received, but that's all we have. I am talking
30 about categories of documents, or documents and

1 categories of documents, most of which we have not
2 received. And we have still not received. I don't
3 know what the basis of this objection is.
4 .
5 I am simply opening this letter as an instance of the
6 encapsulation of the dissatisfaction that the Tribunal
7 had, as of the 25th of June, and which is substantially
8 still the position so far as the Tribunal is concerned.
9 And I think, Sir, at the very outset, I would like to
10 sort out something with Mr. Hussey, because it became a
11 feature of the examination of Mr. McGowan by Ms.
12 Dillon, where Mr. Hussey interrupted on a considerable
13 number of occasions to put to you matters which could
14 properly be put in his own examination of this witness
15 - of this witness in due course.
16 .
17 Now, I would request, Sir, through you, that Mr. Hussey
18 would desist from interruption of my examination of
19 this witness, and that any points that he wishes to
20 make, that he should make in the proper time, in the
21 proper way, in the course of his own examination. In
22 that way, we can get through this thing with the
23 maximum of expedition, and Mr. Hussey can get to his
24 client, to examine his own client and make his own
25 points for as long as he likes sooner rather than
26 later.
27 .
28 And it would, in my respectful submission, avoid
29 interminable submissions, cross-submissions and replies
30 which, with respect, Sir, serve no useful purpose other

1 than the waste of time.

2 .

3 CHAIRMAN: As far as I am concerned, the
4 dissatisfaction and lack of cooperation in relation to
5 Discovery is a relevant matter to be considered by this
6 Tribunal. And that's the end of that matter. And, as
7 far as I am concerned, you are at liberty to proceed
8 along that basis, to indicate what failure has taken
9 place and the consequences to the Tribunal.

10 .

11 I would hope that we will be able to progress this
12 session quickly, expeditiously and effectively. And
13 essentially, this is an inquiry as to fact.

14 .

15 The Tribunal have reviewed documents, have looked at
16 various matters, and these matters appear to outline or
17 indicate certain effects. A challenge to that is
18 perfectly permissible, but the proper way to deal with
19 it is by counsel examining his own client in response,
20 and in dealing specifically - in saying the Tribunal
21 have made this case, this is my response, or this is
22 your response.

23 .

24 Now, I want to hear you in detail and hear it carefully
25 in detail, and in due course of time the two aspects
26 will be compared, and I shall do my best to reach a
27 fair and reasonable conclusion. But it is essential
28 that we get on with the versions of fact that both - I
29 don't want to call them "parties", but both teams have
30 to present. And it's only by this method that we are

1 going to get on, because otherwise you just get
2 confusion and nothing else, and there is no real
3 benefit either to Mr. Finnegan or any witness in the
4 box, or to the Tribunal.

5 .
6 So I would invite cooperation in that context, and as
7 little interruption as can be avoided.

8 .
9 MR. HUSSEY: Can I assure you, Sir, and Mr. Hanratty,
10 that if the matter is being put fairly by Mr. Hanratty,
11 and I see no reason to interrupt, I won't interrupt.

12 .
13 CHAIRMAN: Very good. Mr. Hanratty.

14 .

15 406 Q. MR. HANRATTY: I've put the letter to you, Mr.
16 Finnegan, and I've suggested - I am suggesting to you
17 that the position now is substantially as it was at the
18 time of the writing of that letter, albeit that we have
19 received a deed, which we'll be dealing with in due
20 course.

21 .
22 But it appears from the correspondence, I suggest to
23 you, that there are essentially two categories of
24 documents that we have a major problem with:
25 The first is the assertion which you make through your
26 solicitor, that you are unable to obtain any documents
27 from Sovereign Trustees Limited in Guernsey, isn't that
28 right?

29 A. Yes.

30 407 Q. That covers all of the documentation in relation to the

1 trust. It covers all of the documentation in relation
2 to Foxtown Investments Limited. It covers all of the
3 bank accounts relating to Foxtown Investments Limited,
4 with the exception, of course, of the small number of
5 bank statements which you were in a position to produce
6 last week, having unexpectedly found them in one of
7 your employee's files. And, in essence, covers all of
8 the documentation which would be of assistance to the
9 Tribunal in establishing the disposition of the monies
10 which were paid to this company on your instructions by
11 Brennan and McGowan. Isn't that right?

12 A. To uncover all the monies?

13 408 Q. The documentation - the refusal of Sovereign Trustees
14 Limited to make this documentation available
15 effectively deprives the Tribunal of the opportunity of
16 inquiring into the disposition of the monies received
17 by Foxtown Investments, or sent to Foxtown Investments
18 by Brennan and McGowan, at your direction. Isn't that
19 right?

20 A. Yes.

21 409 Q. That's the first category. The other category is all
22 other documents that one would expect in the normal
23 course of events would be, or would have been in your
24 possession.

25 .

26 We know, for example, and before we go into the detail
27 of it, if I could just give you a global view of it.

28 We know from the Discovery which the Tribunal has
29 received from various parties, that a number of parties
30 were in correspondence with you in various capacities

1 concerning matters touching on the matters under
2 inquiry. For example, your own solicitor, Michael
3 O'Sullivan, was in correspondence with you - sorry,
4 Michael O'Shea was in correspondence with you, for
5 example, at the end of the 1980s, and in 1990 in
6 connection with the disposition of your one-third
7 share. Isn't that right?

8 A. Yes.

9 410 Q. He has discovered his solicitor's files, which clearly
10 indicate that he had written letters to you, and that
11 you had written letters to him. But the problem is
12 that your files, which presumably would contain the
13 letters which he wrote to you, and the copies of
14 letters which you wrote to him, have not been
15 discovered.

16 A. Sir, as far as I am aware, we - anything which we had,
17 we have let you know about them.

18 411 Q. In addition, the Tribunal has been in contact, again
19 through Mr. O'Shea, of Kennedy McGonigal Ballagh,
20 seeking files of Finnegan Menton, the firm of Finnegan
21 Menton, as opposed to Mr. Finnegan personally, and has
22 been told that any files in relation to these specific
23 land transactions which are being looked at have been
24 destroyed?

25 A. Well, now, Sir, we are talking about some transactions
26 which took place some 20-odd years ago.

27 412 Q. Yes.

28 A. And when we were looking for the documentation from
29 Finnegan Menton, we don't keep files that long. I
30 don't know what's the time, but I think it's six, eight

1 years or something like that, and we just hadn't got
2 them. We just don't keep them.

3 413 Q. So that's the position about Finnegan Menton?

4 A. Yeah.

5 414 Q. Dealing with your own position: It's quite clear from
6 the evidence which this Tribunal has been hearing, that
7 you had extensive commercial relations with Brennan and
8 McGowan in a number of land transactions, isn't that
9 right?

10 A. Yes.

11 415 Q. Yet, you have not discovered any single file of
12 correspondence with Brennan and McGowan concerning your
13 commercial dealings?

14 A. Well, I would like to say, Sir, that Brennan and
15 McGowan are not the sort of people who wrote many
16 letters.

17 416 Q. Did you write to them?

18 A. No. Very little. This is over a number of years, now,
19 Sir. I think that when we are talking about anything
20 to do with the transactions that they had - there was a
21 team that they had, headed up by Owens Murray, and I
22 think that's the reason why they - there wasn't much
23 documentation around. It was all done through them.
24 So I am sorry that - we have tried to help as much as
25 possible, to give you any - and we are, and I would
26 like to cooperate as much as possible with you, Sir, to
27 try and give you any information that we have. And we
28 have, actually, tried to get the information that you
29 mentioned from Guernsey, and I think you were notified
30 through our lawyers that we had written and had

1 requested to get the information --

2 417 Q. Yes, we'll be opening that in a moment. I am just

3 dealing with your own personal correspondence.

4 A. Okay. Sorry.

5 418 Q. We know that the dealings which you had with Messrs.

6 Brennan and McGowan were in your own personal capacity,

7 albeit that it does appear that Finnegan Menton's

8 services may have been used on a number of occasions in

9 relation to the sale or purchase of properties --

10 A. Right.

11 419 Q. -- on a fee basis?

12 A. Yes.

13 420 Q. But, insofar as the specific transactions that the

14 Tribunal is interested in is concerned, you were

15 dealing in your own personal capacity?

16 A. Yes, sir.

17 421 Q. And just to be absolutely clear about it, we do know

18 that in the case of the Sandyford lands, the one-third

19 shareholding in that venture was held by Foxtown

20 Investments Limited in its capacity as a shareholder of

21 Ardcar Limited. Isn't that right?

22 A. Yes.

23 422 Q. But in all other cases the one-third beneficial

24 ownership which was held jointly with Mr. Brennan and

25 Mr. McGowan, was held by you personally, not by Foxtown

26 Investments Limited?

27 A. I don't quite understand that.

28 423 Q. Mr. Simon Howard has given evidence in relation to the

29 beneficial ownership of all of these Jersey companies

30 that we've been concerned with, isn't that right? And

1 according to his evidence, you were a one-third
2 beneficial owner of Keno Investments Limited, Victa
3 Investments Limited, Arippe Investments Limited, and I
4 think one, or possibly two, others that I don't have a
5 note of.

6 .
7 Foxtown Investments Limited was the beneficial
8 one-third owner of Ardcarn Limited, which owned Canio
9 Limited, which owned the lands. But in no other case
10 was Foxtown Limited, as opposed to John Finnegan, the
11 beneficial owner of any of these companies?

12 A. No, not that - if that's the case, not that I am --

13 424 Q. Well, that's what Mr. Howard has told us, and he has
14 produced documents and schedules indicating that that
15 is the position.

16 A. Well, I am aware of what you talk about regarding the
17 Canio, but anything to do with - that is Bedell
18 Cristin?

19 425 Q. Yes.

20 A. Well, all of that - you know, I hadn't - I wasn't
21 interfacing with them. That was all done through -
22 there were many, many companies that it referred to,
23 and really some of those are names that I had never
24 really heard about. So I can't say to you, Sir, that
25 all of these - that I was the owner of - just like
26 that. I couldn't say that I was the owner, or part
27 owner of all of these companies.

28 426 Q. Well, the evidence that we have so far would appear to
29 indicate that you were, albeit that there are problems
30 with that, because Mr. Brennan has told us, and it does

1 appear from the documentation that you were not, in
2 fact, one-third, a full one-third participant in the
3 ventures.

4 .

5 We know, for example, that in the first four land
6 transactions you received a distribution of one-third
7 of the money sent over to Jersey, but did not further
8 participate in the developments of the property, albeit
9 notwithstanding that, according to Mr. Howard of Bedell
10 Cristin, you were, in fact, registered in the registry
11 in Jersey as a one-third beneficial owner.

12 .

13 But I think, perhaps, we'll deal with that in its turn.

14 A. All right.

15 427 Q. It is true to say, of course, lest there be any
16 confusion about this --

17 A. Yes.

18 428 Q. -- that in each case in which monies were paid, or
19 payable, they were sent to Foxtown Investments Limited
20 at your direction?

21 A. Well, where in connection --

22 429 Q. We've seen the correspondence. Obviously, you won't be
23 able to recall it all, but we will in due course.

24 A. All right.

25 430 Q. Mr. Wheeler, in each case where there was a
26 distribution, sent the share, the one-third share to
27 which you were entitled, over to an account in Guinness
28 & Mahon in Guernsey in the name of Foxtown Investments
29 Limited. And we've seen the correspondence about that
30 on both sides, principally from Mr. Wheeler.

- 1 .
- 2 But just to go back to your situation vis-a-vis
- 3 obtaining these documents from Sovereign Trustees
- 4 Limited. Can we just sort out who is who in this
- 5 arrangement?
- 6 .
- 7 There is a trust which was originally a Jersey trust,
- 8 is that right?
- 9 A. Yes.
- 10 431 Q. The trust appears to be a trust in which you are the
- 11 settlor, and Guinness & Mahon (Jersey) Trust Limited is
- 12 the trustee. Is that right?
- 13 A. I think that is the situation, Sir.
- 14 432 Q. The original amount of the, or value of the property
- 15 settled was ú5,000, presumably in cash. And the trust
- 16 was obviously established on the basis that further
- 17 monies would then be invested into the trust for the
- 18 purposes of the trust?
- 19 A. Is this all - you've all this information? Are you
- 20 asking me, Sir?
- 21 433 Q. Yes.
- 22 A. I can't recollect exactly what --
- 23 434 Q. Well, all of this was done, we presume, on your
- 24 instructions.
- 25 A. All of this - the trusts were set up by Mr. Des
- 26 Traynor --
- 27 435 Q. Yes.
- 28 A. -- many years ago. It is quite a long time ago.
- 29 436 Q. Undoubtedly. Let's just take it from the start.
- 30 A. Yes.

1 437 Q. In 1972, Guinness & Mahon decided to establish, in
2 Guernsey, a trust administration service for its Irish
3 clients, and, presumably for its other clients as well.
4 And they set up a company called Guinness & Mahon
5 (Jersey) Trust Limited. That is the company which was,
6 in fact, appointed as trustee in the original trust
7 document in which you were the settlor?

8 A. Right.

9 438 Q. Guinness and Mahon (Jersey) Trust Limited, while it was
10 the original settlor, appeared to have passed on the
11 baton, as it were, of trusteeship at some point in
12 time, probably 1975 or 1976, to College Trustees
13 Limited. Isn't that so?

14 A. Well, if you say so, Sir.

15 439 Q. We've seen the correspondence, for example, with
16 Mr. Naylor and Mr. Barry of College Trustees Limited.

17 A. Okay.

18 440 Q. A company called Sovereign Management Limited provided
19 administration services for College Trustees Limited,
20 but the functions of College Trustees Limited, as
21 trustee of these Guinness & Mahon Jersey trusts, was
22 subsequently taken over by a separate company called
23 Sovereign Trustees Limited, which is owned by Credit
24 Suisse who now administer these trusts. Isn't that so?

25 A. Yes.

26 441 Q. The original directors of College Trustees Limited were
27 Mr. Des Traynor, who was at the time a director of
28 Guinness & Mahon in its Dublin parent company. And a
29 Mr. John Collins, who was a director of Guinness &
30 Mahon (Cayman) Limited in its Cayman operation,

1 subsequently known as Ansbacher (Cayman) Limited. And
2 these were the people, with a Mr. John Lipscombe who
3 managed the administration of the Guinness & Mahon
4 Jersey trusts originally set up with Guinness and Mahon
5 (Jersey) Trust Limited.

6 .

7 Do you remember Mr. Lipscombe?

8 A. No, I don't.

9 442 Q. Did you ever have any dealings with Mr. Lipscombe?

10 A. No, I didn't.

11 443 Q. Well, when your trust was originally established, who
12 were you dealing with?

13 A. Mr. Traynor.

14 444 Q. Yes. But he would have been a director in Dublin and
15 he wouldn't have had, I take it, day-to-day management
16 of the Jersey trust, Sir, did he?

17 A. Well, I dealt with Mr. Traynor, and he was handling
18 quite a lot of business at that time, and he was
19 directly involved himself.

20 445 Q. Yes. When the trust was originally set up, where was
21 the bank account of the trust?

22 A. I couldn't say.

23 446 Q. Well, was it in Guinness & Mahon in Dublin?

24 A. I couldn't say. If you have anything that you can lead
25 me on, Sir, but I couldn't say to you - I can't
26 remember.

27 447 Q. Well, it's your trust, Mr. Finnegan. I am asking you.
28 If you don't know, just say you don't know?

29 A. I don't know.

30 448 Q. All right. We do know, of course, that at some point

1 in time, subsequently, and it appears subsequent to
2 College Trustees Limited becoming the trustee, that the
3 accounts of the trusts were in a newly set up bank
4 called Guinness & Mahon (Guernsey) Limited, and, in
5 fact, that is the bank to which Mr. Wheeler was sending
6 the various cheques that he sent?

7 A. Right.

8 449 Q. And we've seen that in the correspondence. So probably
9 around 1975, or possibly 1976, from that point on, the
10 bank accounts of the trust were in Guinness & Mahon
11 (Guernsey) Limited?

12 A. Yes.

13 450 Q. The bank statements which you furnished to the Tribunal
14 last week were from what bank? Some of them, if I can
15 just assist you, did have Guinness & Mahon (Dublin) on
16 them, but some of them didn't have any indication as to
17 which bank or branch of bank that they had come from,
18 they were just printouts of transactions.

19 A. Well, it was quite a surprise for me, actually, that we
20 - when I saw those documents, that they were found in
21 our office, in another investment file. I am afraid I
22 can't help you, as to where the others - whatever -
23 there was a Guinness & Mahon - there was a Guinness &
24 Mahon in it, but I can't say --

25 451 Q. Yes. Well -

26 A. Unless, maybe they all came from Guinness & Mahon.

27 452 Q. Well, they, undoubtedly, almost certainly came from
28 Guinness & Mahon, but they could have been Guinness &
29 Mahon (Dublin), they could have been an earlier
30 Guinness & Mahon bank which was subsequently not

1 renewed, or they could have been the Guinness & Mahon
2 bank which was established, we believe, in 1975 called
3 Guinness & Mahon (Guernsey) Limited?

4 A. Well, they may --

5 453 Q. Well, what I infer from your answer is you don't really
6 know?

7 A. I don't really know.

8 454 Q. You've informed us that your dealings with this trust
9 were primarily through Mr. Traynor, is that right?

10 A. Yes.

11 455 Q. We do know that you had dealings with the trust through
12 your solicitor, Mr. O'Shea?

13 A. Yes.

14 456 Q. What were the, without giving any detail of any
15 particular transaction, nature of the dealings that you
16 had with Mr. Traynor vis-a-vis the trust? In other
17 words, what did he do when you needed it done?

18 A. Well, I think that - at the particular time, when all
19 of that was set up, there was quite a lot of - quite a
20 lot of business being done with Mr. Des Traynor through
21 Guinness & Mahon, and through various developments in
22 Ireland, and in Dublin. So one would have seen quite a
23 lot of him. And he was an administrator. He was more
24 than just an ordinary bank official. He was very
25 friendly with other parties who were involved, we were
26 involved with, and he was a senior man in anything that
27 was going on, and did take - because he was very
28 friendly with other parties, he did play a major role
29 in it. He was a hands-on --

30 457 Q. At one stage, I think, he was Chairman of Guinness &

1 Mahon?

2 A. Yes, he was.

3 458 Q. We've been told that Foxtown Investments Limited is a
4 company owned by the trust?

5 A. Yes, Sir.

6 459 Q. Mr. O'Shea, in correspondence, indicated that it was
7 owned by, I think a company called Biscay Company
8 Limited, and two other people who he said were nominees
9 of Sovereign Trustees Limited, or presumably originally
10 College Trustees Limited. Is that right?

11 A. If you say so, Sir. I haven't --

12 460 Q. One thing that is quite clear is that you, yourself,
13 are neither, and were never a director, nor a
14 shareholder of Foxtown Investments Limited?

15 A. No.

16 461 Q. And Mr. O'Shea has indicated, in correspondence, which
17 we will look at in a moment, that the persons
18 registered as the members of that company were, in
19 fact, nominees of Sovereign Trustees Limited,
20 indicating that the company was owned by the trust?

21 A. The company was owned by a trust.

22 462 Q. Yes. And am I correct in thinking that when you
23 directed monies to be sent over to Foxtown Investments
24 Limited, you were, in effect, putting those monies into
25 the trust?

26 A. I would presume - I can't say that - where all monies
27 ended up, but I presume what you say is correct.

28 463 Q. If the company was owned by the trust, and the monies
29 were put into the company, presumably ultimately the
30 trust owned the money?

1 A. Yes, I would imagine so.

2 464 Q. Mr. O'Shea has also indicated in this correspondence

3 that this trust is a charitable trust, and it's a

4 discretionary trust. In other words, that the

5 directors have a discretion as to the application of

6 the trust funds, both capital and income. And I take

7 it, that was the basis on which it was set up on your

8 instructions?

9 A. Well, I might say so, Sir, that anything that - that

10 that would be far away from what I would have known or

11 know anything about. And anything that was done then

12 was set up on the advice of professionals, such as

13 Traynor, Des Traynor.

14 465 Q. Well, we have been told that it was a charitable trust

15 set up, and that the beneficiaries of the trust were

16 charitable institutions, including the World Wildlife

17 Fund. So, presumably you - it was on your instructions

18 that a charitable trust was established for charitable

19 purposes?

20 A. Can I just get that - I was advised at that time that I

21 should - by Des Traynor, and whoever his bank or

22 whoever, that one should set up a trust, and that they

23 would do that. Now, I think he did, for quite a few

24 people at the particular time. And that, literally,

25 was very foreign stuff to me, but I was like everybody

26 else, taking the advice of professional advisers, and

27 he was at the time one of probably the best-known

28 people in Dublin involved in this sort of business.

29 And he was an accountant by profession himself. So

30 literally he was - he was, if you like to say, a

1 fatherly figure. And anyone who was involved -
2 followed him. He advised, and he was a very direct
3 person. And he would have dictated what one would have
4 done.

5 466 Q. Well, perhaps put it another way: What was your
6 understanding in seeking the assistance of Mr. Traynor,
7 as to what purpose he was going to set up a trust for,
8 on your behalf?

9 A. Well, my understanding - that it was that a trust would
10 be set up for, down the road, for the benefit of one's
11 - for the ultimate benefit or setting up of a family.
12 And that, I think, advice had been given to some other
13 people as well, at the time. And that's what it was.
14 .

15 Now, that was - that this was the proper and
16 appropriate thing to do. At the time I was quite busy.

17 467 Q. Yes. So do I take it - take you correctly to say that,
18 in essence, what you wanted was a family trust to be
19 set up?

20 A. Well, by the way, definitions of - when I say "family",
21 I understood that the advice was that the - it would
22 have been - well, it would act for the benefit of the
23 family.

24 468 Q. Yes.

25 A. If that's the same thing.

26 469 Q. Yes. Essentially.

27 A. Yes.

28 470 Q. In other words, that - as people do, they set up trusts
29 where they settle property or money on trust for their
30 own benefit, but primarily for the benefit of their

1 families, where the discretions are given to trustees,
2 but perhaps a Letter of Wishes is given to the trustee
3 to give them guidance in the exercise of their
4 discretion. That's not an uncommon method of setting
5 up a provision for one's family. Is that what your
6 intention was?

7 A. Yes.

8 471 Q. Did Mr. Traynor tell you that what he, in fact, set up
9 was a trust, the beneficiaries of which were charitable
10 institutions?

11 A. Well, I left all of that to him.

12 472 Q. Yes. And would I be correct in thinking that it
13 certainly was not your intention that any monies put
14 into this trust be disbursed at the will or discretion
15 of the trustees to whatever charitable institutions
16 they decided to give this money away to?

17 A. Now, Sir, we are going into foreign ground. I can't -
18 I am not qualified, technically, to follow all of what
19 the questions are. What my intention - my
20 recollections were, around the 70s that I had a trust
21 formed.

22 473 Q. Yes.

23 A. Whatever the documents are, the documents that I have,
24 and I think that Mr. Michael O'Shea has provided you
25 with the information. You are referring to him?

26 474 Q. Yes, he has provided us with certain documents,
27 including documents which make reference to Foxtown
28 Investments Limited and its place, as it were, within
29 the trust.

30 A. All right.

1 475 Q. But, in those documents he does refer to the trusts,
2 and he informs various parties - perhaps we'll look at
3 it, that might be the easiest way to deal with it.

4 .

5 If I can just - just bear with me for a moment.

6 A. Of course.

7 476 Q. Yes. We know, from a company search, that the original
8 directors of College Trustees Limited were, in fact,
9 Mr. Des Traynor and this Mr. John Collins. And that
10 that company was registered on the 6th of March of
11 1975. Is it your recollection that the trusteeship of
12 the trust passed from Guinness and Mahon (Jersey) Trust
13 Limited to College Trustees Limited in 1975?

14 A. I am not sure, Sir, but --

15 477 Q. Well, you would have been informed of any change of
16 trustees, you being the settlor of the trust?

17 A. Well, I think, you know, when one tries to look back to
18 '75 and remember what happened, you know, this mightn't
19 have been a major thing, you know, at the time. I
20 can't say to you that I recollect, but if there is
21 something there, if that's what it is, it is.

22 478 Q. Well, if I could refer you to page 1489. This is a
23 letter from Mr. O'Shea to a Mr. Des Traynor on the 20th
24 of March of 1991, where he's seeking Mr. Traynor's
25 advice in connection with something. And he says,
26 paragraph 1:
27 .
28 "Canio, a Channel Island company, is a wholly-owned
29 subsidiary of Ardcar Limited, also a Channel Island
30 company.

1 .
2 There are 12 shares issued in Ardcar, of which four
3 were held recently by Foxtown Investments Limited.
4 Foxtown Investments Limited is in turn controlled by a
5 discretionary trust known as 'The Amber Trust', the
6 current beneficiaries of which are charities, including
7 the World Wildlife Fund.

8 .
9 Sovereign Trustees Limited, as trustees of the Amber
10 Trust, do, however, have power to appoint additional
11 beneficiaries, and indeed remove existing beneficiaries
12 at their discretion."

13 A. Okay.

14 479 Q. And at paragraph 2 he says, as you can see there on the
15 screen:

16 .
17 "The directors of Foxtown Investments Limited are:
18 David Naylor, JM Glauser, and Mrs. J Glauser.

19 .
20 The shareholders of Foxtown Investments Limited are:
21 Biscay Limited - 94 shares. David Naylor - three
22 shares. And SA Laine - three shares"?

23 A. Mm-hmm.

24 480 Q. That letter was on the 20th of March, 1991. So this is
25 Mr. O'Shea saying to Mr. Traynor, in 1991, that this is
26 a charitable trust, and setting out who the directors
27 and members of Foxtown Investments Limited were, that
28 being a company which he says is controlled by the
29 trust?

30 A. Right.

1 481 Q. You see, what I want to put to you, Mr. Finnegan, is
2 that while on the face of it this was established as a
3 discretionary trust, that it was not, in fact, operated
4 as a discretionary trust, and that it was operated at
5 all times under your direction and control.

6 .
7 And just so you are clear where I am coming from and
8 where I am going to, I am suggesting to you that that
9 situation remains up to the present time, and that the
10 assertion that you are unable to obtain from the
11 trustees of this trust the documents which the Tribunal
12 has requested you to provide is, to put it neutrally,
13 incorrect?

14 A. But you are not believing me, Sir.

15 482 Q. I don't want to get involved in a personal argument
16 with you, Mr. Finnegan, but what I am suggesting to you
17 is that it is - that it beggars belief that a person
18 who is not only the settlor of the trust, but also the
19 primary or principal beneficiary of the trust, is
20 unable to obtain from the trustees of the trust any
21 documents he wants.

22 .
23 MR. HUSSEY: I am sorry. Can I interrupt there. Just
24 before that question is answered, before Mr. Hanratty
25 can say any such thing, I think he should try to
26 ascertain from the witness what steps this witness has
27 tried to take in order to obtain those documents,
28 before he starts talking about begging belief.

29 .
30 CHAIRMAN: I take the view that the Order was made by

1 this Tribunal, it should be obeyed by a citizen. No
2 major effort has been made to obey. And I want to know
3 why and how, and what steps were taken, and that's it.

4 And I will have no nonsense about that.

5 .

6 I want full, frank answers.

7 .

8 I do not believe that a very well-known businessman, an
9 extremely competent man, does not know how his affairs
10 are being managed.

11 .

12 Now, please, treat me with a reasonable degree of
13 courtesy in that regard.

14 .

15 483 Q. MR. HANRATTY: I just want to refer you to the trust
16 document itself for a moment, Mr. Finnegan, which
17 contains within it a definition of a beneficiary.

18 A. Okay.

19 484 Q. And you, as you are aware, are a beneficiary under the
20 trust, isn't that right?

21 A. I --

22 485 Q. If we can have a look at page 4774. This is the front
23 page of the trust document with which the Tribunal has
24 been provided by your solicitor, and it's entitled,
25 "Discretionary settlement between John J Finnegan and
26 Guinness and Mahon (Jersey) Trust Limited."

27 .

28 And if we turn to page 4775, on the very top of the
29 page it says: "This settlement is made the 18th day of
30 September, 1973, between John J Finnegan of Seapoint

1 House, Monkstown, County Dublin, Republic of Ireland,
2 hereinafter called 'The Settlor' of the one party, and
3 Guinness & Mahon Trust Limited, P.O. Box 83, The
4 Esplanade, St. Helier, Channel Islands, hereinafter
5 called 'The Trustees' of the other part."

6 .

7 It goes on in a very considerable number of pages, up
8 to 48 or so pages, setting out provisions which have
9 all the indicia of a discretionary, charitable trust.

10 .

11 Can I ask you, first of all, were you a beneficiary of
12 this trust?

13 A. It looks here - it says it's between me and --

14 486 Q. You, as settlor, and the trustee, which is Guinness &
15 Mahon (Jersey) Trusts Limited, or Jersey Trust Limited.
16 You, in other words, were settling property on trust?

17 A. But that doesn't necessarily mean that you have it.

18 487 Q. It doesn't mean what?

19 A. What did you say? What was your first question?

20 488 Q. My question is: Are you a beneficiary, or were you a
21 beneficiary of this trust yourself?

22 A. I didn't understand that I was.

23 489 Q. Well, wouldn't you be, if it was intended to be a
24 family trust?

25 A. Well - shall I just get clear on where we are? Is this
26 the trust document where - that's in operation?

27 490 Q. Well, it's the only trust document that we have been
28 provided with in response to our request for the trust
29 document, in connection with Foxtown Investments
30 Limited. Is there some other trust that it could be,

1 that could be the owner of Foxtown Investments Limited?

2 A. No, Sir, I am not saying that. I am just saying - so
3 your description is, this is a discretionary trust?

4 491 Q. Yes. It is in clear terms a discretionary trust, in
5 that it gives discretion to the trustees as to the
6 application of the trust property, both capital and
7 income, and it does frame itself in terms of a
8 charitable trust?

9 A. Right.

10 492 Q. But I am asking you, were you a beneficiary of this
11 trust yourself?

12 A. Not that I was aware of.

13 493 Q. Well, can I refer you to the bottom of the page?

14 A. Yes.

15 494 Q. Where it says under the words, "Now this deed,
16 witnessesst as follows:

17 .

18 "1" - and in the first paragraph it says:

19

20 "1. In this deed wherever the context permits the
21 following words have the following meanings" - this is
22 what's an interpretation clause.

23 .

24 "(A) 'The Beneficiaries' means, includes all and any
25 of the following persons, namely:

26 .

27 1. Members of the appointed class, as described in the
28 second schedule."

29 .

30 And that's the only one in subparagraph (A). And then

1 if we go to the second schedule, which is page 4824.

2 It says:

3 .

4 "The 'appointed class' means such of the undermentioned
5 individuals and such members of the undermentioned
6 classes as are respectively, for the time being, in
7 existence:

8 .

9 1. The settlor, John J Finnegan, of Seapoint House,
10 Monkstown, County Dublin, hereinafter called The
11 Appointee."

12 .

13 So you are the appointed beneficiary. And it goes on,
14 then, in "2" to say:

15 .

16 "Any wife, husband, widow/widower or child or other
17 issue of the Appointee.

18 .

19 3. The adopted or legitimated child or children of the
20 Appointee and the child or children (including any
21 adopted or legitimated child or children) of any such
22 adopted or legitimated child or children.

23 .

24 4. Any trust or body which is recognised as charitable
25 by the laws of Island of Jersey.

26 .

27 5. Any person of the time being and from time to time
28 who is an employee or a former employee or officer or
29 the wife or husband or a widow or widower or the child
30 or other dependant of any employee or former employee

1 or officer of any company in which not less than 75
2 percent of the shares is held by trustees."

3 .

4 So you are the first appointee or appointed trustee,
5 sorry, beneficiary under this trust. And I suggest to
6 you that that document clearly establishes that you
7 were, in fact, a beneficiary, and are, in fact, a
8 beneficiary of this trust?

9 A. Well, that's - if that's what it says, Sir, that - and
10 this was in?

11 495 Q. This is the original trust document we have been given
12 to understand?

13 A. Michael O'Shea?

14 496 Q. 1973. It was established in 1973. I gather it still
15 exists. The trust, by its terms, is for a period of 80
16 years from its establishment, or such earlier
17 termination as is determined by reference to a
18 termination clause, which has a variety of
19 contingencies which could terminate the trust?

20 A. If I am hesitant, Sir, it's not - I may be involved in
21 a business - I am involved in business. We all have to
22 seek advice on various things outside one's own scope.
23 And far from my capabilities of understanding trusts,
24 one would have to take advice on them. So, you know, I
25 am not, by the way - don't think for a moment that I am
26 hesitating with you. I don't understand.

27 497 Q. Mr. Finnegan, anybody in business understands the
28 simple basics of a trust, that somebody settles the
29 property on trustees - who benefits from it? That's a
30 fairly straightforward, simple concept, and according

1 to this document, you are, from the outset, yourself, a
2 beneficiary?

3 A. Hum.

4 498 Q. I am putting it no higher than that?

5 A. All right, Sir.

6 499 Q. But that has certain legal consequences, because a
7 beneficiary of a trust is entitled as of legal right to
8 get information from the trustees, and documents from
9 the trustees. They have no right, whatever, to
10 withhold documents from you. And this Tribunal is
11 being told that you are met with a refusal by Sovereign
12 Trustees Limited to provide you with documents?

13 A. Well, Sir, we did write to the trust, and I don't know
14 whether you have had a copy - requesting that the
15 information would be released. I did do it, and I got
16 a response from them. And the response was that they
17 were not prepared to do so. Now, I think, if we --

18 500 Q. The position in Irish law, certainly, and also in
19 English law, and I can't dogmatically say in Jersey
20 law, which is the proper law of this trust, albeit that
21 the trustees have a discretion to change the proper
22 law, but I would expect that under Jersey law, as well,
23 it is that if trustees refuse to provide documents to a
24 beneficiary, or accounts or information, that they can
25 be sued and will be ordered at their own cost to
26 provide that information, including the costs of the
27 proceedings, and not only that, maybe removed from
28 their position as trustees, if they engage in such
29 behaviour?

30 A. Well, that is, if I might say so, from what I hear, a

1 very, very serious position. Could I take - can I see
2 if I can find out anything more about that, because I
3 have - I think - the Tribunal may have a copy of the
4 documentation. We did write, we were replied to, and
5 then the Tribunal said - came back and said we should
6 make every effort to see, because they - and they
7 replied. The trust said that it was not - they were
8 not empowered to give the information or would not give
9 the information. And then there was a question, unless
10 we did something about appointing, that we might have
11 to go to the court in Jersey - in Guernsey.

12 501 Q. Just put aside the legal situation for a moment, and
13 look at the factual situation. As we know it from
14 Mr. O'Shea's correspondence, which I suggest to you
15 clearly establishes that, in fact, and in reality, you
16 were in control of the trust and were in a position to
17 make decisions and did make decisions and gave
18 instructions to the trustees as to what to do in
19 relation to the trust in general, and Foxtown
20 Investments Limited in particular?

21 A. Well, I shall have to have quite serious words with
22 Mr. O'Shea, because he was actually - he did write to
23 the trustees in Guernsey.

24 502 Q. Yes.

25 A. And do you have a copy of that correspondence, Sir?

26 503 Q. Yes. We'll come to that in a moment. I am just
27 dealing with the factual situation now. You are
28 referring to Mr. O'Shea's letter, which he sent to the
29 Tribunal, and this solicitor's letter, which was sent
30 to him in return, is that the one?

1 A. Yes.

2 504 Q. We'll come to that in a moment, because I want to ask

3 you some other questions about the surrounding

4 correspondence.

5 .

6 But at this stage I just want to deal with the factual

7 situation, at least as it was between 1985, say, and

8 1990.

9 .

10 Can I refer you, firstly, to Document No. 1380.

11 .

12 And this is a memorandum or attendance taken by

13 Mr. McGonigal, now deceased, from the firm of Kennedy

14 McGonagle Ballagh? Is that right? You can see his

15 initials on the bottom there?

16 A. I take it it is, yes.

17 505 Q. It's in relation to a meeting which he, Mr. McGonigal,

18 had with yourself and Mr. Traynor. You see that from

19 the first sentence in it?

20 A. Mm-hmm.

21 506 Q. And he says at paragraph :

22 .

23 "1. Foxtown is to write to Finnegan Menton confirming

24 they are retained to advise Foxtown on the Dublin

25 property which Canio Investments Limited owns, Foxtown

26 holding one-third of the shares of Canio. A fee of

27 5,000 initially is proposed which is to be paid over.

28 .

29 2. Foxtown will give 'X' Limited an option to buy

30 Foxtown's one-third shareholding in Canio at a price

1 equal to the approximate cost of such shareholding plus
2 expenses. In this connection it will be necessary to
3 obtain from Foxtown or Sovereign Management which looks
4 after it, a statement of affairs showing the assets and
5 liabilities of Foxtown."

6 .

7 Do you see that?

8 A. Yes.

9 507 Q. A statement showing the assets and liabilities of

10 Foxtown.

11 .

12 "We assume that its assets are the one-third
13 shareholding in Canio and that its liabilities are
14 monies borrowed for the purpose of that acquisition.
15 Overseas Nominees Limited, Cayman Islands, will take
16 the option on behalf of X Limited. That is a nominee
17 company of Ansbacher Limited.

18 .

19 3. A new letter of instructions in relation to Foxtown
20 is required by Sovereign.

21 .

22 4. We must check and confirm the present limit of the
23 AIB claim against Canio on foot of its
24 guarantee/mortgage.

25 .

26 5. In order to balance out the AIB claim which is for
27 the benefit of Brennan and McGowan, there could be
28 brought into existence a charge for half the amount of
29 the AIB claim which would be for the benefit of Foxtown
30 and would pari passu with the AIB claim.

1 .
2 We are to obtain from Sovereign a short statement or
3 summary of the assets and liabilities position of
4 Foxtown, as well as ensuring that Sovereign on behalf
5 of Foxtown maintains a director of Canio and obtains
6 confirmation that nothing has happened to it or to its
7 Dublin property which would be prejudicial to Foxtown.
8 JJF," that, I presume, is a reference to you, John J
9 Finnegan, "is to authorise all this if necessary."

10 .
11 So, certainly, Mr. McGonigal appears to have been of
12 the impression that your authorisation was all that was
13 required to enable him to obtain the various things,
14 including a short statement of the assets and
15 liabilities of Foxtown from Sovereign. That certainly
16 is what appears from that document. Do you not agree?

17 A. Yes. It appears so, Sir. I can't recollect seeing
18 this document, but we have it.

19 508 Q. You see number 3, "A new letter of instructions in
20 relation to Foxtown is required by Sovereign."

21 .
22 So here we have Sovereign Trustees, the very company
23 who you say are refusing to provide you with
24 documentation relating to Foxtown, requesting or
25 seeking from you your instructions?

26 A. This was in 1993.

27 509 Q. 1990.

28 A. 1990.

29 510 Q. Can I refer you to page 1402, which is a letter from
30 Mr. O'Shea of Kennedy McGonagle Ballagh in December of

1 1990, to Mr. Don Reid, who was an accountant in Stokes
2 Kennedy Crowley. And it's "re Canio", as you can see.

3 .

4 "Herewith draft agreement submitted in connection with
5 the proposed sale by Foxtown Investments Limited of its
6 shareholding in our Ardcar Limited. You will recall
7 that Ardcar holds all the issued shares of Canio
8 Limited. The total consideration is ú700,000 payable
9 as to ú500,000 on completion and the balance over a
10 period of years. There is a suggestion that part of
11 the balance, perhaps up to ú100,000, will be paid by
12 way of fees to Finnegan Menton. You will notice that
13 the initial payment of ú500,000 at least is to be paid
14 in government stock.

15 .

16 I look forward to discussing this matter generally with
17 you this afternoon."

18 .

19 Now, the significance of that letter is that here is
20 Mr. O'Shea communicating, I suggest, on your
21 instructions, not on the instructions of Sovereign
22 Trustees Limited, with Mr. Don Reid in relation to
23 matters concerning Foxtown Investments Limited. Isn't
24 that right?

25 A. Mm-hmm. Yes, sir.

26 511 Q. There is another letter from, I think, Michael O'Shea
27 on page 1412, and it's also in December of 1990. This
28 one is to Mr. Naylor of Sovereign Management Limited.
29 It says:

30 .

1 "Dear David,

2 .

3 I refer to our telephone conversation earlier today and
4 confirm that agreement has been reached in principle
5 for the sale by John" that is, I take it, it you "of
6 his interest in Ardcar.

7 .

8 He appears to be treating Foxtown and John Finnegan as
9 one in the same thing.

10 .

11 "The consideration agreed is ú700,000 payable as to
12 ú500,000 now and the balance over a period of years.

13 The original proposal was that the balance be paid over
14 a period of four years, but John is hoping to negotiate
15 a shorter period, i.e. two years."

16 .

17 So the person who is doing negotiations on behalf of
18 Foxtown in relation to the sale of that company's
19 one-third interest in Ardcar is not Sovereign Trustees
20 Limited or Sovereign Management Limited, it's you.
21 Isn't that clear from that letter?

22 A. Well, in fact, it was Michael O'Shea who was carrying
23 out those negotiations.

24 512 Q. It says, "But John is hoping to negotiate a shorter
25 period." This is a period for payment.

26 .

27 So that seems to suggest that you were doing the
28 negotiating.

29 A. Well, I suppose it's a question of interpretation of
30 that. Obviously - I know that at the - if you go back

1 on this, I was hoping to get - is it four years?

2 Michael O'Shea was carrying out those negotiations.

3 513 Q. On whose behalf?

4 A. On behalf of Foxtown.

5 514 Q. On whose instructions?

6 A. I would say that he was acting on the instructions of
7 Foxtown.

8 515 Q. Really? On the instructions of Foxtown?

9 A. Shall I try and get some clarification on that for you,
10 Sir?

11 516 Q. Well, what I am suggesting to you is that this letter

12 clearly establishes that you were the one that was

13 making the decisions with regard to the sale of the

14 Foxtown interest in Ardcar, both in relation to the

15 price and in relation to the period over which the

16 price was to be paid. It's quite obvious from that

17 letter, I suggest to you, that Mr. O'Shea was receiving

18 his instructions in relation to this matter from you.

19 A. Well, there was a question actually there, I think,

20 back where Finnegan Menton would be appointed to act on

21 behalf of Foxtown.

22 517 Q. You see, Mr. O'Shea has also given evidence to this

23 Tribunal.

24 A. Yes.

25 518 Q. And his evidence is that, in fact, you were in control,

26 and you were giving instructions?

27 A. Right.

28 519 Q. Notwithstanding the fact that it was a discretionary

29 trust or, sorry, that it expresses itself as a

30 discretionary trust? Was he correct about that?

1 A. Well, I shall have to have words with him, because as
2 far as I am concerned, that we were - I think, yes,
3 that he - we were advising Foxtown.

4 520 Q. If can I refer you to page - sorry, to Day 263.

5 A. Yeah.

6 521 Q. Question 456. Ms. Dillon put it to Mr. O'Shea:

7 .

8 Question: But Mr. John Finnegan's orders and
9 instructions are followed by everybody in connection
10 with this trust, isn't that right?

11 Answer: As we have sort of agreed earlier, yes.

12 Question: So let's get down to brass tacks here,
13 Mr. O'Shea, and perhaps all this kind of legalese kind
14 of stuff. The reality of the matter is that Mr. John
15 Finnegan is, in reality, the person in control. He
16 calls the shots, he is the man, isn't that right?

17 Answer: Well, I think we've earlier established that
18 and agreed that."

19 .

20 I have a whole book of questions here. I am not going
21 to go through them now this afternoon, but you can take
22 my word for it that they are all to the same effect.

23 That is the summation of a series of questions, all of
24 which inexorably came to the same conclusion, that you
25 were the person in control, you were the person making
26 decisions, you were the person, as Ms. Dillon puts it,
27 "calling the shots"?

28 A. Well, certainly that the - where one was advising on
29 the sale - I suppose there were two hats here with
30 Finnegan Menton. Let me just - I'll check back on some

1 of this for you, Sir --

2 522 Q. Because the problem we have, Mr. Finnegan, is you are
3 the person who is now asserting to this Tribunal that
4 you can't, notwithstanding all of that evidence,
5 notwithstanding evidence which strongly suggests that
6 you were in complete control of this trust, you are now
7 suggesting it can't get documents?

8 A. Well, I did try, Sir, to get them, and we have,
9 actually - well, I did try. And we --

10 .

11 MR. HANRATTY: Shall I continue in the morning, Sir,
12 because there is some further ground to cover --

13 .

14 CHAIRMAN: I didn't want to interrupt your train of
15 thought. I just want to say one thing, and I want to
16 say it very courteously, and in no way in any way
17 reaching a decision. But I think that the provisions
18 of Section 3 of the Tribunals of Inquiry (Act) 1979 and
19 5 should be brought to the attention of the witness by
20 his advisers.

21 .

22 Now, I say no more than that. But I think it would be
23 helpful to him, that he might fully understand and have
24 it explained to him. I don't propose to attempt to do
25 so.

26 .

27 And I want to make it quite clear, that I simply want
28 everybody to be playing on a level playing pitch,
29 nothing else, and there is no other implication from
30 that suggestion. Just a courtesy, and I hope it will

1 be taken up.

2 .

3 MR. HUSSEY: Thank you, Sir.

4 .

5 CHAIRMAN: Half past ten tomorrow morning. Thank you

6 very much.

7

8 THE TRIBUNAL ADJOURNED TO THE FOLLOWING DAY, OCTOBER

9 THE 5TH, 2001, AT 10:30 A.M..

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