

1 PLANNING TRIBUNAL - DAY 308

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3 THE TRIBUNAL RESUMED AS FOLLOWS ON THE 17TH OF OCTOBER,

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

5 .

6 THE CHAIRMAN: Good morning everyone.

7 .

8 MR. HANRATTY: Morning, Sir.

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, sir.

15 2 Q. Just before we resume on the issue we were talking

16 about yesterday, there are two things. One was, you

17 recalled yesterday, you indicated that you might be in

18 a position to get some information about these code

19 references on the Foxtown Investments Limited Guernsey

20 bank statements.

21 .

22 Have you managed to get any of that information yet?

23 A. I understand that they have made an inquiry about that,

24 sir. And they didn't know - they are looking into it.

25 But they might have been bookkeeping entries, might

26 have been.

27 3 Q. Well, we know they are bookkeeping entries, but --

28 A. Well, sir --

29 4 Q. -- are you waiting on information?

30 A. Yes, sir.

1 5 Q. I see. Perhaps we'll leave it over.

2 A. I think we better.

3 6 Q. When do you expect to have it?

4 A. Today - today, I think.

5 7 Q. Yes. The second thing I just want you to clarify, if
6 you can, is the position about proceedings in Guernsey
7 to get these beneficiary trust documents.

8 .

9 As I understood the information given to the Tribunal
10 last week, the matter was going to be before the High
11 Court in Guernsey on the 26th of this month. Is that
12 right?

13 A. That's what I was told, sir, yes.

14 8 Q. The reason I asked you is because the solicitors -
15 Solicitor to the Tribunal, Ms. Howard, had a
16 conversation with your solicitor, Mr. O'Shea, on
17 Monday, from which she gathered, firstly, that
18 proceedings had not yet been instituted, but that it
19 was expected that they would be instituted before the
20 end of this week. And secondly, that we were talking
21 about a two month timescale, possibly?

22 A. Well, now, sir, that's the first I have heard of that,
23 sir. So --

24 9 Q. Would you be able to clarify that, and perhaps we might
25 revisit it after lunch?

26 A. I will. What I heard, sir, was that they were
27 proceeding, things were moving on, and that
28 documentation would be here for me, for signature
29 shortly, maybe by the end of this week, if not by the
30 beginning of the next week. There was documentations

1 that I had to sign.

2 10 Q. Yes.

3 A. And they --

4 11 Q. What's happening on the 26th? Is the matter listed for
5 hearing in court on the 26th or not?

6 A. I probably should have spent more time - I had a
7 flippant word this morning here, sir --

8 12 Q. Would you like to leave that over?

9 A. I will. I understand it's moving on. I will check and
10 let you know.

11 13 Q. All right. Now, yesterday I was asking you about
12 Newtownpark Avenue, and you said that you would like to
13 just consider the documents again.

14 .

15 Could I just now ask you to tell us what you recall
16 about the sequence of events leading to the acquisition
17 of this property by Arippe Investments Limited, which
18 is a company which we have been told you were a
19 one-third beneficial owner, although not registered as
20 such?

21 A. Sir, first of all, apologies yesterday evening, sir --

22 14 Q. That's not a problem --

23 A. I was so tired at the time I just couldn't think about
24 anything.

25 .

26 Now, my recollection, sir - when you mentioned about
27 planning yesterday, you had a note of when the planning
28 application had come through. But on checking, we had
29 some checks on some planning file, and there were
30 applications made on this property as far back as,

1 somewhere around '75ish, for - the position - to give
2 you a bit of a handle on it; that there was a very fine
3 residence here, and the surrounding grounds. And by
4 the way, I was wrong on acreages, sir. I think that
5 the acreage for the development, I think, was more like
6 12, 13, 14 acres, around about, and there was retention
7 of, I think, probably five odd acres, I think, for the
8 house. That's where I was getting the five or six.

9 .
10 Now, one of the things that, as far as Mr. Maguire was
11 concerned, that it was very important to have - I knew
12 that this was in the back of the mind somewhere, and I
13 couldn't get it out - the appropriate type of
14 development. Now, so - I can't, by the way, I haven't
15 got - I can't recollect exactly when things happened,
16 but the planning started off with an outline planning
17 application. I knew there was some sort of a problem
18 here, in that the Local Authority were anxious to keep
19 it as it was. And that was as recreational use. It
20 was a private golf course, putting green, or whatever
21 on it. And so it took a number of applications to go
22 through, and quite a few applications were made. And
23 indeed, I think at least one of them went on appeal.
24 And it was all for residential development, sir.

25 15 Q. What I was putting to you yesterday specifically,
26 Mr. Finnegan, is that it appears that the application
27 for planning permission for housing on the lands being
28 sold wasn't made until after Brennan and McGowan had
29 already agreed to buy the property. Is that correct?

30 A. Well, I can't tell you, sir, exactly.

1 16 Q. Right.

2 A. But it would have had the benefit of a planning
3 permission prior to that, sir.

4 17 Q. I see. For housing?

5 A. For housing.

6 18 Q. Yes. You believed there was a prior planning
7 permission to which I am referring --

8 A. Yes, sir.

9 19 Q. Very good. Now, just going back to the basics of the
10 transaction. Mr. Maguire was your client. You told us
11 yesterday he wanted to sell his property, but wanted
12 to, obviously, maintain the integrity of his house, as
13 - a dwelling house, and so on, and wanted the thing to
14 be planned in such a way as to facilitate that, but
15 nonetheless get the maximum price, understandably.

16 .

17 So when he came to you, then, what steps did you take?

18 We understand from Mr. Brennan that, as he recalled, it
19 was not - it wasn't advertised and wasn't put out to
20 tender.

21 A. Mm-hmm.

22 20 Q. Is that right?

23 A. As far as I recollect, sir. I haven't anything on it,
24 so I am just going - a hell of a long time ago --

25 21 Q. We don't have any Finnegan Menton file on it?

26 A. No.

27 22 Q. But that was his recollection. Do you have any reason
28 to think he is correct or incorrect?

29 A. The thing I do recollect - there was no doubt Joe
30 McGowan knew, socially knew Maguire.

1 23 Q. Yes. Mr. McGowan has told us that himself?

2 A. Okay. Now, this went back, though, quite a long time.

3 John Maguire was planning this for a while, because it
4 just didn't happen, it was going on for the - the whole
5 process was going on for a while, because I think it
6 was back in 1975 that we were first involved with
7 Mr. Maguire in this. So there was a lot of toing and
8 froing. But I can't give you stroke-by-stroke on that,
9 sir. But there was.

10 .

11 So planning - what was important for Mr. Maguire at the
12 time, for everyone, was that the shape or configuration
13 of the development, the lands that would be allotted
14 for the development were important to him, because -
15 when I was thinking about it afterwards yesterday, I
16 just recollected that, yes, because of the fineness of
17 the house, sir - it was a period residence - that he
18 wanted to make sure that, at different points, that the
19 new housing wouldn't be too close. So there was five
20 or six acres retained around it. So that took a lot of
21 working out. And that's why he wanted to - then, when
22 it was being sold, although unfortunately we don't have
23 - I don't have a copy of the contract, but I understand
24 - what my recollections are, that it was important that
25 whatever the planning was, and that's in the shape,
26 form and configuration of it, maybe house types might
27 change, but the layouts would stay as they were.

28 24 Q. We are not terribly interested in the detail of the
29 planning, and if possible, while obviously covering
30 everything, I would like to get through this

1 Newtownpark Avenue deal fairly quickly.

2 A. Okay.

3 25 Q. What I am really interested in are the basics of the
4 transaction, and in particular, your dealings with
5 Messrs. Brennan and McGowan in connection with this
6 property.

7 .

8 First of all, we know you had carriage of sale?

9 A. Yes, sir.

10 26 Q. Was it you that offered the property to Messrs. Brennan
11 and McGowan?

12 A. Do you know, I was trying to even think about that.
13 It's all - it is all a bit hazy to me, sir. It's,
14 again, almost 30-odd years ago. But I have been there,
15 whether or not in the first instance - you see, it
16 would have been known in the marketplace. By the way,
17 one thing I do recollect very much, that John Maguire
18 always told me that, all along the line, there were
19 people knocking on the door, builders and agents, to
20 see if he would sell the property.

21 27 Q. Yes.

22 A. So this is where - I'll come back to this for a minute.
23 So over a long period of time lots and lots of people
24 wanted to buy it. And that is why it was found that it
25 was essential to go back over that ground, and I'll do
26 it in a second now, to get the planning permission to
27 do what --

28 28 Q. Yes.

29 A. So it would have been known that this was going to be
30 sold, because Maguire wouldn't have been a developer.

1 And so the market - the marketplace - there would have
2 been notes in the papers, newspapers, about planning
3 permissions being obtained on it.

4 29 Q. Yes. People would have known that it was --

5 A. Yeah.

6 30 Q. -- but would that be an indication, perhaps, to have an
7 auction, if there were a number of people interested in
8 it?

9 A. Well, it was - Mr. Maguire's call, that again, I think,
10 that he certainly - I do remember this, that there were
11 very - there were lots of discussions between Maguire
12 and Mr. McGowan.

13 31 Q. Yes.

14 A. And I think Mr. Maguire would like to feel that there
15 would have been a little bit of a hands-on --

16 32 Q. Yes, but what I wanted to know is, was it you that
17 offered it to him? Your answer could be, "yes", "no",
18 or "I can't remember". Which of the three would you
19 select?

20 A. I think you can take it that we were very much there,
21 so whether it happened coinciding, that Maguire
22 mentioned it, or Joe McGowan mentioned it to Maguire.
23 But we would have been in the loop there somewhere.
24 Who told who what, I can't remember. But we wouldn't
25 have been far away at it.

26 33 Q. In any event, some sort of a contract appears to have
27 been entered into between Messrs. Brennan and McGowan,
28 whether it be themselves or Kilnarnagh, I just don't
29 know, because we don't have the contract. But it
30 appears to have happened, as I indicated to you

1 yesterday, prior to the 16th of September, 1977.

2 .

3 If we can just briefly look at that document again,
4 3972.

5 .

6 This is Mr. McGowan's letter to you pursuant to a
7 meeting which he had with you.

8 A. Yeah.

9 34 Q. And in it he says - it's dated the 16th of September of
10 1977, and it's signed by Mr. Joseph McGowan, addressed
11 to you personally. And he says in relation to the
12 lands at Newtownpark Avenue House:

13 .

14 "I refer to our meeting in your office on the 15th
15 September, 1977, concerning the question of my getting
16 an extension of time to complete this contract."

17 .

18 So that clearly indicates that at that point in time
19 some kind of a contract was in existence?

20 A. Yes.

21 35 Q. "I am writing formally to confirm our agreement that
22 John Maguire is prepared to extend the completion date
23 of my contract from mid-August to the 6th of January,
24 1978."

25 .

26 So a number of pieces of information emerged from that.

27 .

28 There was some kind of a contract, probably of a formal
29 nature, probably indicating that it was intended under
30 that contract that it should close in mid-August. The

1 fact that it had not closed in mid-August, the fact
2 that there was a discussion between Mr. McGowan and you
3 about it - you, presumably, in your capacity as
4 auctioneer for Mr. Maguire, and the fact that it had
5 been agreed by Mr. Maguire that he would give them an
6 extension to the 6th of January, 1978.

7 .
8 So that seems fairly clear from that letter, and it's
9 helpful to that extent, albeit we don't have the
10 contract.

11 .
12 But the indications are that it was some kind of a
13 formal contract with a closing date in it, and that the
14 closing date was in August. And that Mr. Maguire,
15 through you, was agreeing to extend the closing date to
16 the 6th of January, and that Mr. McGowan was recording
17 his understanding of what had been agreed at this
18 meeting with you. Isn't that right?

19 A. Yes, sir.

20 36 Q. So we can proceed on the reasonably safe inference that
21 there was a contract, or binding agreement prior to
22 that date --

23 A. Yes.

24 37 Q. We do know that the sale did not close in 1977. We do
25 know that the company which was used as a vehicle to
26 purchase this property was called Arippe Investments
27 Limited. And we also know that that company was formed
28 in Jersey on the 22nd of December of 1977.

29 .
30 Now, I take it that was done in consultation with you?

1 .
2 MR. HUSSEY: I am sorry, sir. As I understand it,
3 there was two companies which took this site in two
4 tranches. It wasn't just the one. If I am incorrect
5 there, I stand to be corrected. I think there was
6 another company, Greenmount Properties, which took one
7 tranche, and Arippe another tranche. Is that correct?

8 .
9 MR. HANRATTY: My understanding was that Arippe
10 Investments Limited purchased Mr. Maguire's property,
11 that he was then selling. It's possible there may have
12 been some other sale of some other portion, but my
13 understanding was that Arippe was the company that
14 bought it, and that Arippe then, in respect of the
15 property that it bought from Mr. Maguire, for, I
16 believe, ú100,000, entered into a licence agreement
17 with Landsdowne Construction Limited, which was the
18 Irish based Brennan and McGowan company. And that's
19 the premise upon which - in fact, I have a letter here
20 --

21 .
22 MR. HUSSEY: No, sorry. There is two deeds, I think,
23 one in February '79, Maguire to Arippe, and one in
24 March of '79, Maguire to Greenmount --

25 .
26 MR. HANRATTY: Well --

27 .
28 MR. HUSSEY: I don't want to interrupt, but I don't
29 think - I think Arippe took one part of the thing and
30 Greenmount took another.

1 .

2 CHAIRMAN: Very good. We'll try to clear it up.

3 .

4 38 Q. MR. HANRATTY: I am going to elicit what I can from the

5 witness, based on the documentation we have seen, and

6 if there is some other information which the witness

7 has not dealt with in my examination, I'm sure

8 Mr. Hussey can fill in the gaps, as it were.

9 .

10 There is - there was a company called Arippe

11 Investments Limited incorporated in Jersey in December

12 of 1977. Isn't that right?

13 A. Sir, I don't actually recollect the thing happening,

14 but I understand it happened.

15 39 Q. Yes. It did. Arippe Investments Limited purchased a

16 substantial portion, let's put it like that, until we

17 hear what Mr. Hussey has to say. But was it your

18 understanding that there was two sales to two different

19 companies?

20 .

21 MR. HUSSEY: I'm sorry - it's at 4439, and --

22 .

23 MR. HANRATTY: I would like to be permitted to examine

24 the witness on the basis of the information which I

25 have. Now, if Mr. Hussey says that it's in some way

26 incomplete, he can fill it in.

27 .

28 MR. HUSSEY: The information that you have includes a

29 deed that you have given us, and it's at 4439. It

30 includes a deed, Maguire to Greenmount Properties

1 Limited. So I don't know --

2 .

3 MR. HANRATTY: Well, I don't know what - sorry, with

4 respect, I am not going to be dictated to about how I

5 conduct my examination. I do know that there were

6 exchanges of property between, I believe Kilnamanagh

7 and Greenmount. I don't know what the basis of that

8 was. I don't have complete information on it. I am

9 asking this witness questions about the deal involving

10 Arippe Investments Limited.

11 .

12 Now, if there is some other deal that Mr. Hussey

13 considers is relevant, he can deal with that in due

14 course. I am asking this witness about the deal which

15 involved - which undoubtedly involved Arippe

16 Investments Limited, and that's all I am asking him

17 about at this point in time.

18 .

19 CHAIRMAN: Will you proceed, please?

20 .

21 MR. HANRATTY: Yes.

22 .

23 A. As I recollect, sir, that I understand - my

24 understanding is that I needed either a Brennan and

25 McGowan company - either Brennan and McGowan did the

26 deal. And that - whichever one of those companies, but

27 I think it was Brennan and McGowan, and I think that

28 afterwards - the implementing the scheme. But I

29 understand, and I think there was a contract for -

30 whichever, we call it, Brennan and McGowan or one of

1 the loops in that.

2 .

3 And I think then the division came after that, and I

4 don't know whether it was prior to the completion, so

5 you'll know from your things there, prior to the

6 completion. I assume now that they may have been

7 directed that this might have been a division organised

8 by Mr. Owens, a division of the property.

9 40 Q. Part to Greenmount and part to Arippe, is that right?

10 A. Yes.

11 41 Q. All right. Well, let's just take it in stages, then.

12 Approximately how many acres went to Arippe, and

13 approximately how many acres went to Greenmount? If

14 you can't remember, just say you can't remember.

15 A. I think there was - either a smaller area of 4 or 5

16 acres, recollection, to the front of the property went

17 to Arippe, and the balance of the land went to

18 Greenmount.

19 42 Q. Yes. What was the price agreed with Mr. Maguire for

20 the whole of his property, regardless of who bought the

21 various bits of it?

22 A. Short of 600, sir. Something - 5 something, something,

23 something. I haven't got an exact note of it, but I

24 think it could have been 60, 70, 80, around that sort

25 of number.

26 43 Q. Yeah. And what was the price of the bid taken by

27 Arippe?

28 A. Now, memory - I think that that was somewhere - I think

29 that was somewhere in the order of ú100,000.

30 44 Q. Yes. And was that, shall we say, the smallest portion

1 of the property?

2 A. Yes, sir.

3 45 Q. The majority haven't been hived off or sold separately
4 to Greenmount or a company called Greenmount, is that
5 right?

6 A. Hadn't been or had --

7 46 Q. Well, was?

8 A. Was. Sorry. By the way, a lot of this is coming back
9 to me from seeing what I see now, sir, rather than a
10 real memory of it.

11 47 Q. Yes.

12 A. But I think you are correct in your assumption, that
13 the balance of the land, and at the rear, which might
14 have been - I think this - I'll get this out. I think
15 there might have been more houses put into an area. I
16 think the back land wouldn't have been as economical.
17 There wouldn't have been as many houses on it per acre
18 as on the front piece.

19 48 Q. Right.

20 A. Bad layout.

21 49 Q. Is the sequence that a contract was entered into
22 between Brennan and McGowan or, perhaps, a Brennan and
23 McGowan company, and Mr. Maguire, for the sale of all
24 of his property?

25 A. All of the property, yes.

26 50 Q. Sometime prior to September 1977, but between the time
27 of the contract and the closing of the sale, a division
28 was decided upon, presumably, by Brennan and McGowan,
29 under which Arippe would take a small portion, and
30 under which the remainder would be taken by another

1 company, probably Greenmount. Is that accurate?

2 A. I think - I wouldn't have, by the way, just because -

3 the reason I am hazy, I wouldn't have been on the

4 forefront of that. But that is what I recollect, sir.

5 51 Q. Yes. And on what basis was the apportionment of the

6 price to be paid by Greenmount and the price to be paid

7 by Arippe decided upon?

8 A. That was part of the - that was part of the tax scheme

9 of Owens.

10 52 Q. Yes. Well, is Greenmount, or was Greenmount a Brennan

11 and McGowan related company?

12 A. As far as I recollect, yes, sir.

13 53 Q. Yes.

14 A. Partly.

15 54 Q. Yes. But not exclusively?

16 A. No.

17 55 Q. Rather like Oakpark, perhaps, were there other

18 directors and other shareholders involved in the

19 company as well?

20 A. Yeah. I am not sure - I note they had an interest in

21 it, but how much --

22 56 Q. Yes. And therefore it appears that insofar as

23 Mr. Owens was putting together a scheme, it was only

24 going to involve a small portion of this property, of

25 Mr. Maguire. Is that right?

26 A. I think that if you take it that - my understanding

27 would be, sir, that the land was bought by a Brennan

28 and McGowan company. Owens came in. I said, "This is

29 the way things are going to be done." So he, again,

30 would have been the author of whatever was to be done.

1 And I'd say the instructions came from him. And I
2 suppose negotiations between them, and then probably
3 Brennan and McGowan negotiating with the parties, who
4 they were to take - taking it.

5 57 Q. Yes. Well, we know the contract was signed sometime
6 before September, and as we'll see in a moment, when we
7 look at the deed, to Arippe, it closed in July of 1978,
8 in fact. We also know that Arippe was formed in
9 December of 1977.

10 .

11 Now, what proposal did Messrs. Brennan and McGowan or,
12 perhaps, Mr. McGowan come to you with in connection
13 with this property, and when did he do so?

14 A. I can't recollect exactly when that happened, sir, but
15 again, looking back at the thing, but it was certainly
16 before any of the - it would have been before the
17 scheme would have been implemented in any way, sir.

18 58 Q. Well, the first step towards the implementation of the
19 scheme was the formation of a company, a Jersey company
20 that was used in the scheme, which was Arippe, and that
21 was done in December?

22 A. Well, I don't recollect the - actually, the formation
23 of that. I am going on what you tell me, sir, but I
24 don't really recollect - if it was done then, it was
25 done then.

26 59 Q. That's the information we have from the Jersey register
27 and from Mr. Simon Howard. And it appears to be
28 correct, that it was formed in December of 1977.

29 A. There was a Mr. Brennan company --

30 60 Q. Yes, that Mr. Brennan was registered as the sole

1 beneficial owner in this instance, but Mr. Brennan has
2 told us that, in fact, while he was registered as the
3 sole beneficial owner, all three of you were regarded
4 by each other, as it were, as the beneficial owners.
5 And that the matter proceeded on that basis, rather in
6 the same way as it did on the previous deal, except
7 that in that case you were, in fact, registered as the
8 beneficial owner?

9 A. Well, the only thing I can say to you, sir, that
10 perhaps - again it's hazy, whether Mr. Brennan may have
11 had that company. I don't know when --

12 61 Q. Well, he didn't have it, certainly, before December,
13 because that's when it was formed.

14 A. Well, I can't say to you --

15 62 Q. We'll just put up that document, Mr. Finnegan. It's
16 1715.

17 .

18 This is an extract from the Companies Registration
19 Office. It's a letter from them, dated the 1st of
20 August, 1978. As can you see there, in the top
21 left-hand column, the first item is date of
22 registration in Jersey, and the date given is the 22nd
23 of December, 1977. And you can see the registered
24 offices are Bedell & Cristin's offices, and so on.

25 A. Mm-hmm.

26 63 Q. So it's fairly clear that that company appears to have
27 been registered on the 22nd of December of 1977. And
28 Mr. Simon Howard has told us that the only registered
29 beneficial owner in the case of this company was Mr.
30 Brennan.

1 A. Well, I take it that that - I hear what you say, sir.

2 The only thing, if we are trying to move on, sir - I
3 think that the only thing is that perhaps he had it,
4 the company. I don't know when I was invited into it
5 --

6 64 Q. Was it before the sales were closed?

7 A. I can't say, sir. I am just going on actually being
8 reminded of things happening here, sir.

9 65 Q. Yes. Well, if we just look - you've told us that you
10 also made an investment in this particular scheme?

11 A. Yes.

12 66 Q. And you've indicated a particular debit on the account,
13 which you believe applies to it. Isn't that right?

14 A. Yes.

15 67 Q. In the sum of ú33,333?

16 A. Yes, sir.

17 68 Q. And that's on some day, possibly the 10th of July of
18 1977 - well, we are not putting this page up on screen.

19 It's slightly obscure. But it bears a reference,
20 B0826, and it's for ú33,333.33, which, as I understand
21 your position is that that was your investment into
22 this particular property?

23 A. Yes, sir. When was it again?

24 69 Q. It may be the 10th of July, but I am not certain about
25 that, because the date is partially obscured on the
26 page that I have, certainly. Possibly the 20th.

27 .

28 MR. HUSSEY: I think it's the 20th.

29 .

30 70 Q. MR. HANRATTY: Well, I am not in a position to say

1 whether it is or not. It's, the second digit of the
2 date is a "0", I know that for sure, but apart from
3 that we don't know. So it could be 10 or 20. It could
4 even possibly be 30.

5 A. What page is that on, sir?

6 71 Q. That's page 4845.

7 A. Sorry. Yes, I have that now.

8 72 Q. You see the entry there. I don't know if the date is
9 any more clear on your copy?

10 A. Where is it on the thing?

11 73 Q. It's the second debit in the debit column, and it's for
12 33,333 --

13 A. I have it, sir.

14 74 Q. Against which Mr. Turvey, as can you see there, has
15 written in "M Park" in abbreviated form?

16 A. Yes.

17 75 Q. Is the date legible on your page?

18 A. July - no, it's July.

19 76 Q. Now, we do have a letter from Mr. Owens to Mr. Wheeler
20 of the 17th of September, 1980, which does give some
21 information about this deal. It's at page 1740.

22 .

23 As you can see, it's "re Arippe Investments Limited."

24 He says:

25 .

26 "The above company was incorporated on the 22nd
27 December, 1977. And the beneficial owner was Mr. Tom
28 Brennan. It acquired land in July 1978 at Newtownpark
29 Avenue, Blackrock, County Dublin for ú100,000. In the
30 autumn of 1978, Arippe entered into a licence agreement

1 with the Lansdowne Construction Company Limited of
2 12 South Frederick Street, Dublin 2. The consideration
3 being €48,000, plus an interest-free loan of €624,000,
4 which Lansdowne made to Arippe. In return Arippe
5 guaranteed a loan of €400,000 to Chase Bank of Ireland
6 in respect of borrowings of Lansdowne Construction
7 Company Limited, and also deposited by way of equitable
8 deposit the title deeds of the land. It was meant to
9 be in respect of 48 plots, but was subsequently reduced
10 to 46 plots, and a revised licence will follow in
11 respect of this.

12 .
13 Up to date seven plots have been sold, and Arippe has
14 been credited with €19,400 off the loan of €624,000.
15 It is now proposed that prior to the date of
16 liquidation the shareholders of Arippe agree to
17 transfer their shares to Lansdowne in consideration of
18 the cancellation of the balance of the loan, and of the
19 release by Chase Bank of Arippe's guarantee. The
20 position is then that Lansdowne is the sole shareholder
21 of Arippe prior to the company going into liquidation.

22 .
23 Article 115 was not used in the resolution to wind up
24 the company, and no liquidator was appointed. This
25 precludes the use of a deed transferring the land by a
26 liquidator to Lansdowne. I would mention, that a
27 transfer of assets in specie in a liquidation avoids
28 Stamp Duty under Irish law. I note that Section 114,
29 although it refers to a deficiency in a winding up, it
30 appears to allow an in specie distribution to the

1 members without having to have a special resolution.
2 .
3 The problem is to get somebody to execute the deed on
4 behalf of Arippe transferring the land to its
5 shareholder, Lansdowne. I note that the subscribers to
6 the memorandum were yourself, Mr. Dart, Mr. Moran, and
7 Miss Mourant. Assuming you hold one share as nominee
8 for Lansdowne, and the other eleven are transferred to
9 Lansdowne prior to liquidation, could you, as a
10 resident nominee, execute the deed incorporating the
11 powers in Article 114, having being instructed by
12 Lansdowne to take such steps?

13 Yours sincerely, Laurence Wheeler."

14 .
15 So that's fairly clear, insofar as the sale to Arippe
16 is concerned, that it was in respect of a specific
17 number of sites, 46 plots, that it was for £100,000, as
18 you've indicated already, and that the sale was closed
19 in July of 1978. Isn't that right? And it's also
20 clear that the scheme involved, as we are - a licence
21 agreement under which there was a payment of a licence
22 fee of a certain sum of money, but also an
23 interest-free loan of £624,000. And as we know from
24 subsequent events, the total sum of the licence fee and
25 the interest-free loan was £672,000. And that a sum of
26 £672,000 was, in fact, sent over to Jersey from
27 Lansdowne to Arippe. Isn't that right?

28 A. Well, whatever.

29 77 Q. Yes. And we know that out of that sum there was a
30 distribution, from which you received £67,000 --

1 A. Yes, sir.

2 78 Q. -- approximately. This scheme is extremely similar to
3 the Donnybrook scheme, in the sense that the monies
4 that were sent from Ireland to Jersey were
5 substantially, although not exclusively, borrowed, but
6 more importantly, that there was a licence agreement
7 providing for payments of two sums, allegedly a
8 relatively small sum of ú48,000 odd, by way of a
9 licence fee, and a relatively large sum, by way of an
10 interest-free loan, in this case ú624,000. Isn't that
11 right?

12 .

13 Now, there is another letter that we have in relation
14 to this transaction, two, in fact. Page 209 is a
15 letter from Mr. Wheeler to Kennedy McGonagle Ballagh,
16 Mr. O'Shea, your own solicitor, and he says:

17 .

18 "Dear sirs, we act for Arippe Investments Limited of
19 this address, which company has agreed to purchase for
20 ú100,000 certain lands (coloured red and blue on the
21 enclosed map) at Newtownpark Avenue, Blackrock County
22 Dublin for Mr. John F Maguire.

23 .

24 Please investigate title to these lands, and let us
25 have your report as soon as possible."

26 .

27 And there is another letter. That was dated the 20th
28 of June. I am not sure we have a date on it. In any
29 event, it's a page 1746.

30 .

1 It's from Mr. Owens to Mr. Wheeler. And it's a draft
2 of the letter I have just read to you, in other words,
3 this is some more of Mr. Owens' correspondence. He
4 says:

5 .
6 "Please send the following letter to Kennedy McGonagle,
7 solicitors of 29 Molesworth Street, Dublin 2, for
8 attention of Mr. Michael O'Shea.

9 .
10 We act for Arippe Investments Limited of this address,
11 which company has agreed to purchase for ú100,000
12 certain lands (coloured red and blue on enclosed map)
13 at Newtownpark Avenue, Blackrock, County Dublin from
14 John F Maguire.

15 .
16 Please investigate title to these lands, and let us
17 have your report as soon as possible."

18 .
19 So that letter, obviously, of the 20th of June, 1978,
20 and page 209, was obviously sent by Mr. Wheeler on the
21 instructions of Mr. Owens, and on the basis of a draft
22 produced to him by Mr. Owens. Isn't that right?

23 A. Well, the only thing I would say, sir, is this: That I
24 don't recollect seeing these. But all I can say to you
25 - I would say, sir, that it is - sorry - it's part of
26 the scheme. You know, it's his setting it up.

27 79 Q. Yes. And this brings us back again to the question of
28 why were you paid ú67,000 in this case?

29 A. I was - at what stage I can't tell you exactly. I was
30 invited in here, and - to participate in the scheme,

1 sir.

2 80 Q. Well, my very first question was: When were you
3 invited to participate in the scheme, and what was
4 Mr. McGowan's, or whoever it was that made the proposal
5 to you, what was their proposal?

6 A. I can't recollect all of the things, but I - I would
7 have thought that it would have been on the same basis
8 as the other, but I can't actually say that it was to -
9 it was to share in the future in the scheme, and be
10 paid for it.

11 81 Q. What exactly was he suggesting? What was the proposal?

12 A. It was to share in the profits which would be produced,
13 again the scheme, the tax scheme prepared by Mr. Owens,
14 that whatever flew out of that - that whatever flowed
15 out of that attributed to the value of the lands, that
16 this is what I would get my proportion out of, and I
17 would have understood I was getting, I think, a third
18 of the profits.

19 82 Q. Yes. But we've been over this ground yesterday, in the
20 case of Donnybrook, and I really don't want to spend
21 too much time on it.

22 .
23 May I take it that your position in regard to this is
24 virtually identical to yesterday, or are there any
25 differences in it?

26 A. I wouldn't have thought so, sir.

27 83 Q. The only possible difference being that in this case
28 the lands, as we understand it, were not subsequently
29 sold off but were, in fact, developed. But, in any
30 event, your evidence yesterday was that it was not

1 one-third of the profits of the development that you
2 were sharing in, isn't that right?

3 A. I - if you go down again, sir, that it was the scheme,
4 what profit was thrown up on the scheme produced by
5 Mr. Owens, by Mr. Hugh Owens. That's what I was
6 participating in.

7 84 Q. What Mr. Owens did, and I put it in its most simple;
8 this particular part of the property of Mr. Maguire was
9 purchased by this Jersey company, in which we are told
10 by Mr. Brennan, yourself and himself and Mr. McGowan
11 shared equally for ú100,000. Mr. Owens produced a
12 scheme under which ú672,000 was sent over to Jersey,
13 404,000 of that was sent back to Dublin immediately,
14 and the remainder was divided up in - for payment of a
15 sum of fees into - approximately ú67,000 for each of
16 the three of you.

17 .

18 Now, the payment out, I think, occurred in November of
19 '78, the sale having closed sometime in July of 1978?

20 A. I think any of the schemes, sir, entailed all of the
21 land that would have been involved in the cocktail, not
22 just one bit of it.

23 85 Q. Well, the only land involved in this scheme was the
24 land owned by Arippe?

25 A. No, but - well, you can take it from me, sir, that it
26 was all of the land. If that's the way Owens comes out
27 - but this is where I was saying to you, what you've
28 seen and what was all - anyway, it was to do with all
29 of the lands, sir. It had been all the lands that were
30 bought by Brennan and McGowan, so the entire site, sir.

- 1 So didn't somebody else take the back of it?
- 2 86 Q. Greenmount took some portion of it. But Greenmount -
- 3 no portion of the land taken by Greenmount was owned,
- 4 as I understand it, by Arippe. Arippe only acquired a
- 5 portion of the entire of Mr. Maguire's property --
- 6 A. I think --
- 7 87 Q. -- Mr. Owens put together did not, as far as we are
- 8 aware, involve any part of the land taken by
- 9 Greenmount?
- 10 A. No, sir. I would say that when you look into it, or
- 11 you find out more, you will find that it involved all
- 12 of the property.
- 13 88 Q. Why do you say that?
- 14 A. Because this is what - this is what it was, that it was
- 15 - Brennan and McGowan bought all the property, the
- 16 entire property.
- 17 89 Q. But why do you say Mr. Owens' scheme involved it all,
- 18 given that the - we know the kind of scheme it was, in
- 19 the sense that it's, in broad terms, similar to the one
- 20 he did for Monkstown, and subsequently for Donnybrook?
- 21 We know that it involved a Jersey company buying Irish
- 22 property. And we know that the thing is pivoted around
- 23 the transfer to the Jersey company, and the retransfer
- 24 by the Jersey company back to an Irish company of the
- 25 property. In this case, the property is the smaller
- 26 lot bought by Arippe Investments Limited for ú100
- 27 (sic), and that's why I am saying to you, what makes
- 28 you think that the scheme which Mr. Owens put together
- 29 had anything to do with the land bought by Greenmount?
- 30 A. Well, I would have - my understanding was that the - I

1 think that all of the property was involved, and that
2 this was part of the set-up, that the divisions would
3 be done in certain ways, because the land was - you
4 see, there was an overall figure, sir - I think, if you
5 look at this, you will see, that there was a price
6 agreed. By the way, I haven't got the contract. There
7 was a price agreed for the overall property --

8 90 Q. Which you think was around 5 to ú560,000?

9 A. Yeah, or I think it might have been a bit more, 506 -
10 well, give or take, around there.

11 91 Q. Now, I think what the position --

12 A. There is no doubt in my mind that the deal - first of
13 all, McGowan bought either - he had of bought on
14 himself on behalf of one of the companies, but it was
15 on behalf of either Brennan and McGowan, or one of his
16 companies, one of his companies. And then, when Hugh
17 Owens came into the picture, he now has started to
18 direct the scheme. And a question of carving up, sir,
19 but I think - I think that, then, the carving up of the
20 land would have been orchestrated and agreed with him,
21 because otherwise there was no - there was no - the
22 contract, out of which all of it flowed, sir, was the
23 contract with Brennan and McGowan.

24 92 Q. There is no doubt about that. But did the sale to
25 Greenmount close, for example, at the same time as the
26 sale to Arippe?

27 A. I don't know. I don't know, sir.

28 93 Q. Well, what reason do you have to believe that the lands
29 ultimately taken by Greenmount had anything to do with
30 Mr. Owens' scheme, because it's not apparent from the

1 documents that we've seen that it has?

2 A. Well, I think, sir - this is where, I think, that what
3 we were talking about yesterday, all of what went in -
4 in Mr. Owens' mind, this is a tax efficient scheme,
5 which was prepared by Mr. Owens to effect all of the
6 properties.

7 94 Q. Yes, Mr. Finnegan. But we do know the kind of scheme
8 it is, having seen two of them previously, and we know
9 that the schemes, each of them, involved the
10 acquisition of Irish property by a Jersey company, and
11 ultimately the retransfer of that property at a much
12 higher value in one shape or form, whether it be for a
13 consideration of the discharge of a debt due under a
14 management agreement, or payment of monies under a
15 licence agreement, or whatever. Essentially the lands
16 came back to an Irish company, ultimately, for a much
17 higher price than the Jersey company had paid. And
18 this pattern appears to be repeated here, in respect of
19 the portion of the property that was bought by Arippe.
20 But what I am trying to point out to you is that there
21 is nothing in any of the documentation that we are
22 aware of which indicates that Mr. Owens' scheme not
23 only included the lands acquired by Arippe, but also
24 lands not acquired by Arippe, being lands acquired by
25 an Irish company in the first instance called
26 Greenmount?

27 A. Well, I put it this way, sir: That the - it wouldn't
28 look a normal apportionment for €100,000 for the front
29 piece of ground, and that would have to be
30 orchestrated, and the balance of the sum on the rear --

1 95 Q. I understand. So that's the basis of your belief, that
2 it did include, or it must have included the other
3 ground?

4 A. Yes.

5 96 Q. It's not that you have seen it in any document?

6 A. No.

7 97 Q. It's because you feel that the disproportion between
8 the 100 and the 672 is so great that it must have
9 included a greater --

10 A. Yes, sir.

11 98 Q. Well, can we just look at the ingredients of it.

12 Perhaps we'll take it in its chronological sequence.

13 If we could just have page 209.

14 .

15 Yes, I think that's the letter that I've just shown you
16 from Mr. Wheeler to Mr. O'Shea, which was drafted by
17 Mr. Owens. Isn't that right?

18 A. Yes.

19 99 Q. Then if we look at page 1747. This is, again, from
20 Mr. Owens to Mr. Wheeler. And it says:

21 .

22 "Please send, by express post, to Stephen Miley of
23 12 South Frederick Street, Dublin 2 the following
24 sealed resolution of Arippe Investments Limited:

25 .

26 It was resolved that Stephen Miley be authorised to
27 make, on behalf of the company, an equitable deposit of
28 the title deeds of the company's lands at Newtownpark
29 Avenue, Blackrock, County Dublin to Chase and Bank of
30 Ireland International Limited.

1 .
2 It was further resolved that Stephen Miley be
3 authorised to complete, on behalf of the company, a
4 guarantee for ú400,000 in favour of Chase Bank and Bank
5 of Ireland International Limited in respect of
6 borrowings of Landsdowne Construction Limited.

7 .
8 We can tidy up the phrases to normal legal banking
9 terminology, and confirm by telex to Stephen Miley, to
10 our number, the contents of the resolution."

11 .
12 And at page 1730, there is a resolution of Arippe
13 Investments Limited (Bank of Ireland), dated the 18th
14 of October, 1978.

15 .
16 "1. In the absence of the Chairman of the company, it
17 was resolved that Laurence Anthony Wheeler be appointed
18 Chairman of the meeting.

19 .
20 2. The minutes of the previous directors meeting held
21 on the 17th October 1978 were read, confirmed and
22 signed.

23 .
24 3. It was resolved that Stephen Miley be authorised to
25 make, on behalf of the company, an equitable deposit of
26 the title deeds of the company's lands at Newtownpark
27 Avenue, County Dublin to Chase and Bank of Ireland
28 International Limited."

29 .
30 And then it was at paragraph 4:

1 .
2 "It was further resolved that Stephen Miley be
3 authorised to complete, on behalf of the company, a
4 guarantee for €400,000 in favour of Chase and Bank of
5 Ireland International Limited in respect of borrowings
6 of Landsdowne Construction Company Limited."

7 .
8 Now, what those documents tell us, although we don't
9 actually have all of the documents implementing those
10 resolutions, but we do know that €400,000 was, in fact,
11 borrowed, and that security was, in fact, given, by, we
12 believe, Mr. Miley. And that all of this happened
13 after the purchase - after the completion of the
14 purchase by Arippe, which was in July of the same year.

15 A. Yes, sir, the same piece of ground?

16 100 Q. €400,000 was borrowed on the security of the property,
17 in fact. And we do know that Chase Bank did, in fact,
18 put up €400,000 by way of loan on this property. And
19 indeed, there was another loan taken out from Northern
20 Bank, of €150,000. And there was another sum of
21 €100,000 held in Northern Bank in a current account.
22 And a further sum of €22,000 held in Northern Bank in a
23 current account. All of those sums were assembled
24 together and sent over to Jersey, and they totalled
25 €672,000, which was the money that was sent over to
26 Jersey.

27 A. Sir - this, you see, would be, again, part of the
28 package of borrowing, because they borrowed 400,000 on
29 Arippe, isn't it?

30 101 Q. Yes.

1 A. Well --

2 102 Q. You see, what it does appear to indicate, in the first

3 instance, is that the borrowing thing didn't really

4 arise until well after the purchase of the property.

5 The property was purchased in July.

6 A. All of the property?

7 103 Q. No, the bit purchased by Arippe was bought in July.

8 A. Yeah.

9 104 Q. Right?

10 A. From whom?

11 105 Q. From Mr. Maguire.

12 A. Well, I would say, sir, that - I would say that there

13 is very little doubt that the apportionment of this was

14 not Maguire's apportioning of it. It was at the

15 request - this is a splitting of a contract, sir.

16 106 Q. We are simply talking about the Arippe property at the

17 moment, Mr. Finnegan. What happened was Arippe closed

18 the sale of a portion of the lands covered in the

19 contract which was made sometime before September of

20 1977. They closed that sale in July of 1978 for

21 ú100,000, between Arippe and John Maguire.

22 .

23 MR. HUSSEY: Sorry, just a very small point. The date

24 on the deed, between Maguire and Arippe, is February

25 '79. I am wondering where --

26 .

27 107 Q. MR. HANRATTY: We've just had, a few moments ago - put

28 back up 1740. This is in Mr. Owens' own hand, the

29 author of the scheme.

30 A. Right.

1 108 Q. He's writing to Mr. Wheeler and he says:

2 .

3 "The above company was incorporated on the 22nd of
4 December, 1977. And the beneficial owner was Mr. Tom
5 Brennan. It acquired land in July 1978 at Newtownpark
6 Avenue, Blackrock, County Dublin for ú100,000."

7 .

8 Now, I take it, he is referring to Mr. Maguire's land,
9 or is there some other land in Newtownpark Avenue?

10 A. Not that I am aware of, sir. No, I would take it that
11 it is Maguire's land.

12 109 Q. So Mr. Owens is saying, in his letter, of September
13 1980, in fact, that the land was acquired by Arippe for
14 ú100,000 in July of 1978. That's what he said.

15 .

16 We know that in July of 1978 there is a debit on your -
17 on Foxtown Investments Limited's account in Guernsey in
18 the sum of 33,333.33. You are saying to this Tribunal
19 that that was your one-third share put into this
20 investment with Messrs. Brennan and McGowan?

21 A. Yes, sir.

22 110 Q. If Mr. Owens is right in this letter, in saying that
23 Arippe acquired this property in July of 1978, it
24 appears that your money may have been used, and I don't
25 put it any higher than that, may have been used by
26 being put towards the purchase price of the property.
27 Isn't that right?

28 A. No, sir, it's not right. I can't say it is right.

29 111 Q. Well, do you know what they did with it?

30 A. No, I don't, sir, but I know this much, sir, that there

1 would be no doubt in my mind that Maguire couldn't have
2 been advised by his lawyers to accept a figure, the
3 wrong apportionment of price from the lands on the
4 front for 100,000, because if the other deal didn't go
5 through, the whole thing would be lopsided.

6 112 Q. Mr. Finnegan, all I can do is deal with what's in the
7 documents. And Mr. Owens says that the property that
8 Arippe acquired was acquired by - for ú100,000 in July
9 of 1978?

10 A. Well, then, this is, as you say, him implementing the
11 scheme. It's the scheme --

12 113 Q. It may well be, but all I am saying is that the
13 document indicates that Arippe acquired some property
14 from Mr. Maguire in July 1978 for ú100,000.

15 A. The thing to remember, sir, is this: That although one
16 could take a tack off on this front piece of ground,
17 but remembering that Maguire did not, but you can take
18 it, Maguire did not do two deals on this ground. This
19 is either - now, who again was this written to?

20 114 Q. Mr. Finnegan, this is not complicated. We know there
21 was one contract for what appears to be the entirety of
22 Mr. Maguire's property, sometime before July - sorry,
23 September 1977.

24 A. Yes, sir.

25 115 Q. We know that sometime subsequently somebody decided
26 that it would be split, and that Arippe would take a
27 small portion at the front, and that the remainder,
28 which is the majority of the property, would be taken
29 by Greenmount. Isn't that so?

30 A. Yes, sir.

1 116 Q. Right. This letter from Mr. Owens, who is the author
2 of the scheme of which you were a part, says, quite
3 explicitly, that in July of 1978 Arippe acquired a
4 portion of Mr. Maguire's land for ú100,000?

5 A. Mm-hmm.

6 117 Q. So on the assumption that that is correct, that that,
7 in fact, happened, and making full allowance for the
8 fact that the documentation we have is incomplete, but
9 on the assumption that Mr. Owens, who was the author of
10 the scheme, knew what he was saying, and had reason to
11 say what he said, it does appear that Arippe acquired
12 some property in Newtownpark Avenue from Mr. Maguire
13 for ú100,000 in July 1978.

14 A. As part of --

15 118 Q. Yes.

16 A. Yes.

17 119 Q. Now, we also know that in July 1978 there is a debit on
18 Foxtown's account, which you say constituted your
19 investment in this scheme?

20 A. Yes, sir.

21 120 Q. And in the absence of any other indication of any other
22 expenditure, in or around July of 1978, what I was
23 putting to you is that it's possible that what was done
24 with your ú33,333.33 is that it was put with similar
25 sums from Messrs. Brennan and McGowan and used to buy
26 the property that Arippe bought in July 1978?

27 A. Well, I don't know, sir.

28 121 Q. Right.

29 A. But you did mention to me there, a little while ago,
30 that there was a lot of other sums of money that were

1 put together.

2 122 Q. Later, in November.

3 A. All right.

4 123 Q. Because if we look at the loans - if we could have page

5 3841. There are two bank drafts from Chase Bank of

6 Ireland Limited, one on the 3rd of November, 1978, in

7 favour of Lansdowne Construction Company Limited in

8 the sum of ú200,000. You see that one? And the second

9 one --

10 A. They took the back. Didn't they take the rear?

11 124 Q. I'm sorry?

12 A. Did they take the rear, Lansdowne?

13 125 Q. No. Lansdowne Construction Limited was the company

14 that entered into the licence agreement with Arippe,

15 about Arippe's property.

16 A. All right. So they paid 200. Yes.

17 126 Q. And Lansdowne Construction Limited is the company that

18 sent ú672,000 to Arippe in Jersey?

19 A. Mm-hmm.

20 127 Q. So this is a portion of the 672 that was sent over.

21 .

22 The first one - there is a loan of ú200,000 dated the

23 3rd of November, 1978. You see that one?

24 A. Yes.

25 128 Q. Later, in the same month, on the 28th of November,

26 1978, another ú200,000. That amounts to what we know

27 to be a borrowing of ú400,000 from Chase Bank. And

28 that, I suggest to you, is clearly the ú400,000

29 referred to in the two previous documents relating to

30 the resolutions of Arippe Investments Limited to

1 provide a mortgage or security over the lands in
2 respect of this borrowing. Isn't that right?

3 A. Yes, sir.

4 129 Q. And just to be clear about it, those documents are
5 dated - the resolution is dated the 18th of October,
6 1978. And I don't have a date on the telex, although
7 I'm sure it's reasonably contemporaneous.

8 .
9 But, in any event, the resolution, in which Arippe
10 agreed to deposit the title deeds to its property as
11 security for this loan, was dated the 18th of October,
12 1978. The borrowing was actually drawn down, as we can
13 see from the bank drafts, the two bank drafts from
14 Chase Bank, firstly, as to ú200,000 on the 3rd of
15 November, 1978, and as to a further ú200,000 on the
16 28th of November, 1978. That seems fairly clear.

17 A. This is all being handled by Mr. Owens?

18 130 Q. Yes.

19 A. Yes.

20 131 Q. This is the scheme that Mr. Owens put together in
21 relation to the bit of the Newtownpark Avenue lands
22 that was acquired by Arippe, although you now appear to
23 be suggesting that it involved the lands acquired by
24 Greenmount as well. And what I am doing is I am
25 bringing you through the documents to see if we can
26 find any sign of that, or resolve the issue one way or
27 another?

28 A. All right.

29 132 Q. Now, there was another loan which I mentioned to you,
30 from Northern Bank Limited, and if we could have page

1 3815.
2 .
3 This is a letter from Northern Bank to Stephen Tracey,
4 an officer in the Revenue Commissioners investigating
5 certain aspects of the liquidation of Landsdowne
6 Construction Limited. There Mr. Tracey was, in fact,
7 the liquidator appointed, I think, by the Revenue.
8 .
9 And the bank are giving him information in this letter.
10 It's dated the 17th of January, 1985. It's "re
11 Landsdowne Construction Company, in liquidation."
12 .
13 "We acknowledge receipt of your letter of the 15th
14 instant.
15 .
16 In November 1978 the above company was granted a loan
17 of ú150,000, which was drawn down and paid to Messrs.
18 Miley & Miley, as per photocopy draft enclosed.
19 .
20 We trust that this information is of assistance to
21 you."
22 .
23 So this is a further loan from a different bank, of
24 ú150,000 in November of 1978. And if we look at page
25 3816 --
26 A. On the same land?
27 133 Q. Yes. We believe so. And as you can see, the draft
28 enclosed is there. It's dated the 28th of November,
29 1978. It's for ú150,000, and it's drawn - a bank draft
30 drawn on Northern Bank Limited in favour of Miley &

1 Miley.

2 .

3 And then if we look at a letter from Miley & Miley,
4 dated the 5th of March, 1985, again to Mr. Tracey, it's
5 page 3853.

6 .

7 "We refer to your letter of the 22nd of January last,
8 and apologise for the delay in dealing with same, which
9 was due, in large part, to the writer's absence from
10 the office.

11 .

12 However, it would appear from our ledger that we
13 received a sum of ú150,000 from Northern Bank on the
14 28th of November, 1978, and that sum represented part
15 of a payment of ú672,013 made on the 29th of November,
16 1978, to Chase Bank (Channel Islands) Limited."

17 Chase Bank (Channel Islands) Limited being the
18 receiving bank in the Channel Islands through which the
19 sum was paid to Bedell & Cristin.

20 .

21 "We cannot easily identify the transaction it related
22 to, but if you can advise us of the lands in question
23 we should be able to turn up an old file to let you
24 have more information in relation to the matter.

25 .

26 With regard to your letter of the 13th ultimo addressed
27 to Mr. Daniel O'Connell Miley, it would seem as if the
28 sums of ú200,000, both of which came from Chase Bank of
29 Ireland, formed part of the payment of ú672,013. We
30 shall send you a copy of the company's client account,

1 and the account of Green Isle Holdings Trust within the
2 next few days. Yours faithfully, Miley & Miley."

3 .

4 So, it's quite clear from that letter that the three
5 borrowings that we know of, the 200,000 - the first
6 200,000 from Chase Ireland, the second 200,000 from
7 Chase Ireland, and the 150,000 from Northern Bank,
8 formed part of the ú672,000 that was sent from
9 Landsdowne Construction over to Arippe in Jersey.

10 Isn't that clear?

11 A. It appears so, yes, sir.

12 134 Q. Now, we understand that the balance, which amounts to
13 ú122,000, came from two current accounts held by some
14 Brennan and McGowan company in Northern Bank in the sum
15 of 100,000 and ú22,000, respectively, and those sums -
16 added together to those three loans we have just
17 mentioned, come to a total of ú672,000.

18 .

19 So that appears to be the source of the funds that went
20 over to Jersey. And, obviously, what I am trying to
21 elicit is what was the reason why Brennan and McGowan
22 paid you out of these combination of borrowed sums in
23 the sum of ú550,000 and ú122,000 of their own
24 resources? Why did they pay you 67,000?

25 A. Well, it was the - by the way, I can't talk to you in
26 isolation about this Arippe part of the land, because
27 it was the overall package, that I am convinced that
28 all of the lands were involved in the package.

29 .

30 Now, what - this is again, to say the least, sir - this

1 is quite involved with toing and froing. You wouldn't
2 know who was playing/paying what, but there was lots of
3 money going in from various parts into the pot, wasn't
4 there, here?

5 135 Q. No, there were three bank loans which account for
6 550,000. We know that for certain. And there was a
7 current account which had a balance, we are told, of
8 ú100,000, and another current account of - holding
9 ú22,000, both held in Northern Bank Limited, and those
10 sums were put together with the borrowed monies and
11 sent over.

12 .
13 In fact, if we could just have a look at page 2492.
14 And if we can just scroll down the page a little bit.
15 This is a - one of Mr. Simon Howard's documents. And
16 you can see there, if we can just scroll it up another
17 little bit, please, a paragraph beginning with the word
18 "file note".

19 .
20 "File note dated the 14th December, 1978, to the
21 Accounts Department personnel at Bedell & Cristin from
22 Laurence Wheeler refers to a transfer of ú472,000 on
23 30th November, and various payments/transactions having
24 been effected."

25 .
26 So it would appear that all of the other sums, except a
27 figure of ú200,000, which, by inference, presumably,
28 must be the second Chase loan of ú200,000, were sent
29 over. And we have a letter, page 220. It's from Chase
30 Bank (CI) Limited to Mr. Wheeler, dated the 30th of

1 November, 1978. It says:
2 .
3 "I refer to the sum of ú672,000 which you " - that may
4 mean that Mr. Simon Howard's entry of 472 is simply
5 incorrect, because we do know from the bank drafts that
6 we have seen, that by the 30th of November the second
7 Chase Ireland loan had already been received.
8 .
9 So this letter says: "I refer to the sum of ú672,000
10 which you received today by telegraphic transfer from
11 Algemene Bank Nederland, Dublin." That's the bank in
12 which Miley & Miley had an account, you recall.
13 .
14 "I would be grateful if you would arrange for an
15 immediate telegraphic transfer of ú404,000 to Algemene
16 Bank Nederland at 46 St. Stephen's Green, Dublin 2, for
17 the account of Messrs. Miley & Miley.
18 .
19 I would be grateful if you would also immediately
20 telegraphically transfer the sum of ú67,278.54 to
21 Guinness & Mahon, Guernsey, at St. Julians Court, St.
22 Peter Port, for the account of Foxtown Investments
23 Limited.
24 .
25 I also require two drafts, one made payable to Hugh
26 Owens Esquire for ú52,000, and the other made payable
27 to Messrs. Reid & McNabb for ú10,500.
28 .
29 I would appreciate it if you could telephone
30 immediately the drafts are ready for collection.

1 .
2 Yours faithfully, Laurence A Wheeler."
3 .
4 So that sets out, quite clearly, what was done with the
5 ú672,000, isn't that right? And so we know, with
6 reasonable certainty, and subject to anything that you
7 may wish to say in relation to the matter, that Brennan
8 and McGowan borrowed ú550,000 from two banks, added
9 another 122,000 to it, and sent it all over to Jersey -
10 sent 404,000 straight back, presumably to repay the
11 Irish loans with some, perhaps, interest or bank
12 charges, and distributed the balance, having paid some
13 expenses to Reid & McNabb and Mr. Wheeler for their
14 fees. And distributed the rest, approximately, in
15 three equal proportions. They don't actually work out
16 exactly equally, because the balance left after all of
17 the distributions, including the 67,278 to you, would
18 leave about 137,000, giving them slightly more, about
19 68,000 each. But close enough, within approximately
20 ú1,000, or somewhat over ú1,000, in fact.

21 .
22 So the question really is, Mr. Finnegan, why did
23 Messrs. Brennan and McGowan, having borrowed this
24 enormous sum of money, and added some of their own
25 money to it, send it over to Jersey, send a chunk of it
26 back, possibly to repay part of the borrowing, and then
27 divide the rest, and out of that division give you
28 ú67,000?

29 A. What happened about the balance of the land here?

30 136 Q. The balance of the land, as far as we can understand

1 it, went to Greenmount.

2 A. Yeah. Well, that's part of the overall thing as well,
3 sir.

4 137 Q. Could you just deal with my question. Why did they
5 give you the ú67,000?

6 A. Well, as part of the overall scheme, sir. And that's
7 where I was involved. And it wasn't isolated just to
8 one piece of ground in front of Arippe, it was the
9 overall. So what - so the balance, as I said to you,
10 that the - there was quite a lot of acreage, and the
11 chunk of ground in the front was very much the smaller
12 one. It was part of - if you want to know, it was part
13 of the overall structure. But the structure did take
14 in, sir, the land at the rear.

15 138 Q. Whether it did or not, why were you getting paid
16 ú67,000?

17 A. Because I was - I was asked to participate in the
18 scheme, and which I did do, sir. And I paid my money
19 in. And then didn't you say - and then whenever he was
20 - he had sorted out the entire scheme, then he did his
21 distribution, sir. But he did realise, out of the
22 contract, he did realise on the rear lands as well.

23 139 Q. Well, there is nothing in anything - any of this
24 documentation to indicate that the Greenmount lands had
25 anything to do with Mr. Owens' scheme?

26 A. This is what is lacking in the thing, sir. It formed
27 part of the overall - and, you see, I suppose it's
28 difficult, looking - it's difficult for anyone here,
29 but outside - outside in, but it was part of the
30 overall transaction, and I don't know, even if you want

1 to go on, sir - well, what happened to the back land
2 afterwards?

3 140 Q. Let's just look at what happened to this land.

4 .

5 We know that the vehicle, if I might call it that,
6 under which the ú672,000 was sent over to Jersey, was a
7 licence agreement between Lansdowne and Arippe.

8 A. Yes.

9 141 Q. And if we could have page 3984. This is the agreement

10 which was signed between Arippe Investments Limited and
11 Lansdowne. Just before we look at the licence
12 agreement itself, there is a letter of the 4th of
13 December, 1978, from Miley & Miley to Mr. Wheeler in
14 connection with it. It's page 1744.

15 .

16 Mr. Wheeler says: "Dear Sirs, Arippe Investments
17 Limited and the Landsdowne Construction Limited.

18 .

19 As you are aware, we act for Arippe Investments
20 Limited, and we refer you to the licence agreement
21 recently entered into between our client and your
22 client, Landsdowne Construction Limited.

23 .

24 As you are aware, we are unfamiliar with Irish
25 conveyancing law, and we will require to retain
26 solicitors in the Republic of Ireland to advise us in
27 relation to it. In the circumstances, it seems to us
28 that it would be a benefit to both yourselves and
29 ourselves in speeding the matter up if you were to
30 undertake this on our behalf. Please let us know

1 whether you are prepared to do so."

2 .

3 It is quite clear this agreement had been entered into,
4 this licence agreement between Lansdowne, as of that
5 date?

6 A. Yes, sir.

7 142 Q. Looking at the licence agreement, page 3984. It says -

8 it gives the date as '78, and that, unfortunately, the
9 top line is obscured:

10 .

11 "Between Arippe Investments Limited, having its
12 registered office at Normandy House, St. Helier, and
13 Lansdowne Construction Company Limited, having its
14 registered offices at 12 South Frederick Street, in the
15 City of Dublin" - that's Miley & Miley's offices -
16 "whereby it is agreed as follows:

17 .

18 1. In consideration of the sum of ú48,000 now paid by
19 the grantee to the grantor (the receipt of which the
20 grantor hereby acknowledges) the grantor hereby
21 licences the grantee to enter on the lands shown on the
22 map attached hereto for the purpose only of building
23 and constructing houses on the plots numbered 1 to 48
24 inclusive."

25 .

26 Now, you see the reference to "1 to 48"?

27 A. Yes, sir.

28 143 Q. That reflects the reference in the correspondence I've

29 previously opened to you about the property being

30 bought by Arippe, which says that the plots were/was

1 actually reduced from 48 to 46. Do you remember that?

2 A. Yes.

3 144 Q. So we are quite clearly talking about the property,

4 only the property acquired by Arippe. Isn't that

5 right?

6 A. Yes, sir.

7 145 Q. "2. On the completion of each house on the plots

8 numbered 1 to 48 inclusive, on the said map, the

9 grantee shall be entitled to call upon the grantor to

10 make a conveyance in fee simple in the form of the

11 conveyance attached hereto of each of the plots to the

12 nominees of the grantee, provided, however, that prior

13 to the completion of such conveyance the nominee of the

14 grantee shall have paid to the grantor a sum of ú19,800

15 as consideration for the said conveyance. The grantor

16 hereby warrants that it has good and sufficient title

17 to make such conveyance.

18 .

19 3. On the completion hereof, the grantee shall make to

20 the grantor an interest-free loan of ú624,000. This

21 loan shall be repayable by the grantor to the grantee

22 at the rate of ú13,000 from each payment of" - I

23 presume it's ú19,800 - "which the grantor shall receive

24 from the nominees of the grantee for the conveyances

25 referred to at paragraph 2 hereof, as and when such

26 payments are made to the grantor.

27 .

28 As security for such loan, the grantor shall mortgage

29 all the said sites numbered 1 to 48 inclusive, together

30 with all necessary accesses and rights-of-way to the

1 said sites, to the Chase and Bank of Ireland
2 International Limited by way of, hereinbefore referred
3 to" - there is a line missing - "by the nominees of the
4 grantee. The grantor shall pay the sums of ú13,000 out
5 of each of such sums of money to the account of the
6 grantee at Chase Bank of Ireland International Limited,
7 provided the bank shall make available to the grantor a
8 release from the mortgage of the plot in respect of
9 which the payment is made."

10 .

11 And then it goes on to deal with the construction.

12 .

13 Now, a very similar scheme, therefore, to Donnybrook, a
14 very similar agreement to Donnybrook, where the premise
15 on which this deed was constructed was that the loan,
16 the borrowing would be an interest-free loan, granted
17 by the Irish company to the Jersey company, added
18 together to a licence agreement fee or a licence fee,
19 in this case ú48,000, and that borrowings of the Irish
20 company making the interest-free loan would be
21 progressively discharged by the payment out of site
22 fees, or deposits, or whatever of ú19,800, paid
23 progressively by each of the purchasers of the sites.

24 .

25 But we also know that in this case that is not, in
26 fact, what happened, and that what, in fact, happened
27 was that on - at the very outset, the full ú672,000,
28 including the interest-free loan and the licence fee,
29 was sent straight over to Jersey from the sources that
30 we've already discussed. Isn't that right?

1 .
2 So it's quite clear, from that document, that the
3 scheme which Mr. Owens put together under which the
4 ú672,000 was sent by Lansdowne to Arippe, Lansdowne in
5 Ireland to Arippe in Jersey, only involved the small
6 portion of the lands purchased by Arippe, and did not
7 involve the lands which were, I believe, subsequently
8 bought by Greenmount. And I think that's quite clear
9 from that deed.

10 A. The only thing that's missing in all of this, sir, is
11 the apportioning between the two properties, that the
12 ú100,000 for the front land and 500 odd thousand, or
13 whatever it is to the rear, which was not - sir, that
14 was a call, as I see it, not being the author - not
15 understanding all of this, part of what was happened,
16 you see - that if they decided to - you would have had
17 to reduce the price on the front and throw up a
18 substantial profit on it. And the cost - the higher
19 portion - the proportionally higher - it wasn't a
20 figure, if you like - sorry, I can't spit it out - on
21 the rear land.

22 .
23 Now, when you said, sir, that - I have to just go back
24 and say it to you. This is all part of the scheme,
25 because, (A), I did say to you, there is no doubt in my
26 mind, first of all, to get it absolutely clear, that
27 Mr. Maguire did not sell - it was not his agreement,
28 and he couldn't have been advised by his lawyers or
29 anyone to sell that portion of the ground, making sure
30 that the same parties were fixed and tied up on the

1 balance of the land to complete it.

2 .

3 It wasn't in isolation, it couldn't have been, because
4 that - if he had sold off that, and for anything to
5 happen on his contract at the rear, he would be on the
6 wrong side of it, absolutely.

7 .

8 So this is where it is part of the scheme that there
9 was a diminishing of the value of the front bit down to
10 100, and decided do all of the implementing of the
11 scheme around it.

12 146 Q. Mr. Finnegan, just dealing with the facts as we know
13 them, without trying to complicate them any more than
14 they are already. We know that you say you sent over,
15 or gave to somebody ú33,333.33. Incidentally, in this
16 case do you remember who you gave it to?

17 A. No, sir, but it would have been transferred - if it's
18 into the pot, it's more than likely in Mr. Owens' or
19 whoever he directed it to.

20 147 Q. Well, do you remember giving it to anybody?

21 A. I don't remember physically giving it to anybody.

22 148 Q. Do you remember arranging to have it transferred to
23 anybody?

24 A. Well, sir, I think - I know I was invited and I had to
25 pay money into the scheme. I don't remember when,
26 what. I am talking about - you see, again I have to go
27 on. I said to you yesterday, sir, to remember in
28 detail what happened 25, 30 odd years ago, I just
29 can't. But it was paid then. Now, just remembering
30 that I said to Owens, who - I can't say to you, sir,

1 but it was paid into the scheme.

2 149 Q. You said a minute ago, "I know I was invited and I had
3 to pay money into the scheme."

4 A. Yes.

5 150 Q. We are, of course, talking about money which didn't
6 belong to you, it belonged to Foxtown Investments
7 Limited?

8 A. Yes.

9 151 Q. And was not within your control as within the control
10 of the trustees of the Trust which owned Foxtown
11 Investments Limited?

12 A. Mm-hmm.

13 152 Q. So when you say, "I paid money into the scheme," you
14 seem to be treating the property of Foxtown as
15 synonymous with your own property?

16 A. Well, I think that, sir, that when you are talking - or
17 talking as we are, and going down things a hell of a
18 long time ago and looking at what was a trust and the
19 party that one was connected with the trust, and this
20 was part of Foxtown, that you don't all the time say,
21 "Oh, well, here we are, this is that and that, that,
22 that." This is not just the way things are done. In
23 normal circumstances that's not the way. So it was --

24 153 Q. In a normal trust, for example, the trustees are the
25 ones that make the investment decisions?

26 A. Yes, sir.

27 154 Q. Did the trustees make this investment decision?

28 A. Sir, when it comes down to it, that the Foxtown - it
29 would have been put to them, that any payment of this
30 size coming out would have to be explained, sir.

1 155 Q. Did they make this investment decision?

2 A. It would have been made, sir.

3 156 Q. By the trustees?

4 A. By the trustees.

5 157 Q. Yes. So what did you tell the trustees about this

6 investment proposal?

7 A. Sir, there is no point in my going around in circles.

8 I'll only be going from - in lots of what we are

9 talking about today is what I have been reminded of,

10 because it is a long time ago and it wasn't the only

11 transaction.

12 158 Q. As far as we are aware, there was no contact, for

13 example, between the trustees and Messrs. Brennan and

14 McGowan or either of them, or do you think there might

15 have been?

16 A. No, sir.

17 159 Q. You have no reason to think that Messrs. Brennan and

18 McGowan made any proposal to the trustees of the Trust,

19 do you?

20 A. No, sir.

21 160 Q. So when Mr. McGowan, if it was Mr. McGowan that made

22 this proposal to you involving a commitment on your

23 part of ú33,333, you would have had to go to the

24 trustees to say, "I want ú33,333, please." And what

25 did they say? Did they say, "Yes, sir, how would you

26 like it?" Or did they say, "What do you want it for?"

27 A. Well, it would have been put up, sir, through the

28 Foxtown - you know, when you are dealing with something

29 like this, it isn't a major, just like a multi-billion

30 pound company. There wouldn't be the same formalities.

1 But it would have been put up through the -- it would
2 be Foxtown that would have been getting the money.

3 161 Q. Foxtown was in receipt already of substantial monies
4 from the two previous schemes, one in Donnybrook and
5 one in Monkstown. We know that. Because those monies
6 were put into Foxtown at your direction. But we are
7 now talking about what the trustees were told about
8 this proposed investment.

9 A. Well, sir, I have to say to you that I can't tell you
10 exactly what they were told, but they would have been
11 informed of it, and I would have been talking as well
12 at that particular time with Mr. Traynor.

13 162 Q. Yes.

14 .

15 CHAIRMAN: I think we might break there for a short
16 break. Twenty minutes.

17 .

18 THE TRIBUNAL THEN ADJOURNED FOR A SHORT RECESS AND
19 RESUMED AGAIN AS FOLLOWS:

20 .

21 163 Q. MR. HANRATTY: I was suggesting to you before the
22 break, Mr. Finnegan, that this licence agreement would
23 appear to establish that the arrangements between
24 Lansdowne and Arippe related only to the portion of the
25 land acquired by Arippe. That's quite clear from that
26 deed, isn't that right?

27 A. Well, on that deed, sir.

28 164 Q. Yes.

29 A. But as I said to you earlier on, sir, that there is no
30 doubt in my mind that the deal that Mr. Maguire made

1 was not for ú100,000 on that portion, and a balance to
2 be collected on the back end. So that was an
3 apportionment. And whenever - I am not sure when that
4 took place, sir, but that was certainly Mr. Owens'
5 scheme being put into operation.

6 .
7 Now, the thing - I am mixed up in the company names,
8 but I am not quite sure whether the connection of the
9 parties to the - that were in the back land company and
10 the front, I think there might have been some
11 overlapping of interest in those companies.

12 165 Q. Well, what we know happened was there was an original
13 contract to sell the lot?

14 A. Yes, sir.

15 166 Q. Incidentally, am I right in thinking Mr. Maguire sold all
16 of the land he owned at Newtownpark Avenue?

17 A. No.

18 167 Q. Except the house?

19 A. Except the house and the - the house and surrounding
20 lands. It did have its own --

21 168 Q. Yes. How much land did he keep?

22 A. Ballpark, five acres or so, or thereabouts.

23 169 Q. Yes. We do know that at some stage after the original
24 contract, which unfortunately we don't have, there was
25 some decision to split it, and to sell part of it to
26 Arippe Investments Limited and part of it to
27 Greenmount. Isn't that right?

28 A. A decision?

29 170 Q. To split the conveyance. In other words, that while
30 the contract was a single contract --

1 A. Yeah.

2 171 Q. -- essentially the decision, presumably, was on the
3 purchaser side, where they decided that they would take
4 a portion of the land in the name of Arippe and a
5 portion of it in the name of Greenmount?

6 A. And - yes, sir.

7 172 Q. And that necessitated two separate conveyances?

8 A. Yes, sir.

9 173 Q. And we have, in fact, got the conveyance to Greenmount?

10 A. All right.

11 174 Q. If we could just have a look at page 4439. And this is
12 an Indenture of Conveyance dated the 29th of March,
13 1979. And as can you see, it's between John Francis
14 Maguire, Malahide address, and Greenmount Properties
15 Limited, with a Dublin address.

16 .
17 And it says in the recitals, it recites in Recital A:

18 .
19 "The vendor is seized of the lands described in the
20 first schedule and in the second schedule.

21 .
22 (B) That he has agreed to sell for ú465,000 the lands
23 in the second schedule and the lands in the third
24 schedule. The lands in the third schedule being part
25 of the lands in the first schedule, in other words, not
26 all of the lands in the first schedule, subject to the
27 easements and reservations of right-of-way in the
28 fourth schedule."

29 .
30 So what is sold to Greenmount there, is sold for

1 ú465,000?

2 A. Mm-hmm.

3 175 Q. Which, when added to the ú100,000 paid in respect of
4 the lands purchased by Arippe, gives approximately the
5 price which you suggested this morning of, you said,
6 560, in fact this would make a total of ú560. So that
7 seems to be right --

8 A. Yes, sir.

9 176 Q. What's your point about the apportionment?

10 A. My point about the apportionment was, sir, that from a
11 development point of view, the lands fronting
12 Newtownpark Avenue, that package there, there was a
13 long strip, sir - and the only - and one road down
14 through it. It was, if you like - there would be
15 lowish development costs on that, sir, compared to
16 other - running a road all around and in and out, which
17 you would have to do in the back.

18 .

19 So, in comparison, the development costs, i.e., roads,
20 sewers and drains and all of that, would be lower,
21 would have been lower on the front piece.

22 177 Q. Yes. How does it affect anything that we are dealing
23 with, including Mr. Owens' scheme? I mean, are you
24 saying the apportionment was disproportionate? Is that
25 what you are saying?

26 A. I think - sorry. It wouldn't have been the normal
27 apportionment of the lands, 100 and 465,000.

28 178 Q. Are you saying, in effect, that the 100,000 that Arippe
29 paid for the land that it acquired was less than the
30 value of the land it acquired?

1 A. Put it this way, it would be extremely good value.

2 179 Q. But if I may say so, so what? They made the
3 apportionment. Mr. Owens took it away and waved his
4 magic wand on it again, and did what he did. What
5 difference does it make, if it was 150,000 or even
6 200,000 apportioned to the lands acquired by Arippe?
7 To the extent, for example, that the value of the land
8 acquired by Arippe was artificially deflated, all it
9 means is that the amount of monies that had to be put
10 up for that - for the completion of that particular
11 part of the sale is less.

12 A. Yes --

13 180 Q. Mr. Maguire still has to get ú565,000 for the lot?

14 A. Yes.

15 181 Q. So it makes no difference to him?

16 A. No, regardless what happened.

17 182 Q. So far as Brennan and McGowan are concerned, does it
18 make any difference?

19 A. No, but it would bring into - it would bring - it would
20 have to take into account, sir, that - what you were
21 saying to me earlier, sir, that it was the front land
22 just to Arippe. But it was - the contract was on the
23 entire. Now, they would have to - I am not sure again
24 - the company - oh, Greenmount, you say?

25 183 Q. Yes.

26 A. Greenmount. Well, they took the rear section. And I
27 think there may have been an overlapping of interest
28 there, sir.

29 184 Q. Well, there is no overlap in the conveyances. This is
30 a discreet, specific conveyance of portions of

1 Mr. Maguire's land to Greenmount. It's a straight
2 sale.

3 A. Yes.

4 185 Q. Undoubtedly, it is land which was covered by the
5 original contract that he had with Messrs. Brennan and
6 McGowan, or Mr. McGowan, or Kilnamanagh, or whoever he
7 had it with.

8 A. Well, again, sir, this is where sometimes it is very
9 hard to understand when it comes down to these
10 structured schemes, as to just how to do it and who
11 puts in the roads. There is a lot of that stuff that
12 is not all, you know, described there as well. So if
13 you take the overall - this is why - I don't know
14 whether, when Mr. Owens was putting together the
15 scheme, he probably had to take into account what the
16 obligations would be on the people - Greenmount, of
17 what they would have to do. He would have to have -
18 how they would have to perform in the overall
19 development.

20 186 Q. What we are fundamentally trying to find out is why did
21 Brennan and McGowan pay you €67,000?

22 A. Well, sir, the position is this: All of what we are
23 talking about here is part of a structure that I was
24 asked to come in on. This is - I don't know what
25 happened all of this, and this is where I put the trust
26 - the Trust put up the money, the €33,000, and this was
27 - you mentioned before there were lots of different
28 pots, there were different things, there was money
29 around in different parts here. I was an integral - an
30 integral part of the scheme at the time. And that's

1 what I was invited to. I got in, made the investment,
2 and then I was taken out of that investment.

3 187 Q. Yes. Well, I can tell you what actually happened, as
4 it appears from the documents, after you put up this
5 money.

6 A. Yes, sir.

7 188 Q. You say you put up the money in July, because you point
8 to a debit in the account of Foxtown in July of that
9 sum, ú33,333. It appears from Mr. Owens' letter that
10 in July there was a conveyance of the - Mr. Maguire's
11 property to Arippe for ú100,000.

12 .

13 Now, you say that that may or may not reflect the
14 value. You say it doesn't, in fact, reflect the value
15 of what was bought, but that's what Mr. Owens' letter
16 says, that there was a conveyance of the 46 sites in
17 July for ú100,000. You don't know what was done with
18 your ú33,333. And it's possible, clearly, that it may
19 have been used for that, but it's equally possible it
20 may have been used for something else?

21 A. What was that date again, sir?

22 189 Q. July 1978. We are talking about July of 1978 now.

23 A. Yeah.

24 190 Q. And the debit on your account is either the 10th or the
25 20th of July of 1978, we think.

26 .

27 We know that, according to Mr. Owens' letter, Arippe
28 bought lands consisting of 46 sites from Mr. Maguire
29 for ú100,000.

30 A. Mm-hmm.

1 191 Q. Albeit that there is undoubtedly a deed dated February
2 of the following year, but this is what Mr. Owens'
3 letter says.

4 .
5 We know that the following November Mr. Owens puts
6 together a scheme under which, effectively, ú550,000 is
7 borrowed on the security of these lands, but certainly
8 400 of it is secured on the lands, I am not sure about
9 the 150, to which is added another ú122,000, put up, we
10 are told, by Mr. Tom Brennan by Brennan and McGowan
11 companies from accounts that they have, two current
12 accounts that they have in Northern Bank, making a
13 total of ú672,000.

14 .
15 We know that that money is assembled together and sent
16 over to Jersey. We know that 404,000 of it is sent
17 straight back to Dublin to Algemene Bank. And it may,
18 or it may not be that it was used in discharge of the
19 loan, because we know that part of Mr. Owens' scheme
20 was that in consideration of Lansdowne or, sorry, if
21 Arippe discharged the loan, Lansdowne would acquire the
22 shares in Arippe. And we do know that subsequently
23 Arippe was liquidated and the title to the land was
24 transferred to Lansdowne.

25 .
26 Those are --

27 A. Later.

28 192 Q. Yes, later. We'll come to the documents about that in
29 a moment. But what we do know is that, therefore, on
30 the basis of this property that was bought for ú100,000

1 by Arippe, apparently in July, according to Mr. Owens,
2 a bank lent ú400,000, which would suggest that Arippe,
3 therefore, had title by that time, on the basis that
4 one infers that a bank wouldn't lend money on the
5 security of land that wasn't owned by the person
6 providing the security. But, in any event, the bank
7 lent ú400,000, another bank lent ú150,000. It was all
8 put together with more money and sent over to Jersey.
9 ú404,000 was sent back, Mr. Owens and Messrs. Reid &
10 McNabb got paid their fees, and you got paid ú67,000.
11 .
12 Now, that's objectively what appears to have happened,
13 on the documentation. And what I am trying to find out
14 from you is where did your ú33,333 fit in, in this
15 whole affair, and why were you paid ú67,000 in November
16 of 1978?

17 A. Well, sir, I'll refer back to what I was saying, that
18 this was part of the - all of the lands were bought,
19 and it was part - it was part of the scheme, and it was
20 - by the way, the front and the back land were all in
21 the pot here.

22 .
23 Now, I don't know - in being invited in here, with the
24 structure that Mr. Owens was doing, I couldn't say to
25 you, sir, because I wasn't on a hands-on thing, and I
26 couldn't say to you where exactly my figure dropped in
27 to the scheme, but it was part of this scheme. Money
28 was put together to be taken out, and that was designed
29 by Mr. Owens.

30 .

- 1 Now, the fact that - I don't know, because you
2 mentioned here on one of the things here, that there
3 was a transfer a year later, was it, sir, of the deed.
4 Was it?
- 5 193 Q. No. That happened in August of 1980, Arippe conveyed
6 its title to Lansdowne. But you were not involved at
7 that stage, in that we understand, or do I
8 misunderstand the position, that your involvement was
9 confined solely and exclusively to the payments out
10 from the sums that went over to Jersey?
- 11 A. Yes, sir. The scheme. Now, what way it went out, to
12 the left or to the right, I don't know, but that's what
13 I got - I got paid for participating in the scheme, and
14 I think - and Arippe, or whatever you call it, it gave
15 guarantees as well for a short space of time.
- 16 194 Q. Yes. So it appears that the matters were so arranged
17 by Mr. Owens that Arippe would secure the borrowing by
18 Lansdowne from Chase of ú400,000?
- 19 A. Mm-hmm.
- 20 195 Q. Which obviously they couldn't have done if they didn't
21 own the property?
- 22 A. No. Well, there again, this is the structuring of the
23 company, sir. I don't know, either, or whether it was
24 all - whether it was all just going around the houses.
25 But it must have been. You are right, it must have
26 been - they must have been able to show title.
- 27 196 Q. If we just look at 1730 again. I mean, we do have this
28 puzzle as to why there is a Deed of Conveyance in -
29 purporting to transfer this land by Mr. Maguire to
30 Arippe in 1979, when Mr. Owens' letter says that it

1 happened in July 1978, and when it appears that the
2 lands were used as security for a ú400,000 borrowing in
3 1978?

4 .

5 But certainly this document may give some assistance on
6 it. This is the document we've already had. It is
7 dated the 18th of October. It is the resolution which
8 was passed by Arippe in the offices of Bedell &
9 Cristin.

10 .

11 And it was resolved at paragraph 3, as you can see:

12 .

13 "That Stephen Miley be authorised to make, on behalf of
14 the company, an equitable deposit of the title deeds of
15 the company's lands at Newtownpark Avenue, County
16 Dublin to Chase and Bank of Ireland International
17 Limited."

18 .

19 That clearly implies that they already owned the land
20 at that point, because they referred to their title
21 deeds and they referred to the land?

22 A. That's why it is very strange that there is a - the
23 deed is dated - is a year later.

24 197 Q. Well, I think February of the following year.

25 .

26 So certainly this document appears to proceed on the
27 premise that as of the date of this resolution, the
28 company already owned the land. Isn't that right?

29 A. Yes, sir.

30 198 Q. And it's quite clear from paragraph 4 that the security

1 contemplated is specifically in respect of the
2 ú400,000, where it refers to a guarantee of that sum as
3 well?

4 A. Yeah. Well, I think - this is where it is so difficult
5 to comment, sir, on what the whole - because on one
6 hand you have here what the land was supposed to be
7 paid, and on the other hand it's not. So whether - I
8 don't know - you see, any structuring of a thing like
9 this, I don't know how he went about it, but certainly
10 it would appear here that there has been some
11 revisiting of the transaction.

12 199 Q. But that doesn't really explain, Mr. Finnegan - where
13 does your ú33,000 fit in --

14 A. Well, it's the same thing, I don't know where it fitted
15 in, but there is a lot of things. You can see, even
16 after this, sir, I don't know --

17 200 Q. All right. That's your answer, you don't know?

18 A. No.

19 201 Q. And even with the benefit of the information you now
20 have, it is still the position that you can't say where
21 your ú33,000 fitted into this scheme of things?

22 A. No, sir.

23 202 Q. Could I put to you a simplistic, perhaps, but certainly
24 much less complex explanation, as I understand your
25 explanation, as to where it fitted in. And that where
26 it fitted in, quite simply, was that it was part of the
27 purchase monies to buy this part of Mr. Maguire's land
28 into a company called Victa, in which you had a share
29 with the other two gentlemen, and in respect of which
30 Mr. Owens was going to put together a scheme out of

1 which you would be paid ú67,000, in Jersey?

2 A. As I said to you, sir, I must remind you - just to
3 remind you of what I said earlier on. Certainly the
4 transaction with Victa - sorry --

5 203 Q. Arippe?

6 A. -- Arippe, was not in isolation to the rear. It was
7 all part of an overall - he was dealing at that time
8 with not just the lands in the front, the lands at the
9 rear, as well. So wherever - and there was money - you
10 see - I don't know what borrowing took place in the
11 background either, sir. So this is a scheme that isn't
12 just black and white, as you see, by talking earlier on
13 there, that this is the eventual documentation.

14 .

15 How it looks on one hand - we've been talking about one
16 year, and the next thing we switch on to yet another
17 year, where Mr. Maguire is signing a document, only
18 conveying the land which already simply a deal had been
19 done on.

20 204 Q. Well, it could have been post-dated?

21 A. Well, you see this --

22 205 Q. Or maybe it was a replacement deed, because there was
23 something deemed to be - we can only speculate. All we
24 can do is deal with the documents we have. And the
25 documents we have, while they include a deed indicating
26 that Mr. Maguire signed the document in February, or
27 whatever it was, of 1979, we have documents which
28 appear to indicate that by October of 1978, certainly,
29 and possibly even July of 1978, Arippe Investments
30 Limited owned this part of Mr. Maguire's property,

1 because they were mortgaging into a bank.

2 A. And --

3 206 Q. And they did get a loan of 400,000. That we do know.

4 A. It did go through.

5 207 Q. Yes.

6 A. Just to say to you, sir, in response to you, that I

7 don't know where my thing went, but in all of this,

8 sir, there is a - where he distributed the money to and

9 who got it, I don't know.

10 208 Q. Sorry, we know where the money went to. We know where

11 the 672 went to?

12 A. Yes, sir.

13 209 Q. We know that 67,000 went to you, 404,000 went back to

14 Algemene Bank Nederland in Dublin in the account of

15 Miley & Miley. We know that 137,000 went to Brennan

16 and McGowan. ú52,000 went to Hugh Owens. And I can't

17 remember, I think it was 10,000 something, went to Reid

18 & McNabb. And that accounted for the whole lot.

19 A. But then what happened to the lands?

20 210 Q. I'm sorry?

21 A. What happened to the lands at the rear?

22 211 Q. We keep talking about the lands at the rear. There is

23 no indication --

24 A. But there was an asset there --

25 212 Q. Not only if there is no indication that the lands in

26 the rear were involved in Mr. Owens' scheme, all the

27 documents indicate that they were not involved; the

28 licence agreement, as I pointed out to you, the

29 documents indicating the provision of the security, the

30 documents indicating the 46 sites. And there is

1 another document, while we are on the subject, I might
2 put now for the sake of completeness, at page 3998.
3 And this is from Landsdowne Construction Limited, dated
4 the 6th of July, 1979. This is their letter to the
5 bank.
6 .
7 Now, it's written by Mr. Bernard Ryan, an accountant in
8 Landsdowne Construction for the attention of Mr. Lewis.
9 He says:
10 .
11 "Dear Sirs, enclosed please find forecasts for our
12 projects in (1), Newtownpark Avenue, and (2), Mount
13 Anvil.
14 .
15 These forecasts have been prepared so that each project
16 can be discussed separately.
17 .
18 1. Newtownpark Avenue:
19 A, sites: The company has purchased 46 developed sites
20 for ú672,000, of which your bank has advanced
21 ú400,000."
22 .
23 Then he goes on to deal with the costs of the
24 development of each site and so on, and then he goes on
25 to deal with sales and proposals for repayment of the
26 bank.
27 .
28 But the point, fundamentally is here, he says:
29 "The company has purchased 46 sites for ú672,000."
30 .

1 So he is quite clearly referring to the sites acquired
2 by Arippe?

3 A. Yes, sir.

4 213 Q. And it does not include any reference to the other
5 sites which we know were acquired, I think again in
6 July of 1979, by Greenmount. He is talking about the
7 sites acquired by Arippe, which is the subject matter
8 of the security provided to the bank for the borrowing
9 of ú400,000. Isn't that right?

10 A. Yes, sir.

11 214 Q. We know that the scheme put together by Mr. Owens was
12 founded upon a licence agreement, or a document calling
13 itself a licence agreement providing for two sums
14 amounting in total to ú672,000 between Lansdowne and
15 Arippe, and we know that Lansdowne did, in fact, send
16 Arippe ú672,000.

17 .

18 So nowhere in this scheme does it include any other
19 part of the land, other than these 46 sites. And I
20 wonder, why do you keep suggesting that it does?

21 A. Well, somebody had to agree to the apportioning of
22 this. This was bought by Brennan and McGowan, the
23 scheme designed by Hugh Owens. They owned the entire.
24 They are doing a deal with one company for the front
25 piece and another company for the rear. But there has
26 to be - there is a contract to be performed on for the
27 entire.

28 215 Q. We know that the second - the remainder of the site, or
29 of Mr. Maguire's land was bought by an Irish company,
30 Greenmount, and as far as we are aware, there was no

1 Bedell & Cristin, Jersey company involved in that bit
2 of it at all --

3 A. Now --

4 216 Q. -- as far as we are aware.

5 A. The only thing, you are now looking at - you see, I
6 don't know either what exactly happened at the rear,
7 but you can take it that whoever was there, that had to
8 be carved out of the main contract as well. You know
9 there was a contract for the entire, and it had to be
10 apportioned out that way.

11 217 Q. Mr. Finnegan, you seem to be making a big deal out of
12 the fact that the original contract covered all of
13 Mr. Maguire's land. That is irrelevant, I suggest to
14 you.

15 .
16 What happened was there was some sort of a contract,
17 undoubtedly, by Brennan and McGowan or one of their
18 companies to buy the lot. Undoubtedly, at some stage,
19 somebody decided for some reason to split it, and part
20 of the land would be taken by Arippe and part of it
21 would be taken by Greenmount. And all the indications
22 are that that, in fact, was done, that Arippe took some
23 part of it, 46 sites, and that Greenmount took the
24 rest?

25 A. And there was a transfer --

26 218 Q. -- what's the point about that? There is nothing
27 unusual about that.

28 A. There was a transfer of values, sir.

29 219 Q. Yes, Arippe paid ú100,000 and Greenmount paid ú465,000
30 for what they got?

1 A. Yes.

2 220 Q. You've made a point about it being disproportionate in
3 some way?

4 A. Yes.

5 221 Q. Perhaps overvalued in the bit that Arippe got?

6 A. I think - yes.

7 222 Q. But I still don't see how that in any way explains
8 where your ú33,000 comes into the picture.

9 A. Well, it came in, sir - as I said to you, that it comes
10 in that I was - it was part of the overall scheme,
11 because there is to be an apportionment of the land,
12 because there was an apportionment of the overall lot
13 of land, not just on Arippe.

14 223 Q. Whether the apportionment was right or whether it was
15 wrong, whether it truly reflected the actual market
16 value of the property or not, we don't know. All we do
17 know is that Mr. Owens' scheme, which was the bit that
18 you participated in, which was the bit that yielded
19 ú67,000 odd for you, was confined to the 46 sites
20 bought by Arippe for ú100,000. Whether that was the
21 value of it or not is, I would suggest to you,
22 irrelevant?

23 A. All right.

24 224 Q. What I am trying to find out is where does your ú33,000
25 come into all of this?

26 A. Well, as I said to you, sir, I don't know, but I did
27 say to you, though, I have to go back to this because I
28 don't know whether he had it apportioned - I don't know
29 where he put it. But it was brought into the scheme,
30 and it could have been anywhere. It could have been

1 part of the development costs, it could have been
2 anything.

3 225 Q. It could have been part of the purchase price of the
4 bid that Arippe purchased?

5 A. It could have been anywhere, sir.

6 226 Q. I am suggesting to you that given the coincidence in
7 time between the debit on your account and the purchase
8 by Arippe, that is assuming Mr. Owens' letter is
9 correct as to it being done in July, that in all
10 probability that's what your money was used for, to buy
11 the land, or that bit of the land of Mr. Maguire, and
12 that on the basis that you put up that 33, you were
13 permitted by Brennan and McGowan to participate in a
14 scheme which involved a transfer of a substantially
15 greater sum of money over to Jersey, and to share in
16 the distribution of that to the tune of ú67,000.

17 .
18 And again, I am suggesting to you, there was an element
19 of bonus or gift in that?

20 A. You quoted that yesterday. And I must take exception
21 to that, that no way was there, sir. And I don't agree
22 with it.

23 227 Q. Please don't take me up wrong. I am simply suggesting
24 to you that there was an element of bonus or gift in
25 it. That's all I am suggesting.

26 A. I don't agree with you, sir.

27 228 Q. You were the auctioneer for the vendor?

28 A. Mm-hmm.

29 229 Q. And it may have been that their motive for doing it was
30 simply that you brought them this deal, or that you

1 introduced them to this land. But what I am suggesting
2 is that there was an element of bonus or gift in you
3 getting ú67,000 in November, having put in, if you did
4 put in, ú33,000 in July?

5 A. I put in 33,000 in July. I was invited to participate
6 in the scheme. I did. Where my money went, I don't
7 know, sir. And I can't - I can't speculate. I wasn't
8 author of the scheme. Owens distributed, Owens
9 controlled it, and it was for the overall package of
10 whatever, 12 odd acres.

11 230 Q. Can I put it to you this way: On the basis of the
12 information which the Tribunal has received to date,
13 and the evidence that it has received to date, it
14 appears that the only place that your money could have
15 went is the purchase of the portion of the lands that
16 Arippe got. And I'll give you the reason why, just to
17 be complete in the question.

18 .
19 We have evidence from Mr. Brennan that the 122,000 that
20 was added to the 550,000 borrowings came from two
21 current accounts in Northern Bank Limited in the name
22 of some Brennan and McGowan company, possibly
23 Kilmamanagh Estates Limited, in the sum of ú100,000 and
24 ú22,000, respectively.

25 .
26 Now, if that is correct, that accounts for the entire
27 ú672,000 that went to Jersey. And that begs the
28 question, therefore, where else could your 33,000 have
29 gone, if not into the ú100,000 that was paid to
30 Mr. Maguire?

1 A. Well, sir, what I said to you earlier, that the scheme
2 did cover --

3 231 Q. Just dealing with where the 33 went, just confine it to
4 that.

5 A. I --

6 232 Q. Do you not agree with me that --

7 A. Well, I think that's what you are saying to me, sir.

8 233 Q. Well, I mean, we are trying to sort it out,
9 Mr. Finnegan. Can you suggest anywhere else where it
10 could have gone?

11 A. Well, as I said, it went into the overall scheme.

12 234 Q. Well, let me put it to you this way: What reason do
13 you have to think that it didn't go towards the
14 purchase price, if there is nowhere else obvious that
15 it did go?

16 A. I don't know, sir, because if you look at the
17 transaction, the next thing I see here is that the deed
18 didn't take place for a year LATER, or six or eight
19 months later.

20 235 Q. Mr. Finnegan, to the question I am asking, that's a red
21 herring, I suggest. I am talking about the
22 possibilities of the application of your money. I am
23 trying to, and I believe I have identified the only
24 places that it could have gone. It could have gone,
25 perhaps, towards the purchase of money. It is
26 theoretically possible, of course, that Mr. Brennan is
27 incorrect in his evidence, and that the ú100,000, for
28 example, in one of these current accounts was made up
29 of monies which was partly yours. That's entirely
30 possible. But Mr. Brennan has told us that it wasn't,

1 that it was Brennan and McGowan money put together with
2 borrowed money?

3 A. That's what Mr. Brennan said at the time, sir. I am
4 saying to you that - I don't know exactly where it
5 went, but it did go into the scheme, sir. And I can't
6 say to you, nor I don't know that Mr. Brennan can,
7 subject back to checking with Mr. Owens, where it did
8 go. But money went in from lots of places, from the
9 mortgaging and --

10 236 Q. No, no, from two banks, 400,000 from one bank, 150,000
11 from another, and according to Mr. Brennan, 122,000
12 from Kilnarnagh Estates.

13 A. Mm-hmm.

14 237 Q. That's where the ú672 came from. That's, as far as we
15 can establish it.
16 .
17 Now, we know for certain that ú400,000 definitely came
18 from Chase, we know for certain ú150 definitely came
19 from the bank. Then we have this ú122,000 to account
20 for, which Mr. Brennan has told us came from
21 Kilnarnagh Estates, or Brennan and McGowan company at
22 least. Now, your starting position, Mr. Finnegan, if I
23 can remind you of it, was you did not know what
24 Mr. Owens did with your money.

25 A. Mm-hmm.

26 238 Q. And if that is the case, why are you disputing the
27 obvious, if I may say so, that it must have gone
28 towards the purchase price?

29 A. Sir, what I am saying --

30 239 Q. Unless Mr. Brennan is incorrect about his evidence,

1 about the whole --

2 A. Perhaps he is, sir.

3 240 Q. Are you suggesting that he is?

4 A. I am not suggesting.

5 241 Q. Would you agree with me, you don't have any basis for
6 suggesting that he is incorrect in that?

7 A. I am going around. You said to me, sir, would I agree
8 or disagree with that. I don't know what --

9 242 Q. I understand that.

10 A. -- what Mr. Brennan may be - you know - maybe it is
11 correct, maybe it isn't correct. I don't know, because
12 I'd say the monies went from him - there was money on
13 deposit, Arippe did - Arippe --

14 243 Q. Yes?

15 A. -- Arippe gave guarantees for mortgages, for a
16 mortgage, didn't it?

17 244 Q. Mr. Finnegan, on the basis that you don't know what was
18 done with it, why are you so resentful of the
19 suggestion that it was paid in July of 1978 towards the
20 purchase price of the land? What's the problem with
21 that?

22 A. Well, sir, when I don't know where it went, and I can't
23 be led into something - I don't know where it went.

24 245 Q. Well, all I am suggesting to you is that in the absence
25 of any other possible place where it could have been
26 used, that that's the most likely place that it did go.
27 That's all I am saying.

28 A. Well, sir, I am not prepared to speculate on that.

29 246 Q. All right. All right.

30 .

1 CHAIRMAN: At that point, I think we'll rise for lunch.

2 .

3 MR. HUSSEY: I wonder, sir, just before you rise, I

4 haven't seen any, and if there are any, I would like to

5 see them, if there were accounts from Brennan and

6 McGowan or their companies in respect of this ú122,000.

7 If there are, if I could see them. If not, well, then,

8 that's fine too. But I haven't seen any such accounts.

9 .

10 MR. HANRATTY: We'll check that over lunch. I didn't

11 put anything about accounts, I put it purely on the

12 basis of Mr. Brennan's evidence --

13 .

14 MR. HUSSEY: Yes, I quite appreciate that.

15 .

16 THE TRIBUNAL THEN ADJOURNED FOR LUNCH AND RESUMED AS

17 FOLLOWS:

18 .

19 .

20 .

21 .

22 .

23 .

24 .

25 .

26 .

27 .

28 .

29 .

30 .

1 THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

2 .

3 247 Q. MR. HANRATTY: Mr. Finnegan, you recall this morning I

4 asked you about the position about what is happening in

5 the High Court in Guernsey on the 26th?

6 A. Yes, sir.

7 248 Q. What is the position?

8 A. I am awaiting - my apologies, sir, I am awaiting for

9 our solicitor to return. She went back to the office.

10 So the minute I hear --

11 249 Q. Is there some question that the case is not now going

12 to happen on the 26th?

13 A. Sir, really, I haven't been - I haven't been posted.

14 250 Q. All right. Would you like to leave it over until

15 tomorrow morning?

16 A. Or maybe later, sir, but certainly I will have bang up

17 tomorrow morning for you.

18 251 Q. If we don't hear anything by this afternoon, we will

19 revisit the matter tomorrow morning?

20 A. With pleasure, sir.

21 252 Q. You will recall, sir, this morning Mr. Hussey inquired

22 whether there were any accounts from Northern Bank. We

23 are still conducting a search to see if we can find any

24 documents, but in the meantime, there is just one

25 document to which reference is made, to this figure of

26 122, which is stated to have been the balance in those

27 accounts.

28 .

29 It is 3762, I think is the page number.

30 .

1 It is a letter from Mr. Hugh Owens to the Inspector of
2 Taxes in response to inquiries which they had made, one
3 of which related to the phrase "site fines prepaid",
4 which was used in a letter this morning. And if we can
5 go to the second page of that letter - sorry, the
6 letter is dated the 28th of January, 1981.

7 .

8 It is from Mr. Owens to the Inspector of Taxes, at
9 Investigations Branch, Setanta Centre.

10 .

11 Paragraph 19 answers the query that the Revenue raised
12 about this under the heading "site fines prepaid." As
13 you can see there it is typed in "Northern Bank Limited
14 loan", and somebody wrote in "ú15,000", and that is
15 crossed out and somebody rewrote "ú150,000".

16 .

17 The second item is "Chase Bank loan, ú400,000, the 3rd
18 of the 28th of November, '78." The third is "Northern
19 Bank current account, ú122,000." Beside it, it is
20 broken up into two figures of ú100,000 and ú22,000,
21 with two dates of the - it is either the 31st of August
22 or the 30th of August, and the 20th of January. I am
23 not certain about those dates, because one of them is
24 obscure.

25 .

26 The total, therefore, is ú672,000. So, that is one
27 document to which reference is made to that ú122,000.
28 And we will revisit that matter in the morning, having
29 searched to see what other documents there may be in
30 reference to it.

1 .
2 MR. HUSSEY: Thank you, Sir. I was aware of this
3 particular document; it was just whether the Northern
4 Bank current account was available that is referred to
5 there.

6 .
7 MR. HANRATTY: I should say, I don't recall ever having
8 seen a current account with those balances in it. We
9 will do a search to see if we have them.

10 .
11 MR. HUSSEY: Thank you very much.

12 .
13 253 Q. MR. HANRATTY: I was asking you this morning, Mr.
14 Finnegan, about what relationship your ú33,000 bore to
15 the ú67,000 which you received, or even more generally,
16 where did your ú33,000 fit in? And you did say that
17 you did not know where the ú33,000 fitted in?

18 A. That's correct sir.

19 254 Q. Can you identify any relationship between the 33,000
20 and the 67,000?

21 A. No, sir.

22 255 Q. You see, what I want to suggest to you, is that
23 whatever else it was, the 67, that is, it couldn't have
24 been a return on an investment of 33, because, in fact,
25 we know it was a distribution of, assuming Mr. Brennan
26 is correct, obviously, in relation to the 122, of
27 essentially Brennan and McGowan monies, mostly
28 borrowed?

29 A. Sir, the position is that what I said was that it was
30 the figure which came out of the scheme when - now,

1 that scheme was what it was, and that was whether it,
2 taking the - what they were able to stand for a tax, to
3 be a good tax effective scheme, what monies they were
4 able to extract.

5 .

6 CHAIRMAN: Mr. Finnegan --

7 A. From the value of --

8 .

9 CHAIRMAN: Mr. Finnegan, I find it very hard to
10 believe. I find it hard to understand, leave out
11 "believe", that any person puts up a sum of money, to a
12 scheme, without before you actually hand over the
13 cheque or join the group, knowing what are the
14 prospects of success, and what degree. And I would
15 expect, if there are a triumvirate, as there were in
16 this instance, that there would be a discussion, "We
17 will - we make an attempt", in this instance, to make a
18 profit out of this particular transaction, "It is
19 likely to yield, X, Y and Z."

20 .

21 Are you telling me here, that somebody asked you for a
22 cheque for 33,000, to put it into a project, didn't
23 tell you what the end product was likely to be, at the
24 minimum or the maximum? Are you really seriously
25 telling me that you toss around, and I use the phrase,
26 I don't mean it impolitely, 15, or 33, 50, 100, or as
27 the case may be, without knowing will you ever see it
28 back? Will it sink to the bottom of the sea? Or will
29 it come in floating on wings with lots of money tacked
30 on to it? Please, what do you say happened before one

1 of these exercises was entered upon?

2 A. Well, I think, Sir, to say to you that it was - the
3 scheme was, first of all, that it was to try to, to
4 extract, if you like, future profits by way of
5 front-loading the land. So for one thing, there would
6 be --

7 .

8 CHAIRMAN: You said that to us before. Don't let's go
9 over --

10 A. The amount of which, Sir - but certainly there was
11 going to be - certainly it was a question of the - that
12 they were going to, with associated companies,
13 negotiate site fines, sale-ons, but certainly there was
14 the question of, that there would be a good return.
15 But to say to you, Sir, that I knew exactly what it
16 was, because what would the - when it came down to the
17 sale on, it had to stand up, Sir, because it couldn't,
18 they couldn't take too much out.

19 .

20 CHAIRMAN: Precisely.

21 A. Because the development, as we discussed the other day,
22 Sir, that the development, it was being passed on to
23 the developer/builder. So that there would be a limit
24 to what it could be, but I didn't get the exact
25 figures. Now, these people --

26 .

27 CHAIRMAN: Well, may I just pause you, ask you to pause
28 there.

29 A. Sorry.

30 .

1 CHAIRMAN: You were a valuer in the property world in
2 1975, I should have thought, with 25 or 30 years
3 experience behind you, of that order. In terms of
4 people who are capable of putting a price on a piece of
5 property, I would have thought that you were in the
6 front rank.

7 A. Yes, Sir.

8 .

9 CHAIRMAN: Did you not join in the assessment of what
10 was the likely outcome?

11 A. Well, Sir, when I - first of all, just to say to you
12 that - I am quite sure at the time that there were more
13 discussions than I probably recollect, but it is still
14 a very long time ago. Now, the main thing would be
15 that the - you see, the discussions taking place with
16 the associated parties like Brennan and McGowan, and
17 Hugh Owens, their accountant, and it was going to be
18 sold on to associated companies, so it wasn't a
19 question, Sir - what I want to get across to you is
20 this: It wasn't necessarily a question of value. When
21 it came to valuing, I agree with you, I should have a
22 damn good stab of what the value of it was worth, but
23 when you have a situation where here there was some
24 extraordinary circumstances, like when it was being
25 passed on - one, there were mortgages, what the -
26 Brennan and McGowan did say to me, they would be
27 backing the take-out - the people who would be taking
28 it out. There would be loans guaranteed. You are not
29 getting a situation of how much would a site be worth.
30 To maximise the value, Sir - I see that there was this,

1 if you like, a package put around it, that they were
2 going to guarantee loans, see how far that it would go.
3 Like you did see in some of the documentation there,
4 that there were variations in site fines from 12,000,
5 15,000, 18,000.

6 .
7 And what I would suggest to you is this, Sir; that
8 there would have been discussions between the parties,
9 like, we should have got, I can't tell you what those
10 figures were, but we must get at least whatever, if we
11 are passing it on up-front, there should have been a
12 sum of money. I can't tell you what that was. There
13 would have been a stab on site values.

14 .
15 By the way, no matter what way the scheme was designed
16 all around, it would have come back at the end of the
17 day to what the sites would have cost.

18 .
19 Now, also Sir, there were a few things, it could be a
20 little bit vague as to who would actually pay the
21 development costs, or the undeveloped or developed.
22 So, the swings and roundabouts, Sir. Yes, you would
23 have a good idea. First of all, when we were talking
24 about the Newtownpark Avenue, Sir, when I say that the
25 ú100,000 there - well, you know, if it was being put in
26 at ú100,000, there was0 an immediate subsidy there, in
27 that that was not - that was a very low figure that it
28 was being put into the scheme at, compared to the
29 overall value, but certainly if you were to average the
30 prices per unit, this one on front would certainly

1 have, would be equal, if not more, than the others,
2 because of its position towards Newtownpark Avenue,
3 Sir.

4 .

5 CHAIRMAN: But is the reason why you were attracted
6 into the unit or the triumvirate, that you could buy at
7 a very attractive price, from a, from sources which
8 were not otherwise known in public?

9 A. I think, Sir, that when it came around to --

10 .

11 CHAIRMAN: That is buying in the first instance I am
12 talking about, the first unit, acquiring the fee
13 simple, in other words.

14 A. Yes. Well, the - sorry, just to - can I go back on it
15 for a moment? Which instance, Sir?

16 .

17 CHAIRMAN: Taking, for instance, the nuns' land in
18 Monkstown.

19 A. Yes.

20 .

21 CHAIRMAN: Would you describe that as an attractive
22 price, that you were able to acquire the fee simple at
23 ú10,000?

24 A. That was, Sir - I think that that was - in that case,
25 that was a figure for the freehold which we had. Now,
26 sorry, just get - the acquisition of the freehold from
27 the freeholder?

28 .

29 CHAIRMAN: Mm-hmm.

30 A. That would be in or around about, swings or

1 roundabouts, Sir, that was in or around about the
2 number that it was worth in the market-place.

3 .

4 CHAIRMAN: So-be-it.

5 .

6 256 Q. MR. HANRATTY: Well, you see what happened was that
7 Mr. Owens transformed something that was bought for 10
8 into something that was sold for 350, and in the case
9 that we are talking about at the present time, the
10 Newtownpark Avenue, he transformed something that was
11 bought for 100 into 672?

12 A. Mmm.

13 257 Q. And obviously it involved some kind of a tax scheme, so
14 far as Brennan and McGowan were concerned?

15 A. Yes, sir.

16 258 Q. And that is their affair, but what it also involved is
17 a substantial, a payment out to you of a substantial
18 sum of money?

19 A. Yes, sir.

20 259 Q. Now, Brennan and McGowan were not, I suggest to you,
21 making a charitable donation when they made a payment
22 to you of ú67,000, I think you would agree with that?

23 A. Yes, sir.

24 260 Q. They are the kind of people, I suggest to you, who when
25 they pay out a substantial sum of money, want value for
26 their money?

27 A. Like most business people, sir.

28 261 Q. What I want to know is what value did they get for this
29 ú67,000?

30 A. Sir, what they got from me was this: I injected into

1 the scheme 33 something odd thousand.

2 262 Q. Right. They could have given that back to you with a
3 handsome return?

4 A. Yes, sir, and also that - you see, the scheme is
5 something which I'am not qualified to tell you, but I
6 think it does embark on something, as well, on related
7 parties, that it has to be sustained some way,
8 naturally, to stand up from, as a tax effective scheme.

9 263 Q. As far as Brennan and McGowan is concerned, undoubtedly
10 it was - we are not making any suggestions as to
11 whether it was tax evasion or tax avoidance, that is
12 entirely irrelevant as far as the Tribunal is
13 concerned. It was a tax scheme --

14 A. Yes, sir.

15 264 Q. -- put together by a professional accountant, that is
16 as far as we want to go now for present purposes.

17 .

18 The company in Ireland that incurs borrowings and loans
19 of this nature can take those into account in doing
20 their own accounts in Ireland for tax purposes, and
21 whatever effect it has on their profit and loss
22 account, if any, so-be-it, that takes care of itself in
23 due course.

24 .

25 So far as you are concerned, this is really what I am
26 focusing on at the moment, they gave you ú67,000, out
27 of this 672 that went over to Jersey. What I am trying
28 to find out is why did they give it to you?

29 A. Well, sir, for - indeed, I got paid well for what I
30 did, sir. I got - I injected the money into the

1 scheme. Now, you must remember, sir, that it wasn't a
2 question of just for me to do well out of it, sir. It
3 meant also that the two partners, the Brennan and
4 McGowan whose accountant was the author of this, it was
5 a very effective - it was very effective for them. So
6 the more within reason that they could extract in the
7 scheme, and I being invited in on a third basis of that
8 first drawdown, the more effective it was for them in
9 the future.

10 265 Q. But, Mr. Finnegan, the point about that, though; that
11 so far as Messrs. Brennan and McGowan were concerned,
12 they were simply playing with their own money for a
13 greater or lesser extent, but in your case you were
14 getting a payment out of essentially Brennan and
15 McGowan monies?

16 A. But, when - sir, when you - the position is that, as I
17 said to you, that in - there was - my money was
18 injected into the scheme, and did play a role, what the
19 exact role, you will probably hear later, whatever.
20 But that was an integral part of it. I think also, not
21 having the background of how these things have to stand
22 up, sir, but I think here we are - it is to have, one,
23 what did happen, that in coming in, too, sir, that
24 there was the guaranteeing of loans, which the company
25 that eventually got the money back had to guarantee for
26 a particular length of time, whatever funds they were,
27 without going into too much detail on it.

28 .
29 So, I injected the money in. They were - they wanted
30 to bring as much out of this transaction as they could,

1 as I say, and still leave it viable for the parties who
2 were going to develop later. Now, they were going to
3 benefit in that, sir, further down the road.

4 266 Q. Well, could I put to you, Mr. Finnegan, the rather
5 obvious proposition is, that the reason that they paid
6 you this ú67,000 is because they believed that it was
7 to their advantage to do so?

8 A. Well, it - yes, sir, that I was in the scheme with
9 them --

10 267 Q. And I suggest to you that the reason that they
11 considered that it was to their advantage to do so, was
12 because you were in a position of advantage, in the
13 sense that you acted for the vendor of the property.
14 .

15 MR. HUSSEY: I am sorry, Sir. Before you answer that,
16 Mr. Finnegan, I wonder, can Mr. Hanratty clarify
17 exactly what he is saying there? Is he accusing
18 Mr. Finnegan of professional misconduct?
19 .

20 MR. HANRATTY: What I am doing is exploring with this
21 witness the reasons, the possible reasons why Messrs.
22 Brennan and McGowan would pay to this witness the sum
23 of ú67,000 in return for an investment relatively
24 recently before that of ú33,000.
25 .

26 I am exploring the motive of Brennan and McGowan for
27 paying that sum of money, that motive, what possible
28 reason there would be. And I am doing so, Sir, if I
29 might remind My Friend, Mr. Hussey, in circumstances
30 where this witness is unable to say what was done with

1 his €33,000; is unable to identify any relationship
2 between the €33,000 and the €67,000, which he paid; is
3 unable to explain where his €33,000 fits into the
4 scheme; and in circumstances where, in summary, his
5 evidence is that he was a hapless individual rather on
6 the periphery of this, didn't really know what was
7 going on, was asked to get involved in some vague,
8 unspecified scheme that he doesn't understand, and put
9 up, in this case, €33,000.

10 .

11 That is the context in which I am asking these
12 questions and, with respect, I am perfectly entitled to
13 ask it. I fully appreciate that it may be perceived to
14 be containing an implication on Mr. Finnegan. I have
15 to accept that. I can't see how I could avoid asking
16 the question in the context of trying to explore why
17 Messrs. Brennan and McGowan made this payment in this
18 particular case.

19 .

20 CHAIRMAN: I would think you are correct.

21 .

22 268 Q. MR. HANRATTY: What I want to put to you further,
23 Mr. Finnegan, is in the case of these three land
24 transactions which we have now been exploring for the
25 last number of days, there is a pattern that appears to
26 be emerging: One interpretation of the evidence, and
27 that is, in each case - perhaps you did make these
28 investments that you said you did.

29 .

30 In the case of Monkstown, €33,000. In the case of

1 Donnybrook, ú50,000. And in case of Newtownpark
2 Avenue, ú33,333. And that in each case the monies were
3 paid out at a point in time roughly contemporaneous
4 with the closing of the purchase of the lands that were
5 used for Mr. Owens' schemes, and at the closing of the
6 purchase of lands that were being sold by you on behalf
7 of your client, either in your capacity as a director
8 of the Pembroke Estate, as in the case of Donnybrook,
9 or as in all cases in your capacity as a partner in the
10 firm of Finnegan Menton.

11 .
12 I suggest that in all cases, when you were paid
13 ú100,000, plus another 5, in the case of Monkstown;
14 when you were paid ú101,000, in the case of Donnybrook;
15 and now this further sum of ú67,000 in the case of
16 Newtownpark Avenue, that in each case the reason that
17 Brennan and McGowan made these payments to you, was
18 because they believed that it was to their advantage.
19 And I suggest to you that the reason that they believed
20 that, was not unrelated to the fact that in each case
21 you acted for the vendors of each of these respective
22 properties?

23 A. That is not the case, sir.

24 269 Q. I have put it to you individually as we dealt with each
25 lands, and each time you have denied it, Mr. Finnegan,
26 but in each occasion you have been unable to identify
27 any recognisable relationship between the monies that
28 you say you put in, and the monies that you received
29 out within a relatively short period after putting in
30 the money that you put in?

1 A. But, sir, there was a scheme for what we discussed
2 there, that was prepared by Hugh Owens, to extract
3 up-front some, a further levy on the lands which was
4 done either - either that the land entry into was at an
5 enhanced value, and that was a tax effective scheme,
6 and that I understand, sir, that in these schemes it is
7 a good thing to have an unrelated, if you like, party.
8 This - and to invest it in the scheme.

9 .
10 Now, I did invest in the scheme. It wasn't the only
11 profit, sir, that was taken out of this, any of these
12 schemes.

13 270 Q. It was the only profit taken out by you. Of course
14 Messrs. Brennan and McGowan went on to do various
15 things with these various properties. In the case of
16 Monkstown, it was developed. In the case of
17 Donnybrook, ultimately it was sold. In the case of
18 Newtownpark Avenue, it was developed. In fact, some
19 exchange was done with Green Park subsequent to the
20 purchase of Green Park's lands. We know that. In each
21 case they went on to do something else, but you were
22 finished?

23 A. Yes, sir.

24 271 Q. Indeed, while we are on the case, the next one we are
25 going to be talking about, the Tritonville Road
26 property. That is another case where a valuable
27 property as an entity was assembled before being sold
28 on at a profit, isn't that right? A number of the
29 constituent elements of the title of this property were
30 vested in the Pembroke Estate, for which you acted,

1 isn't that right?

2 A. Yes, sir.

3 272 Q. Both in your capacity, presumably, as a director of
4 Pembroke Estates Management Limited, and the other
5 Pembroke companies, including Mount Merrion Properties
6 Limited and Mount Merrion Estates Limited, but also as
7 auctioneer?

8 A. And they were very happy with the figure that was
9 obtained, sir.

10 273 Q. Undoubtedly so. I am not making any point about that,
11 Mr. Finnegan. What I am suggesting to you, again there
12 was a profit out of this, albeit that was invested into
13 the next one, which was the St. Stephen's Green one,
14 which in this case you didn't put up any money at all,
15 nor indeed did Mr. McGowan. I think Mr. Brennan was
16 the only one that put up money in that case,
17 Tritonville Road. Sorry, are you saying that you
18 actually put up money for Tritonville?

19 A. Not that I am aware of, sir.

20 274 Q. Mr. Brennan told us that nobody, in fact, put any money
21 into that, but I think subsequently, I think, he agrees
22 that he, in fact, did put up some sort of a deposit of
23 ú15,000, which was reimbursed to him on the
24 distribution of the proceeds of sale. But other than
25 that, neither yourself nor Mr. McGowan put up any
26 money, and the profit out of that was ú79,000, which
27 was sent to Keno Investments Limited, isn't that right?

28 A. Yes, sir.

29 275 Q. That was, you were treated as the beneficial owner of
30 one-third of that, as part of the investment into the

1 Stephen's Green property, isn't that right?

2 A. Yes, sir.

3 276 Q. So to that extent you obtained a benefit equivalent to
4 one-third of the €79,000, for no investment at all?

5 A. I think that what you were saying there, sir, that
6 there was just the investment of the deposit, was it,
7 sir?

8 277 Q. Sorry?

9 A. It was just the investment of the deposit.

10 278 Q. But you didn't pay it. Mr. Brennan put up money
11 up-front to pay a deposit on one of the properties.
12 That was the only money that actually had to be
13 outlaid?

14 A. Mm-hmm.

15 279 Q. And the manner in which it was structured, if you will
16 recall, was the entering into contracts with various
17 companies, Mount Merrion Properties Limited, Herbert
18 Properties Limited, and the sale on to Durkan Brothers
19 Limited?

20 A. The various - well, I think that was a site which was
21 assembled, sir.

22 280 Q. Absolutely. But the upshot of it all was, that I am
23 suggesting, please correct me if you disagree with any
24 aspect of what I am saying, that the only person that
25 put out money out of his own pocket in that case was
26 Mr. Brennan, in the sense that he paid a deposit out of
27 his own and his wife's funds, as it happens, of
28 €15,000, but otherwise, no money had to be put up by
29 anybody. And he, in fact, was repaid that, in the
30 sense that almost as if it were a loan. But what I am

1 saying is, that none of you actually made any
2 investment in this, but you all made a profit, between
3 the three of you, of ú79,000. Isn't that what
4 happened?

5 A. I think they are the figures, sir.

6 281 Q. And that money went into Keno, which was used as part
7 of the investment in Stephen's Green, isn't that right?

8 A. If you say so, sir.

9 282 Q. Well, we will come to Stephen's Green in due course.

10 .

11 Certainly, it does appear to have gone into Keno. That
12 means, Mr. Finnegan, that you earned one-third of
13 ú79,000 for no investment at all. I mean, it is one
14 thing to make an investment of ú33,000 in Monkstown,
15 and get a return which is equivalent, as I have pointed
16 out to you, of 2,400 percent per annum by getting a
17 month later ú100,000. But it is an extraordinary
18 thing, altogether, to get a return of whatever it is,
19 ú27,000 on an investment of nothing.

20 .

21 MR. HUSSEY: I am sorry, Sir. I just wonder, is that
22 fair?

23 .

24 We know that Mr. Finnegan's position in respect of
25 Monkstown and Newtownpark Avenue and Bellevue - sorry,
26 his instructions changed radically when he had the
27 records to show that he had actually put in monies into
28 these matters. Mr. Finnegan has no record and he
29 doesn't know whether he put money into Tritonville or
30 not.

1 .
2 I know Mr. Brennan's evidence is that there was only a
3 deposit paid, but obviously the money, the purchase
4 money had to come from somewhere, but what Mr. Finnegan
5 says is he doesn't know if money was put into
6 Tritonville or not, not that no money was put into
7 Tritonville.

8 .
9 CHAIRMAN: I accept your point. And it is a matter
10 which I am going to have to decide in due course, but
11 those are the facts on the evidence as we have it now.
12 It may alter by the end of the inquiry.

13 .
14 283 Q. MR. HANRATTY: There is actually evidence before the
15 Tribunal that you didn't put any money into Tritonville
16 Road, nor did Mr. McGowan, nor indeed did Mr. Brennan,
17 except in the sense that he fronted a deposit that had
18 to be paid of ú15,000, which was paid back to him, but
19 that there was no actual investment by any of you in
20 that project, and that a profit of ú79,000 was made.
21 Is that right or is it wrong?

22 A. Well, sir, what I am not clear of - I don't know what
23 investment I made, if any, in there, sir. I am not
24 clear. I thought I had, but apparently I haven't. It
25 may have been that - there might have been an around
26 the house thing, sir, but I don't know --

27 284 Q. There is no evidence of it. There is evidence from
28 Mr. Brennan that you didn't. There is no evidence in
29 your bank accounts, which you rely on to show that you
30 did make investments in the first three, there is no

1 evidence in that to show in this case. That is the
2 state of the evidence. There is nothing in any of the
3 documents to show any money coming from you, nor indeed
4 have there been in the first three.

5 .
6 Mr. Brennan is quite clear, and I believe Mr. McGowan
7 as well, although I will have to check that, that you
8 didn't put up any money in the case of Tritonville
9 Road?

10 A. Well --

11 285 Q. If that is so, why were you paid the equivalent of
12 one-third of ú79,000 by Brennan and McGowan in respect
13 of Tritonville Road?

14 A. Well, sir, I am not clear whether I did put up money,
15 as you say, into that. It may be that there was a
16 round-the-house transaction.

17 286 Q. What is that?

18 A. That there may have been - that there was either a
19 pledge of money from me, sir, which I can't - I just
20 can't give you detail of. At the time I don't know
21 whether - what I am not aware of, now, is whether that
22 sale was actually completed or was it just passed on,
23 sir.

24 287 Q. That is the point, that the reason that there was no
25 requirement for outlay was that it was a three-way
26 closing, whether it was simply passed on to Durkans to
27 put up the money, that is what actually happened.

28 A. Mm-hmm.

29 288 Q. It was a fairly quick affair, once the sites were
30 assembled and various bits of the title - this involved

1 a number of houses on Tritonville Road, in Sandymount,

2 isn't that right?

3 A. That's right, sir.

4 289 Q. It involved a couple of acres of land behind those

5 houses in Sandymount, isn't that also right? It turns

6 out that the Pembroke Estate, if we can use that phrase

7 generically, was the owner of a number of the freeholds

8 of the houses, and indeed of the field at the back,

9 isn't that right?

10 A. Yes, sir.

11 290 Q. And also, that it had got in, either by surrender from

12 tenants or by the evaporation of tenancies, or the

13 expiry of the tenancies, somehow it managed to get in

14 some of the tenancies, at least. Therefore, in some

15 cases had an unencumbered freehold, isn't that so?

16 A. Yes, sir.

17 291 Q. All of that was assembled, then, into one buildable or

18 developable site, which would be of use to a purchasing

19 builder, as obviously it must have been to Durkans, and

20 was passed on effectively as an unencumbered freehold

21 that could be developed subject to planning permission?

22 A. Yes, sir --

23 292 Q. All of that was done - we will go through the sequence

24 of it in a little while. All of that was done. And as

25 a result of it all being done, you were in receipt of

26 your one-third share of ú79,000 in the form of your

27 investment in St. Stephen's Green or the Keno part of

28 it at least.

29 .

30 What I am asking you is why were you given this by

1 Brennan and McGowan?

2 A. You said, sir, that went on to Stephen's Green.

3 293 Q. Yes, it went into Keno Investments Limited, and Keno
4 Investments Limited's monies were used in the
5 acquisition of a portion of the title of Stephen's
6 Green?

7 A. Mm-hmm. I am not sure about what you say there, that -
8 as it went into Stephen's Green, that there wasn't a
9 balancing between the parties, that if that was used,
10 or maybe that was because we were going to do - for
11 Stephen's Green, whether it was, it came out as a loan
12 between the parties or not, I don't know, but that it
13 may have been some way of funding in some way. I am
14 not sure about that.

15 294 Q. You see, again in all cases, Mr. Finnegan, insofar as
16 it was simply an investor that Messrs. Brennan and
17 McGowan wanted, they could have got anybody with
18 ú33,000, they might have even borrowed it because they
19 didn't obviously have any problem borrowing money. But
20 it didn't have to be you. Anybody offered the prospect
21 of getting a return of the kind that you got on the
22 first 33, or the 50, or the second 33, or if we are
23 correct, the "nothing" that was invested into
24 Tritonville Avenue, anybody would go for these
25 investments. But the point is, that it is wasn't
26 anybody, it was you?

27 A. Yes, sir.

28 295 Q. The point is that in each case you had something to
29 offer Brennan and McGowan, otherwise what I am saying
30 to you is these are not the kind of people who would

1 pay out money for nothing by way of a charitable
2 donation, that they paid out money because they
3 believed they got value for it?

4 A. Well, now, let's establish a few things, sir. One, the
5 transactions that took place were at full market value,
6 one, in the first instance. And what I would like to
7 say to you, sir, at this stage, that when - one can
8 make lots of - one can make lots of remarks like you
9 have done about me, sir, but I have to say that when it
10 comes down to value, value is a question of
11 comparisons, sir.

12 .
13 So what you are implying, sir, is that the properties
14 were not value when they were disposed of. Now, I wish
15 to - if that is the case, sir, that I would like to
16 draw your attention to one thing that you can check.
17 In those years we are talking about, anyone, if you
18 were going to value something, that one, it has to be
19 by way of comparisons. Like, I don't know if you would
20 have a very good idea of the value of your own house,
21 sir, and it would be by way of comparison, of what has
22 been sold in the area or similar properties.

23 .
24 The same thing applies when it comes down to any of
25 these properties which we are talking about, that in
26 those years, by the way, which in all 25 or 30 years
27 away, at that time there were - and by the way, I would
28 suggest, if you wish to get any further knowledge on
29 them, that you can go to a government source, and go to
30 the Valuation Office, and take what was a fair and

1 reasonable price for land and similar lands in the
2 area.

3 .

4 Now, this is something which - and that is by -
5 anything is created by way of comparison. So then when
6 we take the next step, sir, that whilst I was invited
7 in to partake in a tax effective scheme, and it was to
8 enhance what we said, the value of something, by way of
9 a scheme.

10 296 Q. What tax implications, insofar as it may have been a
11 tax or any of these schemes may have been a tax
12 effective scheme?

13 A. Yes.

14 297 Q. What tax implications, good, bad or indifferent did
15 they have from your point of view?

16 A. I think that it would be the same as - it would be with
17 the likes of the other people, Brennan and McGowan.

18 298 Q. Brennan and McGowan had companies in Ireland, in one
19 case Green Isle Holdings Trust Limited, in another case
20 Lansdowne Construction Limited, in another case Oakpark
21 Developments Limited, all of which companies were
22 involving themselves in the payment, whether out of
23 borrowings or otherwise, of very substantial sums of
24 money to a company in Jersey to acquire a property.
25 And obviously that had implications for their balance
26 sheets. One can readily understand where there would
27 be tax implications for that, and where an accountant,
28 one must presume, acting legitimately, was coming up
29 with what he perceived to be an effective or tax
30 effective or tax-efficient scheme. One can see that.

1 But on the recipient end of a distribution of these
2 monies, in Jersey, I don't see what the tax efficiency
3 element is, and particularly from your point of view,
4 you were simply, at least Foxtown Investments Limited
5 was a recipient of a sum of money?

6 A. Yes, sir, but in the meantime what had been done as
7 well, that the company which it pledged to, that
8 whatever it was, that particular company, which was a
9 Jersey company, did give a guarantee, also, for the
10 mortgage.

11 299 Q. But the Jersey companies were all, I think, invariably
12 wound-up as soon as their function was finished?

13 A. Yes, sir.

14 300 Q. Except in the case of Rapallo, which was subsequently
15 used in its manifestation of Victa?

16 A. Yes, but at the particular time they did give a
17 guarantee, which was important to get the financing
18 through, because this was a very important factor in
19 the whole lot, when it came to borrowing 3 or 400,000,
20 that company had to give its guarantee. I was
21 responsible, my company, Foxtown, the trust company was
22 responsible, then, for that.

23 301 Q. What? Are you suggesting that you might have had a
24 liability on foot of a guarantee by Victa or
25 Bouganville or Arippe for anything?

26 A. But a guarantee is a guarantee, sir.

27 302 Q. It is a guarantee by a Jersey company?

28 A. Yes, sir.

29 303 Q. How could you possibly have any liabilities --

30 A. But the rest could, Foxtown could, sir.

1 304 Q. Foxtown had no involvement with these companies.

2 Foxtown had no involvement. The only company Foxtown
3 had any involvement with was Ardcarn Limited, the
4 company that owned Canio Limited. Foxtown Investments
5 Limited had nothing whatsoever to do with Arippe, with
6 Victa or with Bouganville or Rapallo?

7 A. Mm-hmm.

8 305 Q. You were the beneficial one-third owner of Bouganville,
9 and Victa, previously Rapallo. We are told that you
10 were also a one-third beneficial owner of Arippe,
11 albeit that you were not registered as such. So this
12 is nothing to do with Foxtown, and as I understand your
13 evidence, you are now seeking to suggest to the
14 Tribunal that in some way you might have had a
15 liability, on foot of a guarantee given by one of these
16 Jersey companies?

17 A. Well, sir, it guaranteed, the Jersey companies
18 guaranteed the loan.

19 306 Q. What they did was they secured them on foot of the
20 properties which they had bought in Ireland?

21 A. Yes, sir.

22 307 Q. And they also guaranteed them. But I suggest to you
23 that the guarantee wasn't worth the paper it was
24 written on. I mean, am I right about that? If the
25 properties were insufficient, for example, to meet the
26 liabilities that were secured on the guarantee, the
27 person holding the guarantee would sue Arippe, where do
28 you think it would have got with a judgement against
29 Arippe?

30 A. I think --

1 308 Q. -- a Jersey company with no assets?

2 A. I think that they were sought, the guarantees were
3 sought by the banks, sir.

4 309 Q. Undoubtedly so, but are you seriously suggesting that
5 they had come back against the beneficial owners or the
6 shareholders?

7 A. I would imagine that the banks would have been - the
8 banks would have looked at that, sir, at the time, and
9 I would have thought that they just didn't have them --

10 310 Q. In the case of Victa, for example, what would they have
11 found? They would have found a company, registered
12 offices, Bedell & Cristin in Jersey, of which neither
13 yourself, Mr. Brennan or Mr. McGowan were either
14 shareholders or directors, isn't that right? So how do
15 you say the bank would have recourse against any of you
16 three?

17 A. Well, sir, against the company, wouldn't it?

18 311 Q. Yes, and the company would be wound up.

19 A. All right.

20 312 Q. And that would be the end of it. It would have
21 vanished in a pile of ashes. That would be the end of
22 it. Are you now suggesting, or would you want to
23 withdraw it or consider it, are you suggesting that
24 your involvement involved an element of being liable on
25 foot of some guarantee?

26 A. I said that any guarantee, if a guarantee is given --

27 313 Q. By a company --

28 A. Yes.

29 314 Q. -- of which you were a shareholder --

30 A. Yes.

1 315 Q. -- you have no liability?

2 A. Do you not? All right.

3 316 Q. Well, unless there are some special circumstances in
4 this case under which you are suggesting you would have
5 done --

6 A. All right, sir --

7 317 Q. In this case you weren't even a shareholder or a
8 director because the shareholding in these companies
9 was held by Bedell & Cristin on trust for undisclosed
10 beneficial owners, one of which was yourself. So could
11 we leave aside the bit of the guarantee and try and get
12 back to - what I was putting to you, what I was putting
13 to you, sort of globally, is that when one looks at all
14 of these transactions, take the four of them --

15 A. Hm-hmm.

16 318 Q. We have a situation where Brennan and McGowan are
17 making payments of substantial sums of money --

18 A. Mm-hmm.

19 319 Q. -- to you, in circumstances where I suggest to you that
20 they believed that they were getting value for their
21 money?

22 A. Yes --

23 320 Q. And that the only identifiable basis upon which one can
24 identify, from the evidence we have seen so far, that
25 they could believe that they were getting value, is the
26 fact that you acted in one capacity or another in each
27 case for the party selling the property?

28 A. No, sir.

29 321 Q. Right. Now, let's just finish off with Newtownpark
30 Avenue.

1

2 If we could have page 4048.

3

4 If we just look at that document. It is a letter dated
5 the 17th of May 1979. It is "re Greenmount Properties
6 Limited and Arippe Investments Limited site at
7 Newtownpark Avenue, Blackrock."

8

9 It says:

10

11 "We enclose the deed in duplicate for the exchange of
12 lands between the above two companies at Newtownpark
13 Avenue, Blackrock, and will be obliged if you will have
14 sealed by Arippe Investments Limited and return it to
15 us. We also enclose the counterpart of the conveyance
16 from John Francis Maguire to Arippe Investments Limited
17 and will be obliged if you will have this sealed by
18 Arippe Investments Limited also and return it to us."

19

20 Then he goes on to deal with a postal dispute issue.

21

22 That clearly indicates - first of all, it makes a
23 reference to this deed, and I just wonder, does Mr.
24 Hussey have the reference to the deed he called out
25 this morning? This is the one that is dated, I think,
26 in February of 1979.

27

28 MR. HUSSEY: No.

29

30 MR. HANRATTY: Because we can't find it.

1 .
2 MR. HUSSEY: I am sorry, I thought that the Tribunal
3 would be able to identify it. I haven't been able to
4 identify that reference. I think there is a memorial
5 to it, is there?

6 .
7 322 Q. MR. HANRATTY: It may be a memorial. Well, again we
8 will try and find it. For the moment there is a
9 reference to it here. But fundamentally what I am
10 putting to you here is that after your involvement had
11 terminated, and I think you are in agreement with me
12 that your involvement terminated once the ú67,000 odd
13 was paid?

14 A. Yes, sir.

15 323 Q. Matters progressed further as between Brennan and
16 McGowan and Arippe on the one hand, and Greenmount on
17 the other, and an exchange of certain portions of their
18 respective properties took place, but I - I am putting
19 this to you, simply asking you to confirm that you
20 didn't have any involvement in that or any interest in
21 that?

22 A. Later on --

23 324 Q. The middle - well, May of 1979?

24 A. Was this in connection with the back lands?

25 325 Q. What happened was there was an agreement with
26 Greenmount, or with them and Arippe for a portion of
27 their take, that is what happened?

28 A. In 1979 - no, sir.

29 326 Q. No. I wasn't suggesting there was. I simply wanted
30 you to confirm that there wasn't.

1 .
2 Now, if we could just have page 1733. This is a
3 document dated the 1st of August, 1980. It is directed
4 to the Commercial Relations Officer, Broad Street. As
5 you can see there, it is a notice to the Commercial
6 Relations Office that a resolution has been passed for
7 the dissolution of Arippe Investments Limited. It
8 says:

9 .
10 "Notice is hereby given that the following resolution
11 was submitted to the company at an extraordinary
12 general meeting held on the 14th of July, 1980, and was
13 passed by a sufficient majority." And the resolution
14 is quoted.

15 .
16 "That the company be dissolved."

17 .
18 Then it refers:

19 .
20 "At a further Extraordinary General Meeting of the
21 company held on the 31st of July, 1980, the above
22 resolution was confirmed as a special resolution. It
23 was given under the seal of Arippe Investments Limited
24 and signed by Mr. Wheeler."

25 .
26 So that establishes that Arippe Investments Limited was
27 dissolved at the beginning of August of 1980, isn't
28 that right?

29 A. Yes, sir.

30 327 Q. And if we can then have document - could we just look

1 firstly at 1749, please. This document is dated the
2 5th of August, 1980, and it is expressed to be between
3 Arippe Investments Limited and Lansdowne Construction
4 Company Limited. And this is the deed under which the
5 title that Arippe Investments Limited held to the
6 property that it owned in Newtownpark Avenue was
7 transferred to Lansdowne Construction Limited. Isn't
8 that right?

9 A. Yes, sir. I think so, yes.

10 328 Q. Just seeing if we can see who signed it. I can see Ken
11 Woodley signed it on behalf of one of the parties,
12 Lansdowne Construction, presumably. The rest of the
13 signatures, I am afraid, I can't make out, although I
14 am sure we can, if we need to.

15 .
16 Anyway, that was effectively the end of the scheme.
17 The land, as had occurred on the previous schemes,
18 ended up back with the Irish company, isn't that right?

19 A. Yes, sir.

20 329 Q. But again, this was at a point in time well after your
21 involvement had ceased?

22 A. Yes, sir.

23 330 Q. And I don't think that we need to get into the details
24 of the exchange between the two companies.
25 .
26 So, here again, Mr. Finnegan, we have now the third
27 occasion, albeit that there is a certain amount of
28 overlapping in terms of the chronology, a third
29 occasion on which you get this substantial payment from
30 Brennan and McGowan, coming from an Irish Brennan and

1 McGowan related company, either in the form of their
2 own funds, or borrowings, or a combination of that, to
3 a Jersey company of which you are a one-third owner,
4 getting a substantial sum of money, in circumstances
5 where it appears, and you are certainly telling us,
6 that you did put in a specific sum of money, which was
7 an equal one-third contribution into something, and
8 getting a very substantially greater figure within a
9 relatively short period afterwards. And I've been
10 putting to you in the last few days, in each case it is
11 quite clear that in no case could it reasonably or
12 realistically be suggested that it was an actual return
13 on an investment in the conventionally understood sense
14 of the term, and that, in fact, these payments included
15 a substantial, if not a total element of bonus payment?

16 A. No, sir.

17 331 Q. Now, moving on to the next transaction, which was the
18 Tritonville Road transaction.

19 .

20 Can I just again ask you to tell us in your own words
21 how this came to pass, how it came up, and
22 fundamentally how was the arrangement put together
23 between yourself and Brennan and McGowan?

24 A. On the Tritonville Road - the actual thing, how it came
25 about? Hard to recollect exactly, sir.

26 332 Q. Well, we can put a time on it to an extent. We know
27 that substantially the assembly of the land occurred in
28 or around May of 1978.

29 .

30 Now, you would have had a knowledge of this property,

1 presumably, in your capacity as a director of Pembroke
2 Estates Management Limited, and a representative of the
3 Pembroke Estate, isn't that so?

4 A. Yes, sir.

5 333 Q. What you would have been familiar with, of course, at
6 that start was that there was a sort of a
7 higgley-piggley bunch of properties on Tritonville
8 Road, on which the Pembroke Estate had various types of
9 interests?

10 A. Yes, sir.

11 334 Q. And presumably recognised that it had a potential for
12 development, if it could be assembled into a usable
13 unit?

14 A. Yes, sir.

15 335 Q. Would you just take it from there, then, and tell us
16 what happened?

17 A. I can't go step-by-step, because I just can't remember
18 it, but I would say that - this was, as I say, some 25
19 odd years ago, but in the Estate, that they had land
20 which - and various properties around, and it was a
21 question of - this would have been looked at closely as
22 well by Mr. Cassidy, our - the estate manager, and it
23 was looked at, that they would tease it out to get it
24 into the best possible condition for a disposal, sir.

25 And as far as I recollect, that - as far as I
26 recollect, there was a planning permission sought on
27 it, sir.

28 .

29 And this was put - there was other properties,
30 actually, yes, on the frontage that either we had -

1 Pembroke had the freehold, and either some of those
2 properties came up for sale or we - they were bought
3 in. And that is why I think that there was so many
4 different interests that were combined to give it a
5 unit.

6 336 Q. Well, for a start, can you say how much was everything
7 sold for to Brennan and McGowan, and how much did
8 Brennan and McGowan sell it on for?

9 A. The - I am trying to recollect, sir, the figure which
10 was paid for it, sir.

11 .

12 MR. DUNNE: Not to interrupt Mr. Hanratty, I presume
13 with reference to Brennan and McGowan, it is to Brennan
14 and McGowan companies or --

15 .

16 MR. HANRATTY: Yes.

17 .

18 MR. DUNNE: -- or companies that they have beneficial
19 ownership of?

20 .

21 MR. HANRATTY: Yes. I am using that phrase
22 generically.

23 .

24 A. I am just trying to remember, sir, what the figure was,
25 I just - at this stage I am a bit foggy. I am getting
26 tired after a long day.

27 337 Q. MR. HANRATTY: As far as we can extrapolate from the
28 title deeds, it appears that they were bought for
29 approximately ú100,000, and sold for approximately
30 ú220,000. And if I can just give you a breakdown of

1 that. Your counsel may like, perhaps, to take a note
2 of it to enable him to check it from the deeds himself.

3 .

4 As far as we can extrapolate, the ú22,000 was made up
5 of ú124,000 - now, this is compositing together the
6 various bits of the transactions: ú124,000 for the two
7 acres at the rear of 68 and 84, and the leasehold of
8 No. 78. And the respective prices for those is 116,800
9 and 7,200, that makes up the 124. And secondly, ú9,600
10 for the freehold and leasehold of No. 84, and the
11 freehold of No. 76.

12 .

13 Just putting those out now on the transcript, and
14 people can look at the deeds themselves and check it.

15 .

16 It appears to have been sold for a total sum of
17 ú220,000.

18 .

19 That is extrapolating from the deeds under which these
20 properties, in their various forms and manifestations,
21 were transferred to Durkans.

22 A. All right.

23 338 Q. But, again, extrapolating from the title deeds to the
24 various properties, and looking at the sequence on
25 which this occurred, it seems that the first
26 transaction was the purchase by Glencree Investments
27 (Channel Islands) Limited, you have heard this name
28 coming up, from Mount Merrion Properties of the
29 freehold of No. 76 on the 10th of May, 1978. That
30 seems to have been the first bit of it. Also, on the

1 10th of May --

2 .

3 MR. HUSSEY: I wonder, was there an amount on that,

4 Mr. Hanratty, did you mention?

5 .

6 MR. HANRATTY: I have given out the payments in a

7 composite form.

8 .

9 MR. HUSSEY: I beg your pardon, I thought you were

10 giving --

11 .

12 MR. HANRATTY: I am just giving the various bits of the

13 gathering together of the title now.

14 .

15 MR. HUSSEY: I thought earlier the figure you had given

16 out was the sale on. Now you are giving the price of

17 the purchase in.

18 .

19 MR. HANRATTY: I haven't got a breakdown of the amounts

20 for the - maybe I have. I have some sort of a

21 breakdown.

22 .

23 MR. HUSSEY: Maybe I misunderstood.

24 .

25 339 Q. MR. HANRATTY: It is on this chart. This was

26 circulated? No. We have a chart which we can

27 circulate which gives more information about the

28 amounts than I have given out.

29 .

30 Essentially the summary of these transactions, I don't

1 expect you to remember them, but just to give you a

2 broad brush kind of sweep on what happened.

3 .

4 The freeholds of numbers 78 and 84 which was sold by, I

5 think it was the - yes, the Pembroke Estate, to Whisper

6 Investments Limited. Whisper Investments Limited is

7 the second Jersey company which was used, as you are

8 aware, isn't that right?

9 .

10 The assembling of the site took place variously from

11 Mount Merrion Properties Limited, and also from

12 individual, either members or trustees of the Pembroke

13 Trust. One of the conveyances, for example, to Whisper

14 Investments Limited, the conveying parties were the

15 Right Honourable Henry George Charles Alexander, Earl

16 of Pembroke and Montgomery, John Henry Guinness and

17 John Mungo Park. So that was obviously some portion of

18 the title which was vested in them, presumably in their

19 capacity as trustees. Isn't that right?

20 A. Yes, sir.

21 340 Q. But the rest of it was conveyed by Mount Merrion

22 Properties Limited, which we know was a Pembroke Estate

23 company, isn't that so? It was the one that preceded,

24 we understood, or perhaps succeeded Mount Merrion

25 Estates Limited?

26 A. I think so, sir. Yes, sir.

27 341 Q. Who do you think it was?

28 A. Actually, sir, do you mind if I have a break for a

29 moment?

30 .

1 MR. HANRATTY: Not at all.

2 .

3 CHAIRMAN: Five minutes.

4 .

5 THE TRIBUNAL THEN ADJOURNED FOR A SHORT RECESS AND

6 RESUMED AGAIN AS FOLLOWS:

7 .

8 342 Q. MR. HANRATTY: Are you in a position to continue,

9 Mr. Finnegan?

10 A. Thank you.

11 343 Q. Yes. What we have done is we've prepared charts by

12 extrapolation from the title documents of the property,

13 for ease of presentation, and I think you have a hard

14 copy of the charts in front of you. (Document handed

15 to the witness.) Or if you don't, you are going to get

16 them now.

17 A. Yes.

18 344 Q. You have them there. And we will put them on screen as

19 well.

20 .

21 The first property is 76 Tritonville Road in

22 Sandymount. And before we get into these charts, I

23 should hasten to add that I am not going to burden you

24 with the detail of the title deeds, Mr. Finnegan. The

25 object of this exercise would be to try and avoid this,

26 which would be an extraordinary time-consuming thing.

27 We have given the title deed references in the chart so

28 that your counsel, if he wishes, can check any

29 accuracies of the charts. The document references are

30 there to facilitate that.

- 1 .
- 2 Just to get a general overview of this property. First
- 3 of all, what we are talking about are properties at 76,
- 4 78 and 84 in Tritonville Road, isn't that right?
- 5 A. Yes, sir.
- 6 345 Q. And were they houses?
- 7 A. Sorry?
- 8 346 Q. Were they dwelling houses?
- 9 A. I am just getting, trying to get my mind around this.
- 10 Now - yes, because I am just trying to - if these were
- 11 on the front they would have been, sir.
- 12 347 Q. Yes. And these would have been houses to which rents
- 13 would have been payable to the Pembroke Estate, isn't
- 14 that right?
- 15 A. Yes, sir.
- 16 348 Q. And which would have been collected by Finnegan Menton?
- 17 A. No, sir, by the Estate.
- 18 349 Q. Directly by Pembroke Estates Management Limited, is
- 19 that right?
- 20 A. They managed all the properties.
- 21 350 Q. In addition to the three houses, 76, 78 and 84, there
- 22 was two acres at the rear of No. 68 to 84, isn't that
- 23 right?
- 24 A. Something like that, sir.
- 25 351 Q. Yes. And the two acres is fairly straightforward, in
- 26 that the Pembroke Estate appears to have owned the
- 27 freehold of that property, isn't that right?
- 28 A. Yes, sir.
- 29 352 Q. 76 appears to be straightforward, in that the Pembroke
- 30 Estate somewhere along the line obtained an

1 unencumbered freehold in that as well, presumably it
2 always owned the freehold and got it unencumbered at
3 some stage?

4 A. Yes, sir, there was a drawing at site (inaudible) -
5 assembly on this site.

6 353 Q. And in the case, I think, of the other two, there was
7 freehold and leasehold titles to be dealt with, isn't
8 that right?

9 A. Yes, sir.

10 354 Q. Now, if we could just look, then, at the chart. The
11 first one is No. 76 Tritonville Road, Sandymount.
12 Maybe if it could be reduced somewhat to get a broader
13 view of it. Yes.
14 .
15 In the yellow circle on the left you can see a
16 conveyance and an assignment in 1977 of the freehold
17 and the leasehold interest, by Mount Merrion Properties
18 Limited. And then that is followed in the one beneath
19 it, "Deed of Conveyance of the 10th of May, 1978."
20 Mount Merrion Properties Limited conveyed the freehold
21 interest to Glencree Investments (CI) Limited for
22 ú7,000. There is a document reference there. Beside
23 that in brown there is just a reference to when
24 Glencree was formed.
25 .
26 Finally on the bottom of the page you can see a Deed of
27 Conveyance of the 2nd of June, 1978, where the freehold
28 was conveyed to Durkan Brothers (Dublin) Limited for a
29 consideration of ú48,000. And the document references
30 relating to that transaction are indicated.

1 .
2 And there is a green circle, then, indicating that at
3 that point in time the freehold interest was
4 unencumbered, a previous leasehold interest having been
5 got in somehow. So that, I think, is the position
6 vis-a-vis No. 76, isn't that right?

7 A. Yes, it appears so. Yes, sir.

8 355 Q. The next one, then, is No. 78. Incidentally, at the
9 end of this there is a summary which we will deal with
10 in due course.

11 .
12 No. 78 Tritonville Road. There are two threads to
13 this. On the left-hand side, in yellow, there is the
14 leasehold title, and on the right-hand side, in red,
15 there is the freehold title. And at the bottom in blue
16 is the merger of both titles.

17 .
18 Just looking at it very quickly. There was a lease
19 dated the 24th of July. "Earl of Pembroke and Others
20 to Marie Jones for 99 years by Deed of Conveyance and
21 Assignment on the 7th of June, 1978." Mount Merrion
22 Properties assigned the leasehold interest, which
23 presumably they had acquired in the meantime to
24 Kilnamanagh Estates Limited. The consideration was
25 ú116,800, and that included as well as that interest,
26 the fee simple and the two acres at the back. Isn't
27 that right?

28 .
29 Then on the 6th of August, 1982, the leasehold of No.
30 78 was assigned to Durkan Brothers (Ireland) Limited,

1 subject to the covenants and conditions. And the
2 consideration in that case was ú124,000, including the
3 two acre field. And the two references are there.
4 .
5 Then moving to the right-hand side of the page. On the
6 17th of May, 1978, the freehold was conveyed by the
7 Pembroke Estate and John Mungo Park to Whisper
8 Investments Limited for ú200. You see there the date
9 of incorporation of Whisper.
10 .
11 Then, on the 2nd of June, 1978, Whisper conveyed the
12 freehold interest to Durkan Brothers (Ireland) Limited
13 for ú200. On the blue box, or blue circle oval in the
14 bottom you see "Freehold and leasehold interest merged
15 in Durkan Brothers (Ireland) Limited. All conditions
16 and covenants in the 1941 lease are extinguished."
17 .
18 Then No. 84 Tritonville Road. Again, as you can see
19 the leasehold on the left-hand side and the freehold on
20 the right-hand side.
21 .
22 In the leasehold column you see there was, again this
23 is the 1941 lease. This time the 24th of July, 1941.
24 Earl of Pembroke and Others for Mr. Tandy for 99 years.
25 The document reference for that is there.
26 .
27 Then, on the 17th of May, 1978, a Deed of Conveyance
28 and Assignment of Mount Merrion Properties Limited,
29 assigned the leasehold interest to Whisper Investments
30 Limited for a consideration of ú7,000.

1 .
2 Then, that in turn goes to, where the freehold and
3 leasehold interest merged in Durkan Brothers (Ireland)
4 Limited, including the conditions in the 1941 lease
5 being extinguished. The cost of the leasehold is
6 recorded in the left-hand blue box at ú47,800 to Durkan
7 Brothers, with the document reference there. And the
8 freehold title there on the right-hand side, 17th of
9 May. The freehold was conveyed by the Pembroke Estate
10 and John Mungo Park to Whisper Investments Limited for
11 ú200.
12 .
13 A further Deed of Conveyance on the 2nd of June, 1978,
14 Whisper to Durkan Brothers Limited, for ú200.
15 .
16 If I could just refer you to the summary which is the
17 blue box or square on the right-hand side of that page.
18 If we could just, perhaps, increase that in size.
19 .
20 If we could get it over to, move it over to the left,
21 please. Yes.
22 .
23 Now, the first entry on that is the freehold for No. 78
24 and 84, which was the Pembroke Estate to Whisper
25 Investments Limited, bought in for ú200, and, then, as
26 you can see, sold for ú200, no profit there.
27 .
28 Leasehold No. 84, was sold by Mount Merrion Properties
29 to Whisper for ú7,000. And it was sold to Durkans for
30 ú47,800, indicating a profit on that particular aspect

1 of the transaction of ú40,800.

2 .

3 The next item is leasehold No. 78, plus the two acre
4 field. Mount Merrion Properties to Kilnarnagh for
5 ú116,800. Sold to Durkans for 124,000.

6 .

7 The sale of No. 76 Mount Merrion to Glencree for 7,000.
8 Sold to Durkans for ú48,000.

9 .

10 It seems from that table, if it is correct, that the
11 total amount outlaid by way of expenditure to get in
12 these various titles, and to merge them, was ú131,000.
13 And the total receipts from Durkans, by way of proceeds
14 of sale, was ú22,000.

15 .

16 And just by way of additional piece of information, the
17 ú124,000 sale to Durkans, I think, is broken down in
18 the deed in two parts, as to 116,800 for the two acres
19 at the rear of 68 to 84 and the leasehold of 78.
20 Sorry, the two acres at the rear of 68 and 84 is
21 116,800, and the leasehold of 78 is 7,200, if I am not
22 mistaken.

23 .

24 What all of this indicates, of course, is, as you say,
25 an assembly of various constituent elements of the
26 titles of these, essentially contiguous properties,
27 into a usable unit from the point of view of a
28 developer. Isn't that right?

29 A. Yes, sir.

30 356 Q. And obviously it indicates a significant logistical

1 operation on the part of the Pembroke Estate to put all
2 of this together, isn't that right?

3 A. Yes, sir.

4 357 Q. And having put it together they sold it within a
5 framework involving two Jersey companies, which yielded
6 a profit or a net profit, so far as you were concerned,
7 of ú79,000 between yourself, Mr. Brennan and
8 Mr. McGowan. Isn't that right?

9 A. Sir, if that's what it is, sir.

10 358 Q. It is shown first of all on this chart, then I will
11 show you the underlying documents. If you see the
12 calculations at the bottom of the chart. It is not
13 shown on the bottom of that chart. It is just shown on
14 my note. If we go to the documents. We will be able
15 to show that on screen now.

16 .

17 I will do it the other way around. I will go to the
18 documents first and then I will go to the summary.

19 A. Could I ask you, Sir, would you mind very much if I
20 left this over until tomorrow morning, Sir?

21 .

22 CHAIRMAN: Certainly.

23 A. I am afraid --

24 .

25 CHAIRMAN: It has been a long day.

26 A. I would greatly appreciate that. Thank you.

27 .

28 CHAIRMAN: Not at all.

29 THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
30 THURSDAY, THE 18TH OF OCTOBER, 2001, AT 10:30 A.M..

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