

1 PLANNING TRIBUNAL - DAY 305

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3 THE TRIBUNAL RESUMED AS FOLLOWS ON THE 11TH OF OCTOBER,

4 2001, AT 10:30 A.M.:

5 .

6 CHAIRMAN: Good morning everyone.

7 .

8 MR. HANRATTY: Mr. Finnegan, please.

9 .

10 MR. JOHN FINNEGAN RETURNS TO THE WITNESS-BOX AND

11 CONTINUES TO BE EXAMINED BY MR. HANRATTY AS FOLLOWS:

12 .

13 1 Q. MR. HANRATTY: Good morning, Mr. Finnegan.

14 A. Good morning to you.

15 2 Q. Before we resume with the evidence, can I ask you what

16 is the present up-to-date position vis-a-vis your

17 attempts in Jersey, or in Guernsey, to obtain these

18 documents you have sought from the trustees, which they

19 have declined to provide?

20 A. I've been informed this morning, Sir, that they have -

21 my lawyers have heard from the Guernsey lawyers that

22 they expect to have a case before the court by the end

23 of this month, Sir.

24 3 Q. By the end of this month?

25 A. Yes.

26 4 Q. This is the summary procedure we were told about?

27 A. Yes, Sir.

28 5 Q. And that's the earliest that the application can be

29 made?

30 A. Yes. Well, I understand - can I go back over to my

1 people? They were informed about this, Sir. This is
2 what I understand.

3 6 Q. There is a wider issue, Mr. Finnegan, in that, as we
4 know from the evidence, particularly the testimony of
5 Mr. O'Shea, but also the documentation and
6 correspondence that we have seen with College Trustees
7 Limited, and Mr. Barry, and Mr. Naylor, it's quite
8 clear from that correspondence that up to a certain
9 point in time, which we have identified as in the
10 relatively recent past, anything you wanted from these
11 trustees, you got it. Isn't that right? We have
12 established that --

13 A. No. What have you established, Sir?

14 7 Q. Well, I thought we had established that you were in
15 control, that you made the decisions, and that you gave
16 the instructions?

17 A. I think that's a rather sweeping statement, Sir.

18 8 Q. Well, we can go through Mr. O'Shea's evidence, but
19 that's the effect of his evidence.

20 A. Well, if it is - if that's what you understand from it,
21 Sir. But I think that the position is, regarding - I
22 wouldn't say that I got everything I wanted from the
23 Trust. I got - I think they were facilitating me
24 through the trustees, but I couldn't say - this is what
25 I am saying, Sir. Whatever you got from Mr. O'Shea is
26 another matter.

27 9 Q. You seem to be retreating from the evidence last
28 Friday, when you recall that I put to you a number of
29 specific documents which appear to establish that you
30 were the one that was in control of this trust; that

1 you were the one that made the decisions, and you were
2 the one that gave instructions to the trustees as to
3 what they should do.

4 .

5 And I also put to you one particular passage in the
6 examination of Mr. O'Shea, which encapsulated in one or
7 two questions the thrust of all of the evidence he had
8 given on this point to the same effect.

9 .

10 Now, are we retreating from that?

11 A. Let's clarify the position, Sir. A sweeping statement
12 regarding the Trust, I cannot take - there was a
13 question - you asked me, did they facilitate, as far as
14 I recollect, in giving information which I wanted over
15 a period of time? And I said, "Yes, they had been
16 cooperative." But to say that anything that I wanted
17 to do could be done without the trustees is another
18 matter, Sir.

19 10 Q. But the evidence appears to establish that you were in
20 control, you made the decisions, and you gave the
21 instructions through, essentially through Mr. O'Shea?

22 A. No, I don't like your - Sir, the way you are putting
23 this to me, that I am in control.

24 11 Q. You were in control up until the 8th of September, when
25 they informed you of this policy decision that they had
26 made?

27 A. I wouldn't say - they listened to my questions, Sir,
28 and were obliging. I wouldn't say that I was in
29 absolute control. I think you asked me that time about
30 a specific piece of paper, that I do whatever --

1 12 Q. No, I think we better look at this again, Mr. Finnegan,
2 because it is important.

3 .

4 The point fundamentally being, that I am putting to
5 you, is that all of the documentation in this trust was
6 available to you on the basis of the evidence that this
7 Tribunal has heard, and therefore within your power for
8 any purposes of a Discovery Order. That's the
9 proposition I am putting to you. Because you were in
10 control of the Trust?

11 A. But, Sir, I think what I explained to you, that what -
12 whether you feel it was within my power - I requested
13 it from them, and I gave you the documentation. And we
14 tried our very, very, very best, and we thought we
15 would be able to facilitate you. By the way, the
16 purpose of my being here is to facilitate here. I am
17 here as a witness to help you as much as possible.

18 13 Q. Do you agree with me that you were in control of this
19 trust?

20 A. No, I think that this is control - I can't say to you
21 that I was in control, but they were - they listened to
22 what I had said. And whenever we talked to them, any
23 information we were getting, they were talking freely
24 to us. But to say, Sir, I am in control, the trustees
25 of the trust are in control --

26 14 Q. But they complied with your instructions and acted on
27 them?

28 A. When they did, Sir, when my wishes - they did in most
29 cases, they did. And it was a surprise to me, by the
30 way, that I couldn't get the information which I sought

1 on your behalf.

2 15 Q. Was there any case, any case at all, prior to the 8th
3 of September, when the trustees refused to give you any
4 document you asked for, or any information you asked
5 for?

6 A. No, I don't think so, Sir. I can't recollect.

7 16 Q. And, in effect, they treated any request by you for
8 anything as, in effect, an instruction, I suggest?

9 A. Well, I don't know which way you are coming around
10 this, Sir, but I would say to you this: That on a very
11 friendly way they were very helpful to me all along the
12 line, and obliging, and did - and behaved very, very,
13 very well. And I will say, and I go on to say that
14 when I did - I did everything in my power to try and
15 get them. I phoned them, I did all of - I did
16 everything I could to try and get the information which
17 you sought.

18 17 Q. I've already put to you that this alleged inability to
19 obtain these documents from these trustees is a
20 charade, and the reason that I put that is precisely
21 because the evidence, I suggest to you, overwhelmingly
22 establishes that you could get anything you wanted from
23 this trust at any time?

24 A. Well, I think I would have to take exception to what
25 you say, Sir, that this is a charade. I am here as a
26 helpful witness, to help you as far as I can, and that
27 is - that's a very hurtful remark, Sir.

28 18 Q. The point that I am fundamentally making, so we have no
29 ambiguity about it, is that up to this time when you
30 assert the trustees made this policy decision, when

1 they would no longer give you any of the documents you
2 were looking for, all of the documents relating to the
3 Trust, no matter what they were, were available to you,
4 and therefore within your power. And that is a wider
5 category of documents than the somewhat narrower
6 category of documents to which beneficiaries have an
7 entitlement in strict law?

8 A. Well, when it comes down to technicalities and that, I
9 am not trained. But what I am saying to you, Sir, is
10 this, and I'll repeat it: When you sought the
11 information, I did everything in my power to get it for
12 you. And now you are telling me that that is a
13 charade. It wasn't a charade, Sir.

14 .
15 Then I asked my lawyers. My lawyers tried. I sent you
16 a copy of the correspondence which we had. You then
17 asked me what we would do about - would we take the
18 steps to take proceedings, that we should - you
19 requested we take proceedings. I took that on the hop
20 and have, have requested and instructed lawyers.

21 .
22 Now, I have to say to you, Sir, if it comes down to the
23 Trust and what I can do, I can do no more for you, Sir.

24 19 Q. Well, let's just look at the position as it was prior
25 to the 8th of September, when this decision is supposed
26 to have been made by the trustees.

27 .
28 At Day --

29 A. Supposed to be made, Sir?

30 20 Q. -- 263 on page 12, question 56 - 57. Ms. Dillon asked

1 your solicitor, Mr. O'Shea:

2 .

3 "Question: Yes. And therefore it will have been your
4 position that you would have been happy to take
5 instructions from Mr. Finnegan in relation to the
6 activities of Foxtown, and to act on those without
7 dealing with Mr. Barry or Mr. Naylor?

8 Answer: As I said earlier, yes."

9 .

10 If you go to question 66, Ms. Dillon asked Mr. O'Shea:

11 .

12 "Question: So that insofar as they were trustees of
13 the Trust, in reference now to Mr. Barry and Mr. Naylor
14 in their capacity as officers of Sovereign, so that
15 insofar as they were trustees of the Trust and they
16 were operating or looking after the trust funds, it
17 appears that the property, or the funds in the Trust
18 were being dealt with solely and exclusively on the
19 direction of Mr. Finnegan?

20 Answer: Yeah.

21 Question: Is that correct?

22 Answer: That seems to be the case, yes.

23 Question: And there is nothing in the files that you
24 have furnished to the Tribunal to indicate otherwise?

25 Answer: Not in these files, no. Not that I can see."

26 .

27 And then, if we go to question 205, Ms. Dillon was
28 asking you about instructions - sorry, asking Mr.
29 O'Shea about instructions - perhaps we'll start at
30 question 201.

1 .
2 "Question: In your correspondence, in the
3 correspondence files dealing with this transaction, did
4 you furnish to the Tribunal all communications with
5 Sovereign Management appear to be by way of writing or
6 telephone calls about which attendance notes are made;
7 is that correct?

8 Answer: No, I would have had, I am sure many
9 conversations with David Naylor which I wouldn't have
10 made notes on.

11 Question: But it would appear from the five files that
12 you furnished to this Tribunal that surround this
13 transaction, that insofar as you obtained instructions
14 to do anything from Sovereign Management, you seem to
15 have recorded on your files - we will get the files
16 now and start at page 1, if you wish, Mr. O'Shea?

17 Answer: No.

18 Question: -- in detail?

19 Answer: I can't recall."

20 .

21 Question 204 then says:

22 .

23 "Question: But insofar as this transaction is
24 concerned, you received an instruction from someone to
25 transfer this money to the account of Henry Ansbacher."

26 .

27 I presume this was the ú500,000 first payment in
28 respect of the sale of the Foxtown shares.

29 .

30 "Answer: Yes.

1 Question: Who was the most likely person who would
2 have given you those instructions?

3 Answer: I would have thought Sovereign Management
4 would have been the people to do that, I don't know
5 why. Presumably, they have a banking arrangement
6 there. Honestly, I don't know.

7 Question: Did you receive instructions in relation to
8 this transaction from Mr. Des Traynor?

9 Answer: It is possible, but again, I am sorry, I
10 don't know.

11 Question: Did you receive instructions in relation to
12 this transaction from Mr. Finnegan?

13 Answer: Again it is possible.

14 Question: Would you have regarded Mr. Finnegan as
15 being the ultimate beneficial owner of this money?

16 Answer: As I said earlier, yes."

17 .

18 Then, page 64, question 324. Perhaps just to put it in
19 its context, question 323.

20 .

21 "Question: I see. If you move down through the page,
22 until we see where Mr. Finnegan says, 'John Finnegan
23 made it clear that if the other shareholders attempted
24 to proceed on the basis of this contract, that is the
25 Kilnamanagh/Canio contract, he would take whatever
26 legal action was necessary to prevent this happening.'"

27 .

28 .

29 So this was John Finnegan calling the shots about
30 Foxtown Investments Limited, isn't that right?

1 A. I think we had better clear the lines here, Sir.

2 .

3 When we are talking about a trust, about the Trust and
4 the trustees, then we are talking about Foxtown. And
5 when Foxtown - Foxtown, if there was a question of I
6 was dealing with Foxtown --

7 21 Q. Foxtown was owned by this trust?

8 A. Yes, Sir.

9 22 Q. You didn't own Foxtown. You were neither a director
10 nor a shareholder of that company?

11 A. Right.

12 23 Q. It was owned wholly and exclusively by nominees of
13 Sovereign Management Limited?

14 A. Yes, Sir.

15 24 Q. It was the company vehicle through which the Trust
16 investments were made, you told us, and was the only
17 vehicle that the Trust had, you told us. And here you
18 were calling the shots about Foxtown, and making the
19 decisions. And in the case of the letter that we had
20 last Friday, if you recall, informing them what you had
21 negotiated about the sale of its shares in Ardcarn,
22 both in relation to the price and the period over which
23 the installments had to be paid. Isn't that right?

24 A. What's the point, Sir?

25 25 Q. The point is you were the one that was in control. You
26 were the one that was giving the instructions to the
27 trustees.

28 A. Let's - regarding Foxtown, I did say to you that
29 Foxtown, yes, and that I would get the benefit of the
30 proceeds of what came out of Foxtown, but just because

1 I was working and talking about Foxtown, didn't mean
2 that that meant I had absolute control. It's a trust.

3 26 Q. Really? If we just look at question 324:

4 .

5 "Question: That would appear to be Mr. Finnegan
6 making it very clear, his position, in relation to the
7 matter, and acting on that reference - sorry, I presume
8 that is without reference to either Credit Suisse or
9 Sovereign - other matters of that sort?"

10 Answer: Yes.

11 Question: He was dealing with the matter himself?

12 Answer: Yes.

13 Question: And again, further down the next paragraph
14 it says: 'This type of approach was not acceptable to
15 John Finnegan, given the uncertainties from a taxation
16 point of view.' And this is why - sorry, where they
17 were discussing the value of his one-third interest in
18 Canio and what it might be worth.

19 Answer: Hum.

20 Question: So again, Mr. Finnegan is the man who was
21 making that decision without reference to the trustees
22 in Guernsey?

23 Answer: Yes."

24 .

25 Question 341: "Am I correct in thinking that insofar
26 as you say 'Foxtown Investments Limited is in turn
27 controlled by a Discretionary Trust known as the Amber
28 Trust,' that while you have noted that there, that the
29 ultimate controller or operator of both Foxtown
30 Investments Limited and the Amber Trust is John

1 Finnegan?

2 Answer: I think, as I said earlier, yes."

3 .

4 Now, are you disagreeing with your solicitor?

5 A. No. This is all - by the way, you forgot to mention, I

6 think, it was leading up to - I didn't catch the

7 beginning of it. It was to do with the sale of the

8 interest in the lands, Canio. Is that what we are

9 talking about?

10 27 Q. No. We are talking about the sale of the Foxtown

11 interest in Ardcarn, which owns Canio.

12 A. All right. All right. So we are talking about the

13 sale of the shares that held the land in - the lands in

14 Sandyford?

15 28 Q. Yes. The sale of property owned by a company owned by

16 a trust, in which you appear to be making the decisions

17 and you appear to be giving the instructions, in which

18 you are not a trustee, in which you are the settlor and

19 beneficiary. That's what we are talking about. And in

20 this particular question, question 341, which was

21 specifically put not only about Foxtown Investments

22 Limited, but also about the Amber Trust, and whether

23 you were the one that was controlling it, Mr. O'Shea

24 says, "Yes, that is correct."

25 .

26 Now, are you disagreeing with Mr. O'Shea's testimony on

27 this point?

28 A. I think it all depends on what the - the Trust was

29 certainly - I was interfacing, by the way, with Michael

30 O'Shea on the negotiations of the sale of the shares in

1 the company. And, in fact, that did go on - yes, I was
2 interfacing with him, and we were - he was carrying out
3 a lot of the negotiations, and so was I.

4 29 Q. You see, the problem with all of this, Mr. Finnegan, is
5 that you cannot have it both ways.

6 .
7 If you enter into an irrevocable settlement in which
8 you irrevocably divest yourself of property in favour
9 of trustees on a discretionary charitable trust, at one
10 end of the extreme that means you are finished. You
11 have no further control, whatsoever, over what the
12 trustees do. Your property is gone. And if you become
13 destitute, there is nothing they can do for you because
14 they are obliged to comply with the terms of the Trust,
15 both by reference to the terms of the Trust itself and
16 as a matter of law. That's on the one extreme.

17 .
18 On the other extreme, that while there is a trust,
19 which, on the face of it, purports to be a charitable
20 trust, set up for the benefit of charitable
21 institutions, as indeed the Amber Trust was supposed to
22 benefit institutions such as the World Wildlife Fund,
23 as Mr. O'Shea said in one of his letters, and in which
24 you've now told us it wasn't for charitable purposes at
25 all, that that was something to do with Des Traynor,
26 and it was, in fact, a family settlement. And in which
27 the trustees do not, in fact, exercise their
28 discretion, in which they take instructions from the
29 person who is the beneficiary under the Trust, which,
30 in this case, among others, is yourself.

1 .
2 And I suggest to you that the clear fact, established
3 by Mr. O'Shea's evidence, if he is correct, is that you
4 form your trust - falls into the latter category, that
5 you were, in fact, in control; that you called the
6 shots; that you made the decisions; that you gave the
7 instructions?

8 A. Well, you may say so, Sir, but I disagree with you.

9 30 Q. Are you disagreeing with your own solicitor?

10 A. I may very well disagree with my own solicitor.

11 31 Q. Was Mr. O'Shea incorrect when he told this Tribunal
12 that you were, in fact, the person making the decisions
13 and in control --

14 A. I think --

15 32 Q. -- of the Trust and Foxtown Investments Limited --

16 A. On Foxtown Limited, when it came to the decision, on
17 behalf of Foxtown, I - first of all Finnegan Menton
18 were, we were instructed some long time ago about the
19 position advising Foxtown. I did say that we accepted
20 that the Trust owned Foxtown.

21 33 Q. But it does?

22 A. It does, yes.

23 34 Q. As a matter of law, we have looked at the Companies
24 Office Registration. We know that you are not a
25 director of Foxtown. Do you agree with that?

26 A. Yes, Sir.

27 35 Q. We know that you are not a shareholder of Foxtown. Do
28 you agree with that?

29 .

30 We know that you are not the beneficial owner of

1 Foxtown, because the beneficial owner of Foxtown is
2 Sovereign Management Limited.

3 .

4 The registered members of Foxtown are a range of
5 companies, including Biscay Limited, which we are told
6 are nominees of Sovereign Management Limited. Isn't
7 that correct?

8 A. Yes, Sir.

9 36 Q. So the beneficial owners of this company, which owns
10 Ardcarn, which owns Canio, which owned a one-third
11 share in the Sandyford land, is Sovereign Management
12 Limited?

13 A. Mm-hmm.

14 37 Q. And one would expect, in the normal course of events,
15 that any decisions being made about the sale of this
16 property, or property of this company, which is owned
17 by the Trust, would be made by the directors of the
18 company and the trustees of the Trust, but that is not
19 the case here, because you were the one that was making
20 the decisions?

21 A. No, the trustees have the right to discuss with the
22 parties what the position is. We had a very - this is
23 a very awkward situation regarding the lands at
24 Sandyford.

25 .

26 One, at this particular time, when it came up regarding
27 the sale of the shares in Canio, there was a drastic
28 situation here whereby there was proposed foreclosure
29 on foot of a loan by Lombard & Ulster, that Lombard &
30 Ulster were selling their debt to a well-known lawyer,

1 Noel Smith, and the situation was put. And also there
2 was a question that there was no other way but these -
3 a deal would have to be done on these lands at the
4 time, because otherwise it was also said that Mr. Tom
5 Brennan could, or was about to go into bankruptcy. If
6 that happened, the lands would be tied up for a hell of
7 a long time, and would there be anything - and there
8 was also other worries about title problems.

9 .
10 Mr. O'Shea, Michael O'Shea, had been negotiating on the
11 basis to see could a deal be done on the sale of the
12 shares. Now, there was an ultimatum here. And this
13 was a very special occasion here, where all of the
14 assets could have been - the assets could have been
15 wiped out. He did talk to me about it. And I agreed
16 with his advices, when he did say that, "Look, for
17 everybody, from the trustees' point of view and
18 everything, this should - this, you should go through
19 with this sale. You don't seem to have much option."

20 38 Q. What is your point, Mr. Finnegan?

21 A. I am telling you about what happened.

22 39 Q. I am trying to understand. What point are you making?

23 A. I think that in response - a response that I could make

24 - what is the difference - I just want to clear this.

25 What - you are trying to get me to say what?

26 40 Q. I just want your position to get on the transcript, so
27 that the Sole Member, in the fullness of time, can make
28 decisions as to whether he accepts it or not.

29 .

30 I am putting to you evidence which appears to suggest

1 that you were, in fact, and in reality, the person in
2 control of --

3 A. I wasn't in control of the Trust, but the trustees
4 would listen to what I had to say.

5 41 Q. Mr. O'Shea was asked at question 457, and obviously
6 it's clear from this transcript that it's a topic to
7 which Ms. Dillon returned to repeatedly throughout her
8 examination of Mr. Finnegan, in the context of the
9 various transactions that she was examining him about.
10 At question 457 she asked Mr. O'Shea:

11 .
12 "Question: So let's get down to brass tacks here, Mr.
13 O'Shea, and perhaps all this kind of legalese kind of
14 stuff.

15 .
16 The reality of the matter is that Mr. John Finnegan is,
17 in reality, the person in control. He calls the shots,
18 he is the man. Isn't that right?

19 Answer: Well, I think we've already established that,
20 and agreed that."

21 A. Well, for the record, then, my position is this:
22 The trustees own Foxtown, own Foxtown, yes, Sir. And
23 the trustees would make the final decision. I am
24 accepting that I was - when you asked me the question
25 earlier, that, yes, I would get the benefit of the
26 proceeds of the sale, but that doesn't necessarily mean
27 that I was the controller of the Trust.

28 42 Q. Ms. Dillon asked Mr. O'Shea about your own narrative
29 statement to the Tribunal concerning the €20,000
30 deduction that Mr. Brennan and Mr. McGowan wanted to

1 make to pay to Mr. Burke. And at question 537 she says
2 to Mr. O'Shea:

3 .

4 "Question: I think I asked you to read paragraph 11
5 of that narrative statement into the record. I don't
6 think it's available yet on the screen.

7 Answer: It reads:"

8 .

9 And this is reading from your narrative statement to
10 the Tribunal.

11

12 ""When it came to dividing the proceeds of that loan,""

13 that's the Lombard & Ulster loan, as you are aware.

14 .

15 "Mr. Brennan and Mr. McGowan wanted to retain ú20,000
16 from each of us for future expenses. I disagreed
17 vehemently with that and thought that was too much to
18 retain, as outlined. And it was eventually agreed to
19 ú10,000.

20 .

21 My one-third share of the proceeds of the loan would be
22 held to cover administrative expenses, architects' fees
23 and other outlay. It now transpires that this was not
24 able to be transferred to Ray Burke.'

25 Question: I think it's quite clear from that

26 paragraph, Mr. O'Shea, that Mr. Finnegan has

27 acknowledged from the very earliest times, to this

28 Tribunal, that he was the person who was giving

29 instructions in respect of the distribution of that

30 money and the entitlement to that money?

1 Answer: Obviously, yes."

2 .

3 And that question is based on your own narrative

4 statement?

5 A. Yes.

6 43 Q. When you talk about "My money, my entitlement" to the
7 proceeds of the Lombard & Ulster loan --

8 A. The phraseology and the --

9 44 Q. Hold on a second, Mr. Finnegan. We do know that in the
10 case of Canio and the Sandyford lands, unlike all of
11 the other companies, unlike Bouganville Investments
12 Limited, Victa Investments Limited, and all the other
13 Jersey companies, of which you personally were a
14 one-third beneficial owner, the beneficial ownership in
15 the Sandyford lands was vested in a company called
16 Foxtown Investments Limited. That's quite clear. And
17 that company was not owned by you, it was owned by the
18 Trust --

19 A. Yes.

20 45 Q. -- and supposedly controlled by the Trust. But, I
21 suggest to you, this evidence clearly establishes that
22 it was not, in fact, controlled by the Trust.

23 .

24 In fact, Ms. Dillon draws my attention to the fact that
25 that quote I read out was put by your own counsel.

26 A. What quote?

27 46 Q. And followed by question 539.

28 .

29 "Question: And there is no attempt by him there to
30 suggest that he could hide behind College Trustees,

1 Sovereign Management Trustees, the Amber Trust,
2 Foxtown, or any other device. Isn't that right?

3 Answer: He purely acknowledges his interest."

4 A. Acknowledge my interest, yes.

5 47 Q. No attempt is - that is what your counsel was putting
6 to you to hide behind these --

7 A. I acknowledge my interest, but - my interest in
8 Foxtown.

9 48 Q. You remember the correspondence that I put to you on
10 Friday, which indicated that you were, in fact, in
11 control of the Trust, including, and in particular, the
12 letter which Mr. O'Shea wrote on your instructions to
13 the trustees telling them what you had negotiated and
14 decided about the sale of the shareholding, telling
15 them about documents which he had drafted as your
16 solicitor for them to sign, which they did.

17 .
18 How do you explain that, if you weren't in control of
19 the Trust?

20 A. Well, I had not got control of the Trust. I hadn't got
21 control of the Trust. The Trust is controlled by the
22 trustees.

23 49 Q. Could we have page 1553, a letter from Mr. O'Shea dated
24 the 2nd of December, 1996, to Mr. Wallace in KPMG
25 Chartered Accountants in relation to Ardcarn seeking
26 certain advice. In the first paragraph he says:

27 .
28 "I refer to my telephone conversation with you recently
29 in connection with a CGT problem for our client,
30 Foxtown Investments Limited. This is a company

1 incorporated in the Channel Islands, and controlled by
2 John Finnegan."

3 .

4 How could you control a company that you didn't own,
5 were not a director of, not a shareholder of--

6 A. Well --

7 50 Q. -- by giving instructions to the trustees who did own
8 it?

9 A. I wasn't giving instructions to the trustees. I think
10 that he may have, whatever way he had put it, and we
11 might have to revisit that, actually, with him to see
12 what he was talking about, because he was aware of the
13 position, that the trustees ran it.

14 51 Q. Yes, but he was saying that you controlled it. Of
15 course he was aware of that?

16 A. Well, that will have to be revisited with Michael
17 O'Shea.

18 52 Q. You know, the way you normally control a company is you
19 have a majority shareholding in it and you implement
20 your will by vote. Isn't that right?

21 A. Not in entirety -

22 53 Q. Directors generally control companies --

23 A. Yes, Sir.

24 54 Q. -- as a board?

25 A. Mm-hmm.

26 55 Q. And if they don't agree, or if there is - there isn't
27 unanimity, they vote. But if you are neither a
28 director or shareholder of a company, and you control
29 the company, the only way you can do it is by
30 controlling the people who do own it, in this case the

1 trustees. And I am suggesting to you that you did, in
2 fact, control the trustees?

3 A. Sir, I repeat again, I did not control the trustees.

4 And I make it absolutely clear, I didn't. And I have
5 made - and I think this is coming around, Sir, because
6 I am here as a willing witness to try and help you as
7 much as possible in this Tribunal. And I have carried
8 out your wishes here. And I have been examined on this
9 point here for a long, long, long time. I have tried
10 my very, very, very best.

11 .

12 We have given you evidence this morning that we would -
13 we wish to get the document for you. And I think this
14 is what it's all about, Sir.

15 .

16 You mentioned to me that this whole thing is a charade.

17 56 Q. Yes. This whole pretence that you can't get documents
18 that you want about this trust.

19 A. It is not, Sir. It is not. Now, whether the - the
20 position is this: That the trustees did, when I was
21 talking to them, they did say that they would look into
22 it, and did say they were monitoring the situation over
23 here in Ireland very closely. And they were particular
24 to what was going on - in the various tribunals. And
25 also, there was another point too, that on the last
26 date they were saying that they also saw where an
27 action was being taken against one - an action was
28 being taken against one of the - well, somebody in the
29 tribunals by the Revenue.

30 57 Q. That's an entirely different issue, as you are very

1 well aware, Mr. Finnegan.

2 A. And I think - the general thing is this: They said,
3 when I asked them and pleaded with them, when you asked
4 me, Sir - you stopped the proceedings and asked me the
5 other day, would I go and do something about making
6 calls. I did make the calls. And we did put the case
7 to them as firmly as I could do it, and asked them to
8 release the documents.

9 58 Q. I am saying to you, Mr. Finnegan, it's a charade, and
10 that this - this evidence I put to you establishes that
11 it's a charade?

12 A. If that is your opinion, Sir, that is your opinion. It
13 is not my understanding of it. And that I have tried.
14 Really, I have tried. You've seen the correspondence.
15 You think - really, this is upsetting from my point of
16 view, because I have been willing, and I've tried my
17 very, very best to get it. And we have instructed a
18 firm of lawyers. And you are hearing from my
19 solicitors this morning --

20 59 Q. I suggest to you, Mr. Finnegan, that if the trustees of
21 this trust genuinely believed that you genuinely wanted
22 these documents, you would have them within ten
23 minutes?

24 A. Well, I suggest, Sir - I will not accept that. And I
25 stand firmly on that. And I am here on oath, and I
26 swear I did try to get them. I tried my very best.
27 And if you don't accept that from me, I'm afraid I
28 can't go further on this point with you.

29 60 Q. Can we have page 1380, please.

30 .

1 This is a memorandum in 1990, and we alluded to it
2 briefly, I think, last week. It's a memorandum
3 involving discussions between yourself and - the late
4 Mr. McGonagle, your then solicitor, and Mr. Des
5 Traynor, in connection with the affairs of Foxtown
6 Investments Limited. Isn't that right?

7 A. Yes, Sir.

8 61 Q. The first striking feature about this is that there is
9 nobody here from the trustees. And it says:

10 .

11 "I" - that's Mr. McGonagle - "had a meeting with John
12 Finnegan and Des Traynor when the following matters
13 arose:

14 .

15 1. Foxtown is to write to Finnegan Menton confirming
16 they are retained to advise Foxtown on the Dublin
17 property which Canio Investments Limited owns.

18 (Foxtown holding one-third of the shares of Canio.)

19 A fee of 5,000 initially is proposed, which is to be
20 paid over.

21 .

22 2. Foxtown will give 'X' Limited an option to buy
23 Foxtown's one-third shareholding in Canio at a price
24 equal to the approximate cost of such shareholding,
25 plus expenses. In this connection it will be necessary
26 to obtain from Foxtown, or Sovereign Management which
27 looks after it" - looks after it - "a statement of
28 affairs showing the assets and liabilities of Foxtown.

29 .

30 We assume that its assets are the one-third

1 shareholding in Canio, and that its liabilities are
2 monies borrowed for the purpose of the acquisition.
3 .
4 Overseas Nominees Limited (Cayman Islands) will take
5 the option on behalf of 'X' Limited. That is a nominee
6 company of Ansbacher Limited.

7 .
8 3. A new Letter of Instructions in relation to Foxtown
9 is required by Sovereign."

10 .
11 What do you think that means: "A new Letter of
12 Instructions in relation to Foxtown is required by
13 Sovereign"?

14 A. Well, I don't know.

15 62 Q. Well, it means that the trustees want a letter of
16 instruction in relation to Foxtown from you. Or do you
17 think it means something else?

18 A. I don't understand it. Was that - that was a letter
19 sent to whom?

20 63 Q. This is a memorandum by Mr. McGonagle, your solicitor,
21 of a meeting between himself, yourself and Mr. Des
22 Traynor?

23 A. Well, I think if they - they had their discussion.
24 Mr. McGonagle was trying to go on - he was an old
25 friend of mine. I think that dealing with - and he was
26 aware of the Trust. And they would be talking. And of
27 course Mr. - at that time, then, Mr. Des Traynor, he is
28 talking to him. And they would be talking on the basis
29 of - knowing what the background of all of this was,
30 and not having to repeat it to one another.

- 1 .
- 2 You realise this is a trust, Sir, you realise that.
- 3 That was all accepted in that situation. They are
- 4 talking, friends of one another, and advisers of mine.
- 5 But they wouldn't be referring back to the stat - the
- 6 status quo would be there, Sir.
- 7 64 Q. "A new Letter of Instructions in relation to Foxtown is
- 8 required by Sovereign." That's what he wrote, your own
- 9 solicitor.
- 10 A. Yes.
- 11 65 Q. Are you saying he was wrong?
- 12 A. At this moment in time, Sir, I am saying to you I don't
- 13 know. I don't know what was in his mind. And I don't
- 14 know if anything did take place after that, either.
- 15 66 Q. Mr. Finnegan, you are flying in the face of the
- 16 obvious.
- 17 .
- 18 I suggest to you this correspondence has passages from
- 19 Mr. O'Shea's testimony which overwhelmingly establish,
- 20 beyond the possibility of serious argument, that you
- 21 were, in fact, in control, and that you were the person
- 22 that was making decisions in relation to Foxtown
- 23 Investments Limited?
- 24 A. I think that I have to stand on what I've said to you,
- 25 Sir. I do not accept your interpretation of that. I
- 26 have the Trust there, and I think - the Trust is there,
- 27 and the Trust controlled the property.
- 28 67 Q. If we just go down the page, at paragraph 4 it says:
- 29 .
- 30 "We must check and confirm the present limit of the AIB

1 claim against Canio on foot of its guarantee/mortgage.
2 .
3 5. In order to balance out the AIB claim, which is for
4 the benefit of Brennan and McGowan, there could be
5 brought into existence a charge for half the amount of
6 the AIB claim, which would be for the benefit of
7 Foxtown, and would rank pari passu with the AIB claim.
8 .
9 We are to obtain from Sovereign a short statement or
10 summary of the assets and liabilities position of
11 Foxtown, as well as ensuring that Sovereign, on behalf
12 of Foxtown, maintains a director of Canio, and obtains
13 confirmation that nothing has happened to it or to its
14 Dublin property which would be prejudicial to Foxtown.
15 JJF."
16 .
17 I take it that's a reference to John J Finnegan, "is to
18 authorise all this, if necessary."
19 A. If necessary?
20 68 Q. Yes.
21 A. I think this is a memorandum of Mr. McGonagle
22 exploring, on behalf of the Trust, what could be done
23 in a very serious situation which had come about on the
24 assets of Canio, which was land. And he is here, I
25 think, teasing out something with Des Traynor, as to
26 what way they might be able to salvage, on behalf of
27 the Trust, the situation, the assets of the Trust.
28 .
29 And I would take it that he was doing that - the man
30 who set up the Trust, who was there, and that is

1 Mr. Traynor. So when he was talking to Mr. Traynor, he
2 wouldn't have to be reminding him of what he did and -
3 there was a trust in existence. This would all have
4 been accepted, and here are the parties looking after
5 the Trust.

6 69 Q. But this discussion proceeded with these people, as you
7 say, including the gentleman who set up this trust, on
8 the basis that you were giving instructions to the
9 trustees?

10 .

11 MR. HUSSEY: I'm sorry, Sir, can I interject at this
12 point? I've held my tongue for the last few questions,
13 in order to see where this was going, and in order to
14 see if, in fact, the true impact of this letter was
15 going to be put to Mr. Finnegan.

16 .

17 On Item 3 there, where Mr. Hanratty suggests Mr.
18 Finnegan is calling the shots to Sovereign. In fact,
19 Item 3 says, "A new Letter of Instructions in relation
20 to Foxtown is required by Sovereign." In other words,
21 the trustees were requiring a new Letter of
22 Instructions. The trustees were calling the shots in
23 respect of that particular matter, not the reverse.

24 .

25 Now, Mr. Hanratty has suggested that Mr. Finnegan was
26 calling the shots, and of course Mr. Finnegan was
27 heavily involved in the decision-making, and letting
28 his wishes known to the trustees, but that particular
29 item suggests that Foxtown required - sorry, I beg your
30 pardon, the trustees, the Sovereign - that Sovereign

1 required a new Letter of Instructions. And until they
2 had got a Letter of Instructions or directions from Mr.
3 Finnegan, they were calling the shots.

4 .

5 Down further we see that: "We are to obtain from
6 Sovereign a short statement, or summary of the assets
7 and liabilities position of Foxtown, as well as
8 ensuring that Sovereign, on behalf of Foxtown,
9 maintains a director of Canio."

10 .

11 You will remember this is what had happened, in fact,
12 and Mr. Barry was - had been imposed in 1984 to ensure
13 that nothing was happening to it or to its Dublin
14 property which would be prejudicial to Foxtown.

15 .

16 Quite clearly, from both those statements, it was the
17 trustees who were calling the shots, and the trustees
18 who were requiring, and in a position to provide the
19 statements or the summary of assets and liabilities
20 which were required, not Mr. Finnegan.

21 .

22 And I think that's the fair interpretation of that
23 particular memorandum.

24 .

25 MR. HANRATTY: Well, again, Sir, this is one of these
26 interventions which is not an objection to the
27 admissibility of my question on any recognised legal
28 basis. It's an intervention in which Mr. Hussey has
29 now given his interpretation of what this means.

30 .

1 Now, I haven't recently looked up the word
2 "instructions" in a dictionary, but I suspect that what
3 it means is: Giving directions to, or something to
4 that effect. And Mr. Hussey is now trying to turn the
5 clear and obvious meaning of this statement on its head
6 with his bizarre interpretation. And I respectfully
7 submit it's an inappropriate intervention in the course
8 of my line of questioning of this witness, which is
9 perfectly legitimate.

10 .

11 MR. HUSSEY: I am sorry, Sir. It's not the word
12 "instructions" that I am explaining. It's the question
13 "is required by". And quite clearly the phrase "is
14 required by Sovereign" suggests that the trustees have
15 required something to be done, not that they were told
16 that something would be done.

17 .

18 I don't think there is any need to look up a dictionary
19 to find out "what is required by" means.

20 .

21 MR. HANRATTY: I don't propose to argue the point, Sir.
22 I respectfully submit it's a legitimate question, and
23 Mr. Hussey can deal with it on examination of his
24 client, and tell us about some other meaning at that
25 point in time. But I object to these interventions
26 with interpretations in the course of my examination of
27 this witness. As I said in the past, all it does is
28 waste time.

29 .

30 CHAIRMAN: Well, I personally think that the

1 submissions - the questions you are asking are relevant
2 and appropriate, and that what you are seeking to
3 establish is the de facto situation.

4 .

5 I have no doubt that de jure the trustees should be the
6 people who make the decisions, but de facto, the
7 evidence suggests that it was to the contrary.

8 Now, I say "suggest" because I am only listening to the
9 evidence. I am not adjudicating on the evidence here
10 and now, but my impression, as I listen, is that the de
11 facto operator, the de facto manager of what would be
12 done, on request, albeit on request, is the witness in
13 the witness-box.

14 .

15 Now, whether he had power to impose his will is an
16 entirely different matter, if the trustees elected to
17 say, "No, we are the trustees, we will handle the Trust
18 as we feel appropriate." That's a different matter.

19 But the de facto situation, as the evidence is running
20 at the moment, would suggest that the de facto
21 instructions were coming from Mr. Finnegan.

22 .

23 I can't go any further, and I won't go any further.

24 But I want to make it clear that that is an impression

25 I am getting from the evidence as I hear it, without
26 sitting down and passing and analysing the real
27 situation.

28 .

29 70 Q. MR. HANRATTY: The question, as I believe I was putting
30 it, Mr. Finnegan, was that you were sitting in a room

1 with your own solicitor, and Mr. Traynor, who, as you
2 pointed out, is the person who established this trust,
3 and that the conversation proceeded on the basis that
4 you were going to provide instructions to the trustees,
5 as recorded in paragraph 3 of that minute?

6 A. "A Letter of Instructions relating to Foxtown is
7 required by Sovereign"?

8 71 Q. Yes, the trustees - Sovereign was, at that time, the
9 trustees?

10 A. Yes.

11 72 Q. And they required from you a Letter of Instructions?

12 A. They didn't say from me.

13 73 Q. Well, from who, if not from you?

14 A. They were required by Sovereign.

15 74 Q. Sovereign were the ones requiring the instructions.

16 From whom do you say they wanted to receive these
17 instructions from?

18 A. I don't know.

19 75 Q. Do you think it was somebody other than you?

20 A. Put it this way: The people whom I was talking to and
21 I would like to establish this - I - Liam McGonagle, at
22 the point before he died was an executor, a very close
23 friend of mine. Des Traynor was a person who did all
24 of this work. He was a friend, manager, and very, very
25 close to Liam McGonagle. In a meeting in a room with
26 these parties, it wouldn't be like going into a room in
27 another firm of lawyers. Here are friends, and by the
28 way, we had also been in business together, the three
29 of us, and this is a discussion, and, as I see it, here
30 is McGonagle, Liam McGonagle trying to sort out the

1 situation when he realised that there was a claim that
2 the lands that were owned by Foxtown had been pledged
3 to a bank without Foxtown's knowledge. And they are
4 trying to sort out a way of what could possibly be done
5 in the circumstances to relieve this situation, when
6 this came up. And they were looking into it. And they
7 are discussing this problem like friend/lawyer,
8 whatever, whatever.

9 .
10 So getting the interpretation, Sir, of just, strictly
11 speaking, of the people - he was a lawyer, but he was
12 there talking as being a lawyer, yes, but a friend of
13 mine. So this is a friendly discussion. But Traynor -
14 Des Traynor was there, who was one who, if anything, in
15 lack of other information, that you imagine it was a
16 trustee. Because he would always have looked after me
17 nearly like a trustee. And this was what was teased
18 out at the meeting, as I see it, by McGonagle.

19 .
20 And by the way, I would say this: That I have no
21 knowledge, I am not - the trusts and what you've
22 mentioned, you've asked me lots and lots of questions,
23 this is a job for - there were two people, there was an
24 accountant and a lawyer there. And the exact
25 interpretations of all of this are not for me to give
26 you a ruling on, Sir.

27 76 Q. What I am saying to you, Mr. Finnegan, is that it's
28 fairly clear from the terms of this minute, from the
29 fact that this meeting was taking place among these
30 particular people, from the context in which the

1 meeting occurred, and from the matters which are
2 specifically recorded in it, that they all point
3 inexorably to the conclusion that you were, in fact, in
4 control, and that you were regarded by Mr. Traynor, and
5 particularly by Mr. McGonagle, as being in control of
6 this trust?

7 A. I disagree, Sir.

8 77 Q. And that Mr. McGonagle had the same view of the
9 situation as Mr. O'Shea subsequently had, and in which
10 Mr. O'Shea subsequently acknowledged in the testimony
11 which I have just put to you a few moments ago?

12 A. If that's not the case, Sir, all of the people would
13 have to answer in the question of time. I am saying to
14 you that the position is that the trustees run the
15 Trust, and that I have, and I'll go over it as I have,
16 as requested by the Tribunal, to get the information.
17 This is all coming back to what you are saying, Sir,
18 for me to get the information which you wanted. I am
19 doing my very, very, very best to get that.

20 78 Q. Can we have page 1412, please. And again, we had this
21 letter briefly on Friday.

22 .

23 It's a letter dated the 19th of December, 1990. It is
24 written by your solicitor, Mr. O'Shea, to the trustees.

25 And he, Mr. O'Shea, is telling them what you have done
26 in relation to Foxtown's share of Ardcarn. He says:

27 .

28 "Dear David, Sovereign Management Limited, P.O. Box
29 122, St. Peter Port, Guernsey, Channel Islands.

30 .

1 Dear David, I refer to our telephone conversation
2 earlier today, and confirm that agreement has been
3 reached, in principle, for the sale by John of his
4 interest in Ardcaran."

5 .
6 So Mr. O'Shea is telling the trustees that he, or you
7 have reached agreement in respect of what is described
8 as your "interest", for the sale of your "interest in
9 Ardcaran"?

10 A. I suggest, Sir --

11 79 Q. Do you not see the --

12 A. I don't, and I suggest you recall O'Shea to answer
13 these questions, because I am not going to. Any
14 interpretations - I don't know what was on his mind, in
15 his mind when he wrote that.

16 80 Q. Most of these matters, if not all of them, were, in
17 fact, put to Mr. O'Shea and he acknowledged you were in
18 control --

19 A. I would say to you, Sir, you recall him and question
20 him again on that, because this is not my understanding
21 of the situation. So whether his interpretations were
22 that at the time, I am not going to interpret that as
23 what you are saying, Sir.

24 81 Q. But he was questioned by your own counsel, who was
25 instructed by Mr. O'Shea on your behalf?

26 A. It seems to me, actually, that an awful lot of these
27 questions are arising out of letters that Mr. O'Shea -
28 I wasn't a party to this. I don't know what was in his
29 mind at the time, and what - I suppose when one is
30 doing something, you have to have on the back of your

1 mind what it is. And I think that if Mr. O'Shea is
2 then saying that it is not the Trust, I think he has to
3 stand and say that.

4 82 Q. Well, you see, Mr. Finnegan, we have to take, for
5 example, the memorandum by Mr. McGonagle, which was
6 written, what was it? 1996. We have to take Mr.
7 O'Shea's letter, which was written in 1990, and we have
8 to assume that what he says is what he meant, and that
9 what is written in the letter accurately reflects the
10 state of his mind at that time. Of course, we have to
11 look out in case it might have been drafted by
12 Mr. Owens, but absent that complication, one has to --

13 A. What does that mean, Sir?

14 83 Q. Well, you told us yesterday that a letter, which you
15 wrote, saying that you acted for the Gallagher Group
16 was false, and that the reason it was false was because
17 you were asked to write it by Mr. Owens. But this
18 letter that I am putting to you now is a letter written
19 in 1990, in December of 1990, and I suggest to you,
20 unless you are going to tell us it is not an authentic
21 letter, accurately reflects the state of Mr. O'Shea's
22 mind at the time he wrote the letter?

23 A. I completely disagree with you, Sir. And I wish - and
24 I will reiterate what I said, that - what Mr. O'Shea
25 said there, that he - you feel by that, Sir, that he is
26 taking --

27 84 Q. No, I am saying that here - it's not just what he says,
28 it's the fact that he is saying it, because Mr. O'Shea,
29 who is your solicitor, is telling the trustees what you
30 have done with the Trust property.

1 .
2 Do you not see the incongruity that I am trying to put
3 to you?

4 A. I don't, Sir. I - what I wish to say is, that all
5 around something that is written like this, there is
6 always the background that he was aware of a trust
7 being in existence.

8 85 Q. Mr. Finnegan, can I put it another way, and perhaps
9 clarify where I am coming from.

10 .
11 In the normal course of events, in a normal trust,
12 where a person has, as you appear to have done,
13 divested themselves of property in favour of trustees
14 on certain trusts, for the benefit of certain
15 beneficiaries, you would expect the trustees to be
16 writing to the beneficiaries telling them what they
17 have done with the Trust property, but that is not the
18 case here. It's the other way around. It's on top of
19 its head.

20 .
21 Here we have the beneficiary writing to the trustees to
22 say what he has done with the Trust property, that he
23 sold it for ú700,000. That he is to be paid ú500,000
24 up front. That he is to get two other installments of
25 ú100,000. That he hopes to negotiate a slightly lesser
26 period for the second and third installments.

27 .
28 Here you are, through your solicitor, telling the
29 trustees what you have done with the Trust property.

30 A. It could be that Mr. O'Shea had been in consultation

1 with the trustees.

2 86 Q. Is that your answer? He is actually telling him that
3 the property is sold?

4 A. The shares in the company.

5 87 Q. Sorry?

6 A. The shares in the company have been sold.

7 88 Q. Yes, that's the property I am referring to. Mr.

8 O'Shea, your solicitor, telling the trustees that their
9 property has been sold?

10 A. But before - prior to this, that I think that the -
11 that he had been in touch with - David Barry had been -
12 he had been instructed by the Trust to look after the
13 interests of Foxtown.

14 89 Q. Mr. O'Shea was asked about this letter, and the letter
15 was put at question 61, and - yes, at the end of -
16 after putting the letter Ms. Dillon said to Mr. O'Shea:

17 .

18 "Question: It seems to be the position there, if I
19 can pause there, Mr. O'Shea, that you were informing
20 Mr. Naylor of the agreement that had been entered into
21 in Ireland between the parties?

22 Answer: That's right.

23 Question: You then went on to set out the legal
24 consequences, and the documents that would be required
25 to be signed by Sovereign Management Limited at the
26 time to give effect to the agreement?

27 Answer: That's correct.

28 Question: You say that, 'The completion of the
29 agreement will be conditional on the completion of an
30 agreement.

1 .
2 I've just read that a transfer in respect of the
3 Ardcarne shares should be handed over on completion
4 together with:
5 A. A Letter of Resignation from you resigning as a
6 director of Ardcarne and Canio.
7 .
8 B. A letter from Foxtown confirming that it has no
9 claims whatsoever against Ardcarne.
10 .
11 Again I enclose suggested draft of this letter
12 herewith.
13
14 C. A letter from Sovereign Trustees confirming also
15 that they have no claims. And again, I suggest that a
16 draft of this letter is sent herewith.
17 .
18 In addition to evidence of the purchase of the
19 Government Stock, you should also receive, on
20 completion, a letter from Ardcarne waiving or forgiving
21 Foxtown the Sterling ú624,000 due by Foxtown to
22 Ardcarne.
23 .
24 I shall be in touch with you later on today, as soon as
25 I have settled the terms of the agreement." .
26
27 "As I have settled", that's Mr. O'Shea.
28 .
29 "I will, of course, fax a copy of the agreement to
30 you, which is to be executed to Foxtown on completion

1 and shall ask John to confirm the above."

2 .

3 That's the end of the quotation, and that's the extract
4 on the letter setting out all of the arrangements Mr.
5 O'Shea is making, and all of the things he requires the
6 trustees to do to give effect to this transaction.

7 .

8 Then Mr. O'Shea - sorry, Ms. Dillon says to Mr. O'Shea:

9 .

10 "Question: I think that letter illustrates very
11 clearly, Mr. O'Shea, that the driving force or the
12 person who was giving the instructions in relation to
13 Foxtown was certainly not Sovereign Management, but Mr.
14 Finnegan, and that you were happy to conduct your
15 business on that basis.

16 Answer: Hum, yes.

17 Question: I think in the files that you have
18 furnished to the Tribunal, there is no instance of you
19 seeking instructions from either Sovereign Management
20 or College Trustees in relation to transactions?

21 Answer: Yes, I agree. Yes."

22 .

23 And he was examined after he gave that testimony by
24 your own counsel. He was your solicitor. He is your
25 solicitor in this Tribunal. And that is what he said.

26 A. Well, what I maintain is this, Sir. Whatever way the
27 letters are written, or whatever it is, that I maintain
28 that the trustees are looking after the affairs of
29 Foxtown. And I do reiterate that I have done, in this
30 case here, all that I can to get the documents which

1 you are seeking.

2 90 Q. I might as well just finish that passage. At question

3 65, Ms. Dillon, in response to Mr. O'Shea's answer,

4 which I've just read out, says:

5

6 "Question: Though there are many instances of you
7 informing them of events after they had occurred, and
8 agreements having been entered into?

9 Answer: Hmm.

10 Question: So that insofar as they were trustees of
11 the Trust and they were operating or looking after the
12 Trust funds, it appears that the property or the funds
13 in the Trust were being dealt with solely and
14 exclusively on the direction of Mr. John Finnegan.

15 Answer: Yes.

16 Question: Is that correct?

17 Answer: That seemed to be the case, yes."

18 .

19 Now, Mr. Finnegan, really, I suggest to you, that it is
20 impossible for you to plausibly argue that you were
21 not, in fact, in control of this Trust?

22 A. I wasn't in control of - no, I am not in control of the
23 Trust, but they would accept my wishes. Sir, I was
24 involved in the negotiations, and I take it that
25 Foxtown - that I would get the benefit - the benefit of
26 the proceeds of it.

27 91 Q. Mr. Finnegan, a Letter of Wishes is one thing, that's a
28 letter that's given to trustees when a trust is
29 established, and it's something which the trustees may
30 or may not take into account when they are making

1 decisions about the Trust property. But what this
2 correspondence establishes, and what this testimony
3 clearly establishes, is you were dealing with the Trust
4 property?

5 A. Well, Sir, I know this has been going on for quite a
6 considerable time; that I wish to state my position
7 again, that as far as I am concerned, that the Trust
8 does run the Trust. The trustees run the Trust.

9 .

10 Now, whatever Mr. O'Shea has said here, I wasn't a
11 party to what was on his mind, but certainly they had
12 discussed with me, "Yes, this --" but that was - but
13 the Trust would have the final say, as Your Lordship
14 said.

15 .

16 You know, the trustees are there, but I am not saying
17 that I am in the - the controller of this. The
18 trustees are the controllers.

19 92 Q. I suggest to you, Mr. Finnegan, that all of the
20 documents in relation to this trust, in the possession
21 of these trustees, are within your power.

22 A. Well, they are not, Sir. And I have tried. What more
23 can I do? I think, by the way, I understand that you
24 tried, you wrote to Credit Suisse. And what response
25 did you get?

26 93 Q. They are within your power, Mr. Finnegan.

27 A. They are not within my power. They are not within my
28 power. I have asked them for them. But we are taking
29 proceedings now --

30 94 Q. I suggest to you, in the face of that evidence which I

1 have just been putting to you this morning, it is
2 utterly, totally, absolutely, and completely
3 implausible for you to try and suggest that you cannot
4 get anything from these trustees that you want.

5 A. I can't, Sir. I have tried. You see, the fact - Sir,
6 I wouldn't have my people coming down here - the fact
7 that we have reported to you this morning on what the
8 position is, that we are taking proceedings. If I
9 could have got them, I would have got them for you.
10 And it would have taken me out of a lot of hassle if I
11 had been able to get them, and I did want them. And I
12 wouldn't be here for so long sitting up here if we had
13 got the information for you, Sir.

14 95 Q. If the Sole Member of the Tribunal has to take this
15 further, as it is beginning to look he may, and I am
16 not trying to presume what he may do, and if this
17 evidence is presented to the High Court, you've got a
18 problem, because I suggest to you that the evidence
19 overwhelmingly establishes that these documents are
20 within your power.

21 A. Well, I have tried, and we have instructed a firm of
22 lawyers now to try and procure them. And we have done
23 everything, and we have reported, and I understand - I
24 talked to my lawyers this morning, and I think it is
25 unfair, Sir, that I am trying my very, very, very,
26 very, very best, and to do this, to get them for you.
27 And there was a report, then, in this morning from my
28 lawyers the rep from Kennedy McGonagle Ballagh
29 reporting to me what the situation is. And I am doing
30 everything in my power.

1 96 Q. These documents have been sought, going back as far as
2 April of this year, by the Tribunal, isn't that right?
3 And I am suggesting to you, Mr. Finnegan, that you have
4 been engaging in brinksmanship with this Tribunal in
5 the matter of these documents?

6 A. No, Sir, I have not been.

7 97 Q. And it is only when the Tribunal put pressure on you
8 last week that you took any steps to give the
9 appearance of seeking documents that you are now
10 asserting you can't get. And I suggest to you that
11 this litigation that you are now setting up in the
12 Channel Islands is also a charade?

13 A. I cannot take that, Sir. That is going too far. I
14 can't accept these remarks, Sir. I am here as a
15 willing witness, to help you as much as possible. I
16 have done everything in my power to get them. We have
17 a firm of lawyers that - and if you wish - if the
18 Tribunal wishes to contact directly, can do or
19 otherwise. I am doing my level, level best, Sir, to
20 get them for you.

21 98 Q. Why don't you sack the trustees, have them removed,
22 change them?

23 A. I have sought the advice of what way - what can we do,
24 and we are waiting for a report. And I think, at
25 least, Sir - wait to get the report from our lawyers.
26 We have instructed professionals over there. We were
27 held up a little bit, Sir, initially, because the
28 people whom we were speaking to, that they couldn't -
29 it turned out that they couldn't act for us. There was
30 a conflict of interest. But we have an active firm of

1 lawyers working on it now. And I am awaiting for a
2 report. And anything else that you asked me for today,
3 I will also, if there is any other questions, queries,
4 otherwise, they will be relayed to the lawyer.

5 99 Q. Why hasn't your solicitor been beating down their doors
6 for the last six months saying, "You are acting
7 unlawfully. We want these documents. We are lawfully
8 entitled to receive them and you have no lawful
9 entitlement to keep them. And if you continue acting
10 this way, we will have you removed as trustees." Why
11 hasn't that letter been written?

12 A. Well, I don't know. I know that we have been taking --
13 look, when it comes down to it, as to what steps, legal
14 steps can be taken, I can't vouch for that. But I can
15 tell you that we have tried, and I have tried, and I
16 tried from this room here, Sir.

17 .

18 MR. HANRATTY: I don't propose to pursue this
19 particular topic any further with this witness, Sir. I
20 think I have taken it as far as I can. I plan to move
21 on now --

22 .

23 CHAIRMAN: We'll take a break until 10 past 12.

24 .

25 THE TRIBUNAL THEN ADJOURNED FOR A SHORT RECESS AND
26 RESUMED AS FOLLOWS:

27 .

28 100 Q. MR. HANRATTY: Mr. Finnegan, we did spend a little time
29 yesterday on this question of this investment which you
30 say you made into this particular project, of

1 ú33,333.33. And I am still trying to understand where
2 that sum fits into this scheme, as we know it.

3 .

4 We know, for example, that the only reference to this
5 figure in any document is in the bank accounts which
6 you have lately produced to the Tribunal, and the
7 reference in one of the sheets on this bank account to
8 a sum of ú33,333.33, in which your colleague, or your
9 accountant wrote in "Monkstown" beside it. Is that
10 right?

11 A. Yes, Sir.

12 101 Q. And the difficulty from the Tribunal's point of view is
13 that there is no other reference to ú33,333.33 in any
14 of the documentation we have seen, and we have seen a
15 vast amount of documentation in connection with this
16 particular transaction. Isn't that so?

17 A. Mm-hmm. Yes, Sir.

18 102 Q. There is no reference to any arrangement under which
19 yourself and Mr. Brennan and Mr. McGowan were putting
20 in 33,333 each. Isn't that right?

21 A. No reference?

22 103 Q. No reference in any of the documents to any arrangement
23 under which each of you were required to put in such a
24 figure. Is that so?

25 A. I haven't come across it, yeah.

26 104 Q. You can take it from me, we have been unable to find
27 it. And you can also take it from me that we have
28 searched extensively to try and find it, and we have
29 been unable to do so.

30 .

1 Now, the problem is that on the basis of your
2 testimony, Mr. Brennan and Mr. McGowan were also
3 required to put in ú33,333.33 each. Isn't that so?

4 A. Well, the one thing I would like to make clear is that
5 as far as I am aware, I was asked to put in - we put in
6 33,000 --

7 105 Q. As I understood your evidence yesterday, there was
8 ú100,000 being put in, and each of you put in an equal
9 one-third share?

10 A. That's my recollection of it, Sir.

11 106 Q. Yes. And the problem with that, is that nowhere in any
12 of the documentation is there any reference to any sum
13 of ú33,333.33 being put in by Mr. Brennan, or of such a
14 sum having been put in by Mr. McGowan. And not only
15 that, there is no reference anywhere in the
16 documentation to the total of these sums, ú100,000,
17 being put in anywhere, or being assembled anywhere. Do
18 you follow me?

19 .
20 And it is not obvious, from the information which we do
21 have in relation to this transaction, where this
22 100,000 or these three ú33,333s fit into the scheme
23 that Mr. Owens put up. Do you follow me?

24 .
25 Instead of nodding, if you wouldn't mind saying "yes",
26 so that the stenographer has something to write?

27 A. Sorry.

28 107 Q. And it is certainly, on the basis of the information
29 which we have established in relation to Mr. Owens'
30 scheme, not obvious as to how it could have fitted into

1 his scheme.

2 .

3 Can you offer any explanation as to where this figure,
4 or these three figures of 33,000, or this total figure
5 of 100,000 fit into this scheme?

6 A. Well, all I can say is this, Sir, which is what I said
7 to you.

8 .

9 This is in the scheme that this was - I had to make the
10 contribution for - into the scheme which took over
11 after the acquisition, and that was when they were
12 bringing forward the profits.

13 .

14 Now, on bringing forward the profits, in doing that
15 scheme, if you like, I was dropped into that with my
16 investment, and I think at that - so I was dropped in
17 with the 33,000. And then in the meantime, I think all
18 the transactions were taking place around the companies
19 who - the other companies who eventually took it out,
20 Sir.

21 108 Q. My question was, Mr. Finnegan: Can you assist as to
22 where this ú100,000, or these three ú33,333s, of which
23 there is no trace in any of the documents that we have
24 seen, where it fits into Mr. Owens' scheme?

25 A. Well, I can't - there is no point in my saying I know
26 exactly, because this was the scheme which was quite
27 involved, that was set up by Owens, and he was the
28 author of it. And as I said to you, Sir, which was
29 designed - and apparently this is a reasonably
30 well-known way, you know what I mean, it's not - this

1 is a scheme which was adopted around that time by other
2 people as well, Sir. This is not an extraordinary
3 situation, to have this front-loading situation which
4 would - I think what it did do - you see, I haven't got
5 the mechanics of it, but I think what it did do is that
6 it would have meant that both Mr. Brennan and Mr.
7 McGowan through that loop, then, would have received a
8 profit which would have been very tax efficient, Sir.

9 109 Q. You see, Mr. Finnegan, when Mr. Brennan was giving his
10 evidence, as I told you yesterday, he said that you did
11 not put any money in. And as far as I can recollect,
12 he was not challenged on that. Your counsel did not
13 put to him that he was mistaken, and that you had, in
14 fact, put in ú33,333.

15 .
16 What did happen, just to be complete about this, is
17 that during the course of the examination of Mr.
18 McGowan by Ms. Dillon, and after these documents were
19 put, your counsel - your counsel, in producing these
20 documents, said that you had no recollection as to the
21 matter, but that these documents appear to indicate
22 that you had, in fact, made an investment. And that
23 was based on the fact that there is a figure of a debit
24 on the 17th of November, 1977, in that sum, and that
25 somebody has written "M Town" beside it. And that was,
26 therefore, put to Mr. McGowan by Ms. Dillon. And his
27 evidence was that he did not think that you had put in
28 any money.

29 .
30 But the point, fundamentally, I am putting to you is,

1 is that when Mr. Brennan gave specific evidence on that
2 point, and when he was examined by your counsel,
3 Mr. Hussey, Mr. Hussey did not, I believe, suggest to
4 Mr. Brennan that you had made any investment in this
5 scheme.

6 .

7 And if I am correct about that, it means that at that
8 point in time you had no recollection of having had -
9 having put in any such money, and you had not,
10 therefore, so instructed Mr. Hussey?

11 A. Well, just on that, Sir. The position is, I always
12 maintained that I had put money in, but I couldn't
13 recollect, seriously, what the amount was, or
14 otherwise. And I couldn't - but I did maintain, to my
15 advisers, and I had said it to them, "Look, to the best
16 of my knowledge, I believe I did put in money into
17 this, but I don't know where or what. But I did inject
18 money. The sum I can't tell you." And it was when we
19 uncovered the documentation, that then we discovered,
20 you know, that's what it was.

21 110 Q. Because I don't think you said anything in your first
22 statement to the Tribunal about putting in money?

23 A. Well, I always felt that I had, Sir, and I think that
24 now I am wiser, having got the - but I couldn't show
25 what it was, Sir. I did maintain that I had put in
26 money.

27 111 Q. In your statement, your first statement to the
28 Tribunal, you did not assert that you had put any money
29 into any of these schemes. Am I wrong about that? You
30 deal with all of them, except Sandyford.

1 .

2 I think, in paragraph 2 of your statement, you said:

3 .

4 "Prior to the Sandyford lands joint venture I had been
5 involved with Brennan and McGowan as a minority
6 shareholder/partner in other property transactions,
7 such as Bellevue, Newtownpark Avenue, and 6/7
8 St. Stephen's Green."

9 A. Mm-hmm.

10 112 Q. "These ventures were undertaken and controlled by

11 companies in the control of Messrs. Brennan and
12 McGowan, and I was not always familiar with the name of
13 the particular company that they would have used.

14 However, I now know, for example, that 6/7
15 St. Stephen's Green was held, as the leasehold title,
16 by a company known as Green Trees Limited, and as the
17 freehold title, by a company known as Keno Limited.

18 .

19 St. Stephen's Green was bought with sitting tenants.
20 And Newtownpark Avenue was purchased through a company
21 called Arippe. And Bellevue was bought by a company
22 known as Victa."

23 .

24 That's really all you said in that statement about
25 those other land transactions. And you did not say in
26 relation to any of those other land transactions, that
27 you had put any money in by way of investment?

28 A. I think at that particular time, Sir, that I did say to
29 my consultants, to the best of my knowledge, I did put
30 in money, but I can't - I don't know the amount or

1 when. So I couldn't be emphatic about it.

2 113 Q. Yes.

3 A. I couldn't be emphatic about it. Then I couldn't be --

4 114 Q. You didn't say it at all. You didn't say, "I am not
5 certain, but I believe I did put in money." You just
6 didn't say anything about putting in money. And the
7 first indication that the Tribunal received from you
8 suggesting when these statements were produced, was in
9 the middle of McGowan's evidence, with this
10 interpretation on this entry with "Monkstown" written
11 beside it, that was the first indication. And that was
12 at a time after Mr. Brennan had given specific evidence
13 to the specific effect that you didn't put in money?

14 .

15 MR. HUSSEY: I am sorry, I think we had Mr. Brennan's
16 evidence yesterday, and I referred to it in the
17 transcript. There wasn't specific evidence by Mr.
18 Brennan. In fact, Mr. Brennan's first evidence was
19 that he didn't remember, and he didn't know what Mr.
20 Finnegan had brought in. There was no specific
21 evidence by Mr. Brennan in regard to that.

22 .

23 115 Q. MR. HANRATTY: We had this yesterday. Without getting
24 into an argument about what he said in the transcript,
25 the gist, put it that way, of Mr. Brennan's evidence
26 was that you did not put in money. The upshot of his
27 evidence was that you did not put in money.

28 .

29 MR. HUSSEY: I am sorry. I don't wish to argue this
30 point. There is no need to argue the point. The

1 actual evidence is there, Day 27 (sic), when I quoted
2 this yesterday, where Mr. Brennan said - when he was
3 asked, what did Mr. Finnegan bring to the deal, he
4 says, "I don't know what he brought. I don't know."
5 That's what he said.

6 .
7 MR. HANRATTY: What he brought to the table.

8 .
9 MR. HUSSEY: "I don't know what he brought" was --

10 .
11 MR. HANRATTY: He was asked elsewhere did he put in any
12 money. My recollection, quite clearly, is that he said
13 he didn't. And - I think we better find it.

14 .
15 CHAIRMAN: Not to waste time with it, at this point in
16 time. If necessary, we'll do a summation check on the
17 transcript and find out whether it does happen. And
18 there is no point in "yes" or "no", "I did", "I
19 didn't". We'll do it on a summation check and find out
20 whether that's correct or not.

21 .
22 116 Q. MR. HANRATTY: Whatever he said, and on the basis of

23 your counsel's objection, I am not going to assert "he
24 put in no money", despite my clear recollection.

25 .
26 What I am putting to you is, your counsel never stood
27 on his hind legs and said, "My client, Mr. Finnegan,
28 put in 33,333 into this Monkstown transaction." Now,
29 why didn't he do that?

30 A. Well, I think at the time, I think that was prior to us

1 uncovering the information that we had, we got.

2 117 Q. I suggest to you, the reason he didn't put it to Mr.

3 Brennan was because he had not been so instructed by

4 you?

5 A. We had discussed, actually - but I wasn't in a position

6 to be certain of what I had put in.

7 118 Q. And that what is going on now is that when this

8 statement was produced, like a rabbit out of a hat,

9 which lo and behold somebody found in a file, with a

10 transaction of 33,333 in November 1997 with "Monkstown"

11 written beside it, you are hanging your hat on it and

12 trying to suggest in some way that this was an

13 investment which you made into this Carrickbrennan

14 transaction?

15 .

16 MR. HUSSEY: I beg your pardon, Sir, I do wish to make

17 objection to that classification of the provenance of

18 these documents, to suggest they came as a rabbit out

19 of a hat. And it was necessary to show this particular

20 transaction.

21 .

22 We have identified a number of payments made out of

23 this account in respect of various transactions, and,

24 indeed, with the legend beside them, an explanation by

25 Mr. Turvey, which had been written in a long time ago

26 to explain the provenance of the payments and the

27 source and the destiny of certain payments arising out

28 of the transactions in this case.

29 .

30 This is not a rabbit out of a hat situation. This is

1 one of a series of payments, entries and exits from
2 these accounts which show Mr. Finnegan's involvement in
3 these transactions.

4 .

5 It's not just a one-off payment. There is a series of
6 payments. And it's quite clear that there is no
7 question but that the other payments went in and - I
8 don't, as I said, not yesterday, but I think the day
9 before yesterday, I haven't seen the accounts of
10 Mr. Owens, I haven't seen the accounts of Messrs.
11 Brennan and McGowan, I haven't seen the accounts of
12 Kilnamanagh Estates, I haven't seen the accounts of
13 Green Isle Holdings Trust Limited, to be able to say
14 that this money did not - sorry, the money that Mr.
15 Finnegan suggests was put into these things didn't
16 arrive at a destination.

17 .

18 I don't know if the Tribunal have, either, seen these
19 accounts. Just because Mr. Finnegan hasn't been able
20 to show where - having paid over this money, where this
21 money went into this transaction, that does not prove
22 that it didn't go in, unless we've seen the accounts to
23 show they didn't. I haven't seen - I don't know if the
24 Tribunal has these accounts, and I don't know if it's
25 fair to suggest because you don't have the accounts,
26 that, therefore, the money didn't go into those
27 accounts. That's drawing a conclusion from no evidence
28 whatsoever, certainly that I have seen.

29 .

30 If the Tribunal have these accounts, I certainly

1 haven't seen them, and they haven't been circulated to
2 Messrs. Kennedy McGonagle Ballagh. And I suggest if
3 those accounts are there, they should be circulated.

4 .

5 But I certainly haven't seen those accounts to
6 eliminate the possibility of this money having gotten
7 in. And certainly, Mr. Finnegan would not have access
8 to any such accounts in order to prove his position.

9 He has what he has, which is an indication from - a
10 long time ago, that this money went into Monkstown.

11 .

12 CHAIRMAN: I note your submission.

13 .

14 119 Q. MR. HANRATTY: Mr. Finnegan, am I right in believing
15 that the basis upon which you are now suggesting that
16 you put in this investment is this entry in this
17 extract from the bank account?

18 A. Yes, Sir.

19 120 Q. And prior to the production of this bank account, there
20 was never any suggestion that you had?

21 A. Well, perhaps there wasn't openly, Sir, but I did
22 maintain along the line that I had, but I couldn't
23 substantiate it, Sir.

24 121 Q. You certainly said nothing about it in your statement
25 to the Tribunal, and your counsel made no such
26 suggestion to Mr. Brennan, whatever Mr. Brennan's point
27 was on the point?

28 A. Well, what I have to say, Sir, is that I always
29 maintained that I had, but I couldn't - I didn't know
30 where or what - I couldn't say to you what it was, so I

1 wasn't prepared to go out on a limb, Sir, if I couldn't
2 substantiate it. So I didn't say anything.

3 122 Q. Well, when Mr. Brennan was being examined by
4 Mr. Hussey, Mr. Hussey did not put to him, "My client
5 believes, although he is not certain, that he may have,
6 in fact, made an investment in not only Monkstown but
7 in the other ones in which, as I understand it, you are
8 now saying you made an investment as well." He didn't
9 put that either.

10 .

11 MR. HUSSEY: Sir, again, I don't wish to be
12 interrupting unduly. This was had out between, I
13 think, Ms. Dillon and myself when I was cross-examining
14 Mr. McGowan, and I explained, at that stage, that I
15 felt it was my duty, when I was cross-examining anybody
16 - now, you will remember that.

17 .

18 As far as I am concerned, Mr. Brennan did not give any
19 definitive negative to any payment when Mr. Finnegan -
20 his evidence is that he did not know.

21 .

22 As against not having evidence to put to him to suggest
23 otherwise, I felt it my duty as counsel not to suggest
24 an alternative, because I didn't have the evidence to
25 support the alternative. As I say, I thought I had
26 already explained this during the course of the
27 cross-examination of Mr. McGowan.

28 .

29 When the evidence did come to light, I was then in a
30 position to be able to put an alternative view to Mr.

1 McGowan, and I did. And I - as I say, I thought I had
2 already explained my position, which Mr. Hanratty is
3 putting to this witness already, during the course of
4 the cross-examination of Mr. McGowan.

5 .

6 MR. HANRATTY: Sir, with the greatest of respect, I
7 profoundly object to that intervention. This is a
8 matter for the witness to explain, and for Mr. Hussey
9 to clarify. But I object to these interventions by
10 Mr. Hussey, where Mr. Hussey provides explanations to
11 questions which I have put to the witness.

12 .

13 Now, I have put to this witness a fact, that it was not
14 put by Mr. Hussey to Mr. Brennan, after Mr. Brennan's
15 evidence, and we'll check what his evidence actually
16 was over lunch, but it was not - whatever Mr. Brennan's
17 evidence was, put by Mr. Hussey that Mr. Finnegan
18 believes, although he is not certain, that he may have
19 made an investment in Monkstown. That's all I put to
20 this witness. And I do not see the point of
21 Mr. Hussey's intervention, and his explanation, other
22 than to try and provide the answer that I am seeking
23 from the witness.

24 .

25 This witness is perfectly capable, himself, of
26 providing an explanation as to why that matter was not
27 put. But I think it's quite improper for Mr. Hussey to
28 be intervening in this way every time a question that
29 he perceives to be awkward arises for his client, and
30 to give an explanation himself.

1 .

2 MR. HUSSEY: I am sorry, Sir, I object to that.

3 .

4 CHAIRMAN: Now, this argument is not just going to
5 continue.

6 .

7 I agree with Counsel for the Tribunal that these are
8 interventions which are properly dealt with by
9 re-examination and saying, "It has been put to you "X".

10 Is it not the proposition that "Y" is the state of
11 affairs?" And that's, in my view, the proper way of
12 dealing with it.

13 .

14 I don't want to get into a cross-fire between counsel.

15 I am trying to get this Tribunal to move forward. And
16 you are going to have an opportunity, and you, no
17 doubt, will have a sequence of notes of problems and
18 propositions with which your instructions, your client
19 doesn't agree. I think that's the appropriate manner,
20 and, in fact, it will be much more valuable. There you
21 have the one version and the other version. And I can
22 make my mind up, which is accurate.

23 .

24 So, please, could we now go forward on that basis.

25 Thank you.

26 .

27 123 Q. MR. HANRATTY: All I put to you, Mr. Finnegan, was that
28 whatever Mr. Brennan's evidence may have been, your
29 counsel, when he examined Mr. Brennan, did not suggest
30 to him that you believed that you did, in fact, put

1 money into Monkstown?

2 A. Well, all right, Sir. Well, I think that is the past.

3 But I know - I wasn't sure. It's not the advisers'

4 fault if they didn't - they didn't have accurate

5 information, and therefore I didn't want to put

6 something forward that I couldn't substantiate.

7 .

8 I now have - I am now saying, Sir, and that's what I

9 did say to you, and that when we did uncover the

10 information here, that it clarified what was in -

11 whatever was in the back of my mind, that I had put in

12 - that had clarified what I had. And the minute we got

13 this, these documents, Sir, we let you know. We gave

14 them to you.

15 124 Q. What was it that you were unsure about?

16 A. The amount of money.

17 125 Q. But not of the fact that you made an investment?

18 A. The amount for where or what, but that I had made an

19 investment.

20 126 Q. Well, your counsel did not put to Mr. Brennan, "My

21 client is quite clear he made an investment, although

22 he can't remember how much it was."

23 A. Well, all right, I wasn't there for it.

24 127 Q. That's the fact.

25 A. Well, Sir --

26 128 Q. And I suggest to you, that had it been your assertion

27 at that point in time, he would have done so?

28 A. Well, I just say to you, Sir, whatever is between the

29 parties, Sir, I say now, Sir, that we have the

30 situation where I did inject 33,000 odd into the

1 scheme.

2 129 Q. And I suggest to you that the reason that you are now
3 making the assertion is not because you remember
4 anything, but because of this figure of 33,000 entered
5 into this debit in this bank account?

6 A. I think this clarifies the position for me, that I did.

7 130 Q. You see, if we look at Mr. Owens' scheme. Can I have
8 page 147.

9 .

10 This is Mr. Owens' Letter of Instructions to
11 Mr. Wheeler in Bedell & Cristin. It's dated the 23rd
12 of June of 1977. He says:

13 .

14 "Dear Mr. Wheeler, further to our telephone
15 conversation, I confirm that I want two new companies
16 formed. One will be dealing with land and the second,
17 an investment holding company.

18 .

19 The beneficial owners will be Thomas Brennan Esquire,
20 22 Park View, Castleknock, County Dublin; Joseph
21 McGowan, Dollanstown Stud, Kilcock, County Kildare; and
22 John Finnegan, Seapoint House, Monkstown, County
23 Dublin."

24 .

25 Pause there for a moment. Mr. Owens had instructions
26 to request Mr. Wheeler to set up two companies in
27 Jersey, of which yourself and Mr. Brennan and Mr.
28 McGowan were going to be equal one-third beneficial
29 owners. Isn't that clear from that letter?

30 A. Mm-hmm. Yes, Sir.

1 131 Q. I take it you knew about this at the time?

2 A. Just to say, if that's what it is there, I can't say to
3 you offhand they did, but whatever Mr. Owens was - he
4 was in charge of it all, so whatever he did, I would go
5 along with, Sir.

6 132 Q. Did you know at the time that he was setting up two
7 companies in Jersey in Bedell & Cristin, of which you
8 were going to be registered as a one-third beneficial
9 owner with Messrs. Brennan and McGowan?

10 A. Well, for the purpose of the - I definitely know now,
11 Sir, that I did - that he did.

12 133 Q. Sorry, Mr. Finnegan. Did you know at the time that
13 Mr. Owens was setting up two companies in Jersey, of
14 which you were going to be registered as a one-third
15 beneficial owner with Mr. Brennan and Mr. McGowan?

16 A. Well, it's again a hell of a long time ago. Put it
17 this way: That I can't say to you exactly that I did.
18 But if he has done it, I will accept that that is what
19 the situation is.

20 134 Q. This appears to be, as far as we are aware, the first
21 instance in which Messrs. Brennan and McGowan became
22 involved with Bedell & Cristin. Is that your
23 understanding?

24 A. I wouldn't know, Sir.

25 135 Q. Well, it's the first of these transactions, in which
26 they used Jersey companies, or so it appears, at least.
27 Isn't that so? And it's the first of these
28 transactions in which you were involved with Brennan
29 and McGowan, as far as we are aware.

30 A. Yes, Sir.

1 136 Q. And I think you told us that yourself yesterday, isn't
2 that right?

3 A. Yes, Sir.

4 137 Q. But Bedell & Cristin is, in fact, a firm of solicitors
5 with which you were already familiar, was it not?

6 A. No, Sir, I wasn't familiar. But what did come about by
7 chance, was that - I had nothing to do with it, Sir -
8 was that they were, coincidentally, solicitors who did
9 act on behalf of Pembroke, part of Pembroke, but I had
10 nothing to do with the setting up of that, Sir. So I
11 wasn't aware of them through that source. But now --

12 138 Q. But you were aware of them?

13 A. I wasn't aware of them, Sir.

14 139 Q. Oh, really?

15 A. No.

16 140 Q. And were you not aware of the fact that you were
17 registered as a director of companies, of which the
18 registered office was Bedell & Cristin?

19 A. No, Sir. That - I can't be now 100 percent emphatic,
20 but I would - that's a hell of a long time ago, again,
21 and - it would have been that I was a director of a
22 company that was controlled by the Pembroke Estate.
23 But I had no dealings with them whatsoever, Sir,
24 nothing. I really hadn't. And I wouldn't - if you had
25 asked me before - it came to light that they were, the
26 people who had advised. But I say, Sir, they perhaps
27 advised a lot of people.

28 141 Q. Yes?

29 A. But I hadn't come across them.

30 142 Q. You remember Merrion Properties Limited and Merrion

1 Estates Limited?

2 A. Yes, sir.

3 143 Q. These were companies in which you had an involvement in

4 the early '70s, isn't that right?

5 A. Yes, Sir.

6 144 Q. In connection with the Pembroke Estate?

7 A. Yes, Sir.

8 145 Q. In the mid-'70s, perhaps around 1976, Merrion Estates

9 Limited was wound up, isn't that so?

10 A. As far as I recollect, Sir.

11 146 Q. And it appears that the business formerly conducted by

12 that company was conducted by a company called Herbert

13 Estates Limited, is that right?

14 A. There was a restructuring of companies around that

15 time.

16 147 Q. And that involved the establishment of two companies,

17 Herbert Estates Limited and Herbert Properties Limited

18 in Jersey. Isn't that right?

19 A. Yes, Sir. I wouldn't have been involved in the setting

20 up of those, Sir.

21 148 Q. But you were a director of those two companies?

22 A. Yes, Sir.

23 149 Q. As you had been of Merrion Estates Limited and Merrion

24 Properties Limited, which were their predecessors,

25 except that they were Irish companies. Isn't that so?

26 A. Yes, Sir.

27 150 Q. Is that so?

28 A. Say that again?

29 151 Q. Merrion Properties Limited and Merrion Estates

30 Limited --

1 A. Yeah.

2 152 Q. -- and then Herbert Properties Limited and Herbert
3 Estates Limited were registered in Jersey in March of
4 1976?

5 A. Well, if you say so.

6 153 Q. And you were a director of these companies?

7 A. Right, Sir.

8 154 Q. Did you not know that you were a director of Jersey
9 companies in 1976?

10 A. If you had asked me straight out some time ago, I
11 wouldn't have necessarily known - the origin of them, I
12 wouldn't be quite aware, but I took it that they were
13 the trusts. I knew that Pembroke did have Jersey
14 companies, trust companies. So take it that, although
15 hazy, that I would have known that they were.

16 155 Q. Mr. Finnegan, you can't be a director of a company --

17 A. Take it, Sir, for the purpose - not for this to go on -
18 because I knew I was a director. I was a bit hazy
19 there knowing whether it was a Jersey company. But the
20 Pembroke family had had their trusts settled in Jersey.

21 156 Q. Yes. And you were a director of the companies --

22 A. Yes.

23 157 Q. -- which were the holding companies for these trust
24 properties?

25 A. Mm-hmm.

26 158 Q. And management companies?

27 A. Yes, Sir.

28 159 Q. -- still an Irish company called Pembroke Estates
29 Management Limited, of which you were also a director?

30 A. Yes, Sir.

1 160 Q. And your co-directors in that were co-directors in the
2 Jersey companies, isn't that so?

3 A. Yes, Sir.

4 161 Q. So did you know, do I take it, that you were, in fact,
5 a director of these two Jersey companies?

6 A. Take it, Sir, yes, because I don't wish to hold up the
7 thing, that I did.

8 162 Q. We don't mind you holding it up, once we get it right.

9 .

10 And in the case of Herbert Properties Limited and
11 Herbert Estates Limited, your co-directors were the
12 same as your co-directors, broadly speaking, with some
13 exception, of the Irish company, the management
14 company, and the predecessors, which were Mount Merrion
15 Properties Limited, Mount Merrion Estates Limited.

16 Isn't that so?

17 A. Yeah.

18 163 Q. I take it you knew the name of the company of which you
19 were a director?

20 A. I would, Sir, yes.

21 164 Q. And I take it you had no - you would know that the
22 registered office was in Bedell & Cristin in Jersey?

23 A. Well, the name did not fly out at me, Sir.

24 165 Q. And do you think it was a coincidence, then, that when
25 Mr. Owens came to establish this particular
26 infrastructure in Jersey in 1977, that it was a
27 coincidence that he also selected Bedell & Cristin?

28 A. Absolutely, Sir. I had no contact, I had no - none
29 whatsoever with Mr. Owens about Bedell & Cristin or
30 otherwise. I hadn't.

1 166 Q. Well, what contacts did you have with Mr. Owens in
2 connection with the establishment of these companies,
3 of which you were going to be a one-third beneficial
4 owner?

5 A. Well, I can say, first of all, if you want it clear, I
6 did "X", and this, Sir, that I didn't inform him of
7 Bedell & Cristin, but - he was the accountant who acted
8 for Brennan and McGowan.

9 167 Q. Yes?

10 A. Yes.

11 168 Q. But he was establishing two companies in Jersey, of
12 which you were going to be registered as a one-third
13 beneficial owner?

14 A. Yes, Sir.

15 169 Q. What conversations, therefore, did you have with
16 Mr. Owens in connection with this matter?

17 A. I can't recollect, Sir, what conversations I had with
18 him. It's a hell of a long time ago.

19 170 Q. Well, did he explain to you what he was doing?

20 A. Look, we have to accept, that as he was setting it all
21 up, it was probably his duty to do so, and I have to
22 accept it, but I can't remember what --

23 171 Q. I assume he would have hardly done so without your
24 consent?

25 A. No. Take it that he wouldn't.

26 172 Q. Why did you think he was setting up two Jersey
27 companies, of which you were going to be registered as
28 a one-third beneficial owner?

29 A. That we were going to either do some business through
30 them --

1 173 Q. Yes. What business did you think you were going to do
2 through them?

3 A. Well, I think that this - that at that particular time,
4 I can't recollect exactly - when was that, Sir?

5 174 Q. Well, this letter was written on the 23rd of June,
6 1977. So, obviously, any conversations he may have had
7 with you would have pre-dated that?

8 A. Mm-hmm.

9 175 Q. So what business was it that you were going to be doing
10 with these companies, which - you appear to be
11 acknowledging Mr. Owens told you he was setting you up
12 as a one-third equal beneficial owner with the other
13 two?

14 A. Well, I accept, for the purposes of this, yes, that he
15 did.

16 176 Q. Yes. What was your understanding of what the function
17 of these companies was?

18 A. Well, that if he were setting up - that he had an
19 understanding that he had a scheme - he had a scheme
20 that he was going to involve these companies in.

21 177 Q. Well, what was your understanding of the scheme?

22 A. Sir, the scheme which - if you were setting these up,
23 was the scheme which I am talking to you about. I have
24 given as much explanation about the way of dealing,
25 with what I was trying to explain to you there before,
26 of extracting where I was - I would get involved in the
27 company. And this is, as far as I understand, to go on
28 to do the - to get involved, as I did, with him in
29 Monkstown.

30 178 Q. What did he explain to you - why did he explain to you

1 he was setting up, not one, but two companies in

2 Jersey?

3 A. I really can't - I can't recollect, Sir.

4 179 Q. Well, I take it, he did explain it to you?

5 A. Well, I am now - look, I think it's better to say that

6 I can't remember. Whatever it is, I am assuming that

7 he did, but I wouldn't remember what he did say or

8 didn't say at that time.

9 180 Q. Well, do you think it's likely that he explained it to

10 you, what he was doing?

11 A. I would imagine, but I think that he was - you know,

12 this was a man who was setting up - he acting for

13 Brennan and McGowan, and was in control of whatever he

14 was doing. And he may have. I think he may have, but

15 I can't say to you that I remember what he did say to

16 me.

17 181 Q. No. Undoubtedly. Would you agree with me that it's

18 unlikely that he didn't explain it to you?

19 A. Yes, Sir. I say that he must have had a word with me.

20 He could have gone ahead - it could have been that one

21 of the - either Brennan and McGowan might have said to

22 me he is - you see, I am only now going back thinking

23 what he might have said, but I don't know. But it

24 could have been that Brennan and McGowan might have

25 informed me.

26 182 Q. But he was bringing your name into it, and he was

27 registering your name as a one-third beneficial owner

28 of these companies?

29 A. Right, Sir.

30 183 Q. I would suggest to you that in those circumstances, as

1 I think you've agreed, it's highly unlikely that he
2 didn't explain to you that he was doing this, and why
3 he was doing this?

4 A. Mm-hmm.

5 184 Q. Would you agree with that?

6 A. Yes.

7 185 Q. And why he was setting up not one, but two companies in
8 this way?

9 A. I don't really - I can't really tell you.

10 186 Q. I suggest to you that he would have explained to you
11 the nature of the scheme that he was putting together
12 involving these two companies?

13 A. No, Sir, I cannot remember that.

14 187 Q. I am not asking you, do you remember it, I am simply
15 suggesting to you that it's unlikely that he didn't
16 explain it to you at the time?

17 A. He may very well have, Sir. He may very well have.
18 But at this present time I cannot recollect the
19 conversation.

20 188 Q. Yes. And if he did explain it to you, what presumably
21 he would have explained to you is what he actually did,
22 what he subsequently did after these companies had, in
23 fact, been established, pursuant to the instructions
24 contained in that letter?

25 A. I would - yes, probably.

26 189 Q. And what he did was he registered these two companies
27 in Jersey, one called Rapallo Limited, and the other
28 one called Bouganville Investments Limited. And he
29 arranged matters so that there would be an agreement
30 entered into between these two companies, a management

1 agreement, creating an indebtedness, from one to the
2 other, in the sum of ú350,000. That's what he did. We
3 know that.

4 A. Yes.

5 190 Q. And we also know that he so arranged matters that there
6 would be an exchange of correspondence which he drafted
7 in advance, and we've had all of that. But
8 fundamentally, he arranged matters so that ultimately
9 Bouganville Investments Limited would become the owner
10 of the freehold interest in the nuns' land in
11 Monkstown, isn't that so? And I take it he would have
12 explained all of that to you?

13 A. Well, explaining it all is another matter, but for the
14 purpose of --

15 191 Q. Well, would you agree with me that at this time you had
16 the capacity to understand anything he may have
17 explained to you?

18 A. I would think that - yes, unless it was a very involved
19 situation.

20 192 Q. Yes. But fundamentally, at its most basic, the scheme
21 involved a Jersey company owning the freehold?

22 A. Yes.

23 193 Q. And I take it he would have explained that to you? And
24 that the freehold would ultimately pass from the Jersey
25 company to the same company in Ireland that had already
26 bought the leasehold?

27 A. Well, no, Sir. Now, I have to come in and say to you,
28 the scheme, which - I wouldn't have followed it. It
29 took me a little while to get the principle of this,
30 that the scheme wasn't just as I - it wasn't just,

1 "Look, I set up a company to do this." There was a
2 question that this - there was some chances that the -
3 if this was the scheme - see, they were going to put a
4 package together. There was a question, and that I
5 would be involved in it, to do with the structuring of
6 these companies.

7 .

8 Now, I don't think that it was just as simple as what
9 you were just saying there, Sir. But it did involve,
10 as far as I know, mortgaging of the properties and - I
11 know you said there was a service agreement, but I
12 think there were lots of other things happening as
13 well.

14 194 Q. Fundamentally it involved a Jersey company acquiring
15 the freehold in the Monkstown lands? Did he tell you
16 that?

17 A. Well, I have to take it that that was part - that was
18 part of an overall scheme.

19 195 Q. So you knew that the scheme that Mr. Owens was putting
20 together involved a Jersey company becoming owner of
21 the freehold interest - sorry - involved a Jersey
22 company becoming owner of the freehold interest in the
23 lands in Monkstown owned by the Sacred Heart nuns?

24 A. I think you can take it that I vaguely knew that there
25 was a scheme. Now, when you asked me, did I know
26 specifically that it was - was that done that way?

27 No, I didn't, but there was a scheme being prepared.

28 196 Q. Mr. Finnegan, there are two possibilities here.

29 A. All right.

30 197 Q. The first possibility is that Mr. Owens put together

1 two companies in Jersey?

2 A. Yes, Sir.

3 198 Q. Of which you were registered as a one-third beneficial
4 owner?

5 A. Mm-hmm.

6 199 Q. As part of a scheme under which one of those companies
7 became owner of the nuns' freehold. That's what he
8 did.

9 .

10 Now, the first possibility is that you knew that the
11 scheme involved one of these companies acquiring the
12 freehold. And the second possibility is that you did
13 not know that the scheme involved one of these
14 companies acquiring the freehold. Now, which is it?

15 A. I couldn't - actually, I can't recollect that I was
16 told specifically what the actions were. This was a
17 very complicated scheme --

18 200 Q. Are you suggesting the possibility that you did not
19 know that the scheme in which you were becoming
20 involved, involved the acquisition of the freehold
21 interest in the property of the land of the nuns in
22 Monkstown which you had previously sold to Brennan and
23 McGowan?

24 A. Sir, I think that when you say to me, did I know
25 specifically, this, whatever, whatever, I am not quite
26 sure of the sequence of events in these.

27 201 Q. All right. I accept that. Is it conceivable, is it
28 conceivable that you got involved in a scheme involving
29 two Jersey companies, one of which was to acquire the
30 freehold interest in this land, and that you did not

1 know that the scheme involved the acquisition of the
2 freehold interest in this land?

3 A. Yes, it is, Sir.

4 202 Q. I see. Did you know that this scheme involved
5 something to do with the freehold interest in the
6 Carrickbrennan lands?

7 A. Well, I can't say that - whichever way it was being
8 sorted out, it was in connection with - I don't know
9 whether - at the time how much of this was explained to
10 me, but I knew that there was - and on reflection that
11 it's around the time that the scheme was being set up,
12 the scheme which I was trying to explain to you.

13 203 Q. Did you know that the reason for the payment by Green
14 Isle to Rapallo of ú350,000, out of which you got
15 ú105,000, related to the transfer of the interest in
16 the Monkstown lands?

17 A. It was part of the overall scheme that I was invited to
18 come into.

19 204 Q. I am talking about the scheme, Mr. Finnegan, and I am
20 talking about the specifics of the scheme.

21 A. The specifics of it, I can't, and I can't tell you
22 exactly the specifics of the scheme. And I was trying
23 to say to you, because I recollect that this scheme did
24 involve quite a lot of things happening, like the
25 mortgaging - that Brennan and McGowan mortgaged the
26 leasehold interest, and they put up guarantees - they
27 put up quite a lot of - there was a lot of maneuvering
28 around on this scheme.

29 205 Q. Mr. Finnegan, I can tell you about the specifics of the
30 scheme. You've heard them so many times canvassed with

1 all the previous witnesses.

2 .

3 We know what the specifics of the scheme are. And I am
4 exploring at the moment what you say your state of
5 knowledge was in connection with this scheme.

6 .

7 Now, we know that two companies were set up by
8 Mr. Owens pursuant to the instructions contained in
9 this letter, of which you were an equal one-third owner
10 with Messrs. Brennan and McGowan. As I understand your
11 evidence, you knew he was doing this, and you knew that
12 you were going to be registered as a one-third
13 beneficial owner?

14 A. Well --

15 206 Q. We know that one of those companies became the owner of
16 the freehold. Is it your evidence to this Tribunal
17 that you knew that one of those companies became the
18 owner of the freehold, or that you didn't know?

19 A. Well, Sir, in going - I wouldn't know whatever time
20 this happened, but this was part of an overall scheme,
21 which I told you that I was invited to come into.

22 207 Q. Yes. But we are trying to take it step-by-step, Mr.
23 Finnegan.

24 A. Well --

25 208 Q. We don't need to take global overviews at this stage.
26 We'll just take it step-by-step.

27 .

28 Did you know that one of these companies was intended
29 to become, and did become the owner of the freehold
30 interest in the Monkstown lands?

1 A. I don't know - I can't say to you just at that
2 particular time, but I do know now, with the companies
3 that have been mentioned, that it was one of the
4 companies that was involved in the scheme.

5 209 Q. I am asking you about your state of knowledge at the
6 time.

7 .
8 Did you know, when Mr. Owens was in the process of
9 setting up these companies, and when he had, in fact,
10 set up these companies, that it was intended that one
11 of these companies would become the owner of the
12 freehold interest in the Monkstown lands?

13 A. No, I can't say to you that I did know that that was --

14 210 Q. And when it did become the owner, did you know that it
15 had become the owner?

16 A. Well, I think that this whole thing, Sir, came around
17 in such a - it was quite a complicated scheme. And I
18 feel that, Sir - as you say, that you now understand
19 the scheme. There are certain bits of it that I don't
20 quite understand. But I know that it was - the
21 principle of the scheme was that which I talked to you,
22 was taking out the future profits. And how that went
23 around, I wouldn't be able to take it point-by-point
24 and say - I don't know - I don't know what the steps
25 were to take - to put it in operation. I don't know.

26 211 Q. Did you know that the payment of ú350,000 from Green
27 Isle to Rapallo had something to do with the transfer
28 of the title of the Monkstown lands from Bouganville to
29 Green Isle?

30 A. Well, when you mention the transfer of title at

1 particular times, I wouldn't be able to say to you

2 exactly on timing what the situation was here.

3 212 Q. Did you know that the ú350,000 was the price of the

4 freehold paid by Green Isle to Bouganville?

5 A. Well, I know that the figure came out there, and I

6 accepted that that's what the figure was.

7 213 Q. Did you know then, when the ú350,000 was paid, which

8 was in December of 1977, that that figure was paid for

9 the Bouganville freehold title to the Monkstown lands?

10 A. Put it this way: I wouldn't have been watching it

11 step-by-step, and I don't know whether anything to do

12 with that - I wouldn't have been watching it step,

13 stage, stage, stage.

14 214 Q. All right. You were a director of Bouganville?

15 A. Yes.

16 215 Q. Sorry, you were a one-third beneficial owner of

17 Bouganville, and a one-third beneficial owner of

18 Rapallo. What did you think Green Isle paid Rapallo

19 ú350,000 for?

20 A. Well, at that stage - this is where, Sir, that this

21 came with a number of movements around and deals with

22 various - agreements with various companies. And I

23 can't say to you that I know how that came to pass, but

24 there was - there were transactions between the

25 companies organised by Hugh Owens.

26 216 Q. What did you think Green Isle Holdings Trust Limited

27 paid ú350,000 to Rapallo for?

28 A. Sir, this was part of the structure which I was trying

29 to explain, and in isolation I couldn't explain to you

30 what it was.

1 .
2 On the face of it, that would be it. I was asked -
3 this is why, you see, I find it difficult, that when I
4 was asked to come into the scheme for the participation
5 of taking out the future profits, this was a scheme
6 that Hugh Owens had, and I wouldn't have known each and
7 every movement of it, and I still don't know each and
8 every movement of it.

9 217 Q. See, this is nothing to do with future profits, Mr.
10 Finnegan.

11 A. Well, it has, Sir.

12 218 Q. There was an indebtedness created by Bouganville to
13 Rapallo of ú350,000?

14 A. Yes, Sir.

15 219 Q. And the price for Bouganville transferring, in effect,
16 its title through the mechanism of a liquidation in
17 specie, the price of Bouganville transferring the
18 freehold title which it did acquire, by acquiring the
19 nuns' contract, was the payment of this ú350,000 to
20 Rapallo?

21 A. Right, Sir.

22 220 Q. That ú350,000 was paid, and you got ú105,000 out of it?

23 A. Right, Sir. That did not - I want to make one thing
24 clear, because I think this is where you are coming
25 around to, Sir, and I think it's time that I cleared
26 absolutely what the position is.

27 .
28 First of all, the transaction of the nuns in the sale
29 to Brennan and McGowan at ú210,000 and 220 to the
30 freehold was the open market value of the property at

1 the time. There is no question of - that there could
2 be any market value of the figures of which you were
3 talking about, unless they were what I am explaining to
4 you, was extracting the forward profits out of a
5 transaction. It was - as has been partly explained to
6 me. It was a loop of a deal that did give advantages
7 to certain participants, and this is where I was
8 invited in.

9 .
10 And I think, Sir, as it is getting - this is quite a
11 complicated scheme, and I think that, really, the
12 person whom - who - really the author of this scheme is
13 the person - and I see he is coming on, Sir, after Hugh
14 Owens. And I think that he could give you a very good
15 rundown as to how this could come around. But I do
16 want to say to you, that there is no question about, if
17 your questioning is leading up to something that this -
18 that that was the value of the freehold. It was not
19 market value. This was part of an overall scheme --

20 221 Q. Mr. Finnegan, I accused Mr. Tom Brennan of hiding
21 behind the mask of a fool, and I am now accusing you of
22 the same thing. You knew --

23 .
24 MR. HUSSEY: I'm sorry. I am objecting to that remark.
25 It is quite clear from the scheme, as outlined in this
26 letter here, that what Mr. Finnegan is saying has a
27 basis in Mr. Owens' scheme. It is quite clear that the
28 Jersey companies, you'll see from the third paragraph
29 there:

30 .

1 "The first company will enter into a contract to
2 purchase the ground rent for ú10,000. The second
3 company will take an assignment of the contract and
4 complete the purchase and give the first company a
5 profit, the amount of which has yet to be determined."

6 .

7 It is quite clear that Mr. Finnegan is not hiding
8 behind the mask of a fool. That is exactly what Mr.
9 Finnegan has been saying has been the scheme and has
10 been the purpose of the scheme, and not to do with
11 market value.

12 .

13 It is entirely supported by Mr. Owens' explanation
14 there, which he gave to Mr. Wheeler. And to suggest
15 that Mr. Finnegan is hiding behind the mask of a fool
16 is unfair, unfounded, and completely at odds with the
17 evidence such as we know it of how the scheme was to
18 operate.

19 .

20 And I would ask Mr. Hanratty at this stage to withdraw
21 that remark.

22 .

23 CHAIRMAN: Once again, I am inviting you, Mr. Hussey,
24 to deal with this matter in re-examination, which is
25 the proper way to deal with it; to deal with it in
26 detail, to show, step by step, how wrong the premises
27 that Counsel for the Tribunal is advancing, if that is
28 your situation.

29 .

30 But, please, let us proceed in an orderly manner,

1 because I don't want to interrupt everybody every time

2 something happens.

3 .

4 And at that stage, I think, we'll rise for lunch.

5 Shall we say 20 past 2.

6 .

7 THE TRIBUNAL THEN ADJOURNED FOR LUNCH:

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1 THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

2 .

3 MR. JOHN FINNEGAN RETURNS TO THE WITNESS-BOX AND

4 CONTINUES TO BE EXAMINED BY MR. HANRATTY AS FOLLOWS:

5 .

6 MR. HANRATTY: Sir, you will recall that this morning

7 we said that we would revisit after lunch the testimony

8 of Mr. Brennan on the specific point as to whether Mr.

9 Finnegan put any money into any of these transactions.

10 .

11 CHAIRMAN: Yes.

12 .

13 MR. HANRATTY: Now, as it happens, we have been unable

14 to complete our researches over lunch. You will

15 recall, there is quite a few days testimony to be gone

16 through. We have gone through part of it, but not all

17 of it. With your permission, I would like to defer

18 revisiting that until first thing in the morning, by

19 which time we would have finished.

20 .

21 CHAIRMAN: Certainly.

22 ?

23 222 Q. MR. HANRATTY: Mr. Finnegan, before lunch we were

24 exploring the extent of your knowledge of the scheme

25 that Mr. Owens put together.

26 .

27 We had established, I believe, that you knew that you

28 were going to be the registered beneficial owner as to

29 one-third share equally with Mr. Brennan and

30 Mr. McGowan of two companies being established in

1 Jersey?

2 A. I think, Sir, that the - two companies were being - the
3 two companies were being established in Guernsey, and
4 at that time, Sir, my understanding is this: That at
5 that time that these companies were the companies who
6 were going to participate in the scheme. I think it
7 would be wrong of me to give you the exact proportions
8 and things that were going to be. But this, Hugh Owens
9 at this stage, was putting together the scheme, which
10 he, as we said before, he was the author of. They were
11 two companies, which way they were going to work. But
12 at this stage, what exactly the roles they were going
13 to play, I wasn't aware of, Sir, but --

14 223 Q. Well, let's just put it into its context. The previous
15 August, that is August 1976, the nuns had signed a
16 contract to sell their leasehold interest in the
17 Monkstown lands, to Brennan and McGowan, for ú210,000.
18 Isn't that so?

19 A. Yes, Sir.

20 224 Q. The following December, December 1976, the nuns had
21 entered into a contract with the De Vesci and Longford
22 Estate, to purchase the freehold interest in the same
23 lands?

24 A. Yes, Sir, and the terms had been agreed prior to that.

25 225 Q. And by June of 1977, when Mr. Owens wrote this Letter
26 of Instructions to Mr. Wheeler, that is page 147, the
27 planning permission was still outstanding. The
28 contract for the sale of the nuns' property was subject
29 to planning permission, isn't that right?

30 A. Mm-hmm.

1 226 Q. And as we understand the position, the planning had not
2 yet come through, and came through some time in the
3 Autumn of 1977?

4 A. Mm-hmm.

5 227 Q. But certainly the completion of the sale of the nuns'
6 land had not yet taken place. That's fairly clear?

7 A. Fairly --

8 228 Q. That was the context in which you entered into a joint
9 venture, to put it neutrally, of some kind, with
10 Messrs. Brennan and McGowan, which involved the
11 establishment of two companies in Jersey, by Mr. Owens,
12 isn't that right?

13 A. No, Sir, I didn't enter - the sale of the completion of
14 the leasehold had taken place before the deal was done,
15 Sir.

16 229 Q. Yes. What I am saying is the factual situation is,
17 that at the time when you entered into a joint venture
18 with Messrs. Brennan and McGowan, involving the
19 establishment of two companies in Jersey --

20 A. No, let's correct the situation. I did not enter into
21 a joint venture situation at that time. At that
22 particular time Hugh Owens was setting in place - this
23 was the beginning of what he was doing, setting up the
24 place for this scheme.

25 230 Q. You entered into an agreement with Brennan and McGowan
26 to do something?

27 A. I was asked by them to participate in the company,
28 which I was - in the scheme which I was talking about.

29 231 Q. And the fact that Mr. Owens was setting up these two
30 companies, which were an integral part of the scheme?

1 A. Mm-hmm.

2 232 Q. And setting you up as a one-third owner of these two
3 companies, means that you had reached your agreement
4 before he did this with Messrs. Brennan and McGowan?

5 A. No, I hadn't, Sir.

6 233 Q. Oh, I see. You didn't have an agreement with Messrs.
7 Brennan and McGowan before Mr. Owens wrote this letter?

8 A. No, I - you can see that even in this, Sir, they were
9 talking about what was the - just let me have a look at
10 this. "Contract to complete the purchase and to give
11 the first company a profit, the amount of which has yet
12 to be determined."

13 234 Q. Mr. Finnegan, we know that these two companies were set
14 up for the purpose of this scheme, whatever it was.

15 A. Yes, Sir.

16 235 Q. We know that you were part of it, because you were
17 named in Mr. Owens' letter as a one-third owner. That
18 means that you had reached your agreement, whatever it
19 was, with Messrs. Brennan and McGowan before he did
20 this, otherwise your name wouldn't have been in there?

21 A. It was that the - the principle of it was that I
22 would - I was asked to participate. And this was the
23 beginning of putting it - but things hadn't happened.

24 236 Q. Whether they did or not, all I am putting to you at
25 this point is the limited proposition, that you had
26 agreed with Messrs. Brennan and McGowan before he wrote
27 this letter that you were in?

28 A. In what - wait now. It depends on what you say "in",
29 Sir.

30 237 Q. You were in something that involved the establishment

1 of two Jersey companies, for a start?

2 A. Yes, Sir. What I wanted to, and just to make it
3 absolutely clear, again, because we were - in this
4 situation, there are two different stages in this. We
5 went through this yesterday, but I want to say it
6 again, Sir, absolutely. First of all, to clear it once
7 and for all, that the price which the one deal was - we
8 dealt with - advised the nuns and did a deal with
9 Brennan and McGowan, for the purchase of the property,
10 for the freehold, leasehold and freehold, which
11 accumulated in the ú220,000. That was the value of the
12 property then, and that was the first transaction.
13 Hugh Owens and the others, they had this scheme to
14 extract future profits.
15 .

16 Now, by the way, Sir, I think that this is something
17 which - at the particular time that this was done, this
18 wasn't just a one-off thing by Owens. I understand
19 that this was an up-front way of doing it, and it was
20 something that - the practice in around those times of
21 carrying out a scheme like this. So, it is not - there
22 is no - and I want to make it absolutely clear. It did
23 not reflect in any way on the value of the property.
24 It isn't value.
25 .

26 So I wanted to get that over because that seemed to be
27 coming into your questioning now to me. I want to make
28 it absolutely one hundred percent clear, that it had
29 nothing to do with enhancement of value. It was a
30 question of taking out anticipated profits. And when

1 you have the opportunity, Sir, of discussing this with
2 Owens or anyone else, Sir, you will see that is what it
3 was about, that even when they were looking at it here,
4 they were saying, they were setting up the companies,
5 and the profit had not been settled, and the settling
6 of the profit would have taken place by the actions of
7 Brennan and McGowan, their future partners.

8 .

9 I understand that this did take into account the full
10 mortgaging of the property, the leasehold and freehold
11 of the property that came around somewhere, give or
12 take, around about, of somewhere like ú250,000 to
13 Chase, and that formed one of the parts of the deal.
14 They did that, Brennan and McGowan, and I understand -
15 but in getting the 250 or whatever it was, that they
16 had to give added security for that.

17 .

18 Now, to get that amount, they had to give guarantees, I
19 think, and other - to get that. Now, that was the
20 first part of the scheme. Now, all I have to say, ask
21 you, Sir, is to bear with me. I am not one who - I
22 don't understand how this works out exactly.

23 .

24 It is, as I say, orchestrated in a way that apparently,
25 and when you have the opportunity of talking to Mr.
26 Owens, that this, this was a scheme that was in
27 operation at the time. It was a switching around, the
28 companies, and debt from one to the other, but what
29 there was - there was a definite tax advantage in
30 extracting, for the parties being able to extract the

1 sums of money out in a tax effective manner.

2 .

3 Now, that is what it was all about. So it was a, I

4 have to just say, a scheme.

5 238 Q. Sorry, Mr. Finnegan, I do not understand anything that

6 you have said for the last seven minutes. And you have

7 not addressed the particular point that I put to you,

8 which was a very simple one.

9 A. Yes, Sir.

10 239 Q. Isn't it obvious that whatever your agreement with

11 Brennan and McGowan, it was reached before the 23rd of

12 June, 1977, when Mr. Owens wrote that letter. That is

13 all I was putting to you.

14 A. I have been asked at that time - I can't say exactly

15 which time it was, that would I go, that they were

16 working on the, a scheme, and apparently I understand

17 now, didn't quite understand maybe at the time, or

18 maybe when you have the time to check this again, Sir,

19 that it would have been important to have a third

20 party, an independent third party involved in a scheme

21 like this for it to work through the lines of the

22 companies. And I am not quite clear on that, and

23 perhaps you could, you will be able to find out more.

24 240 Q. Mr. Finnegan, I am putting it to you straight, it is

25 obvious that that letter establishes, beyond the

26 possibility of argument, that whatever the nature of

27 the agreement you had reached with Mr. Brennan and

28 Mr. McGowan, it was reached prior to the date of that

29 agreement. Sorry, of that letter. And that what that

30 letter is doing is proceeding to put in place the

1 arrangements for this agreement?

2 A. At that time I had been asked, as far as I recollect,
3 to participate, but hadn't participated because it
4 hadn't been put into action.

5 241 Q. No, he was proceeding to put in place the arrangements
6 pursuant to your agreement with Brennan and McGowan.

7 A. No. I want to clear this up. Agreements with Brennan
8 and McGowan, at the time here, they were - you had,
9 first of all, Hugh Owens, the author of the scheme.
10 And you then had Brennan and McGowan, who were in
11 charge of what the deal would be. Like, they were
12 negotiating with their parties and with their connected
13 people.

14 242 Q. Mr. Finnegan, I am only trying to establish one thing.

15 A. Yes.

16 243 Q. And one thing at a time.

17 .

18 Do you agree or do you not agree that you had reached
19 agreement, whatever your agreement was, with Brennan
20 and McGowan, prior to Mr. Owens writing this letter?

21 A. But I can't say that I reached agreement.

22 244 Q. Does that mean your answer to my question is "no"?

23 A. To the best of my knowledge, because that only - when
24 he put the deal together when he put his package
25 together, and whatever that was, Sir, that was when --

26 245 Q. Mr. Finnegan, I am taking your answer as a no, unless
27 you wish to change it, because we have to move on.

28 A. All right, Sir.

29 246 Q. Now, Mr. Owens wrote a letter to Mr. Wheeler
30 instructing him to set up two companies of which you

1 were a one-third owner?

2 A. Mm-hmm.

3 247 Q. You told us this morning that that was done with your

4 knowledge and your consent?

5 A. I think, when you questioned me on it, and I nodded my

6 head, and I said it must have been.

7 248 Q. Are you now suggesting it wasn't?

8 A. No, if that was what it was at the time.

9 249 Q. Yes. Why was he setting up two companies with you as

10 a one-third owner?

11 A. Well, I think that these were two companies that were

12 going to participate in a scheme.

13 250 Q. And they did?

14 A. And they did.

15 251 Q. And the scheme that they participated in involved the

16 acquisition of the freehold interest in the Monkstown

17 land?

18 A. That was only one part of the scheme.

19 252 Q. It doesn't matter if it was only one part of the scheme

20 or not. The fact of the matter was part of the scheme

21 was the acquisition of Bouganville of the freehold

22 interest in the Monkstown land, and the payment of

23 ú350,000 by Green Isle for that interest?

24 A. That came about, that was the result of a number of

25 transactions that was documenting what had been done,

26 which included a number of, and I think you said you

27 were aware, you understood the scheme, that it did take

28 a lot of things to happen. And that is how it

29 resulted, but in the meantime, that all - I was a cog

30 in the middle of this.

1 253 Q. We can we leave aside the other transactions for a
2 moment.

3 A. That is the only --

4 254 Q. Let's just deal with the ones we know about.

5 .

6 We know that part of this scheme was the acquisition of
7 Bouganville of the freehold interest in the property?

8 A. Which was part of the scheme.

9 255 Q. Yes. Did you know that at the time or did you not know
10 that at the time?

11 A. I can't say that to you, Sir.

12 256 Q. Are you seriously suggesting that you didn't know at
13 the time that the scheme that Mr. Owens was putting
14 together, involved the acquisition by Bouganville, a
15 Jersey company, of the freehold interest in the nuns'
16 land?

17 A. I can't say I was part of - I want you to understand
18 this, Sir. I was part of, if you like, of a cocktail
19 which had been - I was asked to enter into this. I - I
20 hear now that it was, I believe it was important to
21 have another party. I wasn't, and I can't say to you
22 any one bit if this is what was done, Sir, just a
23 acquisition of a freehold just like that. I can't say
24 I was aware of that.

25 257 Q. Were you aware of the fact that the nuns signed a
26 contract in December, 1976, to buy the freehold of
27 their land in Monkstown?

28 A. Whatever you say the time, but the deal --

29 258 Q. Were you aware?

30 A. What do you mean?

1 259 Q. Were you aware of the fact that the nuns signed a
2 contract in December of 1976 to buy the freehold
3 interest in their lands in Monkstown?

4 A. Yes.

5 260 Q. Were you aware of the fact that in June of 1977, they
6 entered into an agreement to sell the benefit of that
7 contract to somebody else?

8 A. Yes. Well, from the time that passed.

9 261 Q. Were you aware of the fact that the "somebody else"
10 that bought the freehold interest, pursuant to the
11 nuns' contract, was Bouganville, one of the Jersey
12 companies that you owned?

13 A. Well, now, as it transpires, that was part --

14 262 Q. Were you aware, I am talking about?

15 A. I am not sure if I was aware then, Sir.

16 263 Q. Are you seriously suggesting, Mr. Finnegan, to this
17 Tribunal that you, in your capacity as auctioneer for
18 the nuns, selling this land for them, selling their
19 leasehold interest, to Brennan and McGowan --

20 A. Yes, Sir.

21 264 Q. -- entered into a scheme with Brennan and McGowan,
22 involving the setting up of two Jersey companies, one
23 of which bought the freehold land of, freehold interest
24 in the same land, and you did not know that?

25 A. No, Sir. Now, a moment - I think that where you are
26 coming to here, Sir - I want to say something to you.

27 265 Q. Are you telling me that you know, Mr. Finnegan, that is
28 the only question --

29 .

30 MR. HUSSEY: If he can be allowed to answer the

1 question, please.

2 .

3 266 Q. MR. HANRATTY: I am trying to keep him to the question

4 Sir.

5 .

6 Just answer the question that I put to you. Did you

7 know?

8 A. I am not sure at what stage that took place.

9 267 Q. What took place?

10 A. As you say, the contract was entered into with the

11 freehold.

12 268 Q. It was in June?

13 A. June.

14 269 Q. The nuns agreed in June to transmit their interest

15 under the contract to buy the freehold to somebody

16 else, in June, and they did, in fact, transmit it, and

17 Bouganville did, in fact, buy the freehold pursuant to

18 that contract?

19 A. Well --

20 .

21 MR. HUSSEY: This witness has already given evidence

22 contrary to that.

23 .

24 CHAIRMAN: Put that again.

25 .

26 270 Q. MR. HANRATTY: The question I am asking you is: Is it

27 your evidence to this Tribunal that you did not know

28 that Bouganville Investments Limited, a company of

29 which you were a one-third beneficial owner, a Jersey

30 company, of which you were a one-third beneficial

1 owner, bought the freehold interest in the lands, in
2 1977?

3 A. Sir, the actual dates and times of this scheme being
4 put into operation I am vague on. I was not kept aware
5 bang, bang, bang. I was asked to come in on the scheme
6 that I talked about. I am not, and I can't say to you
7 that I knew they were on a particular date. I wasn't.

8 271 Q. Your answer, therefore, is that in 1977 you did not
9 know that the freehold in the nuns' land in Monkstown
10 was bought by a Jersey company, of which you were then
11 a one-third owner. Is that your evidence?

12 A. Well, I think that you are going to find out about
13 this, Sir, that at the time I didn't, I wouldn't have
14 known that that was the situation, if it had - you see,
15 this was being - remembering something --

16 272 Q. Mr. Finnegan, please answer my question.

17 A. I --

18 273 Q. I am going to ask it again.

19 A. Yes.

20 274 Q. Is it your evidence to this Tribunal that you did not
21 know, in 1977, that a Jersey company, of which you were
22 a one-third owner, bought the freehold interest of the
23 nuns' land in Monkstown? Is that your evidence?

24 A. That I wouldn't - I wouldn't have known if they put it
25 in place. They could have put it in place, but I
26 wouldn't have to have known, Sir.

27 275 Q. I don't care whether you would have had to have known
28 or not. What I am trying to establish is --

29 A. No --

30 276 Q. -- is what you are saying as to whether you did know or

1 not. I don't care what you say. I just want to get
2 the answer on the transcript.

3 .

4 Is it your answer - I am going to ask you the question
5 for the third time. Is it your evidence to this
6 Tribunal that you did not know in 1977 that a Jersey
7 company, of which you were a one-third owner, acquired
8 the freehold interest of the nuns' land in Monkstown?

9 A. I was not aware at that time, but I might have been
10 made aware later, Sir.

11 277 Q. When do you say you first became aware that the
12 company, of which you were a one-third owner, acquired
13 the freehold interest of the nuns' in Monkstown?

14 A. I can't tell you, Sir, because I wasn't kept informed
15 of this.

16 278 Q. Was it in 1977?

17 A. Really, I am only going back. Now, anything I am
18 answering, I am answering on something that I have seen
19 or been told. It is not my recollection. I wouldn't
20 have recollected. I - remembering, Sir, that I was not
21 - it wasn't something that I was negotiating. It was
22 something that had been - it was a scheme that could
23 have been artificial or it could have been whatever, or
24 whatever, but it was something that would have been
25 packaged together by Hugh Owens.

26 279 Q. Let's be unambiguously clear about this. The question
27 was framed about 1977?

28 A. Yes.

29 280 Q. Now, are you absolutely clear that at no time in 1977,
30 in other words, let's say up until the 31st of

1 December, 1977, you did not know that your one-third,
2 the Jersey company of which you were a one-third owner,
3 acquired the freehold interest of the nuns' land in
4 Monkstown? Is that your evidence?

5 A. I was - my evidence is, Sir, that at the time I
6 wouldn't have been aware of the stroke-by-stroke, and
7 you will hear that from Owens, if you ask him, I
8 wouldn't have been kept informed. I think all of that
9 would have been slotted in - I think that was all - I
10 think it was all just packaged, the scheme.

11 .

12 Now, when they actually put the things into place, I
13 couldn't say, I couldn't say when. I really couldn't.

14 But, perhaps, as I say, when you are talking to Mr.

15 Owens --

16 281 Q. I am asking you, Mr. Finnegan. Mr. Owens can answer
17 for himself.

18 A. I don't know, Sir.

19 282 Q. You were a one-third participant in this scheme?

20 A. I was.

21 283 Q. You are not going to dodge it by passing it off to Mr.

22 Owens. You were a one-third owner of these two Jersey
23 companies?

24 A. I am not passing --

25 284 Q. We know for a fact that one of these Jersey companies

26 bought the interest, the freehold interest of lands in

27 Monkstown, which you had sold on behalf of the

28 leasehold, of which you had sold on behalf of your

29 client to your partners in these Jersey companies?

30 A. The actual implication of this, the implementing of

1 this, I can't say to you the exact dates on which they
2 were done.

3 285 Q. What did you think the Jersey companies were for?

4 A. Sir, it was part of an overall scheme that - to extract
5 the future profits. I have mentioned this so many
6 times to you, Sir. The future profits from the benefit
7 of the development, the future development of the
8 properties.

9 286 Q. What did you think Green Isle Holdings Trust Limited
10 was paying ú350,000 to one of your Jersey companies
11 for?

12 A. I think it is - they were getting - this figure, first
13 of all, came around by the negotiation with the
14 parties, and, of course, that you know that Brennan and
15 McGowan were - Brennan and McGowan were holders in
16 Green Isle --

17 287 Q. Please answer the question, Mr. Finnegan. I will ask
18 it again. What did you think Green Isle Holdings Trust
19 Limited was paying ú350,000 to one of your Jersey
20 companies for?

21 A. This was part, this was the result of the scheme and
22 the transferring of the properties and mortgaging of
23 the properties, and extracting the future profits.

24 .

25 CHAIRMAN: Can we get back to the question.

26 A. Yes.

27 .

28 CHAIRMAN: What did Green Isle get for ú350,000? Now,
29 a simple exercise. What did they get in return? It is
30 not what it was part of. What did they actually get

1 when they passed over the cheque? What was the
2 consideration for the cheque for ú350,000? That's what
3 the question is.

4 A. Well, if it is in the contract, it was for --
5 .

6 CHAIRMAN: Isn't the answer patently that they got a
7 conveyance of the freehold interest that Bouganville
8 had acquired from the nuns, from the - first of all,
9 from the Pembroke Estate and the nuns? Isn't that what
10 they got?

11 .
12 Now, I am trying to reduce - I am not trying to trap
13 you in any way. I just want to get this clarified.

14 Isn't that what the actual - that came across the
15 table, when the sale was closed, ú350,000 came to
16 Jersey, and the fee simple moved from Bouganville to
17 Green Isle --

18 .
19 MR. HANRATTY: Green Isle Holdings.

20 .
21 CHAIRMAN: Isn't that what happened? Now, why it
22 happened is a different matter. Isn't that actually
23 what did happen?

24 A. As far as I am aware, Sir.
25 .

26 CHAIRMAN: Let's start from that. Go back to the
27 questions. Now, we have got that much cleared. Now,
28 you say, you are telling us when you got to know this,
29 and all that. I am not involved in that. I only want
30 to know what you thought was happening at the time.

1 A. I wasn't following this. It may seem strange now, but
2 this is a long, long time ago, a scheme that, as I said
3 to you, I was asked to participate in, and which was
4 run and orchestrated completely by - we seen in other
5 cases, where - by Mr. Owens.

6 .
7 Now, if this is the result of what had happened at the
8 end of the day that is what it was, but lots of things
9 had happened in the meantime. It was, I suppose,
10 putting on paper what the result of all the
11 transactions that had taken place in the meantime.

12 288 Q. Nothing took place in the meantime. All that happened
13 was that Bouganville, pursuant to the contract which
14 was acquired from the nuns, did take a conveyance of
15 the freehold interest and paid for it.

16 .
17 MR. HUSSEY: I am sorry --

18 .
19 289 Q. MR. HANRATTY: Then the nuns subsequently were paid the
20 balance of their ú200,000 for the leasehold interest.

21 And the other thing that happened was that Green Isle
22 took a conveyance through a particular --

23 .
24 MR. HUSSEY: Device.

25 .
26 MR. HANRATTY: -- route of the freehold interest from
27 Bouganville. That is what happened, what is
28 complicated about that?

29 A. The actual mechanics of this, Sir, I am not quite clear
30 if it was just that straightforward. I think along

1 with that there was some obligations on that company to
2 take over a mortgage as well.

3 290 Q. What company?

4 A. I am not quite sure of the company.

5 291 Q. Well, Bouganville was one, Rapallo was the other, and
6 Green Isle was the purchasing company in Ireland?

7 A. Mm-hmm.

8 292 Q. What obligation are you talking about?

9 A. Well, I'll tell you, I think, from what I understand,
10 that there was - you see, the leasehold had been
11 mortgaged.

12 293 Q. What has that got to do with this?

13 A. It was part of the - it is part of the overall scheme.

14 294 Q. Mr. Owens' scheme is quite self-contained to the extent
15 that he arranged an exchange of correspondence, which
16 set out what was going to happen, and it did happen?

17 A. Mm-hmm.

18 295 Q. He arranged that Bouganville should acquire the fee
19 simple, which it did. He arranged that Bouganville
20 would have an indebtedness to Rapallo, which it did.
21 He arranged that Bouganville would sell its shares to
22 Green Isle and then liquidate, and that the title in
23 the property would be conveyed to Green Isle through a
24 distribution in specie, which was done. And he
25 arranged that the consideration for Green Isle
26 acquiring the shares and therefore ultimately the
27 title, was ú350,000, which would have to be sent over
28 to Jersey. And he arranged, that after payment of
29 certain expenses, he would receive an equal ú100,000
30 share, plus an additional ú5,000 for yourself. He

1 arranged all of that, and that happened. That was Mr.

2 Owens' scheme.

3 .

4 There was another little refinement where he arranged

5 for a ú20,000 loan on a temporary basis, to show that

6 Bouganville's cash assets were greater than its land

7 assets. That's the total extent of Mr. Owens' scheme,

8 and that is the beginning and end of Mr. Owens' scheme.

9 .

10 MR. HUSSEY: I am sorry.

11 .

12 MR. HANRATTY: And Mr. Owens' scheme was finished when

13 you got your ú105,000 and when the other two got their

14 money.

15 .

16 MR. HUSSEY: I wonder --

17 .

18 296 Q. MR. HANRATTY: Was that the end of the participation of

19 Bouganville and Rapallo, so far as this property was

20 concerned, freehold or leasehold?

21 .

22 MR. HUSSEY: I am sorry, Sir, if I can be allowed to

23 interject?

24 .

25 CHAIRMAN: Yes.

26 .

27 MR. HUSSEY: Mr. Hanratty has given his understanding

28 of what he believes to be Mr. Owens' scheme. Mr.

29 Finnegan thinks that the scheme may involve other

30 factors, including the taking out of a loan facility,

1 for example, with the Chase, with the Chase Bank, and
2 him putting money in.

3 .

4 MR. HANRATTY: Sorry, I am objecting to this, Sir.

5 Mr. Hussey is putting words into this witness's mouth.

6 This witness is perfectly capable of giving his own
7 evidence. If he says there were other features, he can
8 say it. I suggest that, Sir, it is improper.

9 .

10 MR. HUSSEY: He said it ad nauseam.

11 .

12 THE CHAIRMAN: Please, Mr. Hussey, if you want to make
13 this case, in due course of time you have every
14 opportunity to do so.

15 .

16 A premise is being put forward here by Counsel for the
17 Tribunal, and it has essentially been accepted by the
18 witness - when I say "essentially", in principle it has
19 been accepted.

20 .

21 Now, there may be refinements which are important, and
22 no doubt which you will illustrate, but we must proceed
23 on the basis of this witness is giving evidence. In
24 due course of time, if you think he is in error or has
25 failed to justify himself or to appropriately explain,
26 by all means correct him in the course of
27 re-examination.

28 .

29 MR. HUSSEY: I am careful of my obligation to you, Sir,
30 and to this Tribunal not to interject in order to help

1 the witness.

2 .

3 What Mr. Hanratty has said is that Mr. Owens' scheme

4 was 'X', and no more than 'X', and I - as a definite

5 fact. I am saying that that is not fair, when this

6 witness has already said there were other factors

7 involved. He may not have been able to explain it to

8 Mr. Hanratty's satisfaction.

9 .

10 CHAIRMAN: Mr. Hussey, without interrupting you, it is

11 manifest that there had to be other facts because the

12 money, the borrowed monies had to be paid for.

13 .

14 MR. HUSSEY: Exactly. Exactly.

15 .

16 CHAIRMAN: Now, that is a different, that is a second

17 tier - I mean, I am conscious of the fact you can't

18 borrow money and forget it.

19 .

20 MR. HUSSEY: Exactly.

21 .

22 CHAIRMAN: Now, that is a different matter. It is not

23 something that has to be folded in at this stage. It

24 is, in my opinion, I beg your pardon, as I see it, it

25 is presumably tier No. 2 before the ultimate

26 conclusion, and it's - what the witness has been

27 describing as the front-loading of the profit.

28 .

29 MR. HUSSEY: Yes.

30 .

1 CHAIRMAN: Because the property, as I understand it,
2 was in the first instance in the amount of money
3 borrowed. It was contained in that, and it had to be
4 paid for by those who constructed and sold the houses.

5 .

6 MR. HUSSEY: Yes.

7 .

8 CHAIRMAN: That is as I understand it. I hope I have
9 got the thing basically correct.

10 .

11 MR. HUSSEY: I think you have. And I think the
12 importance of the loan is absolutely clear, that it was
13 part of --

14 .

15 CHAIRMAN: Nobody is stopping you showing the
16 importance of the loan, but please, let's go forward
17 piece-by-piece. Apart from anything else, I don't want
18 to get confused myself.

19 .

20 MR. HUSSEY: Okay. Thank you Sir.

21 .

22 CHAIRMAN: Sorry for interrupting.

23 .

24 297 Q. MR. HANRATTY: I am putting to you, Mr. Finnegan, that
25 once you got paid your ú105,000, and Messrs. Brennan
26 and McGowan got paid their ú100,000, that was the end
27 of Mr. Owens' scheme, fullstop. There was nothing else
28 other than the fact that the monies, which were sent
29 over to Jersey, had been borrowed by Green Isle
30 Holdings Trust Limited. But so far as Mr. Owens'

1 scheme was concerned, there was nothing left
2 outstanding. Neither of these two Jersey companies had
3 anything further to do with the lands in Monkstown,
4 good, bad or different, leasehold or freehold?

5 A. Well, I can't say that, Sir, because I don't - I can't
6 give you the full thing. I think Your Lordship
7 explained - I think what you were saying, that I think
8 that was - that there was obligations - I am not clear
9 of exactly, but I think you have got a grasp of it,
10 Sir.

11 298 Q. Well, I haven't, Mr. Finnegan. Will you please explain
12 it to me. What was left after you got ú105,000 in Mr.
13 Owens' scheme? What was left? It was finished?

14 A. Yes, I think that was --

15 299 Q. So it started and finished in 1977?

16 A. Well, when you say "finished", I think that the
17 participants, the participants in the company, the
18 scheme to extract the forward profits was finished
19 then.

20 300 Q. What company?

21 A. Or the scheme, the scheme finished - well, I think it
22 did.

23 301 Q. I have told you what the scheme is, Mr. Finnegan. The
24 scheme involved the establishment of two Jersey
25 companies?

26 A. No --

27 302 Q. And the creation of an indebtedness of ú350,000 of one
28 to the other, and of the passage of ú350,000 from an
29 Irish company to the Jersey company, to get the
30 freehold interest of the nuns' land?

1 A. Now, can I come in here, Sir --

2 303 Q. That was done in December of 1977. And when it was
3 done, I am suggesting to you the scheme was finished.

4 It was defunct. Bouganville was wound up and Rapallo's
5 name was changed to Victa, which was used for something
6 else subsequently.

7 A. Let's - I want to clarify something. I think you are
8 coming to, going around in this, Sir. What I want to
9 say is, are you - do you understand that this
10 transaction was absolutely clear from the first one,
11 and that this was purely a transaction to extract
12 future profits out of this?

13 304 Q. Mr. Finnegan, there is not a single shred of evidence
14 to support that ludicrous proposition.

15 .

16 MR. HUSSEY: I am sorry, Sir --

17 .

18 305 Q. MR. HANRATTY: Not one shred of evidence.

19 .

20 MR. HUSSEY: I am going to he interject most
21 vehemently. I notice it is taken down from the screen,
22 page 147 being the directions from Owens to Mr. Wheeler
23 of exactly what Mr. Finnegan is talking about, that the
24 second company will take an assignment of the contract
25 and complete the purchase and give the first company a
26 profit. That is exactly what Mr. Finnegan is saying.

27 To suggest that there isn't a shred of evidence to
28 support this is just so far beyond belief at this
29 stage, that I can't believe that Mr. Hanratty is
30 continuing with this.

1 .

2 MR. HANRATTY: Sorry, Sir. I am sorry, I didn't
3 realise that Mr. Hussey wasn't finished.

4 .

5 MR. HUSSEY: Am I to be allowed to continue?

6 .

7 CHAIRMAN: Mr. Hussey, would you just complete what you
8 want to say, please.

9 .

10 MR. HUSSEY: Mr. Hanratty has suggested to this witness
11 that there is no evidence to support his view, or his
12 understanding of the scheme, was that he was to take
13 out the future profit. Nothing could be clearer, I
14 would suggest, from this directive or this advice from
15 Mr. Owens to Mr. Wheeler. That is exactly what was
16 going on here, that the future profit which would
17 ultimately be earned by Green Isle or Lansdowne, as we
18 know in fact happened, was taken out by way of loan
19 early, the loan, of course, to be repaid, as Your
20 Lordship rightly pointed out, earlier on. Just because
21 the scheme ended, doesn't mean the loans don't have to
22 be repaid.

23 .

24 What Mr. Finnegan has suggested is that he was taking
25 out the draw-down of the early profit, as were Mr.
26 Brennan and Mr. McGowan. To suggest that there isn't a
27 shred of evidence is just so far away from the reality,
28 and so far away from what we have come to understand of
29 this scheme, that I - it is so unfair to ask this
30 witness or to suggest to this witness that he is, that

1 there is not a shred of evidence to support what he is
2 saying, is - I mean, I just can't believe it. The
3 evidence is right there. Right before our very eyes,
4 before the scheme even came into place, that this was
5 exactly the purpose of the scheme.

6 .
7 CHAIRMAN: Well, my view of this matter is that what
8 Mr. Hussey is saying may or may not be correct. It is
9 a matter for him to either deal with by way of
10 re-examination or in his submissions to me based upon
11 the documents and based on his construction of the
12 documents, but it is not a basis for interrupting Mr.
13 Hanratty in the course of cross-examining this witness.
14 .

15 MR. HUSSEY: No, I am sorry, Sir, Mr. Hanratty has
16 suggested to the witness that there wasn't one shred of
17 evidence to support what he was saying. And I am
18 saying that is not a fair question, in the light of the
19 very document that Mr. Hanratty has put up.

20 .
21 And I do think I am entitled to interrupt when I feel
22 that an unfair question is being asked. And I try my
23 best to bite my tongue in order that the Tribunal --

24 .
25 CHAIRMAN: The tongue is getting a bit well chewed, but
26 however, but that apart --

27 .
28 MR. HUSSEY: Touche, touche.

29 .
30 CHAIRMAN: That apart, I have no wish in any way to

1 restrict you in performing and looking after your
2 client. At the same time I can't have a witness's
3 answer being interrupted. I don't say you do it
4 intentionally, to establish for the witness the
5 premises which he should, with which he should answer
6 Mr. Hanratty, but I think we would get along further if
7 we could get Mr. Hanratty's version denied by the
8 witness and then get you to put up to the witness a
9 particular proposition. I am then left with two
10 versions; I can select between the two, and I know the
11 basis on which both are being put forward.

12 .

13 At the moment, if I go on for much longer, I will get
14 so confused that I won't know what I am talking about.

15 .

16 MR. HUSSEY: I am sorry, Sir.

17 .

18 CHAIRMAN: I really do ask - I do my best to be
19 courteous.

20 .

21 MR. HUSSEY: Thank you, Sir. I'll try my best.

22 .

23 CHAIRMAN: Mr. Hanratty.

24 .

25 306 Q. MR. HANRATTY: Mr. Finnegan, let's just look at this

26 third paragraph of this letter on which your counsel is
27 placing such reliance. Let's just understand what it
28 means, so that nobody in the room is in any doubt.

29 .

30 In the first two paragraphs he talks about setting up

1 two Jersey companies. Do you see that?

2 A. Yes, Sir.

3 307 Q. Each of which you are a one-third owner of. You see
4 that?

5 A. Yes, Sir.

6 308 Q. He then says:

7 .
8 "The first company will enter into a contract to
9 purchase a ground rent for ú10,000. The second company
10 will take an assignment of the contract and complete
11 the purchase and give the first company a profit, the
12 amount of which has yet to be determined. When this
13 second company has become the registered owner of the
14 ground rent, an Irish trading company will buy its
15 shares and the second Jersey company will then be
16 liquidated and there will be an in specie distribution
17 of the rent to the Irish trading company."

18 .

19 Did all of that happen or did it not?

20 A. I don't know, Sir, if it did happen, but if this is
21 what the records show, that it did --

22 309 Q. No, it doesn't. The record of the Tribunal shows that
23 it did not happen, that was Mr. Owens' original plan,
24 but he changed it.

25 A. Oh --

26 310 Q. The first company did not enter into a contract to buy
27 the ground rent for ú10,000. Sorry, the second company
28 did not take an assignment of the ground rent. The
29 first company did enter into an agreement to buy the
30 ground rent, and did so. Bouganville did so. But the

1 second company did not take an assignment of the
2 contract and complete the purchase and give the first
3 company a profit. That did not happen. He changed it.
4 He decided at some stage instead, the precise point of
5 time which we have been unable to identify, but he
6 definitely decided that the first company would enter
7 into a management agreement with the second company,
8 where management services would be provided at ú10,000
9 per month for two years and 11 months. That is what
10 actually happened.

11 A. All right.

12 311 Q. So that paragraph, on which your counsel is placing
13 such reliance is totally and utterly irrelevant to what
14 actually subsequently occurred.

15 .

16 Now, let's deal with what actually did subsequently
17 occur. What did occur was that through the medium of
18 this agreement which was executed, Rapallo Limited
19 became owed ú350,000 by Bouganville. And it was in
20 consideration of the discharge of that indebtedness by
21 Green Isle that Bouganville transmitted the fee simple
22 interest. We know, as a fact, that that has happened.

23 We have been canvassing these facts for the last three
24 or four months and nobody has ever suggested that that
25 is not the case, including your own counsel.

26 .

27 Now, let's just deal with the facts. That is what
28 happened. And what I want to ask you, Mr. Finnegan, is
29 did you know that Bouganville, the company of which you
30 were a one-third owner, acquired the interest of the

1 nuns' land in Monkstown, the freehold interest of the

2 nuns' land in Monkstown?

3 A. Well, if it was part of the scheme, that's what

4 happened. That was all in the power of Owens.

5 312 Q. Did you know --

6 A. No, I didn't - I can't say that I knew that that

7 actually happened.

8 313 Q. Did you know that the ú350,000, of which you received

9 105, came from Green Isle Holdings Trust Limited?

10 A. I have to say to you now, when you mentioned - if you

11 had asked me before I came here, did you remember any

12 of these names of companies, I wouldn't have remembered

13 the names of them. You are saying --

14 314 Q. Did you know that it came from the company that had

15 previously agreed to buy the nuns' leasehold interest

16 in Monkstown, or to put it another way, did you know

17 that it came from a company with which Brennan and

18 McGowan were associated?

19 A. Brennan and McGowan were associated, yes, Sir.

20 315 Q. Yes. And did you know that it had come from the same

21 company, the same Brennan and McGowan associated

22 company that had bought the nuns' land or was buying

23 the nuns' land because it wasn't completed at that

24 stage?

25 A. I wouldn't - I am not actually - I am not dodging

26 anything. I am not just following all of this, Sir. I

27 am finding it quite difficult myself. I - but that is

28 what did happen --

29 316 Q. That is what did happen. It came from Green Isle, it

30 wasn't over to Jersey, it was divided up between the

1 three of you. That is what happened. You knew it came
2 from a Brennan and McGowan associated company. My most
3 recent question was: Did you know that it came from
4 the Brennan and McGowan company that was buying the
5 nuns' land, the leasehold interest in the nuns' land?

6 A. I remember the name - I wouldn't be --

7 317 Q. Leaving aside the name. Brennan and McGowan --

8 A. I knew that they had an interest, Brennan and McGowan
9 had an interest in the company that was taking, that
10 was paying the price for the future profits.

11 318 Q. Mr. Finnegan, you knew that, we will call it
12 generically, Brennan and McGowan were buying the nuns',
13 the leasehold interest in Monkstown, you had sold it to
14 them?

15 A. Yes, Sir.

16 319 Q. You knew that?

17 A. Yes, Sir.

18 320 Q. As I understand your evidence, you knew that the
19 €350,000 that went over to Jersey came from Brennan and
20 McGowan?

21 A. Yes.

22 321 Q. I am using it in a generic sense.

23 A. Yes, and others.

24 322 Q. Yes. The other people involved in the Brennan and
25 McGowan company.

26 .

27 Why did you think this Brennan and McGowan company was
28 sending over €350,000 and giving you a third of the
29 divvy-up?

30 A. Because at that stage the scheme was being implemented,

1 that there was money, that this apparently was the way
2 that they were - that they were transferring that money
3 that came in, was going back over to Jersey, and that
4 Brennan and McGowan were participating in that, and so
5 was I.

6 323 Q. Why did you think this Brennan and McGowan associated
7 company was sending ú350,000 over to one of the
8 companies of which you were a one-third owner in
9 Jersey?

10 A. Because Brennan and McGowan had organised that they
11 would pay that sum of money.

12 324 Q. Yes, but for what? What did you think it was for?

13 A. This - that they would end up eventually with the land.

14 325 Q. The freehold interest in the land?

15 A. Sir, I tell you what, I am not quite sure.

16 326 Q. Well, they already had their contract for the leasehold
17 the previous year. The only thing that was holding
18 that up was the planning permission. So we are now
19 talking about this company sending over ú350,000 over
20 to Jersey, and what your understanding was the reason
21 for that?

22 A. When I said to you, the reasoning for that was - this
23 was part of the scheme that was involved, involving the
24 future profits.

25 327 Q. But they were paying over ú350,000 to Jersey. What was
26 your understanding as to why they were paying ú350,000
27 to one of your Jersey companies?

28 A. Because Brennan and McGowan had orchestrated that
29 figure. That was the figure that they wished to
30 extract from the future profits of the development.

1 328 Q. Right. The future profits?

2 A. Yes.

3 329 Q. Why were they giving you €105,000 of the future
4 profits?

5 A. Well, apparently, Sir, that in the situation I had - I
6 was invited to come into this scheme, and to come into
7 this scheme, and this is something, even looking at it
8 now - at the time I was asked to come in, and I feel -
9 I understand that - as I said to you this sort of
10 scheme was operated. You could find out from other
11 people, that this is a sort of scheme that was taking
12 place around this time.

13 .

14 CHAIRMAN: Let's not worry about where else it was
15 taking place. Let's just deal with this scheme here
16 and now and not worry about what was the culture of the
17 time.

18 A. Yes. Well, I - all I can say to you, Sir, I cannot
19 give you a detailed, detailed, detailed blow, because
20 the scheme that I would know that I was invited into,
21 and this was a scheme whereby the Brennan and McGowan -
22 it suited, apparently, to have a third party coming in,
23 because they were transferring, they were dealing with
24 the contract on the land, the leasehold on the land,
25 and their other, the other contracts that they were
26 manoeuvring around the place. And if there wasn't
27 another party in, there wasn't the associated - so I
28 understand. I can't give you the blow by blow on this.

29 330 Q. Let's look at it another way, Mr. Finnegan. I have
30 told you what the scheme was - I told you when it

1 started and I told you when it finished. I told you
2 what happened in between. I told you that it finished
3 in December of 1977, when the monies were distributed.

4 .

5 Now, you tell me what other features there were of this
6 scheme that are not referred to in any of these
7 documents that we have had?

8 A. What I can say to you is this, Sir, and I can say to
9 you no more, is this: The scheme which I participated
10 in was a scheme to extract future profits, it did not
11 reflect anything to do with market value of the lands.
12 It was a scheme that was prepared and orchestrated by
13 Hugh Owens. It did not - I want to clear this once and
14 for all --

15 331 Q. Future profits of what?

16 A. Future profits of the development of the land.

17 332 Q. Right. Can you point to any single document in those
18 thousands of documents we have seen about this
19 particular transaction, referring to any scheme
20 involving future profits?

21 A. Well, I think when you look at the thing that - on that
22 Hugh Owens letter, it says that it is anticipated that
23 the figure will be --

24 333 Q. No, no. He is talking about a profit on the
25 assignment. Let's have 137 up again. That is - we
26 have already agreed that that has nothing to do with
27 future profits?

28 A. No, no, Sir.

29 334 Q. Mr. Finnegan, we are talking about future profits of
30 the development now. That says nothing about any

1 future profits of any development?

2 A. That was reflected on - that was cash - that was the
3 profit.

4 335 Q. Look - sorry, Mr. Finnegan. Look at the paragraph. Do
5 you suggest that that has anything to do with future
6 profits of the development?

7 A. Whatever way they worded it, that's what it was. That
8 was --

9 336 Q. That, as I have already pointed out to you, is entirely
10 and completely irrelevant. It is a proposal that was
11 never pursued and never implemented, and it is a
12 proposal that the first Jersey company take an
13 assignment from the second Jersey company and thereby
14 sell it at a profit. It didn't happen. And it is not
15 talking about profits of the development. It is
16 talking about profit on the sale of the freehold
17 interest for 10 and selling it on for 350. It is not
18 talking about anything else and it didn't happen
19 anyway.

20 .

21 So now, let's just talk about the future profits of the
22 development. Can you point to one single document
23 making any reference to a scheme involving the future
24 profits of this development?

25 A. Well, Sir, can I ask you a question?

26 337 Q. No, Sir, you can't.

27 A. Are you saying to me, Sir --

28 338 Q. I am asking you the question, Mr. Finnegan, and I am
29 asking you for an answer to it.

30 A. That was not value, Sir, this was part of - I can't say

1 any more than this. This was part of a - the scheme
2 which Hugh Owens had brought around. That is where the
3 sum of money came from.

4 339 Q. My question, Mr. Finnegan, was: Can you point to any
5 single document which makes any reference to any scheme
6 involving future profits of the development?

7 A. Well, this - well, first of all, there is no way, first
8 of all, that the 10 - that the freehold was worth
9 ú350,000.

10 340 Q. That is not my question.

11 A. What is it, Sir?

12 341 Q. Can you point to any single document which contains any
13 reference to any scheme involving future profits of the
14 development?

15 A. Well, this is what he was bringing about, putting into
16 position.

17 342 Q. I take that to be a "no" answer. You can't point to
18 any document, and before we pass on, can I leave it at
19 that on the transcript, you cannot point to any
20 document, isn't that right?

21 A. Well --

22 343 Q. The only scheme that we know about is this scheme that
23 Mr. Owens put in place, and which was, in fact,
24 implemented, and which culminated in you receiving
25 ú105,000? That was the only scheme?

26 A. I want to put on record, Sir, one thing; the fair price
27 for the lands that were paid, that were bought by
28 Brennan and McGowan was ú220,000. The question of -
29 and no matter how you try and question me, Sir, or try
30 and have my mind muddled, I won't have it, Sir. I will

1 tell you straight down the line that this was a scheme,
2 and even when you wait to get Owens into the stand
3 here, and you can't, it was - and I tell you straight,
4 this was not anything to do with passing on an enhanced
5 value of any kind. It was orchestrated and calculated
6 in a scheme which had - it is complicated, but I can't
7 give you the full blow-by-blow, but I was only brought
8 into the middle of this, which is more complicated,
9 Sir, when you mentioned it.

10 .

11 And I want to put that - I want to put that point down
12 firmly, because I think this is coming - you are coming
13 around, Sir, which is something that is not fact. I
14 don't want you to misunderstand it either.

15 344 Q. Well, if you want to take a break, Sir. After that we
16 will go through Mr. Owens' instructions and just have a
17 look at that.

18 .

19 CHAIRMAN: Take a break for five or six minutes.

20 .

21 THE TRIBUNAL THEN ADJOURNED FOR A SHORT RECESS AND
22 RESUMED AGAIN AS FOLLOWS:

23 .

24 345 Q. MR. HANRATTY: Subsequent to that letter, Mr. Finnegan,
25 that's the letter of the 23rd of June, Mr. Owens
26 followed through, having been told by Mr. Wheeler of
27 Bedell & Cristin that his instructions with regard to
28 the establishment of these two companies had been
29 complied with, and that two companies had, in fact,
30 been established, he wrote again on the 7th of July,

1 1977. If we could have page 153.

2 .

3 And may I remind you, Mr. Finnegan, what we are talking
4 about here is Mr. Owens' scheme and this is the only
5 scheme that we know about.

6 .

7 And in that letter he said to Mr. Wheeler - at this
8 stage you can see that on the heading of the letter he
9 now has the names of the two companies that he has
10 formed, of which you were a one-third owner. Do you
11 see that?

12 A. Yes, Sir.

13 346 Q. "Dear Mr. Wheeler, Thank you for your letter of the
14 29th of January.

15 .

16 With reference to paragraph two of that letter, the
17 persons with whom I have had most dealings in Royal
18 Trust are Mr. Humpleby and Mr. Charles" - something or
19 other - "while not deliberately unhelpful I have found
20 them to be totally tied up in red tape. In that
21 connection I would only need ú20,000, back-to-back,
22 from 3rd August for two weeks."

23 .

24 That is that little ú20,000 short-term loan refinement
25 that I mentioned to you that we needn't get concerned
26 about.

27 .

28 "There will be three Dublin solicitors acting on this
29 case. The first is Vincent and Beatty, 67 Fitzwilliam
30 Square, Dublin 2, who act for the Sacred Heart Nuns,

1 who have a contract for the purchase of the freehold of
2 their property.

3 .

4 The second firm will be Young O'Reilly, Solicitors, 1
5 Lower Leeson Street, Dublin 2, who will act as your
6 agents in the investigation of title, etc. on the
7 purchase of the property.

8 .

9 The third firm will be Miley & Miley, Solicitors, 12
10 South Frederick Street, Dublin 2, who will act for the
11 ultimate purchaser of the shares in Bouganville.

12 .

13 Since I wrote to you on the 23rd of June, I have had
14 consultations with solicitors over here, and the
15 revised and final scheme is enclosed. Bouganville will
16 take the property direct without going through Rapallo,
17 and Rapallo will take its profit by entering into a
18 management agreement with Bouganville." That is the
19 point where the third paragraph of the letter of the
20 23rd of June is changed.

21 .

22 Do you see what I am saying?

23 A. Yes I do, Sir.

24 347 Q. So the third paragraph of the 23rd of June is
25 completely, utterly and absolutely irrelevant, because
26 it didn't happen, and what actually happened is what he
27 is now saying in this paragraph in this letter. Do you
28 see that?

29 A. Yes, I do.

30 348 Q. And we know that the third paragraph, or that the third

1 paragraph of this letter is, in fact, what was
2 subsequently done. Isn't that right?

3 A. So I believe, Sir.

4 349 Q. There was a management agreement entered into,
5 involving a consideration of ú350,000?

6 A. Yes, Sir.

7 .

8 MR. HUSSEY: I am sorry. Just again and again I have
9 tried, I have tried to restrain myself.

10 .

11 We have heard through the cross-examination of both Mr.
12 Brennan and Mr. McGowan that this management agreement
13 never actually came into operation, but that it was
14 just simply used as a mechanism to create debt, and as
15 a mechanism to take profit. It was never actually
16 activated to any degree that - these companies were in
17 fact defunct before even the terms of this management
18 agreement could come into play. So to suggest that
19 this actually came into operation is, I think, bogus.

20 .

21 MR. HANRATTY: I never suggested it came into
22 operation, and I have always suggested that it was a
23 bogus agreement. And I still suggest that it was a
24 bogus agreement. It was executed, and everybody
25 proceeded on the assumption that the ú10,000 per month
26 payable over two years and 11 months, for management
27 services, which incidently were never provided, was the
28 full ú350,000 was due from day one. I have always said
29 that, and I have never suggested otherwise.

30 .

1 MR. HUSSEY: That is precisely the point. What is
2 pointed out there is that the profit would be generated
3 by that bogus arrangement; in other words, that the
4 profit had to be generated some other way other than
5 through that scheme. That's the point.
6 .

7 350 Q. MR. HANRATTY: All I am putting to you, Mr. Finnegan,
8 IS that this arrangement replaced the arrangement
9 originally envisaged in the third paragraph of the
10 letter of the 23rd of June. I think you agree with me,
11 that that is, in fact, what happened?

12 A. That this is --

13 351 Q. That the arrangement involving a bogus management
14 agreement replaced the arrangement involving Rapallo
15 taking an assignment of Bouganville's interest which
16 was originally envisaged?

17 A. But all I can say, Sir, is whatever did happen, this is
18 where they were factoring the - bogus - sorry, if you
19 like "bogus profit" or whatever it was, but this is
20 where they were bringing, trying to bring up-front the
21 profit.

22 352 Q. Let's just take it in stages, Mr. Finnegan.

23 A. Yes.

24 353 Q. What I am establishing at this stage, and nothing else,
25 is that Mr. Owens is clearly in this letter referring
26 to the change which we know was made and which we know
27 was, in fact, implemented?

28 A. I thought you said it wasn't.

29 354 Q. No, that this change was implemented. The matter was
30 dealt with by way of a management agreement or an

1 alleged management agreement instead of an assignment,
2 which is what he originally intended to do. That is
3 all I am saying.

4 A. Okay.

5 355 Q. He then says:

6 .
7 "Enclosed is a memorandum consisting of six paragraphs
8 describing in general the scheme from beginning to end.
9 Also enclosed is a detailed timetable of sixteen
10 letters and events, and please note that the dates on
11 the letters must be as per the enclosed timetable. The
12 three Irish solicitors are also getting their relevant
13 timetables insofar as concerns each firm.

14 .
15 Enclosed is a draft of the first letter for you to send
16 on the 29th of June. The second letter dated the 6th
17 of July could follow simultaneously."

18 .
19 Now, if we just look at the scheme which I actually
20 enclosed in that letter, it sets out - it is page 154.
21 It sets out in detail - and this is where Mr. Owens
22 explains to the solicitor who has primarily - the
23 primary responsibility for putting together the various
24 features of the scheme, what he wants done.

25 .
26 He has already got his two Jersey companies
27 established. As you can see, it is headed "Rapallo
28 Limited and Bouganville Investments Limited", which are
29 the companies that Mr. Wheeler formed on Mr. Owens'
30 instructions.

1 .
2 "1. Bouganville purchases freehold of land at
3 Monkstown."
4 .
5 That is the very first element of the scheme. Is it
6 your evidence that you didn't know that?
7 A. Sir, this is all part of a scheme, and if this is what
8 happened, I wasn't - by the way, I want you to know
9 this, Sir, I was not aware of the stroke by stroke, I
10 wouldn't have known what was going on here. But if
11 this is what did happen --
12 356 Q. This is the man, the author of the scheme himself, the
13 inventor, the orchestrator, whatever you want to call
14 him. This is the man that put the whole thing
15 together. This is him explaining to Mr. Wheeler what
16 the scheme is. And the first sentence is:
17 .
18 "Bouganville purchases the freehold of land at
19 Monkstown."
20 .
21 Is it your evidence that you did not know that this
22 scheme involved the purchase of the freehold by
23 Bouganville?
24 A. I tell you what, I don't know. I have to say to you
25 one thing, Sir, that asking me these questions, "Did
26 you know that Bouganville did this? Did you know
27 so-and-so?" I didn't know. This was the scheme. I
28 put it this way: The package was being put together.
29 How? This was a package that was being put together.
30 If he is orchestrating it here, that this is what all

1 of the people have to do, well, that is then what he --

2 357 Q. This is the package. This is what Mr. Owens' scheme

3 is. He goes on to say:

4 .

5 "Bouganville purchases the freehold of land at

6 Monkstown. Takes over a contract between ground

7 landlords - De Vesci Estate and lessors - Sacred Heart

8 Nuns for ú10,000."

9 .

10 Did you not know that that was part of the scheme?

11 A. I think, just asking me these direct questions, did I

12 not know that that was part of the scheme, my direct

13 answer to you is this "no".

14 358 Q. That is all I want to know, Mr. Finnegan.

15 A. It all happened in --

16 359 Q. All I wanted was an answer. Now I got it. Thank you

17 very much.

18 .

19 "Nuns have already paid ú2,500 deposit on the contract.

20 This will be refunded by Bouganville to the nuns and

21 Bouganville will complete the purchase and pay De Vesci

22 ú7,500 on closing and the nuns ú500 profit.

23 .

24 2. Rapallo will enter into a management agreement with

25 Bouganville whereby Bouganville will pay Rapallo

26 ú350,000 per annum for one year certain."

27 .

28 You can see somebody has drawn a line through that.

29 .

30 "Whereby Rapallo undertakes to find suitable

1 investments for Bouganville in all countries excluding
2 Channel Islands, and to manage the said investments.
3 This agreement will be dated prior to the acquisition
4 of the ground rent.
5 .
6 3" - this is crossed out by somebody as well, and we
7 don't know who.
8 .
9 "An Irish company will inquire from Bouganville whether
10 it is prepared to sell the freehold and Bouganville
11 will decline being an investment holding company.
12 However, the shareholders of Bouganville will be
13 prepared to sell their shares, at par, provided the
14 Irish company guarantees the repayment of Bouganville's
15 liabilities of ú350,000.
16 .
17 4. The Irish company agrees and at the time of the
18 purchase of the shares the balance sheet of Bouganville
19 will look like this."
20 .
21 Then he sets out the balance sheet showing a net
22 deficit of ú350,000.
23 .
24 "The value of the company is nil and if the test for
25 Capital Gains value is assets only, the greater part of
26 the value of its gross value is not land in Ireland."
27 .
28 Because as you can see, he shows a ú20,000 cash at bank
29 balance.
30 .

1 "5. Bouganville is liquidated, and if the full ú350,000
2 has not been received by Bouganville at that time, the
3 Irish company and Rapallo will agree with the
4 liquidator that the debt due by Bouganville to Rapallo
5 will be taken over by the Irish company. The
6 liquidator will then distribute the ground rent in
7 specie to the Irish company.

8 .
9 6. Rapallo will then have ú350,000 in cash and will
10 discharge expenses of advisors and consultants and have
11 ú300,000 left which it will hold for the beneficial
12 owners. It will be shortly liquidated and the
13 beneficial owners will then instruct you further."

14 .
15 And we know what happened after that.

16 .
17 So that, I suggest to you, Mr. Finnegan, in Mr. Owens'
18 own document, is Mr. Owens' scheme, and it is the
19 beginning and the end of his scheme. And there is
20 nothing in that about future profits or other parties
21 or arrangements with subcontractors or anything else.
22 That is the beginning and end of the scheme.

23 A. But you can - sorry. You can see that this is - you
24 can see though - that I am not an expert in this thing.
25 Here we are, this is something - you can see where Mr.
26 Owens, this has all been set up, what to do, what to
27 do.

28 360 Q. And we have seen his correspondence. I am not going to
29 take you through it tortuously. Again we have seen
30 all the orchestrated correspondence which he wrote in

1 advance, which were dutifully sent by the three
2 solicitors involved to each other, on the dates that
3 Mr. Owens ordained, and everything that as he
4 preordained should be done, was, in fact, done,
5 culminating in Bouganville getting the freehold title
6 and ultimately transferring it over to Green Isle by a
7 liquidation in specie. That is what actually happened.

8 .
9 The only thing, the only aspect of the scheme that is
10 not explicitly set out in this letter, it was what was
11 actually done with the ú300,000 that was left after
12 payment of expenses, where he says "and the beneficial
13 owners will then instruct you further."

14 .
15 But we know, from what actually happened, was that he
16 was instructed to distribute the ú300,000 as to
17 ú100,000 equally between each of the three beneficial
18 owners of the two companies, and that was done in
19 December of 1977.

20 A. And that was the result of the scheme.

21 361 Q. Yes. Now, what features of Mr. Owens' scheme do you
22 say are not referred to in this document?

23 A. Well, what I want to say to you, Sir, is this: That I
24 want to make it absolutely clear, and to Your Lordship,
25 that the position is that when the - because this, I
26 think, was around - the deal - the transaction took
27 place with the nuns for the sale of the leasehold and
28 the freehold to Brennan and McGowan way back, a year
29 previously. Whilst you say there wasn't a contract in
30 existence, but there was a firm understanding, this was

1 a deal done with the freeholders. The lawyers
2 acknowledged this with all parties. So there was a
3 deal done for ú220,000.

4 .

5 Now, this is all - all of what I see here, I don't
6 understand line-by-line or paragraph-by-paragraph --

7 362 Q. Could you just identify the bit of it that you don't
8 understand.

9 A. I am not - coming into this, I wasn't part of - I
10 wasn't - I don't understand the scheme fully, but I
11 want to say something to you, Sir, one thing that you
12 understand. This was not market value. The figures
13 drawn up there was not land value.

14 363 Q. We will come to valuations in a moment. At this point
15 all I want to know is what bit of this do you not
16 understand?

17 A. I can't say to you that any one piece of that, that I
18 knew what was going on, but I do say that at the end of
19 the day there was a profit thrown up out of the scheme.

20 364 Q. Do I take that to mean that you do understand this, and
21 that there is no bit of it that you don't understand?

22 A. No, Sir, you can't.

23 365 Q. All right. Well, then, would you identify the bit of
24 it that you don't understand?

25 A. One thing that I just want to say to you is - one thing
26 that - this is a scheme which was designed to take out
27 a profit, an artificial profit.

28 366 Q. This is the scheme, Mr. Finnegan?

29 A. If it is the scheme --

30 367 Q. I want you to identify the bit of it that you don't

1 understand.

2 A. I have to say to that, that I don't understand any of

3 it.

4 368 Q. All right. Let's go through it line-by-line.

5 .

6 "Bouganville purchases freehold of land at Monkstown."

7 .

8 Do you not understand that?

9 A. I think if you take it - you know the old thing, I

10 can't say, because I say I understand one bit of it

11 that is accumulated, that I understand the whole bit of

12 it.

13 369 Q. Mr. Finnegan, this isn't terribly pleasant. You are

14 coming up with a proposition that you don't understand

15 any of it. I have to test that proposition. Are you

16 really serious that you don't understand any of this,

17 or do we really have do this?

18 A. I accept, Sir, that there was a scheme put in place.

19 370 Q. Do you understand it?

20 A. The overall - I can't say, by the way, one thing that -

21 what went on between - this was the finishing up of a

22 deal which was agreed between the parties.

23 371 Q. Do you understand it?

24 A. Well, I understand at the end there was a distribution.

25 372 Q. Do you understand it as it appears on page?

26 A. Well, I see what --

27 373 Q. When you say you don't understand it, are you

28 suggesting that it is beyond your intellectual capacity

29 to understand what he is doing?

30 A. No, I am not saying that, Sir.

1 374 Q. Well, why do you not understand it, then?

2 A. Well, it is not my forte to go down through this, but I

3 think if - what I want to say is, Sir, that I don't -

4 if you - not to misrepresent the situation, that in

5 saying this, to feel that this is something that

6 represents the end value of the freehold coming out,

7 because this is not, this is not the case. This is -

8 all I have to say to you is that it is not a real deal,

9 it is something that was put together. So when - he

10 has given all his letters out there, and I wouldn't

11 follow all the letters, anyway, to get to this end

12 result.

13 375 Q. That may well be right. You could well be absolutely

14 correct about that, Mr. Finnegan. It was not a real

15 deal. There is to doubt that the - on the evidence it

16 would appear that no services were, in fact, provided

17 by Rapallo to Bouganville, and certainly no services

18 were provided over two years and 11 months, because by

19 the time that point in time came, everything was

20 finished. And it is clear that the parties appeared to

21 have treated the full indebtedness that could have

22 arisen under that agreement as having been due from day

23 one. There is no doubt with that. It may be that it

24 is an artificial scheme for tax avoidance which may be

25 legitimate or illegitimate. I do not know, and it is

26 not part of this Tribunal's function to figure it out.

27 .

28 But the fact of the matter is that is what the scheme

29 was, and it did involve the acquisition of the freehold

30 interest of the nuns' land in Monkstown.

1 A. If - that was part of it. But I must say, what I want
2 to make clear to you, Sir, is this: That the deal was
3 done. As long as you have it in your mind, that the
4 freehold wasn't floating all around the place. The
5 deal of the freehold was done, was done with Brennan
6 and McGowan, when the deal was placed, was agreed for
7 the sale of the leasehold.

8 376 Q. You see, any time I ask you about this, Mr. Finnegan,
9 you keep, if I may say so, retreating into this kind of
10 vague, airy fairy description about a deal or a scheme
11 which you don't really understand, involving aspects
12 that you don't understand, parties, something to do
13 with a front-up or up-front distribution of future
14 profits on the development. What I am putting to you
15 is no such thing. That is the scheme there, pure and
16 simple, from start to finish.

17 A. Sir --

18 377 Q. Unless you point me to some other document showing that
19 there were other dimensions or another scheme or
20 something.

21 A. Well, Sir, all I can say to you is this: This is not a
22 deal of - that is not to go around this. I say to you
23 that there was a deal put in place, and that this is
24 the deal that actually went down. It was to generate
25 profit, as I talked to you about, and it shows it was
26 generating a profit. But it is not a real profit. It
27 is a profit that was taken forward, like the profit
28 wouldn't have - put it this way, you put it out on the
29 market, you wouldn't have got that price for it.

30 378 Q. Can I ask you this: Do you agree that this is Mr.

1 Owens' scheme?

2 A. If this is the end result of it, this is what he
3 orchestrated.

4 379 Q. No, no. Do you agree that this is Mr. Owens' scheme?

5 A. Yes, Sir.

6 380 Q. As described in this document and the letter enclosing
7 this document and the previous letter, of the 23rd of
8 June, as modified in the letter of the 7th of June,
9 that that encapsulates, as it were, Mr. Owens' scheme?

10 A. I think - I don't know if it does all of it. No, Sir,
11 I couldn't answer that to you because --

12 381 Q. Well, this Tribunal appears to have established as a
13 fact, subject to any other evidence you may wish to
14 call, that this scheme, as envisaged in this document,
15 was, in fact, implemented to the letter, including
16 every single letter that Mr. Owens drafted on the dates
17 by-and-large that he drafted them?

18 A. Right.

19 382 Q. And that all of the features of this scheme, including
20 the acquisition by Bouganville of the freehold
21 interest, including the ú20,000 loan, although it
22 lasted for a bit more than a fortnight, including the,
23 as Mr. Owens described it, inflation of the balance
24 sheet for a particular purpose, including the
25 distribution in specie to Green Isle of the Bouganville
26 interest in the freehold, in consideration of ú350,000,
27 and including the payment of the ú350,000, and
28 including the payment out of that ú350,000 of
29 approximately ú50,000 expenses. All of the features
30 set out in this document did, in fact, happen as a

1 matter of historical fact, as a scheme orchestrated,
2 implemented and concluded in 1977.

3 .

4 Now, that is all we know about this scheme. We don't
5 know about any other scheme involving the freehold of
6 the nuns' interest in Monkstown. We do know that there
7 was a scheme involving the freehold and that this is
8 it. Now, are we missing something?

9 A. I think that the - I think saying the freehold - the
10 freehold happened to be a part of which they worked on,
11 but I want you to know, Sir, as long as we are not at
12 cross-purposes here, I want to say to you, that this is
13 why I can't say that this is exactly, exactly, exactly
14 it.

15 .

16 One, I want to clear, clarify yet again, as long as
17 there aren't any misunderstandings about it, and there
18 seem to be along the line, and I want to clear it.

19 383 Q. That is what we are trying to do. Are you saying that
20 there are other features of this scheme not contained
21 in that document?

22 A. Well, I - as I say, it was a complicated deal. If that
23 is what it ended up, but that way was a way of
24 orchestrating a profit, but it wasn't that the value,
25 the real value of the freehold was --

26 384 Q. I see. So as I understand what you are saying,
27 undoubtedly things were done with the freehold, which
28 was purchased for £10,000, the effect of which was to
29 generate a figure of £350,000, which was distributed,
30 but it had nothing to do with the value of the land.

1 Is that your point?

2 A. Yes, it is.

3 385 Q. Yes. But that otherwise that is the scheme that Mr.
4 Owens implemented?

5 A. Well, if that is what you have on file, that went
6 through, that is what it is, because I never saw what
7 actually did go.

8 386 Q. It may well be, and I don't know whether it is or not
9 the case, that the land which, or the interest that was
10 bought for £10,000 was definitely not worth £350,000?

11 A. There is no question about that.

12 387 Q. And therefore the total value of the freehold and
13 leasehold together was not £560,000?

14 A. Absolutely no doubt about that.

15 388 Q. That could well be the case. But all I am trying to
16 establish at this stage, are there any features of this
17 scheme, other than those set out in that, on that page
18 that we don't know about?

19 A. Well, I don't know what came about in between, to get
20 to - that is the structuring, I put it that way, of a
21 deal which had been brought around by the parties. And
22 I suppose one would look at this, that all I can say to
23 you is this: It came about, it was the intent of the
24 party to orchestrate somehow or another to come up with
25 a tax-efficient deal to enhance the value of the
26 property.

27 389 Q. Absolutely. There is no doubt that that is what Mr.
28 Owens appears to have achieved. What he did was he
29 took a feature of the transaction, namely, the £10,000
30 freehold, or the freehold which could be bought for

1 ú10,000?

2 A. Yes.

3 390 Q. And not to be pejorative, but he waived his

4 accountant's magic wand over it and turned it into

5 ú350,000 in Jersey?

6 A. Yes, however he got there.

7 391 Q. Yes. But it fundamentally involved the freehold

8 interest in the land?

9 A. That was --

10 392 Q. That was the vehicle which he used to achieve this

11 objective?

12 A. That was the - it appears that was the vehicle he used,

13 yes.

14 393 Q. Yes. And that he was in a position, by whatever

15 means, to use the freehold interest which could be

16 acquired, and we know was acquired for ú10,000, to

17 generate a substantial profit for the parties concerned

18 in the scheme in Jersey?

19 A. Well, I would say that it wouldn't matter whether it

20 was the freehold or it was something else as long as,

21 that it was only - it was an entity. It could have

22 been anything. It just so happened it was the

23 freehold.

24 .

25 As long as we are quite clear in something, Sir, and

26 that is why I don't want to mislead you in any way, and

27 that is why - and in answering the questions that I

28 want to say to you that when the deal, that this was a

29 scheme that was, whether he has written out there or

30 not, it was to enhance artificially - artificially

1 enhance the value of some part of it to produce a
2 profit which wasn't really there.

3 394 Q. Well, you got ú105,000?

4 A. Yes, but what I want you to understand, Sir, is this:
5 That it wasn't - if you are saying "Well, then, that
6 was a value", because somebody paid it, that wasn't the
7 case. It is that between - because there was a
8 complicated deal around the houses, that ended up
9 producing this sum of money.

10 395 Q. Yes?

11 A. That is why they wanted - I am not the author of it.
12 This was why I was invited in, to participate in a
13 scheme, and apparently it was - so why was I there --

14 396 Q. Sorry?

15 A. Sorry. Why was I there? I understand that perhaps it
16 was beneficial for them to have another party into it,
17 to inject the money into it for the scheme to work.
18 Now, there would be a lot of thought behind this, that
19 - we probably haven't heard it. We haven't heard it,
20 and it hasn't come out here.

21 397 Q. If all of this is the case, and I am not suggesting it
22 is true, why were you telling us earlier this afternoon
23 that you didn't know that this is what he was doing,
24 that you didn't know that the scheme involved the
25 acquisition of the freehold by Bouganville?

26 A. No, Sir --

27 398 Q. Or did I misunderstand you?

28 A. What I was saying to you is this: I didn't know what
29 way he put it about, what was the beginning and the end
30 of it. It is a package that - I didn't, I didn't see

1 any of these letters.

2 399 Q. Did you know - to put it a different way: Did you know

3 that whatever Mr. Owens was doing it involved using the

4 ú10,000 freehold to achieve a particular objective

5 which ultimately culminated in a large profit in

6 Jersey?

7 A. Yes, he used that.

8 400 Q. But did you know that at the time?

9 A. Actually not to be dodging it in any way, Sir, the

10 package was the package.

11 401 Q. I know that, Mr. Finnegan.

12 A. I didn't know at the time.

13 402 Q. You didn't know at the time? Just be clear what you

14 didn't know.

15 A. Look, this wouldn't have been explained in the same way

16 as we are going through it. This is a hell of a long

17 time ago. It is a deal - because if something was

18 real, you would remember it. But this is something

19 that has been - a scheme put together by somebody. I

20 just - damn it - didn't understand it. But it was that

21 I was an integral part of it, apparently, of it, to

22 make it work.

23 403 Q. Yes?

24 A. And - but not knowing. If it was something clear just

25 about property, straight down the line, I would say to

26 you "Yes, I know, and I know this, yes, yes, yes", but

27 this is something, because it has - it is an

28 inspiration of Mr. Owens, and the other parties, to

29 produce this profit.

30 404 Q. The one thing that is clear from this scheme, as

1 encapsulated in this document, is that it had nothing
2 to do with the leasehold, the scheme itself, that is.
3 The leasehold interest of the nuns forms no part of the
4 scheme. It was confined solely and exclusively to what
5 could be done with the ú10,000 freehold. Isn't that
6 right?

7 A. But they eventually had to go into, they had to get
8 into somewhere.

9 405 Q. Brennan and McGowan still had to get in the freehold,
10 and by whatever circuitous route. They could have
11 taken an assignment directly from the nuns to Green
12 Isle, if they wanted to, isn't that right? There was
13 nothing to stop Green Isle taking an assignment of the
14 nuns' contract in June, rather than sending it over to
15 Bouganville?

16 A. I think, all I can say to you is this: That the
17 scheme, apparently, was designed that because of - that
18 the individuals could have - and this was something, as
19 I said to you, was being done around; that it meant
20 that there was a very big tax advantage to the parties,
21 and that the money arrived - wasn't going through a
22 company, but came to the individuals, and that is
23 where, apparently, that the - rather than going through
24 distributions and all that sort of thing --

25 406 Q. All I am saying, Mr. Finnegan, is that within the
26 scheme itself, the leasehold interest which Green Isle
27 had agreed to buy formed no part --

28 A. Well, Sir --

29 407 Q. The scheme resolved exclusively around Bouganville and
30 Rapallo, and the acquisition of the freehold interest

1 of the land, and did not in any sense involve the
2 acquisition, or any form of dealing with the leasehold
3 interest. I am only talking about the scheme itself
4 now. The four walls of the scheme itself did not in
5 any sense include the leasehold of the land, or am I
6 wrong about that?

7 A. I don't know --

8 408 Q. It is quite clear from the document that the leasehold
9 isn't involved, isn't that right?

10 A. By the way, what I want to say to you - this doesn't
11 come naturally, to follow this. What I am saying is
12 this: When you say it didn't come in, I don't know
13 what happened. I think you have a good idea, though --

14 409 Q. What happened is what is in this document, in fact.
15 What actually happened is as set out in that document,
16 apart from the actual distribution which is referred to
17 in the last line, but otherwise everything in that
18 document was done between June/July of 1977 and
19 December of 1977?

20 A. Are we agreed on this, Sir? That what I am saying is
21 that the - what I am looking at, and we were involved
22 in it - firstly, that the real value of the property
23 was ú220,000?

24 410 Q. I don't know, Mr. Finnegan, that is ultimately a matter
25 for the Sole Member. I can't engage with you in that.

26 A. Well, this is what I want to say to you Sir: That is
27 what it was. And after that, this is a structure to
28 benefit the parties. Like, there was only a value for
29 land at that time, by the way, and that is what the
30 value was.

1 411 Q. Can I put it to you another way: It is fairly clear,
2 as I have said to you, from that document, that the
3 only thing that Mr. Owens was, and I don't mean this
4 pejoratively, playing with, waving his magic wand over,
5 was the freehold interest which was acquired for
6 £10,000?

7 A. Well, all I can say is - what I can say is this, Sir:
8 I don't understand it sufficiently to give you a stamp
9 of approval on that.

10 412 Q. But the reason I am making that point is this: That
11 there is also nothing in that document about the
12 £33,333.33 which you say you invested in the scheme.
13 In fact, there is nothing about anybody putting in
14 £33,333, or three people putting in a composite figure
15 of £100,000, in this document?

16 A. Well, not in this document. That is why you will see
17 that, when you - that there was somebody else, because
18 I did put in 33,000.

19 413 Q. But, what I am saying to you is, if I am correct, and
20 again it is ultimately a matter for the Sole Member --

21 A. Yes.

22 414 Q. -- in suggesting that that document contains all of the
23 features of the scheme in which you were involved with
24 Messrs. Brennan and McGowan, and it doesn't, as I
25 suggest to you, include anything to do with the
26 leasehold. If you invested £33,333.33, it was only as
27 a contribution towards the purchase of the leasehold?

28 A. No, Sir, emphatically no, no question of that.

29 415 Q. Well, let's look at it.

30 .

1 At the point in time when the money was paid, if it
2 was, in fact, paid in connection with Brennan and
3 McGowan in connection with Monkstown, it certainly
4 doesn't appear to fit in anywhere into this scheme, and
5 the only liability that had to be discharged in
6 November of 1977, was the payment to the nuns of the
7 balance of the purchase price on the leasehold
8 interest?

9 A. But --

10 416 Q. They, having received a deposit of 21,000 the previous
11 August, sorry in August of 1976, but they were,
12 therefore, due ú189,000 and --

13 A. Who were?

14 417 Q. The nuns were, for their leasehold, and they were paid
15 that, as we know, I believe on the 23rd of November of
16 1977, less than a fortnight after you say you invested
17 ú33,333.33. It was the only capital outlay that
18 Brennan and McGowan had in relation to this whole
19 Monkstown affair at that time?

20 A. Well, I can say to you, it was not for that, Sir. That
21 was, it was for the injection into - and what pool it
22 went into - there may have been some - all I can say to
23 you is that there may have been some balancing between
24 the parties involved. We all knew one another quite
25 well to come up with this figure, but I did inject the
26 33,000, and --

27 418 Q. Which you say you gave to Mr. Owens?

28 A. It was, to the best of my knowledge and belief, because
29 he would have been the recipient, or he would have
30 directed where it went.

1 419 Q. Well, do you agree with me, it doesn't fit into the
2 scheme as set out in this document?

3 A. Well, then, the - I would think that then one would
4 have to say it went in, it certainly went in, and
5 maybe, perhaps, that is not - I don't know what
6 happened, you see, leading up to this. I don't know
7 what happened, but I can say to you, that certainly
8 that is what I put my money in for, and was requested
9 for, was to participate in the scheme.

10 420 Q. Because one question that arises in all of this, Mr.
11 Finnegan, is that if the ú10,000 freehold, which we
12 know as a matter of common sense could have been
13 transmitted directly from the De Vesci and Longford
14 Estate to Green Isle which had agreed to buy the
15 freehold, sorry the leasehold, if that ú10,000 freehold
16 interest could be so skillfully manipulated by Mr.
17 Owens as to generate a profit, in your case of
18 ú105,000, it does raise the question why didn't the
19 nuns get that profit?

20 A. Well, this - this is a - this is a scheme, Sir. The
21 other - for the sale of a property at full market
22 value. This is, and I say "artificial", it was a
23 scheme generated to bring forward a profit which wasn't
24 market value.

25 421 Q. You see, one of the issues that the Tribunal has to
26 consider in its deliberations as to the motives of
27 Messrs. Brennan and McGowan in making payments to Ray
28 Burke, is whether on making those payments they had an
29 improper motive, perhaps to improperly influence Mr.
30 Burke in the discharge of his public duties. And the

1 question that may arise is, did they have an improper
2 motive in paying you £105,000?

3 .

4 Now, you were the auctioneer acting for the nuns. And
5 it is a question which, unfortunately, inevitably
6 arises.

7 A. Yes, but the transaction was done in whatever it was,
8 August. The deal was done with the nuns for full
9 market value of the freehold, of the freehold and
10 leasehold.

11 422 Q. Well, accepting that for the moment, for the sake of
12 the argument --

13 A. Yes.

14 423 Q. -- assuming the full market value, with full planning
15 permission, and no restrictions on development was
16 £210,000.

17 A. Yes.

18 424 Q. The fact remains that there was a sweet little profit
19 of £105,000 to be made by an accountant waving his
20 magic wand over the freehold, and they, certainly up as
21 far as June 1977, had a contract to buy the freehold.
22 They were effectively the owners of the freehold, if
23 they wanted to be?

24 A. Well, there was a deal done, a deal done, yes, but --

25 425 Q. They were not bound by any contract, as far as we can
26 see, until June of 1977?

27 A. You have to take it that they were bound morally and
28 other wise, and the parties, and even Mr. Beatty who
29 was deeply involved in the transaction, he too
30 understood that the deal was done --

1 426 Q. No, no, Mr. Beatty's evidence was that the De Vesci
2 Estate were approached, and that they had indicated
3 that they would sell it?

4 A. Yes.

5 427 Q. He didn't say that the nuns had agreed to sell it.

6 .

7 MR. HUSSEY: I beg your pardon. Mr. Beatty did say
8 that the nuns had an understanding that they would sell
9 on the freehold --

10 A. Sell on.

11 .

12 MR. HUSSEY: -- to Brennan and McGowan when the sale,
13 the leasehold interest was signed. That was Mr.
14 Beatty's evidence.

15 .

16 MR. HANRATTY: I don't want to get into other
17 transcript argument, but my recollection of what Mr.
18 Beatty said was that the freehold was always in there
19 from the start. That the De Vesci and Longford Estate
20 were approached, and indicated that they would sell, if
21 they were required to sell. He said that they, that
22 they always kept their word when they said that they
23 would. And he said - I would want to be careful what I
24 say - but I think he said that the nuns were not bound
25 at any stage, I believe until June of 1977, were not
26 legally bound until June of 1977 to sell their interest
27 under that contract.

28 .

29 MR. HUSSEY: That is not as I understand Mr. Beatty's
30 evidence. I wonder could the transcript be checked on

1 that, because my understanding of Mr. Beatty's evidence
2 is contrary to that?

3 .

4 MR. HANRATTY: I am sure Mr. Hussey can check the
5 transcript. We have already transcripts to check
6 tonight.

7 .

8 MR. HUSSEY: Maybe that could be left over as well?

9 .

10 MR. HANRATTY: Sir, this is just another one of the
11 many interruptions. I am trying to keep a flow on my
12 examination. Every time we start making progress, in
13 terms of finding out what the witness's position on
14 something is, there is an interruption, and we have to
15 try and roll it back.

16 .

17 It is ten past four now.

18 .

19 CHAIRMAN: I think we will rise.

20 .

21 Tomorrow morning at 10:30.

22 .

23 There is one matter to be dealt in the morning, one
24 aspect of the inquiries, the position in relation to
25 the Guernsey documents. They have to be dealt with by
26 tomorrow morning.

27 .

28 MR. HANRATTY: Yes.

29 THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
30 FRIDAY THE 12TH OF OCTOBER, 2001, AT 10:30 A.M..

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