

1 PLANNING TRIBUNAL - DAY 312

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3 THE TRIBUNAL RESUMED AS FOLLOWS ON THE 24TH OF OCTOBER,

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

5 .

6 CHAIRMAN: Good morning everyone.

7 .

8 MR. HANRATTY: Good Morning, Sir.

9 .

10 We've been furnished with a copy of a set of
11 proceedings taken in Guernsey, Sir, but it does appear
12 that we would require, to enable us to fully monitor
13 the proceedings, a Letter of Consent to the legal
14 representatives of the Tribunal being in attendance at
15 all parts of the proceedings. I wonder if Mr. Hussey
16 could obtain instructions --

17 .

18 MR. HUSSEY: I beg your pardon. As I understand it,
19 there is a Letter of Consent that has been, or is being
20 furnished from Messrs. Kennedy McGonagle, and the
21 Guernsey solicitors, in respect of that --

22 .

23 CHAIRMAN: To attend all parts of the proceedings, even
24 if they are in camera?

25 .

26 MR. HUSSEY: Yes.

27 .

28 If I might explain, and I haven't quite understood what
29 I've been told in respect of this; that it seems to be
30 a notice party. It seems in Guernsey the term is to be

1 an "interested party". The party itself has to apply
2 to the Court, of course with the other party's consent,
3 which, as far as our client is concerned, that's
4 forthcoming. But it's the Court that determines
5 whether you become an interested party.

6 .
7 In any event, there is a Letter of Consent to the
8 Tribunal lawyers attending each part of the
9 proceedings, as far as our client is concerned. And
10 another letter, I think, to consent to it being brought
11 in as an interested party, should the Court so
12 determine.

13 .
14 So I think that's as much as I can say.

15 .
16 MR. HANRATTY: Then we'll have a look at the letter
17 when it comes in. That seems to me the case.

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30 .

1 MR. JOHN FINNEGAN RETURNS TO THE WITNESS-BOX AND
2 CONTINUES TO BE EXAMINED BY MR. HANRATTY AS FOLLOWS:

3 .

4 1 Q. MR. HANRATTY: Good morning, Mr. Finnegan.

5 A. Good morning.

6 2 Q. We were discussing yesterday afternoon the question of

7 Mr. Wheeler, and the fact that it would appear that if,

8 as you have said, you did not know the true reason for

9 the deduction of ú10,000, that it would appear,

10 therefore, that Mr. Wheeler must have been involved in

11 a deliberate deceit.

12 .

13 Now, what I just want to explore with you, first of all

14 in relation to that, is whether you are aware of any

15 attempt by Mr. Barry, subsequent to this deduction, to

16 seek an account of the disposition of the ú10,000 which

17 had been retained for this purpose, architects' fees?

18 A. Well, first of all, to answer you, sir, did I know that

19 Mr. Barry - did he seek anything? I don't know that he

20 did, sir, but I want to just - shall I tell you what

21 had to be done there, sir, about the --

22 3 Q. No, not at the moment.

23 .

24 You can qualify any answer you give. But at this stage

25 I am just trying to establish the parameters of what

26 was done or what was not done.

27 .

28 Did you, yourself, make any subsequent attempt to

29 obtain an account of the application or disposition of

30 this deduction of ú10,000?

1 A. No, sir. The only thing that we did get was that we
2 got - Mr. Barry got a note from Mr. Wheeler that the
3 money was going on deposit.

4 4 Q. What document is that?

5 A. He wrote to Mr. - he wrote to Mr. Barry and said that
6 the money was going on call account.

7 5 Q. Are you referring to the correspondence which preceded
8 the deduction, or are you referring to some letter or
9 correspondence which occurred after the deduction was
10 made? In other words, after the 19th of November --

11 A. I think after the - when the loan was drawn down.

12 6 Q. Yes. We'll try and identify that document, and we'll
13 come back to it.

14 .

15 MR. HUSSEY: I think - if I might interject. I think
16 it's Document 776.

17 .

18 MR. HANRATTY: Yes, we have it here.

19 .

20 MR. HUSSEY: I think that's the one. I don't want to
21 pre-empt the evidence.

22 .

23 CHAIRMAN: It certainly is on a handwritten document
24 prepared by Wheeler, is my recollection, a handwritten
25 division of the proceeds, if I may call it that.

26 .

27 MR. HANRATTY: I am not quite sure that he refers to a
28 deposit, because at that stage he is distributing.

29 .

30 CHAIRMAN: I certainly remember reading a deposit call

1 account somewhere. I don't recall precisely where.

2 .

3 7 Q. MR. HANRATTY: We'll have page 776, please.

4 .

5 This is a document, it's a telex from Mr. Wheeler to
6 Mr. Barry, dated the 21st of November, 1984, which is,
7 in fact, the day that he distributed the money. And he
8 says:

9 .

10 "We have received ú412,156.42 by telegraphic transfer
11 into our client's account. I was authorised to deduct
12 our fees, which includes fees and disbursements to the
13 30th June, 1984, for Canio Limited and Ardcaru Limited
14 in a total of ú2,858.05. This leaves a figure of
15 ú409,308.37. ú10,000 has been deducted, as agreed,
16 from Foxtown's one-third share and placed on a call
17 deposit account, and the net figure, which is being
18 sent - TT'd to Guinness & Mahon this morning is
19 ú126,436.16."

20 .

21 That, I presume, is the document you are referring to?

22 A. Yes, sir.

23 8 Q. Now, are you aware of any subsequent attempt by
24 Mr. Barry to verify the existence of that deposit
25 account?

26 A. I don't know, sir.

27 9 Q. And did you, yourself, make any attempt to verify its
28 existence?

29 A. Not - no, sir. I don't remember.

30 10 Q. Because we do know, as an objective fact, that it was

1 not, in fact, put on a call deposit account, that it
2 was simply sent off, it was amalgamated with two sums
3 of £25,000 deducted from Messrs. Brennan and McGowan's
4 shares and sent off to Caviar Limited.

5 .
6 We also know, to the extent of what is not contained in
7 Bedell & Cristin's file, that there is no subsequent
8 reference to it, and no subsequent record of, (A), any
9 call deposit account, or any correspondence or
10 communication between Mr. Wheeler and anybody else
11 about this retention fund, from which one might infer
12 that there wasn't any such correspondence and
13 communication, and that was essentially the end of the
14 matter.

15 A. Well, I think, sir, yes, that I feel that probably
16 Mr. Wheeler should have informed Mr. Barry about what
17 had happened, if he hadn't - because we were told, as
18 you say here, whatever. He did say that, that's the
19 day that he was putting it on call deposit.

20 11 Q. Undoubtedly he did. But he also said in the previous
21 correspondence, which we'll also deal with in a moment,
22 that it was being deducted for architects' fees?

23 A. Yes, sir.

24 12 Q. Or in one case, architects' fees/administration
25 expenses?

26 A. Yes, sir.

27 13 Q. But we know - it seems very likely that when he was
28 writing this, he knew already that it wasn't, that it
29 was for Mr. Burke?

30 A. Well, I didn't know, sir, at all. As I said that to

1 you, I was not aware of that. That was then between
2 the parties. I didn't know.

3 14 Q. Yes. Could we just look at the correspondence
4 surrounding this particular deduction. Yes.

5 .
6 The first document we'll look at is page 41. And this
7 is a telex dated the 14th of November, 1984, from
8 Mr. Wheeler to Mr. Owens. We've already had this in
9 evidence, but I need to just get your reaction to it.

10 .
11 I'll just read it out again. It says:

12 .
13 "I briefly saw Mr. McGowan yesterday, and he raised
14 with me his wish, and that of Mr. Brennan, that each of
15 the parties should reserve ú20,000 for possible future
16 expenses (such as architects' fees) should the present
17 negotiations not succeed. I put this to Barry of
18 College Trustees Limited who said that this was not
19 agreed. By the time I learned this I was not able to
20 recontact Mr. McGowan, but perhaps you would inform
21 him, and hopefully the three parties can agree in
22 Ireland.

23 .
24 In the meantime, I am writing to Mr. Barry along the
25 lines discussed with Mr. McGowan, with the one proviso
26 relating to the three pounds 20,000 retention.

27 .
28 Regards, Wheeler."

29 .
30 MR. HUSSEY: I am sorry, that memo isn't on the screen.

1 It's not 41. It's 755, actually.

2 .

3 15 Q. MR. HANRATTY: Yes, I have the wrong reference. Yes,

4 it's 755.

5 .

6 Would you like to just take time to read it, Mr.

7 Finnegan, on screen.

8 .

9 MR. HUSSEY: I wonder, this monitor doesn't seem to be

10 operating. I have a little difficulty with the screen

11 and my eyesight. I wonder, is there any chance of this

12 being checked?

13 .

14 16 Q. MR. HANRATTY: If we could enlarge it on the screen,

15 while it's being looked into.

16 .

17 It appears to be working now.

18 .

19 So, Mr. Wheeler is saying to Mr. Owens that he had a

20 meeting with Mr. McGowan. Mr. McGowan had communicated

21 to him his wish, and that of Mr. Brennan, that all

22 three of you would suffer a deduction of ú20,000 for

23 possible future expenses, as he describes them. And he

24 instances in brackets "(architects' fees) should the

25 present negotiations not succeed."

26 .

27 He goes on to say that Mr. Barry of College Trustees

28 had said to him that this was not agreed, and that he

29 couldn't recontact Mr. McGowan, but he's asking

30 Mr. Owens to tell Mr. McGowan that it isn't agreed,

1 with a view to the three parties agreeing something.

2 .

3 Now, presumably, as a result of that, somebody
4 contacted you, because we do know that subsequently
5 Mr. Owens wrote to say that the three parties had now
6 agreed to a deduction of 10,000 each.

7 .

8 So did somebody contact you?

9 A. After that?

10 17 Q. Yes.

11 A. Yes, Joe McGowan.

12 18 Q. And what did he say?

13 A. There was a question that we should - that was when we
14 were talking about the 20 --

15 19 Q. Sorry? Yes, Mr. McGowan said?

16 A. About a deduction of ú20,000 each.

17 20 Q. Yes.

18 A. And that had never been discussed with me before. You
19 know, this was a shot out of the blue, that I wasn't
20 aware that we were going to have any deductions out of
21 the loan, apart from the ordinary expenses and whatnot.

22 21 Q. What did he tell you they were for?

23 A. For architects, engineers and professional fees. And I
24 thought that that was too much, and particularly as it
25 was - it was an out of the blue request, sir.

26 22 Q. Well, what were architects' fees at that stage?

27 A. Well, I'll give you the sort of thing. The land, which
28 comprised 80 odd acres, there were - a fair amount of
29 things, actually, had to be done, because there was a
30 road reservation in the middle of it, the services were

1 not available to it, and there was a lot of work to be
2 done on that end of it. And Mr. Brennan was to -
3 looking after quite a bit of that. But there was,
4 like, a whole water scheme to be designed for the
5 storage of water, drainage, which was the major end of
6 it. And that was being conducted by the engineers.

7 .
8 So it wasn't just a question of the land lying fallow,
9 there was on-going - how this land could be serviced.

10 I think that's summing it up, how it could be serviced.

11 So these are fees that could have been --

12 23 Q. Well, both Mr. Brennan and Mr. McGowan have told us
13 that any architects' fees that would have been incurred
14 would have been paid by Kilnamanagh.

15 A. But why would Kilnamanagh pay them, sir?

16 24 Q. Because they had had a contract to buy a substantial
17 portion of the lands?

18 A. They only had a contract, sir, to buy a portion of the
19 land on the basis of the loan, and there was a note
20 immediately after that, that that was really only a
21 guarantee, sir, not --

22 25 Q. I am just putting to you what they said?

23 A. Well, that's not the case, sir.

24 26 Q. Yes.

25 A. And --

26 27 Q. Mr. McGowan says that what - the reason that he gave
27 you for the deduction was the donation to Fianna Fail.

28 That's what he said in evidence here?

29 A. Well, sir, I haven't made any sort of donations like
30 that ever to Fianna Fail, and I would certainly have

1 remembered it if it was --

2 28 Q. You mean of that size?

3 A. Or a donation.

4 29 Q. Ever?

5 A. Sorry?

6 30 Q. Are you saying you've never made a donation --

7 A. No, sir. No.

8 31 Q. You've never made a donation of that size, is that what

9 you are saying?

10 A. No, anything that I ever do, sir, it would be normally

11 sort of taking tables or giving --

12 32 Q. The normal fundraising kind of things?

13 A. Yes, sir.

14 33 Q. Yes. But Mr. McGowan's testimony was that the reason

15 that he gave to you for the making of this deduction

16 was for the purpose of making a donation to Fianna

17 Fail?

18 A. Well, sir, no, that is not the case. He didn't tell me

19 that.

20 34 Q. Well, do you remember the conversation with

21 Mr. McGowan?

22 A. I do - well, as much as one would remember that long

23 ago, but it was a question of - I would have been very

24 - first of all, sir, the question of a retention like

25 this would be kind of a red rag to a bull to me,

26 because, one, that I hadn't been told about it, a

27 deduction of €20,000 each. And I know I said, "This is

28 a last minute affair", and if it came down to it, to

29 satisfy - to satisfy their request, and that is for

30 this retainer. And I reluctantly agreed to €10,000,

1 sir, but certainly there was never a question of saying
2 that it was for Fianna Fail.

3 35 Q. Well, he says that he does remember it, and this is the
4 reason that he gave you for this proposed deduction.

5 A. Sir, certainly he did not tell me.

6 36 Q. Well, are you saying that because you remember what he
7 did say, or are you saying it because it's the kind of
8 thing that you would have reacted against?

9 A. It's the kind of thing - certainly, whatever, whatever,
10 whatever else might have been said, I would certainly
11 remember that.

12 37 Q. It's not something, do you say, that you would have
13 agreed to?

14 A. No, sir.

15 38 Q. Well, the Tribunal's confronted with the fact that
16 Mr. McGowan has told it, in sworn testimony, that that
17 is what he did say.

18 A. Well, I must say to you, sir, that it came as a great
19 surprise to me that a contribution had been made,
20 because I am out of Canio - by the way, there was never
21 even, when this came up and it was up that Brennan and
22 McGowan were coming against the Tribunal here, that
23 never even - at that stage, sir, there was never any
24 word about it. I never knew anything. That's the
25 first I knew of anything being made.

26 39 Q. Yes.

27 A. So - as a matter of fact, I think I said earlier, you
28 know, "at least I am not involved in that". You know,
29 so --

30 40 Q. Well, what did you think happened to the 10?

1 A. Well, it would have been disbursed over the period of
2 time, sir.

3 41 Q. To who?

4 A. To architects, engineers and --

5 42 Q. What architects, engineers?

6 A. Well, the engineers - it's more an engineering job,
7 sir. As far as I recollect at the time, it was - this
8 is over a period of years too, sir --

9 43 Q. What years are you talking about?

10 A. Well, from the date of that - that's - up to the time
11 of disposal - three or four years involved there, sir.

12 44 Q. Well, did you have reason to believe that this fund was
13 used to pay fees to McCarthys?

14 A. I think, sir, to give you a little bit of a flavour
15 from where we are coming from here. It's received from
16 what's come about -- Brennan and McGowan were running
17 the show here, sir, and they were running the company
18 as if - well, I know I was there, but - so they were
19 operating it, sir. And that was - and that was being
20 shown up, sir, along the line that I didn't know of
21 certain things to have been done.

22 .

23 So that would - they were on the day-to-day. And they
24 were interfacing, sir, with the consultants.

25 45 Q. Yes. Well, we do know, for example, that McCarthy &
26 Co. were indeed a firm of engineers which were used on
27 a regular basis by a variety of Brennan and McGowan
28 companies. They essentially were the firm that did all
29 of the Brennan and McGowan engineering work.

30 A. Mm-hmm.

1 46 Q. And they appear to have been billing Brennan and
2 McGowan on a regular basis, certainly in the early
3 '80s, and indeed as far back as, as far as we can see,
4 in the '70s, for work that they were doing for Brennan
5 and McGowan companies in respect of various projects
6 they had around Dublin.

7 .
8 But there is no indication that anybody ever told,
9 either yourself or Mr. Barry, that any part of this
10 retention fund was ever paid to them, or to anybody
11 else for that matter.

12 A. Right, sir. Well, I think that the - I think it's fair
13 to say that I don't know - I can't tell you of any
14 particular drawdowns, but --

15 47 Q. Given the mistrust that obviously existed between
16 yourself and Brennan and McGowan because of the
17 previous events in June that we had yesterday, it does
18 seem, if I may say so, surprising that nobody ever came
19 back to see whatever happened to the €10,000.

20 A. Well --

21 48 Q. Or whether it was spent at all.

22 A. Well, that's the other thing, sir, as to whether - I am
23 not aware, I can't say to you that I actually know
24 where it was spent, but I --

25 49 Q. You now know where it was spent. It was sent to
26 Mr. Burke?

27 A. Yes, sir. Yes.

28 50 Q. And what I am trying to find out is what did you think
29 the position was about it a month, six months, a year,
30 two years afterwards? Nobody appears to have ever

1 reverted about this or mentioned it again.

2 A. Mm-hmm.

3 51 Q. As if it was all finished and done --

4 A. Sir, I can certainly think that this was an event that
5 wouldn't stick out that much in my mind, but I suggest
6 - I was interested in doing one thing at that
7 particular time, sir, and that was getting - it was
8 getting the loan through. And whilst this - if this
9 had been put up to me beforehand, I might have
10 remembered it or remembered more about it, but there
11 was nothing - I mean, it was a retainer for the
12 architects, engineers, but this was a last minute
13 throw. And I wanted to get the money, and to me that
14 was important, to get that, and indeed yet another
15 comfort --

16 52 Q. If we just look at a letter Mr. Wheeler wrote to
17 Mr. Barry on the same day he sent that telex we've just
18 had to Mr. Owens. It's dated the same date, the 14th
19 of November, 1984. He says:
20 .
21 "Dear Mr. Barry,
22 Canio Limited
23 Thank you for your letter of the ..." - the page
24 reference, 756. "... I confirm the following. I
25 executed a contract for the sale of 43 acres of the
26 land belonging to the company to Kilnamanagh Estates
27 Limited for ú1,500,000, which you confirmed to me on
28 the telephone was approved by Foxtown.
29 .
30 Receipt of a letter from Kilnamanagh Estates Limited,

1 whereby that company agrees to release Canio Limited
2 from the contract on demand. (Copy enclosed.)

3 .
4 Receipt of a letter from Reid & McNabb asking for the
5 title documents to be returned. I released these to
6 Mr. McGowan against his receipt. (Copy of Reid &
7 McNabb's letter enclosed.)

8 .
9 So far as the undertaking which you require from me,
10 this has been complicated by the apparent lack of
11 agreement concerning a total retention amount of
12 ú60,000 against future expenses should Dublin County
13 Council not proceed with the purchase of the land. I
14 have passed this problem on to my client's
15 representatives in Dublin, and hope that this aspect
16 can be cleared up at that end and full instructions
17 relayed to us."

18 .
19 And he goes on to deal with the facility.

20 .
21 Now, Mr. Owens came back to Mr. Wheeler, at page 757,
22 on the 16th of November, 1984, "re Canio Limited." He
23 says:

24 .
25 "Confirm ú10,000 by 3 agreed as reserve, and Barry has
26 been advised.

27 .
28 Mortgage being closed at 2 p.m., Monday 19th at your
29 office.

30 .

1 Regards, Hugh Owens."

2 .

3 So, that clearly indicates that Mr. Owens had, in some
4 way, advised Mr. Barry that the ú10,000 had been
5 agreed, and presumably that was told to him by
6 Mr. McGowan, Mr. McGowan having spoken to you --

7 A. Yes, sir.

8 53 Q. Now, Mr. Brennan has told the Tribunal that this
9 reference to "architects' fees" by Mr. Wheeler is a
10 euphemism for a payment to Mr. Burke, and that
11 everybody at the time, as far as he was aware, was -
12 knew what it was for, including, in particular,
13 Mr. Wheeler, when he wrote that document?

14 A. Well, I want to say to you, sir, that as far as I am
15 concerned, that is not true. I didn't know about it.
16 I was never informed about it. I certainly would have
17 remembered if it was a payment to a politician or a
18 payment to Fianna Fail. I never agreed it. It was
19 never discussed with me. And indeed, it did come as a
20 great surprise to me when I learnt of it.

21 54 Q. If we could have a look at what Mr. Wheeler actually
22 did with it. Page 749. Sorry, I've got the wrong page
23 number. The handwritten document, 1863.

24 .

25 Now, as you can see, we've seen this document on a
26 number of occasions before. This is Mr. Wheeler
27 sitting down and dividing up the money that he has
28 received from Lombard & Ulster.

29 .

30 He had not, as expected, received 420,000, because

1 there was a deduction for Binchy's fees, so what he got
2 was approximately €412,000. He deducted his own fees
3 from that, and some other expenses, which it appears
4 everybody had agreed. It's fairly clear what he did.
5 He divided the remainder by three, coming up with a
6 balance of €136,436.16 for each of the three of you.
7 And then he deducts the agreed 10,000 deduction from
8 your share and calculates your entitlement as
9 €126,436.16.

10 .

11 And at the top of the page we can see that he has "2 by
12 25,000 to Caviar Limited, plus €10,000." In fact, we
13 are looking at the indistinct page. We have a clearer
14 copy of this - right.

15 .

16 You see the top left-hand side, "2 by 25,000 to Caviar,
17 plus 10"?

18 A. Yes.

19 55 Q. And he gives the number of Caviar Limited, the account
20 number in Hill Samuel Bank.

21 .

22 Now, if your version is correct, here is a solicitor,
23 in Bedell & Cristin, sitting down, and one can only
24 conclude, so far as you are concerned, and Mr. Barry is
25 concerned, fraudulently making a deduction from your
26 money, from your €136,436.16 for a purpose completely
27 different to the purpose which he had told yourself and
28 Mr. Barry. There is no other conclusion that one can
29 make?

30 A. No other conclusion, sir.

1 56 Q. Whatever point in time you might speculate about or
2 infer prior to this, from which he must have known that
3 this deduction was for Mr. Burke, whether or not you
4 accept Mr. Brennan's evidence that the reference to
5 "architects' fees" was a euphemism, there is absolutely
6 no doubt about what he is doing here?

7 A. No.

8 57 Q. We know that Caviar Limited is a company which he
9 established in correspondence with Mr. - as a result of
10 correspondence with Mr. Oliver Conlon on behalf of
11 Mr. Burke?

12 A. And I never knew of the existence of that, sir.

13 58 Q. And there is no doubt that Mr. Burke was in Jersey with
14 him a few days prior to this, and before that
15 Mr. McGowan. But there is absolutely no doubt what he
16 is doing in this document on the 21st of November,
17 1984. He is taking ú10,000 out of your money and he is
18 sending it to Mr. Burke. And if you are correct in
19 saying that neither you nor Mr. Barry were aware of the
20 true reason that he was making this deduction,
21 Mr. Wheeler could only have been acting fraudulently in
22 doing what he clearly did in this document. There is
23 no other possibility, I suggest.

24 A. Well, sir, whatever. He certainly wasn't doing it - he
25 certainly wasn't doing it on any instructions from me.
26 I was not aware of it in any way whatsoever. Never,
27 never any communication with him. I never knew
28 anything about this. So he was doing it either on the
29 instructions of --

30 59 Q. And if you are right, Mr. Wheeler, a solicitor in

1 Bedell & Cristin, was engaging in a deliberate deceit
2 of yourself and Mr. Barry as to the true reason as to
3 why this \$10,000 was being taken out of your money?

4 A. Yes, sir. That is the position, sir.

5 60 Q. Call it what you like, it was deceit, it was fraud, it
6 was theft, because you had been misled fundamentally as
7 to what the reason for this was?

8 A. Yes, sir. Absolutely.

9 61 Q. And if the Sole Member accepts your evidence that you
10 did not know, or that Mr. Barry did not know what the
11 real reason for this was, then he is driven inexorably
12 and unavoidably to that conclusion, that Mr. Wheeler
13 was acting in a most profoundly dishonest way?

14 A. Yes, sir. And it does concern me gravely, that that
15 did happen, because otherwise I wouldn't be here today.

16 62 Q. We do know that in correspondence which was exchanged
17 between Mr. O'Shea, and I can't remember the other
18 party, in 1990, Mr. O'Shea asserted that this 126,416
19 was, in fact, a repayment of the monies that you had
20 advanced to Canio, and that, in fact, there was an
21 overpayment in the sum of 6,436.16?

22 A. Mm-hmm.

23 63 Q. Now, it's quite clear from Mr. Wheeler's document that
24 what this was, and that the basis on which he
25 calculated the sum to be sent to you was simply by
26 reference to the division of the proceeds of a loan,
27 which he originally thought would be 420, but which
28 actually turned out to be 412, and was not calculated
29 by reference to any indebtedness.

30 A. Well, I don't know, sir, what - I think that that might

1 have been between the Trust and the thing, it might

2 have been a bookkeeping thing, sir.

3 64 Q. Well, you see, Mr. Finnegan, we know that the amount of

4 the contribution of each of the three of you was

5 ú100,000, being one-third of the ú300,000 that came

6 over from Green Trees.

7 A. Mm-hmm.

8 65 Q. A further cash payment each of ú50,000, and a further

9 cash payment each of ú70,000.

10 A. Mm-hmm.

11 66 Q. In other words, a total of ú220,000 in cash each. It's

12 quite clear that at the time that the Lombard & Ulster

13 loan was being taken out, there is no indication that

14 its purpose was to pay back the full amount of the

15 investment, shall we say, that each of the three of you

16 had made. Isn't that right?

17 A. Sorry?

18 67 Q. The Lombard & Ulster loan borrowing was ú525,000?

19 A. Right.

20 68 Q. That's what was actually applied for?

21 A. Yes, sir.

22 69 Q. It was sanctioned by Lombard & Ulster on the basis of a

23 retention of 105,000 against future interest?

24 A. Yes, sir.

25 70 Q. Leaving 420 to be distributed?

26 A. That's right.

27 71 Q. In fact, it's quite clear from the correspondence prior

28 to the actual arrival of the loan cheque, assumed

29 incorrectly, as it turned out that what would arrive in

30 Guernsey or Jersey would be ú420,000. They hadn't

1 anticipated, or perhaps had overlooked the fact that
2 the bank's own solicitors would deduct their own fees
3 from that sum. Isn't that so?

4 A. Yes, sir.

5 72 Q. And it's quite clear that what actually arrived was a
6 net figure less the Binchy's fees, in other words,
7 €412,000 approximately.

8 .

9 And it's quite clear the calculations that Mr. Wheeler
10 did on that sum to arrive at the respective
11 entitlements of each of the three of you. Isn't that
12 so?

13 A. Yes, sir.

14 73 Q. The deduction of his fees, the deduction of the
15 €58,000, the division by three of the 409,000 to reach
16 136,000 each, and the deduction from your 136,000 of
17 €10,000. No aspect of those calculations is done by
18 reference to any indebtedness, or for the purpose of
19 paying any loans. Isn't that right?

20 A. Yes, sir. I think to answer your question there, I
21 think it was just coincidental on the amounts there,
22 and I think that the - whatever - when Michael O'Shea,
23 Mr. O'Shea was taking it up there, I think it was, from
24 what I gather, either just a question of the thing
25 between the Trust and the thing, whether it was the
26 repayment of a loan within the Trust. It was a
27 bookkeeping matter, I think, sir.

28 .

29 CHAIRMAN: May I intervene at this point?

30 A bookkeeping matter with €10,000 put into a

1 contingency fund, money must be very plentiful if you
2 simply forget €10,000?

3 A. No. Sorry, Sir. I am at cross-purposes here. I
4 wasn't talking about the €10,000, Sir.

5 .
6 CHAIRMAN: Well, I am. There is €10,000, according to
7 all these documents, being retained out of your share,
8 and so far as I know at this moment in time, you have
9 never either asked for an account of the disbursement
10 of that 10,000 or the repayment of that 10,000. And to
11 put it mildly, I find that strange.

12 A. Well, Sir, if I go on here, that when - by the way, I
13 was talking about another thing there, but back on to
14 the 10,000. I don't know what was paid out of that
15 along the lines to the consultants, and indeed, I don't
16 know if, at the end of the day, when I sold out my
17 shares in the company that this was a wash through of -
18 whether there was any balancing up. I don't know, sir.
19 But when I was being bought out, it was just for my
20 interest in the company, and if there was any - if
21 there was anything around, there was a clearout then,
22 Sir. I just got paid for my shares.

23 .
24 74 Q. MR. HANRATTY: Mr. O'Shea's evidence about the 10 was
25 that you never told him about it. He never knew about
26 it. It was never, according to him, mentioned to him.
27 He did refer to an alleged overpayment of €6,420.36,
28 and he did, in fact, take it into account in the
29 reckoning, that alleged overpayment in balancing, and
30 reconciling everything that was owed between yourself

1 and Messrs. Brennan and McGowan on the sale of your
2 shares to them.

3 A. Mm-hmm.

4 75 Q. But he made no provision of any kind in relation to
5 ú10,000, nor did he seek any evidence of the
6 disbursement of that sum, or the expenditure of that
7 sum. He did nothing about it. And he, himself, has
8 given testimony that he didn't know about it, because
9 you never told him about it.

10 .

11 It says, at question 126, on Day 263:

12 .

13 "Question: And there is no issue on any of the
14 documentation, either between the solicitors or between
15 the parties that ultimately led to the agreement of
16 which this 6,426 formed part in relation to a sum of
17 ú10,000?

18 Answer: No. But as I said, I wasn't aware of the
19 ú10,000. Had I been, I would have raised the issue.
20 And I assumed that over the years my client would have
21 assumed the money was expended."

22 .

23 So he didn't know about it, and he wasn't told about
24 it.

25 A. Well, it's just - if that is the case, sir, it's a
26 little bit surprising to me, but if that is what his
27 recollections are, sir - but he would have been aware,
28 I think, of my discussions with Barry.

29 76 Q. Well, you see, the first assertion that what happened
30 on the - in November of 1984 was, or was intended to be

1 a repayment of monies put up by yourself and Messrs.
2 Brennan and McGowan, was made in a letter from
3 Sovereign Trustees Limited in 1990. And Mr. O'Shea has
4 told us that that is the basis upon which he made the
5 assertion of this ú6,400 overpayment in his letter.

6 .

7 If I can just refer you to the Sovereign Trustee's
8 letter. It's page 1385. And this is a letter written
9 on the 10th of September, 1990, by Mr. Naylor to
10 Mr. McGonagle of Kennedy McGonagle Ballagh, or Kennedy
11 McGonagle, as it then was.

12 .

13 "Dear Liam, I refer to your letter of the 27th August,
14 1990.

15 .

16 The relationship between the various entities is as
17 follows:

18 .

19 Foxtown Investments Limited is wholly-owned by
20 Sovereign Trustees Limited as trustees of the Amber
21 Trust.

22 .

23 Foxtown owns four shares in Ardcar Limited, 33 and one
24 percent of the issued share capital. These shares are
25 registered in my name, and I have executed a Letter of
26 Trust in favour of Foxtown.

27 .

28 Canio Limited is wholly-owned by Ardcar Limited.

29 Canio Limited is the owner of the Irish property.

30 .

1 I am a director of both Ardcarne and Canio, so nothing
2 should happen without my knowledge. I have written on
3 several occasions to Advocate Wheeler about this, and I
4 am confident that he would not take any action
5 regarding both companies without consulting me.

6 .

7 Regarding the original investment, I have looked
8 through the old files and have found the following
9 information:

10 .

11 The original investment of £300,000 Sterling was
12 injected in December 1978 into a company called Green
13 Trees Limited. This sum was loaned to Canio Limited in
14 May 1979, and was used to pay the deposit on their
15 property.

16 .

17 In February 1980 Foxtown loaned £50,000 Sterling to
18 Canio. And in November 1980 Foxtown loaned a further
19 £70,000. From correspondence, it appears that these
20 last two loans were matched by loans from the other two
21 shareholders.

22 .

23 In November 1984 Foxtown received back £126,426, being
24 its share of the loan arranged through Lombard &
25 Ulster. The amount shown in Foxtown's accounts "re
26 loan due to Ardcarne" is, therefore, the latter amount,
27 less the Sterling, £120,000. I can't find any further
28 details relating to the funds sent to Green Trees.

29 .

30 If I can be of any further help please let me know. I

1 shall let you know if I hear anything from Advocate

2 Wheeler."

3 .

4 Now, Mr. O'Shea has told us that the statement in the

5 last paragraph on the first page of that letter is the

6 basis of his assertion in his subsequent correspondence

7 that there was therefore an amount due by Foxtown to be

8 paid back to Ardcar in the sum of ú6,426.

9 .

10 Now, here we have Mr. Naylor of Sovereign Management

11 Limited asserting for the first time that the ú126,426

12 had anything to do with repayment of the monies which

13 we know you put in. And can I ask you, why was he now

14 asserting this in 1990?

15 A. I don't know, sir, but I think it - unless it's to do

16 with - it was a dealing that the money that came out of

17 the Trust was deemed as a loan, sir.

18 77 Q. See, this is not consistent, I suggest to you, with

19 what Mr. Wheeler did. What Mr. Wheeler did was simply

20 to divide a sum received from Lombard & Ulster by way

21 of a loan to, as you say, get some money out after a

22 deduction of a number of different expenses?

23 A. Yes, sir. I see it, sir, too.

24 78 Q. And after deduction, of course, specifically in your

25 case, of an agreed figure of ú10,000?

26 A. Mm-hmm.

27 79 Q. That's how the 126 was arrived at?

28 A. Yes, sir.

29 80 Q. It was not arrived at by reference to any loan?

30 A. No. I would say so.

1 81 Q. So why is Mr. Naylor now saying this in this letter,
2 that it's a loan?

3 A. Well, I think that is just the way that my - my
4 understanding of it would be that that is - that's
5 in-house; that we are saying that that was - that was a
6 loan re Foxtown vis-a-vis the Canio. That's the way it
7 was injected. That might be just the sort of
8 procedure, sir, I would say --

9 82 Q. Well, if the ú126,000 was not, in fact, distributed by
10 way of repayment of a loan, at some point in time
11 somebody, either through error, or deliberately,
12 decided that it would be treated as a loan, except
13 that, for whatever reason they did it, they had a
14 problem, because the figure that was repaid was not
15 120,000, it was ú126,436. So that necessitated saying
16 that the 6,436 was an overpayment, and therefore,
17 consequently, there is a sum of ú6,436 due by Foxtown
18 to Ardcar, which is, in fact, what Mr. O'Shea said in
19 his letter, which we'll come to in a moment.

20 .
21 Is it possible that the reason the people in 1990 are
22 now saying that this ú126,000 was a repayment of a loan
23 was clouded or disguised or covered the fact that it
24 was a sum calculated after the deduction of ú10,000
25 paid to a politician --

26 A. Oh, no, sir, absolutely not.

27 83 Q. Well, what is your best shot at why Mr. Naylor in this
28 letter treated this ú126,000 as a repayment of the
29 loan?

30 A. I think - as I said earlier, sir, that I think that

1 whatever came out, whatever the injection was out of
2 the - into Canio, came via Foxtown. And I think it was
3 just treated as a loan, rather than a capital
4 expenditure. I think there is no more in it than that,
5 sir.

6 84 Q. But Mr. Naylor, I suggest to you, must have known in
7 September 1990 when he wrote this letter that the
8 126,000 wasn't, in fact, paid over to you by way of
9 repayment of any loan?

10 A. No, I - really, sir, I don't know - I think it's just
11 something that we - between the parties. I don't think
12 there is anything in that at all, sir.

13 85 Q. How do you mean?

14 A. I think it's just - I think the - I think it's just
15 bookkeeping between Naylor looking after the interests
16 of Foxtown, and just how that was treated in the books,
17 sir.

18 86 Q. You see, on one view of it, it wasn't in your interest
19 for him to do that. He could, for example, have said,
20 "That wasn't a repayment of a loan. It was \pounds 126,000
21 arrived at after deduction of certain expenses, and
22 after dividing by three a sum received by way of a
23 borrowing from Lombard & Ulster. But it was not
24 intended to be at the time, and it was not, in fact, a
25 repayment of any part of the investment which my client
26 made. And consequently my client is still owed the
27 \pounds 120,000 which was advanced by way of loan."

28 .

29 He could have taken that position, and if he had done
30 so, I suggest nobody could have argued with him?

1 A. I didn't quite follow that, sir.

2 87 Q. He could have said --

3 A. Who?

4 88 Q. Mr. Naylor could have said, and bearing in mind he's
5 looking after the interests of Foxtown?

6 A. Yes.

7 89 Q. He could have said that the two sums which were put in,
8 the 70 and the 50, were loans, and they are still owed,
9 but the ú126,000 paid out in November 1984 was not, and
10 was not intended by the parties to be repayment of
11 those loans.

12 .

13 For example, there is no evidence that Messrs. Brennan
14 and McGowan were ever repaid their loans either.

15 .

16 Could we just look at how it was referred to by
17 Mr. Barry in 1984.

18 .

19 This is a letter which he wrote on the 8th of November
20 to Mr. Wheeler, page 749.

21 .

22 "Further to today's telephone conversation, I enclose a
23 copy of the Lombard & Ulster (Banking) (Ireland)
24 Limited facility letter.

25 .

26 As I have explained, my client is agreeable to this
27 facility being taken up subject to the following:

28 .

29 1. The Sterling ú420,000 drawn down should be paid by
30 the bank to a client account in the name of Bedell &

1 Cristin.

2 .

3 2. We require a written undertaking from Bedell &
4 Cristin that immediately on receipt of the ú420,000
5 they will transfer one-third thereof, i.e. ú140,000, to
6 an account in the name of Foxtown Investments Limited,
7 details of which will be supplied to you.

8 .

9 Please confirm as soon as possible that your clients
10 are agreeable to the above, and let me have the
11 undertaking referred to."

12 .

13 Now, the first thing that strikes one about this letter
14 in the context that we've just been discussing, is that
15 there is no reference to this payment being anything to
16 do with any repayment of a loan. Is that right?

17 A. Yes, sir.

18 90 Q. Secondly, one can reasonably infer, I suggest, from the
19 manner in which he makes the calculation of dividing
20 the net 420, as he thought it then was, by three, and
21 therefore the resulting 140 to you, would indicate that
22 it wasn't, in fact, intended to be the repayment of a
23 loan, because the ú140,000 is not the figure. The
24 figure would have been 120, if that's what it was
25 doing. Isn't that right?

26 A. Yes, sir.

27 91 Q. But yet, in 1990, Mr. Naylor writes a letter containing
28 the explicit assertion that the payment of the ú126,000
29 was, in fact, a repayment of monies which he says you
30 loaned to the company, but that there was an error,

1 there was an overpayment of 6,436, which therefore is
2 now owed by Foxtown to be paid back?

3 A. Whatever Mr. Naylor was doing, I think it was just
4 sorting out my affairs. But I can tell you one thing,
5 absolutely, that this had nothing to do, sir - it had
6 nothing to do with anything regarding the payment which
7 you suggested I was involved in, sir, and which I
8 wasn't, nothing whatsoever. And I don't know, really,
9 if it was just - there was a little bit of going around
10 there, sir, about this, sir, but I really - I don't
11 think there is anything there, sir, no more than just
12 settling the proper way to deal with it.

13 92 Q. If we just look at what Mr. O'Shea says in his letter.
14 It's a letter, page 1402, dated the 18th of December,
15 1990, to Mr. Don Reid of Stokes Kennedy Crowley, who I
16 think was advising you at the time.

17 .
18 "Re Canio:

19 .
20 Dear Don, herewith draft agreement submitted in
21 connection with the proposed sale by Foxtown
22 Investments Limited of its shareholding in Ardcar
23 Limited.

24 .
25 You will recall that Ardcar holds all the issued
26 shares of Canio. The total consideration is ú700,000,
27 payable as to ú500,000 on completion and the balance
28 over a period of years.

29 .
30 There is a suggestion that part of the balance, perhaps

1 up to 100,000, will be paid by way of fees to Finnegan
2 Menton. You will notice that the initial payment of
3 ú500,000 at least is to be paid in government stock. I
4 look forward to discussing this matter generally with
5 you this afternoon."

6 .

7 And the document he encloses, it's 1403, and it's
8 "re Canio". It's entitled: "Proposed sale by Foxtown
9 of its shareholding to Ardcarne." He sets out the share
10 structure, and so on, and the shareholders in Foxtown.
11 And at the second paragraph in paragraph 4, he says:

12 .

13 "In November 1984 Foxtown received back from Canio
14 ú126,426 Sterling, being its share of the loan arranged
15 through Lombard & Ulster Bank. There is, therefore, an
16 amount due by Foxtown to Canio/Ardcarne of ú6,426."

17 .

18 I'll read the whole of paragraph 4:

19 .

20 "I am not aware of the full purchase price paid by
21 Canio for the Irish property. However, it seems that
22 the ú300,000 Sterling was injected in December 1978
23 into a company called Green Trees, which in turn lent
24 this money to Canio Limited in May 1979.

25 .

26 In February 1980 Foxtown lent ú50,000 to Canio, and in
27 November 1980 lent a further sum of ú70,000. Both
28 these payments were in Sterling. These last two
29 payments were matched by loans by the other two
30 shareholders in Ardcarne, and it is assumed that the

1 €300,000 was contributed equally by the three
2 shareholders in Ardcarne."

3 .

4 Now, Mr. O'Shea has told the Tribunal in evidence that
5 the basis of what he says there, in that paragraph 4,
6 is that letter that I've just referred you to from Mr.
7 Naylor dated the 10th of September, 1990.

8 A. Yes, sir.

9 93 Q. So, firstly, Mr. Naylor, and now Mr. O'Shea, is
10 treating this €126,000 as a repayment of a loan, even
11 though that's not what it was at the time. In fact, in
12 paragraph 7 on page 1404, he refers to it again. He is
13 talking about the arrangements for completion of the
14 sale. He says: "The vendor will require a release by
15 Ardcarne of the loan of €6,426 made to it."

16 .

17 So, there must be some reason why this €126,000 is
18 being, in effect, reinvented or redefined, not as a
19 division of a loan obtained by Lombard, but as actually
20 a repayment of loans made by you to Ardcarne?

21 A. I don't know, sir.

22 94 Q. Can you think of any possible reason why they are doing
23 this?

24 A. I can't, sir. I think it's all a very simple thing,
25 but I really don't know, except that it is just good
26 housekeeping, sir.

27 95 Q. Why is it good housekeeping to do something, the effect
28 of which is to give rise to a liability, among other
29 things of €6,426 by Ardcarne - sorry, by Foxtown to
30 Ardcarne, which didn't, on anybody else's version

1 previously, exist, and on which it had never been
2 sought. Nobody on behalf of Ardcar, or indeed Canio,
3 ever approached either Mr. Naylor, or Mr. Barry, or
4 you, or Mr. O'Shea saying, "Incidentally, chaps, you
5 owe - sorry, Foxtown owes ú6,436.15 to Ardcar. Can we
6 have it?"

7 .

8 There was an overpayment in November of 1984. Nobody
9 had ever said that, and nobody had ever asserted there
10 was any overpayment. Nobody had ever suggested that
11 any such indebtedness was due, and nobody had ever
12 sought payment of it. And suddenly we find, in 1990,
13 not only Mr. O'Shea, but one of the trustees of the
14 trust treating monies that were paid out simply by way
15 of a distribution of monies borrowed by Lombard &
16 Ulster as a loan containing an overpayment which had to
17 be repaid.

18 .

19 And what I am trying to understand, is why would he do
20 that?

21 A. I don't - actually, sir, I am at a loss here, that -
22 because there was no real - there was no real issue
23 raised with me about this, sir. I am at a bit of a
24 loss to follow the track of this myself, sir. I don't
25 know, except that if Michael O'Shea was trying to put
26 --

27 96 Q. You see, one of the consequences of treating the
28 ú126,000 - ú126,436.15 as the repayment of your 70 and
29 50, which we know was put in with an overpayment of
30 6,436, is, in a sense, to airbrush out the fact that

1 that figure was reached after a deduction of £10,000
2 was made for some purpose?

3 A. No, sir. Absolutely not.

4 97 Q. I am putting it to you, that is the effect of it,
5 because it provides a different explanation as to why
6 the £126,000 was paid. The one explanation, as set out
7 in explicit and unambiguous terms in Mr. Wheeler's
8 handwritten document, is that it was a figure
9 calculated after a deduction of £10,000 for something.

10 We'll just leave it there.

11 .

12 The other explanation, as contained in Mr. Naylor's
13 letter, is that it was something entirely different
14 altogether; that it was the repayment of a loan, but
15 unfortunately there was an overpayment of £6,436,
16 thereby airbrushing out of the picture completely,
17 perhaps, what was perceived to be the inconvenient
18 fact, that that figure was actually reached after a
19 deduction of £10,000, for some reason?

20 A. I don't know what all of this is about, sir. I must
21 say that I have no instructions, no idea, never
22 mentioned to at any time that it was anything to do
23 with anything like what you are suggesting, sir. I
24 must reiterate, (A), I was never involved in any
25 contribution, never agreed to it. I didn't have it. I
26 didn't do it, sir. And this, sir, is to me - I don't
27 know how anyone came around to this sort of idea, but I
28 can't - nobody - I can't see where this is coming from
29 at all, sir.

30 .

1 I know that even with my lawyers, I don't know - I
2 think it was no more than putting the house in order,
3 sir. It's no more than that --

4 98 Q. In what way did it or could it have put the house in
5 order?

6 A. Well, I am not good at this --

7 99 Q. Did it give rise to an indebtedness, for a start, of
8 ú6,436 which didn't previously exist?

9 A. I am afraid this sort of thing is a little outside my
10 gambit, sir. It was never an issue, sir, and it was
11 never something that came up, or was discussed with me
12 in detail. This was my lawyer sorting out something,
13 but there was never anything like what you are talking
14 about, sir. I never knew of anything, and --

15 100 Q. Because again, trying to sift out objective - the
16 objective fact. The objective fact appears to be that
17 when Mr. Naylor said that this ú126,000 was a repayment
18 of loans by you to the company, he was factually
19 incorrect, and he was factually incorrect in saying
20 there was an overpayment, because it's quite clear that
21 you are entitled, on the basis of the arrangements as
22 they then existed, to receive 126,000?

23 A. Yes, sir.

24 101 Q. In fact, you were entitled to 136, but you agreed to a
25 deduction of 10?

26 A. Yes, sir.

27 102 Q. So when Mr. Naylor says this was a repayment of a loan,
28 he was making a false statement. And when he said
29 there was an overpayment of 6,436, he was making a
30 false statement?

1 A. If he was, sir, he was, sir, but it's something that -
2 really, there was never an issue about any of this.

3 103 Q. Just to be absolutely clear about this, Mr. Finnegan,
4 and to be complete about the whole picture about this,
5 particularly these two cash payments of 50 and 70 that
6 you put in.

7 .
8 There is no doubt that when those payments were made,
9 Mr. Owens, who was viewing it from the point of view of
10 tax efficiency, particularly for Messrs. Brennan and
11 McGowan, was keeping his options open as to whether
12 they would subsequently be treated by the parties as a
13 loan or as an investment. We've seen that in one of
14 the documents when he is giving instructions to
15 Mr. Wheeler.

16 .
17 Perhaps I'll just show you that document.

18 .
19 If we could have page 726.

20 .
21 You can see there he sets out the costs of the land,
22 the original investment, and he refers to a number of
23 expenses. Then, if we scroll down and we look at - he
24 says:

25 .
26 "All the money was paid equally by the three
27 shareholders. Of the original investment, ú300,000 had
28 been invested in December 1978 into a company called
29 Green Trees Limited. This money was transferred in May
30 1979, and was used to pay the deposit on Sandyford. In

1 February 1980 a total of ú150,000 was paid from Jersey,
2 and in November 1980 a total of ú210,000 was paid."

3 .

4 Now, can we have another look at page 393, please. He
5 says - this is Mr. Owens writing to Mr. Wheeler in
6 relation to the ú70,000. He says:

7 .

8 "I confirm instructions to withdraw by telegraphic
9 transfer ú70,000 each from Kalabraki and Gasche at AIB
10 Bruton Street, London telex number. The Manager is Tim
11 Godfrey. When received, plus ú70,000 from Guinness &
12 Mahon (Guernsey), please telegraphic transfer ú210,000
13 to AIB, 5 College Street, Dublin for account of Reid &
14 McNabb."

15 .

16 On the last line he says: "Will advise whether loan or
17 investment shortly."

18 .

19 So at the time the ú70,000 was paid, it's quite obvious
20 that Mr. Owens hadn't decided for his particular
21 purposes, which related to tax efficiency, whether
22 these investments would be treated as investments or
23 loans, and he was keeping his options open on that.

24 .

25 And it is quite obvious, therefore, that at the time
26 that the Lombard & Ulster borrowing was being made, it
27 could have been, had the parties decided to do so, been
28 done on the basis of borrowing enough money to repay
29 loans, but we know that, in fact, it wasn't?

30 A. That's right, sir.

1 104 Q. So, therefore, we know that the ú126,000 was simply a
2 distribution of what was left out of the ú525,000
3 borrowed and secured on the land?

4 A. Yes, sir.

5 105 Q. But yet, yet, despite all of that, Mr. Naylor writes a
6 letter, in September of 1990, asserting, falsely, that
7 this was a repayment of a loan, with an overpayment of
8 ú6,426.

9 .
10 MR. HUSSEY: I am sorry, sir. I wonder, can I just - I
11 am trying to keep my interruptions to an absolute
12 minimum.

13 .
14 I think when you see the letter from Mr. Naylor -
15 sorry, I just - I am just being critical - hold on,
16 Mr. Finnegan, now until I finish.

17 .
18 I am just being critical of Mr. Hanratty's use of the
19 words, "it's been asserted by Mr. Naylor." I think
20 when you see the letter from Mr. Naylor, I think it's
21 at 1385, it's quite clear that Mr. Naylor has come in
22 and read himself into the file, and as a result of
23 reading the file, he draws a conclusion from that file.

24 .
25 MR. HANRATTY: That's an inference being made by
26 Mr. Hussey, with respect.

27 .
28 MR. HUSSEY: I am sorry, if I can draw attention - it's
29 1385. I'll show you exactly what I am saying. I am
30 not making any inference from anything. Can I read the

1 text of the letter?

2 .

3 It was a letter that was up on the board. It's 1385, I

4 think it is. 1385. I beg your pardon. It's the

5 letter from College Trustees, is it?

6 .

7 MR. HANRATTY: That's it.

8 .

9 MR. HUSSEY: Yes, the second last paragraph there:

10 .

11 "Regarding the original investment, I have looked

12 through the old files and have found the following

13 information:"

14 .

15 So it's an extrapolation by Mr. Naylor of what he had

16 seen on the files, probably including the memos from

17 Owens, explaining, regarding Green Trees. But I don't

18 know what was on the old file.

19 .

20 You can see Mr. Naylor reading himself into the old

21 files and trying to put together an explanation from an

22 extrapolation of files, not from any assertion on his

23 part with regard to the - what those files meant.

24 .

25 Sorry, that's all.

26 .

27 As I say, I am just being critical of Mr. Hanratty

28 saying that Mr. Naylor asserted certain things. I

29 don't think that's quite the tone of the letter here.

30 .

1 MR. HANRATTY: Well, with respect, Sir, if he did look
2 at the files, he would be aware of the calculation of
3 the 126, and would be aware that it was after a
4 deduction of ú10,000. And there is no reference to
5 that in that letter.

6 .

7 MR. HUSSEY: I am sorry, the Wheeler document is on the
8 Bedell & Cristin file, not on the College Trustees'
9 file.

10 .

11 MR. HANRATTY: It was a telex sent by Mr. Wheeler to
12 Mr. Barry.

13 .

14 MR. HUSSEY: I am sorry. I am talking about the - I am
15 sorry, I am talking about the Wheeler handwritten memo.
16 That certainly wasn't - that was on the Bedell &
17 Cristin file.

18 .

19 MR. HANRATTY: I am not going to argue --

20 .

21 CHAIRMAN: The figure on the Bedell & Cristin file,
22 handwritten figure, is consistent with the 126.

23 .

24 106 Q. MR. HANRATTY: The letter, which Mr. Hussey has just
25 been referring to, Mr. Finnegan, is actually in
26 response to a letter from Mr. McGonagle to him. It's
27 page 2379. And Mr. McGonagle addresses it to Mr.
28 Naylor in Sovereign. It says:

29 .

30 Re Foxtown Investments Limited.

1 .
2 I refer to your letter of the 30th March, and
3 subsequent telephone conversations with Michael O'Shea.

4 .
5 I should be grateful if you would clarify the
6 relationship between Foxtown Investments Limited,
7 Ardcarne and the Amber Trust on the one hand, and Canio
8 on the other. How was the original investment or
9 payment made by Mr. X dealt with? Do the four shares
10 held by Foxtown in Ardcarne represent one-third of the
11 issued share capital of Ardcarne, which in turn holds
12 all the shares in Canio? If so, then it is vital that
13 you should be involved in all the affairs of Ardcarne as
14 well as Canio, and nothing should be done by those
15 companies without your intervention and consent.

16 .
17 I understand that matters may be coming to a head in
18 relation to Canio's Irish property, and it is most
19 important that nothing is allowed to happen without
20 your knowledge and consent."

21 .
22 Now, this arose, or the involvement of McGonagle -
23 Kennedy McGonagle, arose in connection with the sale of
24 your shareholding, isn't that right?

25 A. Yes, sir.

26 107 Q. And they were engaging with the trustees on the basis
27 that they wanted to ensure that everything was regular,
28 as it were, as between Foxtown and Mr. Wheeler,
29 effectively. Isn't that right?

30 A. Yes, sir.

1 108 Q. With a view, ultimately, to concluding this sale of
2 Foxtown's one-third shareholding?

3 A. Yes, sir.

4 109 Q. In the course of all of this correspondence, the
5 distribution of the borrowing of Lombard & Ulster was
6 transformed from that into an assertion. We'll avoid
7 the word "false", into an assertion which was
8 incorrect, which had no basis in fact, that it was
9 actually a repayment of a loan with an overpayment of
10 ú6,426?

11 A. Mm-hmm.

12 110 Q. And what I've been trying to elicit from you is any
13 possible explanation as to why that was done?

14 A. I don't know, sir.

15 111 Q. And I've put to you one possible explanation, and that
16 is that it undoubtedly had the effect of airbrushing
17 out of the ú126,000 the fact, perhaps perceived by
18 somebody as the inconvenient fact, that that figure was
19 arrived at after a deduction of ú10,000 for --

20 .

21 MR. HUSSEY: I am sorry, sir, before the witness
22 answers that question, I wonder, can Mr. Hanratty -
23 Mr. Hanratty has lost me in the significance of how it
24 is in any way significant, or how it is in any way
25 helpful that this airbrushing, as he calls it, has been
26 done? How does that disguise any payment or any
27 deduction made four years earlier? He has lost me on
28 that. And I wonder, can he explain what he means by
29 that? Because from an accountancy point of view I
30 don't see that it bears any relation whatsoever, and it

1 certainly doesn't airbrush out something that happened
2 five years earlier.

3 .

4 I am just wondering how he can make that - how he can
5 ask that question in that particular way, when there
6 doesn't seem to be any basis for it at all? It doesn't
7 matter a damn what happens five years later, and how
8 the accounts are dealt with. It certainly doesn't
9 disguise the fact that €10,000 was sent to - to Caviar
10 Limited. It doesn't in any way disguise that or
11 airbrush that out of the picture. And I can't
12 understand Mr. Hanratty's --

13 .

14 MR. HANRATTY: This is, with respect, another of these
15 unwarranted interventions. I am putting a proposition
16 to the witness, which the witness is perfectly entitled
17 to deal with in any way he sees fit. It is not for
18 Mr. Hussey to start getting up and examining me on what
19 I mean because he doesn't understand it. If he
20 disagrees with the proposition, or is unsatisfied with
21 the answer of the witness, he can deal with it in
22 re-examination in due course.

23 .

24 I am simply exploring with this witness why, what we
25 know to have been a distribution after a borrowing from
26 Lombard & Ulster, was somehow transformed on the
27 record, as it were, in 1990 to something entirely
28 different? That's what I am exploring with the
29 witness. It seems to me to be perfectly relevant, and
30 a perfectly legitimate line of questioning.

1

CHAIRMAN: Mr. Hussey, if you want to quarrel with that, you'll have to do it in re-examination.

4

MR. HUSSEY: Fair enough.

6

7 112 Q. MR. HANRATTY: You see, we can only presume that Sovereign Management Limited knew about the 10, because they were told about it, and had correspondence about it?

11 A. Yes, sir.

12 113 Q. And yet, within what Mr. Hussey seems to think was this relatively short number of years later, they were referring to this €126,000 without reference to it having anything to do with a deduction of 10 at all, and making no mention of the 10. Why do you think they were doing that?

18 A. I really don't know, sir. This is all foreign to me, sir. I don't know, because - I want to say, nothing like what you are suggesting has ever been aired with me, or whatever the consultants were doing between one another, I was not aware of it, or that there was anything like you are discussing. I never, never - not even a mention of it. So I don't know how this comes about and the real effects it has. It's something that - I am sorry, sir, it's outside my gambit.

27 114 Q. Would you agree with me, there is no apparent reason for it?

29 A. Of doing what the - yes - I can't see why, myself, sir, I don't know.

30

1 115 Q. I mean, would you - do you find it surprising that,
2 given that Mr. O'Shea got down to the level of detail
3 which he did in connection with the signing off, as it
4 were, with Brennan and McGowan on the balance due
5 between the parties, that he got down to the level of
6 detail to deal with a sum of 646, leaving aside how the
7 646 indebtedness arose, that he actually got down to a
8 level of detail to deal with 646. But as between
9 himself and the trustees, nobody ever alluded to the
10 ú10,000, or at least taken into the reckoning --

11 A. I think, sir - just looking at the particular time when
12 I am selling. I didn't have - by the way, I didn't
13 have much choice at this stage of where things had
14 gone. I made a proposal, and I made a proposal on the
15 following, that to sell out - I did say, by the way,
16 and, you know, I mentioned it yesterday, and it was -
17 it was put forward to me - I know that it might have
18 been mixing up the parties - it wasn't mixing up the
19 parties, that this could cause Mr. Brennan at the time
20 to get into financial difficulties or maybe go - this
21 was mentioned to me by the parties. He was up to here
22 - that this was a very important thing to go through at
23 the particular time, and if anything were to happen to
24 him, of course there would - it would be years the
25 whole thing would be tied up.

26 .
27 Now, I didn't know, sir, at that stage, and also it was
28 mentioned to me - not mentioned, I was told firmly that
29 there was a question of Noel Smith buying the loan.

30 .

1 Now, I was not aware, sir, at that time, of course, of
2 what I now know, coming up out of this situation and
3 the various letters, that there was a guarantee of
4 Messrs. Brennan and McGowan that I was not aware of for
5 the loan. If, in fact, I had been, there wouldn't have
6 been the same panic about the sale at that particular
7 time, because the events which are being talked about
8 then might never have happened.

9 116 Q. There was all kinds of reasons why everybody wanted to
10 settle it. The two banks had to be sorted out. That
11 was the most pressing, urgent matter. But I don't take
12 you to be suggesting, or do I, that therefore, for any
13 reason you were going to take less than you were
14 entitled to?

15 A. But, sir, I would say that - I would say that, in my
16 opinion, that this would have been counted as a fire
17 sale.

18 117 Q. Whether it was or not, a figure was agreed?

19 A. Yes, but I think --

20 118 Q. The £700,000?

21 A. Yes, sir.

22 119 Q. So, as in all commercial transactions, whether it's a
23 conveyance of property, or, as in this case, a transfer
24 of shares --

25 A. Yes.

26 120 Q. -- solicitors sit down on the closing, as it were, and
27 they do their sums, and they prepare apportionments.
28 They cross all the T's, dot all the I's. They take
29 into account all of the sums due by the two parties to
30 each other, and they do a debit and a credit, and they

1 balance the books, and they figure out the bottom line,
2 namely, the amount of money that has to be handed over.

3 Isn't that right?

4 A. Yes, sir.

5 121 Q. In the apportionment account, to call it that, that was
6 done in this case, no reference whatsoever, good, bad
7 or indifferent, was made to the call deposit account
8 containing ú10,000 of your money for architects' fees.
9 No attempt was made to find out where architects - were
10 architects ever paid out of that fund, or whether the
11 fund, plus, presumably, interest, was still extant, and
12 therefore should be taken into account.

13 .

14 MR. HUSSEY: I am sorry, Sir. Is there an
15 apportionment account that Mr. Hanratty is referring
16 to?

17 .

18 122 Q. MR. HANRATTY: I used it as a turn of phrase.

19 .

20 But we do know that Mr. O'Shea did a number of
21 calculations, and in his calculations, on closing, took
22 into account a figure of ú6,436, an indebtedness which
23 was never asserted by the creditor, which was never
24 sought by Ardcarn, which nobody had ever suggested
25 existed until the trustees and/or your own solicitors
26 did so?

27 A. Yes.

28 123 Q. But he did not take into account this ú10,000 that was
29 on a call deposit account.

30 A. Right, sir. I must say to you that - again, just to

1 say to you, that at this time I was - I made an offer
2 for the sale of my shares - for the shares in the
3 company. It was rather a rush - it was, "Take it or
4 leave it. That's what's around, and that's for
5 clearing the decks. That's what you are getting." And
6 I think Canio still, I am not sure, but I think still
7 exists today. But that was for selling the interest
8 which I had in the company, and there was no question
9 of anything else, sir. That was it. And that's where
10 - even there was the 500 thousand being paid, and then
11 the two other hundreds to be secured by promissory
12 notes or --

13 124 Q. We know all of that, Mr. Finnegan. But the upshot of
14 it was that a price was agreed?

15 A. Yes, sir.

16 125 Q. And when a price was agreed, other factors had to be
17 taken into account, including, it appears, by Mr.
18 O'Shea, the ú6,436, but including the fact that the
19 ú10,000 on call deposit account, according to the
20 Sovereign Management Limited files, no reference was
21 made to it at all, no attempt was made to ascertain
22 whether the money was still there, whether there was
23 interest earned on it, whether it was spent, or
24 anything.

25 A. Yes, sir. I would imagine that - I am imagining that
26 at that time there was quite a time lapse since the
27 retention of that, that I think it was probably assumed
28 that anything that was there had been spent.

29 126 Q. You see - well, do you think that Mr. O'Shea closed
30 this deal and did his sums on the basis of an

- 1 assumption for which he had no instructions?
- 2 A. I wouldn't --
- 3 127 Q. He's told us, as I've already indicated to you, that he
- 4 didn't even know it was a ten, nobody told him about
- 5 it?
- 6 A. I am very surprised, sir. I thought he would have
- 7 known - I am sure - I am not sure, but at the time we
- 8 had correspondence with Mr. Barry, you know. He would
- 9 have known of Mr. Barry's involvement, and I just feel
- 10 it is strange. Perhaps he didn't know, but I would
- 11 have thought he did know about that at the time.
- 12 128 Q. You see, the people who were selling the shares, in
- 13 fact, as they have already pointed out to you in a
- 14 slightly different context, were Foxtown, therefore the
- 15 trustees of the Trust which owned Foxtown. Isn't that
- 16 so?
- 17 A. Yes, sir.
- 18 129 Q. It was their shareholding?
- 19 A. Yes, sir.
- 20 130 Q. Foxtown was the registered shareholder of this
- 21 shareholding in - one-third of Ardcar, which was being
- 22 sold. And they knew the ú10,000 of Foxtown money had
- 23 been retained by Mr. Wheeler, and had been told by
- 24 Mr. Wheeler that it had been put into a call deposit
- 25 account?
- 26 A. Yes, sir, but I think that - if there was this shadow
- 27 around this, if this is a question of whether there was
- 28 anything about a payment to a politician or whatever,
- 29 whatever, whatever, I never knew anything about that,
- 30 as I say. I think that, probably now, sir, looking

1 from outside in, and looking back, that this €10,000,
2 of course, is looking - is attracting a lot more
3 attention than it would have in the normal course of
4 events when we were looking at just a retention of
5 money for architects. There was no cloud around it --

6 131 Q. You said that, Mr. Finnegan, but in circumstances such
7 as this, where, as you appreciate, the Tribunal is
8 confronted with a number of conflicting pieces of
9 evidence --

10 A. Yes, sir.

11 132 Q. -- including Mr. McGowan's assertion that he told you
12 that this deduction was being proposed for the purpose
13 of a donation to Fianna Fail --

14 A. Mm-hmm.

15 133 Q. -- the Tribunal has to look at the surrounding
16 circumstances --

17 A. Yes.

18 134 Q. -- and has to view events in the light of what one
19 would expect to happen in normal circumstances.

20 A. I understand.

21 135 Q. And could I suggest to you that in normal
22 circumstances, where €10,000 of trust monies are
23 deducted by somebody for a stated purpose, one would
24 expect to find subsequent correspondence in connection
25 with that - with that money. And if it is agreed
26 between the parties, for example, that it is to be
27 placed on a deposit, that you would expect the trustees
28 to seek confirmation of the deposit, to seek
29 verification of the deposit, and from time to time to
30 be informed what, if anything, had been done with the

1 deposit. None of that documentation appears on any of
2 the documents we have seen?

3 A. Yes.

4 136 Q. We haven't, unfortunately, as you are aware, seen the
5 Sovereign Trustees' files, but we have seen the Bedell
6 & Cristin files. And it appears from them that there
7 was no further reference of any kind whatsoever by
8 anybody to this call deposit account with this €10,000,
9 or architects' fees, or spending it, or accounting for
10 it, or inquiring about it. It just seemed to vanish.

11 A. Yes. Of course. We now know it was used for something
12 else, sir.

13 137 Q. Yes. But my point is, you would have expected, in the
14 normal course of events, if the trustees genuinely
15 believed that there was, in fact, a call deposit
16 account, that the €10,000 which was deducted was, in
17 fact, deposited in that account. You would have
18 expected to find correspondence about it. You would
19 have expected to find queries or inquiries from the
20 trustees to Mr. Wheeler about the €10,000. You would
21 have expected him to ask for a copy of the account, see
22 how much interest had been paid of it, had any of it
23 been paid out yet. "If it has, can we have the
24 vouchers, please, to verify payment." We have none of
25 that.

26 A. I did say to you, sir --

27 138 Q. And you would have expected them - sorry to interrupt
28 you. You would have expected them to tell Michael
29 O'Shea about it when he was doing his calculations for
30 the closing of the share deal. But they didn't, they

1 never said anything about it.

2 A. Well, I think that all I can say to you, sir, is that
3 perhaps that - I know that you have to inquire into
4 everything, sir, and any way I can help you, I will.
5 But at the time, when all of this was done, it was for
6 the purpose of doing this for the fees. You see,
7 Brennan and McGowan would, sir - the running of Canio,
8 as you can see, that there were certain things done
9 there all along the line, that they ran it maybe not
10 necessarily all the time - or maybe forgetting my
11 interest. Because, sir, I know that even when we came
12 back, you know, before I was concerned, as I think I
13 told you, of the pledging of the title deeds, and I was
14 terribly concerned about that, as you know, sir. Now,
15 that was something that happened that I didn't know
16 about, sir.

17 139 Q. Really, what I was endeavouring to address your
18 attention to, Mr. Finnegan, is the complete absence of
19 the kind of documents, records, communications, one
20 would expect to find in connection with the existence
21 of a call deposit account, if such a thing existed.
22 And I am trying to understand why there is such an
23 absence, at least from Bedell & Cristin's files, why
24 none of these files appear to be there, no requests
25 from the trustees, no inquiries from the trustees,
26 nothing? It just - the end of the matter is
27 effectively the telex from Mr. Wheeler or, I suppose,
28 the deduction by Mr. Wheeler of your \$10,000.
29 A. Of course, you see, Mr. Wheeler didn't know where it
30 was going, I didn't know where it was going --

1 140 Q. Clearly he did, because he is the one that sent it?

2 A. Sorry?

3 141 Q. Clearly he knew where it was going, because he sent it
4 himself?

5 A. Yes, sir. But, you know - yes. So I think on their
6 side, they knew what they had done with it, but I
7 didn't know, our side didn't know, sir.

8 .

9 CHAIRMAN: At that point, I think we'll break for
10 twenty minutes.

11 .

12 THE TRIBUNAL THEN ADJOURNED FOR A SHORT RECESS AND
13 RESUMED AGAIN AS FOLLOWS:

14 .

15 142 Q. MR. HANRATTY: Mr. Finnegan, just to finish on this
16 point we had before lunch.

17 .

18 It's quite clear that at the outset the figure to which
19 you were entitled was ú136,000, subject to a deduction
20 of 10, on a sort of a contingency basis, as a fund, as
21 it were?

22 A. Yes, sir.

23 143 Q. The point, fundamentally, really is that when the
24 correspondence was exchanged in 1990, it wasn't 136,000
25 any more, it was 126,000. The 10 had disappeared?

26 A. Yes, sir.

27 144 Q. Any reference to the 10 had disappeared?

28 A. Yes, sir.

29 145 Q. And I just wonder why?

30 A. Well, I suppose - first of all, I suppose, as we now

1 know, sir, the monies were paid elsewhere.

2 146 Q. Yes. But I am talking about it from the point of view
3 of the trustees from your side, as it were - the
4 correspondence we were talking about in 1990 was the
5 correspondence between the trustees and Mr. O'Shea, or
6 Mr. McGonagle?

7 A. Understood, yes.

8 147 Q. And we do know that, from the trustees' perspective,
9 your figure, your share of the Lombard & Ulster loan
10 was ú136,000, subject to a deduction of ú10,000, which
11 was agreed for a particular sort of contingent purpose,
12 I suppose, unknown, unascertained at that time,
13 architects' fees?

14 A. Mm-hmm.

15 148 Q. That's on the assumption that that's what they believed
16 that they were?

17 A. Yes.

18 149 Q. So no figures had been - no bills had been received, no
19 fees had been incurred by them, it was against possible
20 future architects' fees?

21 A. Yes, sir.

22 150 Q. Or perhaps, you say, engineers' fees?

23 A. A mixture of it, sir.

24 151 Q. So the question was still outstanding: Were
25 architects' fees or engineers' fees actually incurred,
26 and if not, is the ú10,000 still in the call deposit
27 account, presumably with interest?

28 .

29 The point I am making to you is that while, from the
30 trustees' point of view, from November 1984 onwards,

1 your figure was ú136,000 less this contingent
2 deduction, in 1990 136,000 had dropped out of the
3 picture altogether, and the figure was 126. Not only
4 that, but the 126 was now a repayment of a loan with an
5 overpayment of 6,000.

6 .

7 So the whole thing was transformed in character.

8 A. I think, sir, regarding - the way the Trust works, any
9 withdrawals in their books - and you'll see this later,
10 sir - that would be treated as a loan. So that
11 withdrawal to the - so the payment from the Trust to
12 Foxtown would have been treated as the loan, but
13 Foxtown's investment on wouldn't be treated as a loan.
14 That was an investment - that's the way it's just
15 treated, sir, no more than that.

16 152 Q. You see, the non-existence of any subsequent reference
17 at all by the trustees to Bedell & Cristin of any
18 communication concerning this ú10,000, I would suggest,
19 in normal circumstances, would be surprising, but
20 particularly so in the circumstances which then
21 prevailed, which was this atmosphere of mistrust or
22 suspicion that existed, this increased vigilance on the
23 part of Mr. Barry because of what had previously
24 happened in June of 1984, that in those circumstances
25 it's particularly surprising that they never came back
26 about the 10,000 to see what, if anything, had been
27 done about it?

28 A. Well, sir, with a large slice of land like this, 80-odd
29 acres, which is a big chunk, and there were lots of
30 things to be done to it, there is no doubt about it,

1 sir, there were - that people had to be paid. So, you
2 know, they were - people were working on it.

3 153 Q. Well, are you suggesting that, therefore, the trustees
4 simply proceeded on the basis that it was money written
5 off?

6 A. Well, sir, I think that, from the point of view that,
7 one, it was money that was put aside, and of course we
8 know now it wasn't there, but the money - I would have
9 looked at it that money would have been absorbed over
10 those years, sir.

11 154 Q. Well, they didn't - that may well be so, Mr. Finnegan,
12 but we are dealing with trustees, we are dealing with
13 people who are in a position of trust, which has
14 significant legal consequences. We are dealing with
15 people who have duties of stewardship and
16 accountability, as a matter of law, and, I suggest to
17 you, it would be unrealistic to suggest that they would
18 have made a conscious decision not to bother making
19 inquiries about the 10, because they assumed that it
20 was probably spent?

21 A. Well, you see, there was quite a time lag, nearly six
22 years, sir, from that time until the property was sold.
23 And there were lots of things happening over a six-year
24 period.

25 155 Q. How did the trustees know?

26 A. Well, the only thing - what I would say is this, sir,
27 that - you see, the deal that I did with my disposal,
28 sir, was an all-in figure, everything. There was no
29 question of a bit of this and a bit of that, it was an
30 all-in figure for the sale of the shares.

1 156 Q. The 700,000. But that doesn't mean that the normal
2 procedures are not adopted on closing, that there is
3 adjustments for this and that, and that the final
4 figure is properly calculated?

5 A. Well, I think, sir, that - I suppose on the sale of the
6 shares, sir, the entity stays, I was exiting it --

7 157 Q. Without doubt, as I've already told you --

8 A. As an all-in figure --

9 158 Q. Without doubt. And you received the ú500,000 in stock,
10 but that doesn't alter the fact that Mr. O'Shea, in his
11 reckonings and in his writings at the time, made
12 specific reference in the context of the closing of
13 this deal to, among other things, to a number of
14 things, but including the ú6,426?

15 A. I think we all would have expected that any monies that
16 were - that would have been expended or would have been
17 owed to whoever paid it --

18 159 Q. And it's noteworthy, I suggest, that the trustees, when
19 writing to Mr. O'Shea in relation, in general terms to
20 the state of account, as it were, as between yourself
21 and Ardcar, made no reference at all to the ú10,000.
22 They didn't even say, "Look, our client received or was
23 entitled to receive one-third of the proceeds of a loan
24 from Lombard & Ulster in the sum of ú136,000, but
25 agreed to a deduction of ú10,000 against anticipated or
26 possible future architects' fees. We think it's
27 probably all been spent, but you better check it."
28 They didn't say anything like that. They simply didn't
29 mention it at all?

30 A. No, sir. And I think that, really, just to remind you

1 of the state of play then, sir, was that this was a
2 question or an opportunity to exit here. And there
3 were all sorts of - I didn't know then what I know now,
4 but it was that there was a crisis, remembering that
5 the loan could have been sold on. I had one chance,
6 and even - of getting out, and that was that chance
7 that I got.

8 .
9 Now, whilst a consideration was mentioned as 700 - and
10 500 - and I asked to see, could we get any more money,
11 sir, at that time, up front, and it wasn't forthcoming
12 --

13 160 Q. Did somebody make a decision, then, in 1990, "Look,
14 forget about the ten, forget about everything, just get
15 the closing figure"?

16 A. I think you can take it, absolutely - I don't think it
17 came into bits and pieces here or there. It was an
18 all-in - it was getting - you see, I think it's
19 slightly different selling - I suppose we were - if you
20 were selling the entire property it would be different.

21 161 Q. Why then, if that was the case, would Mr. O'Shea
22 gratuitously resurrect an indebtedness by Foxtown,
23 which Foxtown - which Ardcarne never claimed in the sum
24 of 6,426? Why get involved in this nitpicking and
25 offering gratuitously to pay money that nobody ever
26 sought, if, as you say, it was a case of, "Let's just
27 close the thing and" --

28 A. As far as I was concerned, yes, sir, and I think the
29 only thing is this: That probably Mr. Naylor must have
30 made a mistake when he was - because the way he was

1 treating it. A solicitor was probably doing his job
2 here, and as I said to you - sorry. I'll say it again,
3 sir. So the loan situation will be cleared up, you
4 see, that it was a loan to - a loan to Foxtown, and
5 Foxtown then would have made their investment.

6 162 Q. But Mr. O'Shea - what Mr. O'Shea actually did about
7 that six, was to say that an indebtedness existed,
8 which it doesn't appear was regarded by Ardcarn as
9 existing, but he said it existed, but then he wanted a
10 forgiveness of it. He wanted, as part of the closing
11 arrangements, that the loan - if you look at paragraph
12 8 of the memorandum.

13 .

14 It says: "The vendor will require a release by Ardcarn
15 of the loan of ú6,426 made to it."

16 .

17 He is now calling this indebtedness a loan, which he
18 says - "this overpayment is now a loan." But anyway,
19 what he is seeking, on closing, is a release by Ardcarn
20 of this indebtedness?

21 A. Yes.

22 163 Q. So he is getting down to that level of detail, and in
23 that context - I mean, one could understand the
24 trustees, or you and the trustees taking the view,
25 "Look, we are getting ú700,000 for this. Let's forget
26 about everything, get ú700,000 and get out." But it
27 didn't happen like that, because Mr. O'Shea in this
28 very document - another thing he doesn't -
29 incidentally, if you look at paragraph 7.2 on the same
30 page: "A letter from Sovereign Trustees that it has no

1 claim against Ardcarn and no claim in respect of the
2 ú100,000 lent to Green Trees."

3 .

4 Remember the ú300,000 used to pay the deposit. So they
5 were dealing with the 100 as well. That seems to
6 clearly establish that 100 of that was clearly
7 attributable, in their minds at least, to you. Do you
8 see that?

9 A. Yes, sir.

10 164 Q. And they wanted, just to put it beyond any argument and
11 to avoid future disputes, that everybody is clear and
12 up-front, with cards faceup on the table, that this
13 ú100,000 isn't going to be sought after this deal is
14 closed by somebody coming along, for example, and, "By
15 the way, we never did anything about that ú100,000 to
16 Ardcarn and you" --

17 A. I think again I would reiterate, sir --

18 165 Q. I'll start again.

19 A. Sorry?

20 166 Q. When they were closing this deal --

21 A. Yes, sir.

22 167 Q. -- they addressed the issue of the ú300,000 that came
23 in from Green Trees, which was used to pay the deposit?

24 A. Yes, sir.

25 168 Q. They treated it on the basis that you were, as it were,
26 a one-third contributor to that fund. It was borrowed
27 by Green Trees, we know, and it came in to Ardcarn.
28 And it was treated as a loan?

29 A. Yes, sir.

30 169 Q. So what they were really doing here was to close off

1 any possibility that after everybody signed off on this
2 share transfer, where you sold your shares to Ardcarn,
3 that you didn't come back in a month or six months and
4 say, "By the way, we didn't take into account the
5 ú100,000 that came from Green Trees, which of course is
6 mine, and I want that repaid now." They were just
7 simply closing off that possibility, putting matters on
8 a footing that everybody knew where they stood and
9 dealing with that particular issue. Isn't that right?

10 A. I think that, again, sir, what they were probably doing
11 - looking at, that there was a loan there, sir, and
12 that there wouldn't be a claim. You see, again I go
13 back to the package deal. I did a deal to sell on
14 behalf of the company, to sell out of Canio. And it
15 was a package. And at that stage I didn't have - it
16 wasn't a question of a little bit here or a little bit
17 there or otherwise, it was, "This is the deal you've
18 got, and make up your mind if you are going to take it.
19 And if you don't take it -", I was told,
20 "- that there mightn't be anything in it for you."

21 170 Q. Mr. Finnegan, we've gone beyond that. There was a deal
22 done, we know that, of ú700,000. The fact that you did
23 a deal for ú700,000, the fact that it was a fire sale,
24 the fact that there was enormous pressure from the
25 banks, all of that is now irrelevant, the deal was
26 done. That does not change the fact that solicitors
27 protecting their clients' interests do not address the
28 details of the relationship between their client and,
29 in this case, the purchasers. Isn't that right?

30 A. Mm-hmm.

1 171 Q. It does not mean that solicitors do not tidy up the
2 loose ends to avoid future trouble, and that is
3 precisely what Mr. O'Shea was doing here. He was
4 addressing the issue of the €100,000 so that people
5 could be ad idem and under no allusion with no
6 possibilities of future disputes. He was addressing
7 this €6,426 indebtedness, or loans as he called it,
8 from Ardcarne to Foxtown. He was doing the kind of
9 things that solicitors do on the closing of a
10 commercial relationship between two parties with a
11 deal, as in this case it was a sale of shares?

12 A. Mm-hmm.

13 172 Q. But the one thing he did not address at all, because
14 nobody told him about it, was that there was this
15 outstanding question of €10,000 which, as far as the
16 trustees are concerned, if we are to believe that that
17 was their view, was put in a call deposit account.

18 A. Yeah.

19 173 Q. And what I am saying to you, that it is surprising that
20 that matter was not dealt with on closing, if it was
21 still an outstanding issue.

22 A. Well, sir, as far as I am concerned, that the question
23 of over a six year period that fees, any fees - in my
24 opinion, there must have been more than that paid out.
25 You see --

26 174 Q. Was there a discussion between you and the trustees
27 about that? Was there a decision made by anybody,
28 "Look, forget about the ten"?

29 A. No, I think you can take it, sir, that at that time,
30 having the lapse of time, six odd years, and I think in

1 everybody's mind that it would be - anything there

2 would have been well absorbed, sir.

3 175 Q. That's what I mean. Did anybody, therefore, decide,

4 "Look, forget about the ten on call deposit, we assume

5 it's long since spent." Did anybody say that?

6 A. Well, in the flurry of doing the deal, and one thing

7 and another, there may have been. I can't say to you

8 now I recollect any real discussion on it, sir, but

9 there may have been --

10 176 Q. There is no evidence or indication, certainly in the

11 correspondence between Messrs. Kennedy McGonagle and

12 the trustees, that the question ever was addressed?

13 A. Well, I don't think - you see, I think that when you

14 get a bid like I got, sir, there were two factors

15 there. It was a question that this had to be done. It

16 was an all-in package deal --

17 177 Q. I think we've been over that ground.

18 A. But that's why - Canio, sir, that I think that - you

19 see, I was getting out of Canio, so anything - it could

20 be that the money is still in Canio. You know, it was

21 to Canio's account.

22 178 Q. I think we are going back around the same circle. I

23 think we've covered it. Let's just jump back to 1984.

24 Even if you were right about - even if it was

25 addressed, and we have no indication that it was, and

26 that somebody said, "Look, forget about it, it's long

27 since gone, and there is no point in looking for

28 receipts from accountants, from architects or

29 anything." Let's assume somebody did that. It does

30 not alter the fact that in 1984, after this call

1 deposit account is supposed to have been established,
2 there is not a single communication from the trustees
3 inquiring about it?

4 A. Well, the --

5 179 Q. It just seems to have vanished into the ether?

6 A. Well, I think, you see, sir, that if there had been -
7 if what was supposed to have happened to it, happened
8 to it, then - sorry. If it was supposed to be done
9 that money was to be left in - retained for future
10 expenses, there would have been a note of that. And I
11 suppose that that would have probably shown up. But
12 the fact that we now know, sir, that that wasn't done,
13 that it was transferred elsewhere --

14 180 Q. Well, again, Mr. Finnegan, looking at the matter from
15 an objective point of view, or from the point of view
16 of the objective facts. The objective facts, as we
17 know them, so far as we know them, appear to suggest
18 that after the 21st of November, 1984, the parties
19 proceeded in all respects as if no call deposit account
20 ever existed?

21 A. Well, I think, sir, that there was a long time span
22 there, and there was work being done. It wasn't just
23 left lying fallow. There was work being done by
24 parties on it, you know --

25 181 Q. There may well have been. I am talking simply about a
26 call deposit account. They proceeded in all respects
27 as if there was nothing outstanding after the 21st of
28 November, so far as the events of the 21st of November
29 are concerned, that there was nothing further to be
30 accounted for, that there was nothing further to be

1 checked, that all matters were finalised on that date?

2 A. Yeah. Yes, sir.

3 182 Q. That there was no ú10,000 to be accounted for?

4 A. Sorry?

5 183 Q. The objective facts, as we know them, as far as we know

6 them, appear to suggest that after the 21st of November

7 all parties to this transaction proceeded in all

8 respects as if there was no outstanding business?

9 A. No, I think - sir, I would look at it that it went on,

10 then, and there was, whatever. There would have to be,

11 no matter whatever - whatever, we got over a, whatever

12 a hurdle, and now there is goodwill between the

13 parties, "Go ahead and see what the hell is" - excuse

14 the language - "see what is going to be done with the

15 property" --

16 184 Q. There is also the objective fact that there is no

17 evidence of any kind in existence, that we are aware

18 of, suggesting that any such architects' fees were, in

19 fact, paid out of any fund in connection with this

20 particular property?

21 A. Well, sir, I say this to you, that any big piece of

22 ground like this, there is a lot of work to be done on

23 it. There is work to be done on it over a period. And

24 I don't know whether they were paid or not, but I know

25 one of the firms that were involved was like McCarthys,

26 and there were others.

27 185 Q. I am talking about Canio and Arcarn. There is no

28 evidence that either of those companies ever paid any

29 funds or any monies to any architect or to any

30 engineer.

1 A. Well, I think that it may have been that - you see, the
2 running of this was done by Mr. Brennan and
3 Mr. McGowan. And in particular on this, I think that
4 Mr. Brennan was doing a lot of the running when it
5 comes down to the question of the on-going thing, and
6 dealing with the consultants. So I would have felt
7 that, sir, in my own mind, that over a period of that
8 six-odd years, that there would be at least - that sort
9 of money would have been absorbed. And, you see, they
10 could - you see --

11 186 Q. You are missing my point, Mr. Finnegan.

12 A. Sorry.

13 187 Q. There is simply no evidence that any such expenses of
14 that kind were ever incurred by either of these two
15 companies.

16 .

17 MR. HUSSEY: I am sorry, Sir, can I interrupt here?

18 .

19 As I understand it, the Tribunal does have accounts in
20 respect of expenditure from McCarthy Engineers, as I
21 understand it. I think Mr. Hanratty had suggested that
22 he knew of expenditure in that area --

23 .

24 MR. HANRATTY: No. What I was referring to, that
25 McCarthys, we do know, were the standing engineers to
26 the Kilnarnagh companies in Ireland, and involved in
27 their Kilnarnagh Estates project, for example, and all
28 of that, and that there were invoices. But there was
29 no evidence of any accounts in relation to this
30 particular property. And specifically what I am

1 putting to the witness, that Canio, which is,
2 presumably, the company in which this account was kept,
3 had ever paid any bills to not only engineers, as it
4 turns out, but to anybody, apart from Bedell & Cristin.
5 .

6 MR. HUSSEY: I think - sorry, if I can just clarify why
7 I considered that important. We know that monies were
8 not retained in Canio, despite what Mr. Finnegan's
9 evidence was, that there was to be a retention fund.
10 We know that the day of the retention, it went
11 immediately. The minute of the retention, it went out
12 of Canio to Caviar. So we know that there is no
13 expenditure. There is no fund within which Canio could
14 pay any such expenditure.

15 .
16 However, we also know that Kilnarnagh, whether
17 legitimately or otherwise, had contracts with Canio in
18 respect of all or portions or - in fact, at various
19 stages, I think, half of it, more than half of it, and
20 then all of it, without reference to Mr. Finnegan.

21 .
22 It could well be the case that any accounts with
23 McCarthy and Kilnarnagh could well have to do with
24 these lands, and Mr. Finnegan would not be aware, or
25 would not be party or privy to that information.

26 .
27 That's what I am saying. If there is information in
28 respect of expenditure to McCarthy Engineers, if the
29 Tribunal has that information, I wonder, could that be
30 made available? Because it may very well be that

1 expenditure on this site, as I say, over a period of
2 six years, and as Mr. Finnegan has said, it was a site
3 that did require work to be done on it, of an
4 engineering nature, then --

5 .

6 MR. HANRATTY: We don't have any such information, sir.

7 We know that McCarthys were the engineers used by
8 Brennan and McGowan companies, including Kilnamanagh,
9 but it was Mr. Finnegan that introduced McCarthys.

10 What the document says is "architects' fees", and it is
11 Mr. Finnegan who refined that to say, in fact, it was
12 engineers' fees.

13 .

14 We are not making any case that there was any - or we
15 are not aware of any specific evidence, other than the
16 general proposition that we know McCarthys were acting
17 on an on-going basis for the various Brennan and
18 McGowan companies that they had in Ireland for the
19 various building projects they had. That's as high as
20 we can put it. It was Mr. Finnegan that introduced
21 McCarthys, by way of speculation, as I understand his
22 evidence, not by way of assertion, that they did, in
23 fact, pay or were, in fact, paid money in connection
24 with this.

25 .

26 What I was simply putting to this witness, and it's
27 something, again, which Mr. Hussey can explore with his
28 client in due course, is that there is not a shred of
29 evidence anywhere that either Canio or Ardcar, but
30 particularly Canio, paid any money to any architect or

1 engineer. That's all. And that's just a piece of
2 circumstantial evidence which may or may not have any
3 value or weight whatsoever, but I am putting the fact
4 to him, to give him an opportunity, if he is aware,
5 that there is such evidence, to point us to it.

6 .

7 That's all I am doing.

8 A. I think that the question of whether Kilnamanagh - that
9 what we just briefly touched on there, that there were
10 contracts in existence between the parties,
11 Kilnamanagh. What I know now and didn't know then,
12 sir, was that it was the intention all the time that I
13 would have been bought out of my - my shares would have
14 been bought out. I didn't know that at the time, but -
15 and there were contracts which, in the first instance,
16 were for stock relief. And then there was the other
17 contract, that Kilnamanagh - you see, I think that -
18 maybe in Brennan and McGowan's eyes, they were working
19 through, and perhaps that some of these were picked up
20 by Kilnamanagh. Because it was - I didn't know, but it
21 was their intention all along the line that this would
22 be - that it would be bought in by one of these
23 companies.

24 188 Q. Their evidence was that there was never any question
25 that these companies - that Canio was ever going to be
26 involved in architects' fees, and that insofar as such
27 fees would have arisen, they would have been paid by
28 Kilnamanagh. That's what - and I've already put that
29 to you, I think?

30 A. Yes, but in the - what we know now, sir, which again we

1 didn't know then, that - of course, the money wasn't
2 there.

3 189 Q. Well, the fact of the matter, Mr. Finnegan, is that
4 this document, page 776, is, as far as I am aware, the
5 last reference to this ú10,000, the last document.
6 It's dated the 21st of November, 1984. It's the last
7 document in which anybody has made any reference
8 whatsoever to this ú10,000, or this call deposit
9 account containing ú10,000.

10 A. Mm-hmm.

11 190 Q. It just then vanishes off the face of the earth, so far
12 as documentary evidence is concerned.

13 .

14 And it begs the question "why?" If there was
15 unfinished business, outstanding matters, unascertained
16 as yet architects' fees, why isn't there some reference
17 to it in some document? Why isn't there some request
18 by the trustees for an update about the ú10,000? Why
19 didn't they seek a copy of the account into which it
20 was put? Why didn't they make an inquiry as to whether
21 it was spent? Why didn't they ask, was any interest
22 ever earned on it?

23 A. Well, sir, like - I have to say to you that - like, I
24 never knew - I didn't know about what had happened to
25 this money. I didn't know. I was never told.

26 191 Q. You see, one possible explanation that would explain
27 it, I am not saying it is the explanation, but it is
28 certainly an explanation that would explain it, is that
29 you did in fact know that it was to be given as a
30 political donation?

1 A. No, sir, I didn't --

2 192 Q. Because if that was the view of the trustees, well,
3 then, they would have had no cause to go back looking
4 for an account of it. They would have had no cause to
5 wonder whether there were any architect fees, because
6 they would already know that the €10,000 was gone
7 forever?

8 A. I am very clear in my mind, sir, that there is one
9 thing, I did not pay or contribute €10,000 to Fianna
10 Fail or to Mr. Burke. I was not involved in that, sir.
11 I was not aware of anything, and I did not do it. So
12 whatever way it was done, it was done the way you know
13 now it was done, but it wasn't done with my knowledge,
14 sir.

15 193 Q. And that explanation would be consistent with
16 Mr. McGowan's evidence, or at least - sorry, with the
17 piece of Mr. McGowan's evidence where he said that he
18 told you that it was being deducted for a donation to
19 Fianna Fail.

20 A. Well, sir, all can I say --

21 .

22 MR. HUSSEY: I am sorry, how does that follow? How is
23 that consistent with a payment to a Jersey company
24 called Caviar Limited off-shore, that Mr. McGowan -
25 that the furthest Mr. McGowan says - he asked
26 Mr. Finnegan for a donation to Fianna Fail. How does
27 that follow?

28 .

29 MR. HANRATTY: I don't understand what Mr. Hussey is
30 talking about.

1 .

2 CHAIRMAN: I don't understand either.

3 .

4 194 Q. MR. HANRATTY: The fact of the matter is Mr. McGowan

5 has given testimony, specifically, to the effect that

6 he told Mr. Finnegan that this €10,000 deduction was

7 for payment to Fianna Fail, for the making of a

8 political donation to Fianna Fail. Now, I accept that.

9 He may be right or he may be wrong. If he told

10 Mr. Finnegan - if he told you, Mr. Finnegan, that it

11 was for Fianna Fail, and if you told the trustees, then

12 the trustees would have had no reason to come back

13 seeking confirmation of the deposit of this sum in an

14 account, because they would have known, in fact, that

15 there wasn't any such account. They would have had no

16 reason to come back looking for vouchers for

17 architects' fees, they would have had no reason to

18 inquire. That's what I am saying is consistent with

19 Mr. McGowan's evidence.

20 A. Yes. Well, sir, as in I would remember if I did do it,

21 sir, a payment to Fianna Fail - a payment to Fianna

22 Fail or to Mr. Burke, and I think it initially also

23 was to Mr. Burke. I had never anything to do with

24 Mr. Burke.

25 195 Q. Just on that particular point. Did you ever have any

26 conversation with either Mr. Brennan or Mr. McGowan

27 about Mr. Burke?

28 A. No, sir.

29 196 Q. Ever?

30 A. No, sir.

1 197 Q. Have we not heard the evidence that we've had from both
2 of them - both in connection with the first time they
3 gave evidence and subsequently, that Mr. Brennan in
4 particular was a very close friend of Mr. Burke, worked
5 for Mr. Burke in his constituencies, and that Joe
6 McGowan was engaged in extensive fundraising activities
7 for Mr. Burke?

8 A. But I must say, sir, they may have been, but I wasn't
9 involved in it. In fact, I was never at any of those
10 fundraising - I was never included in any of those,
11 sir.

12 198 Q. Isn't that surprising, given that you were involved so
13 extensively with business transactions with Messrs.
14 Brennan and McGowan?

15 A. Yes, sir, but I never - they never brought me into that
16 side of it, sir. I wasn't - and I would have
17 remembered if I was. I certainly was not involved in
18 any of their fundraising.

19 199 Q. You were never invited to any of the fundraising events
20 that we've been told have happened?

21 A. No, sir.

22 200 Q. Did --

23 A. In fact, I have been at many fundraising events, but
24 not --

25 201 Q. Did you ever pay any monies out of the sums that you
26 received from Brennan and McGowan to Ray Burke?

27 A. No, sir.

28 202 Q. Did any of the sums which Foxtown received from Brennan
29 and McGowan, were any of those ever paid by the
30 trustees to Mr. Burke?

1 A. No, sir.

2 203 Q. How do you know?

3 A. Well, I would have known, sir, if they had been --

4 204 Q. How would you know?

5 A. Sorry, say that -- any of the monies received from

6 Foxtown?

7 205 Q. Any of the funds received by Foxtown from Brennan and

8 McGowan, they were sent over to Foxtown, with the

9 exception of the Canio monies, everything was sent over

10 to Foxtown?

11 A. Mm-hmm.

12 206 Q. By Brennan and McGowan - well, by Mr. Wheeler, in fact?

13 A. Mm-hmm.

14 207 Q. You said that none of those monies were ever paid out

15 to Mr. Burke, and I am asking, how do you know?

16 A. I said to you, sir - look, there is no problem in

17 answering this, sir. I was never involved, and I say

18 this, I was never involved with paying any money to

19 Mr. Burke or to Fianna Fail relating to Brennan and

20 McGowan --

21 208 Q. I am asking you about the trustees. How do you know

22 they didn't pay out any portion of these monies to

23 Mr. Burke?

24 A. Well, it was never - I would imagine, if they did, sir,

25 I would have been told.

26 209 Q. Well, you would imagine?

27 A. Well, I would have been told, sir.

28 210 Q. Well, it's a trust for charitable purposes, if you read

29 the document.

30 A. Well, sir, I just want to reiterate, sir, certainly, as

1 far as I am concerned, or any connection of mine, I
2 never, never knew of any payment made to Mr. Burke or
3 to Fianna Fail in this connection, sir.

4 211 Q. Did the trustees of this Trust ever pay out any monies
5 from the Trust to any Irish politician?

6 A. No, sir.

7 212 Q. How do you know?

8 A. Well, I would have known, sir. You know, the money to
9 politicians, you know, this is not just an ordinary
10 payment - I would have known, sir.

11 213 Q. Well, how would you have known?

12 A. Well, there would be no reason for them to do it, sir.
13 And if they did do it - I am sure with my Trust, they
14 would have to inform me, sir. There would be no reason
15 for it. You can take it that they didn't, sir, and
16 never did.

17 214 Q. Well, the impression that you've given to this Tribunal
18 is of a fairly minimalist level of accounting to you in
19 relation to what was done. In fact, if I recall your
20 evidence, was that they would come over occasionally
21 and tell you things and show you documents, but not
22 leave any?

23 A. But I think that - sir, I think that if you talk about
24 - any trust, any party, let's face it, making a
25 payment, this is why I am here giving evidence and
26 trying to help you out, sir, on this matter, that it's
27 a payment to a politician. Now, that would stick out,
28 if there was anything like that, and how the Trust
29 might get involved in that. There is no question of
30 that, sir.

1 215 Q. So --

2 A. That would have been - it would have been a very
3 special thing, if anything like that would be done.

4 216 Q. Well, I don't know.

5 A. Well, I would think that that would come up as a very
6 flag-up, as being something very - out of the ordinary,
7 sir.

8 217 Q. See, unfortunately, I have to take things on face
9 value, Mr. Finnegan, and I've read the Trust, and the
10 Trust expresses itself to be a charitable trust for
11 charitable purposes?

12 A. Yes, sir. I understand where you are coming from, sir,
13 and I know you have had evidence otherwise, from other
14 parties, but I wish to reiterate to you, sir, I was not
15 involved in any payment to Mr. Burke or to Fianna Fail.
16 I certainly was not. So, you know, that's it, really.

17 .

18 CHAIRMAN: On that answer, I think we'll rise for
19 lunch. It's ten past one. Twenty past two? Very
20 good.

21 .

22 THE TRIBUNAL THEN ADJOURNED FOR LUNCH

23 .

24 .

25 .

26 .

27 .

28 .

29 .

30 .

1 THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

2 .

3 MR. HANRATTY: Sir, we haven't actually yet received

4 the consent letter that was referred to this morning.

5 I wonder, would Mr. Hussey --

6 .

7 MR. HUSSEY: I am waiting for my solicitor so come

8 back. As I understand it, there is a letter from my

9 instructing solicitors Kennedy McGonagle Ballagh. I

10 had advised them that we would also need a letter from

11 the solicitors on record in Guernsey. So as I

12 understand it, there is a letter from Kennedy McGonagle

13 Ballagh consenting to what has been requested by the

14 Tribunal. There is also letters from the Guernsey

15 solicitors both in respect of the appearance and in

16 respect of - and being a Notice Party, certainly they

17 have been instructed to provide these letters. I am

18 awaiting for word that that is the case. Whether the

19 letters are there or not, it is a fact that we consent

20 to these matters.

21 .

22 In any event, I just put that on the record at the

23 moment. As I understand it, there are letters on the

24 way.

25 .

26 MR. HANRATTY: Perhaps we will leave it aside until

27 tomorrow morning. It is just that time is getting

28 short.

29 .

30 MR. HUSSEY: I totally appreciate that.

1 .
2 MR. HAYDEN: I wonder, Sir, might I make one point for
3 the purpose of clarification on the record. I think
4 this morning Mr. Hanratty indicated to the witness that
5 Mr. Brennan had used a euphemism in relation to the
6 architects' fees representing the payments to Mr.
7 Burke.

8 .
9 Just for the purpose of the record, Sir, I think, in
10 fact, how the issue of the "euphemism" and how it came
11 up, was on Day 281, page 104, where, in relation to it,
12 question 329:

13 .
14 "Yes" - this is Mr. Hanratty. "Yes, there weren't any
15 architects' fees at that stage, in fact, isn't that
16 right? Am I correct in thinking that therefore this
17 reference to architects' fees is essentially a
18 euphemism or a cloak for the purpose of that payment?"
19 Then there was the answer from Mr. Mr. Brennan:
20 "It couldn't have been, because there wasn't any
21 architects' fees."

22 .
23 Question from Mr. Hanratty, which is 330:
24 "Why was it that this euphemism was being used?
25 Answer: I couldn't tell you. I don't know."

26 .
27 It is just for the purpose of the record that the
28 euphemism wasn't Mr. Brennan's phrase, just for fear if
29 there was any --

30 .

1 CHAIRMAN: Very good. Thank you.

2 .

3 218 Q. MR. HANRATTY: Mr. Finnegan, yesterday we made
4 reference to the question as to when Lombard and Ulster
5 first became aware that you were a party with an
6 interest in Canio, being the company to which they were
7 making this loan?

8 A. Yes, sir.

9 219 Q. And I put it to you that their evidence was that they
10 did not become aware of it until 1985.

11 .

12 Now, am I not correct in thinking that you, in fact,
13 made approaches to Lombard and Ulster in 1985 after the
14 trouble started and the litigation started?

15 A. I think I did, sir, yeah, to stay up my interest.

16 220 Q. Yes. I understood your evidence yesterday, I gathered
17 that you were expressing some surprise that they didn't
18 know of your interest until 1985?

19 A. Yeah. Yes, I sort of - I thought --

20 221 Q. Am I not right in thinking that the manner which they
21 came to know about your interest was when they received
22 an approach on your behalf, in 1985?

23 A. Well, I put this, this way, sir, that what I said to
24 you yesterday, that I thought that they might have
25 known, through discussions with Mr. Brennan and Mr.
26 McGowan, that I had an interest.

27 222 Q. Well, can you just tell us about the contact or
28 communication you had with them, either directly or
29 indirectly in 1985, which was the trouble started?

30 A. I don't - I don't recollect what I actually said to

1 them, sir, or when or what. I did make contact with
2 them.

3 223 Q. Yes. And in what manner did you do that? Did you
4 phone them directly or did you get somebody to contact
5 them on your behalf?

6 A. Gee - it is a little bit vague. I would have thought
7 that I probably contacted them, sir.

8 224 Q. You did?

9 A. I am rather hazy about the contact, but I do recollect
10 something about making contact, sir, but maybe you
11 could --

12 225 Q. What was your purpose, in contacting them?

13 A. The only reason in contacting them was to let them know
14 of my interest in the property, sir.

15 226 Q. Sorry?

16 A. To let them know of my interest in the property.

17 227 Q. Yes. Which would imply that your state of mind at the
18 time was that they did not previously know of your
19 interest in the property?

20 A. Or might not have known, yes, sir.

21 228 Q. So you did know that they were not aware of your
22 interest in the property until 1985?

23 A. I am not quite sure, sir, and that's the position. But
24 I would have - in the normal way, I would have thought
25 that they did know, how they would have known --

26 229 Q. But if they did, there wouldn't be any need for you to
27 contact them to tell them of your interest.

28 .

29 There was a letter written by Mr. Barry on the 9th of
30 August, 1985. Page 1024.

1 .
2 And it is written to Mr. CFC Smith of Lombard and
3 Ulster Banking in Dawson Street.
4 .
5 It says:
6 .
7 "Dear Mr. Smith,
8 .
9 Re Canio Limited.
10 .
11 Thank you for your assistance yesterday in clarifying
12 recent developments in regard to our loan facility. My
13 co-director Mr. AA Wheeler is writing to you to confirm
14 my status as a director of Canio."
15 .
16 It is quite clear that Mr. Barry is writing in his
17 capacity as a director.
18 .
19 "I only became aware of the caution recorded by Allied
20 Irish Finance yesterday. Having spoken to various
21 parties on the matter, I can now confirm that:
22 .
23 1. The only persons empowered to represent Canio in
24 any way are the company's directors. Would you please
25 in future send me copies of all correspondence to
26 Canio, so as to avoid any communication breakdown
27 between my co-director in Jersey and myself (as has
28 happened in this case.)
29 .
30 2. I have agreed with Mr. Wheeler that we must

1 immediately instruct our own independent lawyers in
2 Dublin to make whatever steps are necessary to lift the
3 caution. This we are doing.

4 .

5 3. I understand the caution relates to an undertaking
6 given in 1981 by a Dublin solicitor to Allied Irish
7 Finance in respect of the title deeds to Canio's land.
8 I was not a director of Canio at the time but I am
9 advised by Mr. Wheeler that the undertaking was given
10 with neither the knowledge of, nor the authority of
11 Canio's directors.

12 .

13 4. We would hope that when the caution is lifted, you
14 will be able to reverse the set-off of the deposit
15 against the loan so as to restore our position."

16 .

17 So, obviously, in August of 1985, Mr. Barry decided
18 that it was necessary for him to communicate directly
19 with Lombard and Ulster, and that he did so, and that
20 he did so in his capacity as a director of Canio,
21 without disclosing the fact that he represented Foxtown
22 or without disclosing your interest. And there is
23 another document, it is a memorandum, an internal
24 Lombard and Ulster memorandum. It is at page - I think
25 it is 1072. Yes.

26 .

27 This is to Mr. Crookes, a director, from Mr. Wall,
28 Chief Executive. And it is dated the 27th of
29 September, 1985. It is in relation to Canio Limited.

30 .

1 He says:
2 .
3 "I refer to your memorandum of September 23rd in
4 connection with the above.
5 .
6 You will recall following our discussions with counsel,
7 that whilst he is certain that our security is
8 watertight in relation to the unregistered lands, some
9 small doubt exists in his mind over the registered
10 lands, although on balance he took the view
11 nevertheless that our case would prevail over that of
12 AIF in relation to the entire 86 acres.
13 .
14 We are instructing new solicitors in this case to brief
15 counsel in relation to the possibility that allegations
16 may arise challenging the validity of the entire
17 transaction, and should anything emerge I will revert
18 to you.
19 .
20 As a matter of interest, a third party, unknown to us,
21 as a John Barry, has been in touch with a Fergus
22 Smith..."
23 .
24 We believe that is a mistake in reference to Mr. David
25 Barry.
26 .
27 "... has been in touch with Fergus Smith."
28 .
29 As you recall, Mr. Smith is the person to whom the
30 letter was written.

1 .
2 "... has been in touch with Fergus Smith claiming to
3 represent parties interested in the company, and has
4 asked Fergus to agree to meet John Finnegan,
5 auctioneer. You will recall that Mr. Finnegan's name
6 only came into the picture following a very recent
7 discussion I had with Paddy Dowling of AIF. Fergus has
8 agreed to meet Finnegan on the basis that he will
9 merely listen to what he has to say, and as far as we
10 are certain, Finnegan has no connection with Canio and
11 we are not at liberty to divulge any information to
12 him.

13 .
14 I will revert further to you as matters evolve."

15 .
16 What does that last paragraph, or the second last
17 paragraph tell you?

18 A. That I only came into the picture, as far as I am
19 concerned.

20 230 Q. Yes. But the reference to Mr. Barry, assuming it is
21 David Barry that is referred to there, being in touch
22 to - "representing parties interested", and the fact
23 that those parties are not apparently identified,
24 wouldn't it seem to suggest that at that stage, even,
25 there was a certain reluctance on your part to be known
26 as a person with an interest in this company?

27 A. Well --

28 231 Q. I am asking this, obviously, in the context of what I
29 was asking you yesterday, that perhaps for some reason
30 that this is, in fact, why Mr. Roger Wreford was

1 presented to Lombard and Ulster at the time the loan
2 was being sought, as the third party interested in the
3 property, simply not to disclose the fact that you were
4 an interested party for whatever reason. And that even
5 as late as 1985, while Mr. Barry was making contact
6 with the bank, as he did undoubtedly in that letter I
7 have just shown you, and indeed some subsequently, that
8 he didn't at that stage disclose your identity, albeit
9 that the bank were asked to attend a meeting with you.
10 Do you see what I mean?

11 A. Yeah.

12 232 Q. Doesn't it tend to suggest that they - first of all,
13 that they certainly didn't know until 1985, and
14 thirdly, that you didn't want them to know?

15 A. It surprises me a little bit that they didn't know, but
16 I see that - this is when the third, the charge arose?

17 233 Q. No, this is when the row erupted. The charge is
18 alleged to have arisen in 1981, or 1980, but - 1981.
19 The Lombard and Ulster mortgage was in 1984?

20 A. Mm-hmm.

21 234 Q. The row about it erupted in 1985, when it became known
22 that there was an outstanding undertaking in relation
23 to the title documents, and litigation then broke out
24 between various parties, including litigation involving
25 Mr. Russell, Brennan and McGowan's solicitor. But
26 these are, this letter to Lombard and Ulster does not
27 disclose your involvement, and Mr. Barry approves them
28 on the basis, or in his capacity as a director without
29 disclosing that he is actually representing your
30 interests.

- 1 .
- 2 And in this memorandum, then, the subsequent memorandum
- 3 within the bank, it would appear that even at that
- 4 stage your involvement in the land, as such, is not
- 5 directly disclosed, albeit that there was a request
- 6 that you meet with Lombard and Ulster, and it turns out
- 7 that they had information from Allied Irish Banks
- 8 suggesting that you may have had an interest. All it
- 9 does is really suggest that, as I put to you, Lombard
- 10 and Ulster definitely didn't know until 1985 that you
- 11 had an interest, and that even as late as
- 12 August/September 1985 you were still, as far as
- 13 possible, anxious not to reveal your actual interest in
- 14 the property?
- 15 A. Well, I see - I don't remember seeing this letter, but
- 16 anyway, I don't know why - well, Barry, I suppose, in
- 17 the first instance would, he was coming in as a
- 18 director of the company.
- 19 235 Q. Yes. That is undeniably true, but it doesn't tell the
- 20 whole story, does it?
- 21 A. I don't know --
- 22 236 Q. He may not have considered it necessary to tell the
- 23 whole story at that particular point in time?
- 24 A. No. Apparently I contacted Dowling.
- 25 237 Q. It doesn't say that - it says "your name only came into
- 26 the picture following a very recent discussion I had,"
- 27 that is Mr. Crookes had, "with Paddy Dowling of AIF,"
- 28 not you?
- 29 A. Oh, right. Yes.
- 30 238 Q. Obviously, Allied Irish Finance somehow found out that

1 you may have an interest in the property, possibly from
2 Brennan and McGowan?

3 A. Well --

4 239 Q. But it is quite clear from this memorandum that the
5 information about your possible involvement is only
6 emerging into their consciousness at this point in
7 time?

8 A. I don't know why Barry didn't say who he was acting on
9 behalf of, sir.

10 240 Q. Do you agree with me that this memorandum, that
11 particular paragraph, carries an implication that
12 perhaps even up to that time you didn't necessarily
13 want your involvement to be known to them?

14 A. I don't know, sir, because the situation is that, that
15 of course - I had - I don't know whether people wanted
16 me or not wanted me to talk to them --

17 241 Q. Well, it says, "As a matter of interest, a third party
18 unknown to us, a John Barry" - intending to mean, I
19 think, David Barry - "has been in touch with Fergus
20 Smith claiming to represent parties interested" - and I
21 emphasise the phrase "parties interested" - "who are
22 unspecified, and has asked Fergus to agree to meet John
23 Finnegan auctioneer." Implying, perhaps, in fact, that
24 John Finnegan might represent in some way the parties
25 interested. That seems to be what it is saying. That
26 is certainly an interpretation one could reasonably
27 take from what is said, which would suggest that the
28 cards were not completely on the table. I don't mean
29 that in any pejorative sense, but simply that there was
30 a desire, perhaps, to have a meeting with you, without

1 necessarily disclosing that you, yourself, were, in
2 fact, the person that was interested?

3 A. Well, I really don't know, sir, what the implications
4 to this - I would have thought that that is why I was a
5 bit surprised when you said yesterday they didn't know
6 of my involvement.

7 242 Q. Well, it seems fairly clear from these documents, I
8 suggest, that they didn't - put it another way, these
9 documents tend to corroborate the specific testimony
10 which we have been given by a witness from Lombard and
11 Ulster, that they didn't. Ultimately it is a matter
12 for the Sole Member.

13 .
14 What I am doing is simply drawing your attention to the
15 evidence that we have, such as it is, and certainly the
16 paragraph to which I am drawing your attention in this
17 particular memorandum, I suggest to you, carries a
18 strong implication that even at this point, the bank
19 are not being explicitly told that you actually have an
20 interest by Mr. Barry, but that he represents or that
21 he has approached the bank on behalf of a party or
22 parties that does have an interest, and for that
23 purpose requires the bank to meet John Finnegan,
24 auctioneer, without saying that John Finnegan,
25 auctioneer, is actually the person that has the
26 interest. I mean, that is all I am saying to you, Mr.
27 Finnegan. I am really only asking you to comment on
28 it, and to indicate whether you agree with that
29 interpretation.

30 A. Sir, just before you showed me this, was there --

1 243 Q. There was a letter from Mr. Smith. Do you want to see
2 that one again?

3 A. Mr. Wheeler was mentioned. Was he in one --

4 244 Q. No, this is a letter from Mr. Barry. Mr. Wheeler was
5 mentioned in the letter.

6 A. What did you say about --

7 245 Q. I will put it back on screen. 1024.

8 .

9 Mr. Barry says to Lombard and Ulster:

10 .

11 "Thank you for your assistance yesterday in clarifying
12 recent developments in regard to our loan facility. My
13 co-director, Mr. Wheeler, is writing to you to confirm
14 my status as a director of Canio."

15 A. Right.

16 246 Q. So, at that stage, he is simply approaching them on the
17 basis that "I am a director of Canio."

18 A. This is still in connection with the charge, is it?

19 247 Q. Yes.

20 A. Yeah.

21 248 Q. It arises in the context of the difficulty which has
22 arisen about the discovery that there is an outstanding
23 undertaking which may have an implication of a serious
24 nature in relation to the Lombard and Ulster security?

25 A. Mmm.

26 249 Q. That is the context in which all of this arose?

27 A. Yes. Because --

28 250 Q. This is, in fact, an approach by Mr. Barry to Mr.
29 Smith, such as the one referred to in the subsequent
30 memorandum?

1 A. And --

2 251 Q. It would seem, from the fact that Mr. Barry does not in
3 the letter, on screen, say anything about representing
4 parties interested, he simply puts himself forward as a
5 director, that there must have been some other
6 subsequent communication, possibly verbal, between Mr.
7 Barry and somebody in the bank, possibly Mr. Smith,
8 between the date of that letter and the date of the
9 memorandum we've just been discussing.

10 .

11 All I am suggesting, Mr. Finnegan, is that this tends
12 to support the theory that you did, in fact, prefer not
13 to have your interest in the property known to the
14 bank?

15 A. This is all - this is when the trouble arose about the
16 charge?

17 252 Q. Yes.

18 A. And Mr. Wheeler is saying to - I came across something
19 that I didn't know then, but I know now, that -
20 apparently that Mr. Wheeler knew about that,
21 Mr. Wheeler, there was a memorandum about the charge
22 being fixed on the lands a long time ago. I didn't
23 know it then, but I came across it since.

24 253 Q. Well, we know, as an objective fact, that there was an
25 undertaking in a letter from Mr. Russell, and we know
26 that there was a mortgage to Lombard and Ulster in
27 1984. And we know that a dispute erupted as a result
28 of those two facts, in 1985, involving various sets of
29 litigation between various parties?

30 A. Yes, sir.

1 254 Q. Including George Russell. And we know that there were
2 various communications between all of the parties to
3 try and resolve the difficulty?

4 A. Because I came across the thing there, where I said I
5 didn't know it then, but that, apparently, that there
6 was a - there was an authority for the charge.

7 255 Q. Well, perhaps I could shorten it this way,
8 Mr. Finnegan. All I am trying to do is to establish
9 what your position is on this point?

10 A. Yes.

11 256 Q. Because the Tribunal is confronted with a document
12 which we saw yesterday, in which Mr. Roger Wreford was
13 presented to the bank as the person with the third
14 interest, and explicitly because, and we saw this in a
15 document of Mr. Owens, because you did not want your
16 involvement to be known to the bank. That is what he
17 said in the document.

18 .
19 Now, what I want to know is, is it your position that
20 you did not want your involvement or interest in this
21 land known to the bank, or is it your position that
22 there was no such thing, and that is an incorrect or
23 false statement that Mr. Owens made, or that he had no
24 basis for it?

25 A. Well, whilst I may not have been going around saying
26 that I had an interest all around, but I really did
27 think that the bank knew that I had an interest in it,
28 but I may be - it may be that I am wrong in that, sir.

29 257 Q. Well, perhaps can I put it another way?

30 A. Yes.

1 258 Q. I am just getting out this memorandum from Mr. Owens

2 again. It is a telex, in fact. 690, I think. 692.

3 Yes.

4 .

5 Under the heading "Names of Directors" it says:

6 .

7 "Names of beneficial directors (Tom Brennan, Joe

8 McGowan and Roger Wreford.) Wreford's name has been

9 substituted for that of Finnegan because Finnegan wants

10 to remain silent." That is what he said in 1984.

11 .

12 Do you have any reason to dispute what he said in 1984?

13 A. Well --

14 259 Q. Sorry, to dispute the accuracy of that statement which

15 was made in 1984?

16 A. I didn't know that Wreford was applying for - applying

17 for the loan.

18 260 Q. He wasn't. He was simply allowing his name to be used

19 as the third person. He was not incurring any

20 liability, he was not going to make - get any benefit

21 out of it, himself, in any way, shape or form. He was

22 simply permitting his name to be used as the third

23 one-third shareholder, with Brennan and McGowan, but

24 the liabilities were being incurred by Brennan and

25 McGowan, the guarantee was being provided by

26 Kilnamanagh. There was no - there were personal

27 guarantees provided by Brennan and McGowan, as well.

28 He was not, any sense, participating in the loan. He

29 was allowing his name to be used in an application for

30 a loan.

- 1 .
- 2 But what Mr. Owens says in this document in 1984 is
- 3 "Wreford's name has been substituted for that of
- 4 Finnegan because Finnegan wants to remain silent."
- 5 .
- 6 Now, do you have any reason to dispute the accuracy of
- 7 that statement?
- 8 A. Yes, that I - of the secrecy, unless there was
- 9 something else involved, sir. I wouldn't have known if
- 10 an application was made, if an application was made by
- 11 Brennan and McGowan, I wouldn't have known at that
- 12 stage, or how much they would have to say about me or
- 13 otherwise. They, knowing the bank so well, they were
- 14 very well in, that I don't know - I didn't see any
- 15 application --
- 16 261 Q. This is on the 14th of June of 1984. As I pointed out
- 17 to you yesterday, this was actually more than a week
- 18 before this meeting, at which you had your sorting out
- 19 session with Mr. Brennan and Mr. Wheeler, and Messrs.
- 20 Brennan and McGowan over in Jersey?
- 21 A. Mmm --
- 22 262 Q. To which you all travelled at some, presumably,
- 23 considerable inconvenience to yourselves. But the
- 24 point is that Mr. Owens is saying in this, you wanted
- 25 to remain silent?
- 26 A. Well, I don't know why this, sir, because remember - I
- 27 shouldn't say "remember", but just to remind you that,
- 28 sir, that around that time I was a concerned man,
- 29 because I had learnt, I told you before, you know,
- 30 about the contracts that were in existence or might

1 have been or might not have been in existence for stock
2 relief. But that was a concern. But more on top of
3 that, sir, the word that the property might have been,
4 there might have been a lien on the property to a bank,
5 was a very, very serious, serious situation, that could
6 be sort of a doomsday situation.

7 .

8 Now, the reason - and the discussions that took place,
9 I don't know whether anyone wanted, did or did not want
10 anyone else to know that I was involved, but I was
11 very, very concerned. And the big thing that I wanted
12 to do then was to get - to be sure - well, to see what
13 the position was regarding the lands. And when I was
14 told that, whatever problems that there might have been
15 or whatever, there wasn't really any problem about any
16 security, and Mr. Russell would guarantee this, so
17 going to, going to - the reason we went to Guernsey was
18 that I was very pleased to hear that Mr. Russell was
19 travelling, and that he was going to bring the deeds
20 with him.

21 .

22 Now, to me, sir, that was a very, very important time,
23 and that's what was on my mind.

24 263 Q. I am sure, Mr. Finnegan, it is, but that doesn't assist
25 us on this question that I am asking you.

26 A. I don't know what the reasoning was to bring in Mr.,
27 what do you call him, Wreford? I would be loath now -
28 I would be loath to have Mr. Wreford coming in
29 representing me.

30 264 Q. He wasn't.

1 A. He wasn't representing me.

2 265 Q. He wasn't representing you in any shape or form. It
3 was simply a name substituted, you see.

4 A. Which was very important --

5 266 Q. Put it this way. If the statement in this telex from
6 Mr. Owens to Mr. Wheeler is correct, the statement to
7 the effect that "Wreford's name has been substituted
8 for that of Finnegan, because Finnegan wants to remain
9 silent", if that accurately reflects the state of
10 affairs as it then was, that is on the 14th of June,
11 1984, two consequences follow: One, that you did
12 indeed want to remain silent. The second is, that you
13 knew about the loan application before the meeting of
14 the 26th of June.

15 A. And certainly - I didn't know about an application,
16 because I was only going to get one thing clarified,
17 and that was to get the question of the deeds cleared.

18 267 Q. And if --

19 A. I was afraid at that stage that it was indeed tied up.

20 268 Q. Well, the question of the deeds was cleared to the
21 extent that they were handed over?

22 A. Yes, sir.

23 269 Q. And an assertion was made that no undertaking or no
24 lien or pledge had been given in relation to them,
25 incorrectly as it turned out, that assertion was made
26 and that assurance was given, but going back to the
27 issue, when Mr. Owens said, "Yes, Wreford's name has
28 been substituted for that of Finnegan, because Finnegan
29 wants to remain silent," that that statement is
30 incorrect. It begs the question, why would he say it,

- 1 if that wasn't the state of his mind at the time?
- 2 A. I don't know what - you know, lots of thing - remember,
3 I don't know why this had come up, but remembering now,
4 I am just getting out, as I said, at the risk of
5 repeating myself, that - an awkward - when I say - the
6 situation that things had happened before here. Like,
7 I didn't know about the contracts being entered into.
8 And things could happen on this property without my
9 necessarily knowing.
10 .
- 11 Now, I didn't know about the contracts until
12 afterwards, sir, for the stock relief. I didn't know
13 about a pledge for the bank.
- 14 270 Q. No, you were told there was none.
- 15 A. What?
- 16 271 Q. You were told there was none.
- 17 A. That was being cleared at that meeting, sir.
- 18 272 Q. Yes.
- 19 A. I don't know why, and I didn't know about a mortgage
20 application. It was afterwards, sir, that I knew about
21 that, so I wouldn't have known about this.
- 22 273 Q. What this statement may mean, quite simply?
- 23 A. Yeah.
- 24 274 Q. Is that you are mistaken in your recollection that you
25 didn't know about the loan before the 26th of June and
26 about your recollection that you wanted to remain
27 silent or that you didn't want to remain silent?
- 28 A. No, sir. I think what I said to you there, that - the
29 meeting - this is - you are talking about the meeting.
30 The meeting was only to make sure that Mr. Russell had

1 cleared the decks at that stage and confirmed that
2 there were no charges, because Mr. Barry had been
3 writing to him before that, sir, hadn't he?

4 275 Q. Oh, yes.

5 A. There was quite a bit of --

6 276 Q. But on one view of it, the loan and this question of
7 tidying up arrangements involving Mr. Barry could have
8 been running in parallel. In other words, Mr. Barry
9 and/or yourself may have regarded the loan application,
10 which you may have known, and I am not saying you did
11 or you didn't, but which you may have known was in
12 existence, was running in parallel and would, if it
13 succeeded, secure your position to the extent that you
14 got some of your money back?

15 A. I think, sir, that what I know now and what I didn't
16 know then, was that there were different applications
17 made, and in the - because it came up in the course of
18 the thing, that there were guarantees, there were
19 guarantees being given or sought and given by
20 Mr. Brennan and Mr. McGowan, and in that they did say,
21 sir, that they didn't want another party to know that
22 there was, there was different negotiations backwards
23 and forwards.

24 .
25 It came up on the screen, sir, some time ago, that
26 there was another party, the other party to know about
27 this.

28 .
29 Now, I don't know whether this formed part or all of
30 this, but it - and it did come out too, sir, along the

1 line that somewhere that it was always the intention
2 that Grange would buy this property.

3 277 Q. Well, can I put it now another way, Mr. Finnegan.

4 A. Yes.

5 278 Q. I really don't want to spend too much more time on it.

6 A. No.

7 279 Q. That faced with a statement such as this, in a
8 contemporaneous document, "Wreford's name has been
9 substituted for that of Finnegan, because Finnegan
10 wants to remain silent", I would suggest to you that
11 one would have little alternative but to accept that at
12 its face value, as a true description of the state of
13 affairs as it then was, in the absence of a clear and
14 specific recollection from you to the effect that it
15 was false.

16 A. Well --

17 280 Q. And that is not what I am getting from what you are
18 saying at the present time, if I may say so.

19 A. What?

20 281 Q. A clear and specific --

21 A. Yes, it is - no, sir, I certainly did not agree to Mr.
22 Wreford going in.

23 282 Q. No, that is not the point.

24 A. Sorry?

25 283 Q. He is simply saying that you wanted to remain silent.
26 That is all he says. He doesn't say anything about Mr.
27 Wreford, he says "Mr. Wreford for that of Finnegan,"
28 because Finnegan wants to remain silent. As far as you
29 are concerned, the only thing he is saying, that you
30 wanted to remain silent. It doesn't necessarily follow

1 that you knew that Mr. Wreford's name was or would have
2 been introduced?

3 A. All I can say is this, sir. It may have been of
4 interest for other people that I was to remain silent.
5 I don't remember any specific reason that was not
6 involved in the application, and as I say, that there
7 were --

8 284 Q. You weren't, in fact, involved in the loan application.
9 We know that as an objective fact?

10 A. That I wasn't?

11 285 Q. Yes.

12 A. No. No. But I don't know the reasoning behind this,
13 sir. But as I said to you there, certain things did
14 arise. I didn't know about this, but certain things
15 did arise out of this application. I don't know
16 whether it was this application or another one that I
17 saw, that it says that when there was a written
18 guarantee by Mr. McGowan or there was - yes, that I -
19 the other party, I don't know whether it mentioned my
20 name, shouldn't know about the guarantee, in the loan.
21 So there was a different lot of negotiations there,
22 trying to keep me out of it or the third party out of
23 the picture.

24 286 Q. Mr. Finnegan, to go back to my original question, which
25 was a very simple one.

26 A. Yes.

27 287 Q. Mr. Owens said, in a contemporaneous document on the
28 16th of June, 1984, "Wreford's name has been
29 substituted for that of Finnegan, because Finnegan
30 wants to remain silent." Do you have any reason to

1 dispute the veracity of that statement?

2 A. Yes, I do, sir, because I didn't --

3 288 Q. What is that?

4 A. That I didn't - I didn't give my consent to that, sir.

5 I didn't say that I didn't, that I wanted Wreford to

6 get in there, or they aren't to put my name in, or I

7 was to remain silent.

8 289 Q. Is that the reason you have to dispute the veracity of

9 that statement?

10 A. Yes, sir.

11 290 Q. And is that the only reason you have to dispute the

12 veracity of that statement?

13 A. Yes, sir.

14 291 Q. Thank you Mr. Finnegan. If you wouldn't mind answering

15 any questions that my colleagues may wish to put to

16 you.

17 .

18 CHAIRMAN: If you go first, Mr. Hayden.

19 .

20 MR. HUSSEY: I think Mr. Hayden should go first.

21 .

22 MR. HUSSEY: I wonder, just before that, could there be

23 a small break so that Mr. Finnegan --

24 .

25 CHAIRMAN: Certainly. Five minutes.

26 .

27 MR. HUSSEY: Five minutes. Thank you, Sir.

28 .

29 THE TRIBUNAL THEN ADJOURNED FOR A SHORT RECESS AND

30 RESUMED AGAIN AS FOLLOWS:

1 .
2 THE WITNESS WAS THEN CROSS-EXAMINED BY MR. HAYDEN AS
3 FOLLOWS:

4 .
5 292 Q. MR. HAYDEN: Thank you, Sir.

6 .
7 Mr. Finnegan, I appear on behalf of Messrs. Brennan and
8 McGowan, instructed by Miley & Miley.

9 .
10 Just from the outset to let you know, I don't propose
11 to embark upon much, to the joy of everybody, I
12 suspect, on the various business transactions between
13 yourself and Messrs. Brennan and McGowan outside the
14 Terms of Reference.

15 .
16 So, whether over the last few weeks you have indicated
17 certain views as to what you thought the transactions
18 were, in the context of what they were meant to be and
19 how they were meant to operate and the structures, I
20 don't propose to embark upon any inquiry as to your
21 view. However, just from the point of view of the
22 Tribunal, and the Chairperson, it is not an acceptance
23 one way or another as to the position.

24 .
25 However, in the context of the actual Terms of
26 Reference, if I could just deal with some slight
27 housekeeping at the start.

28 .
29 I think on Day 294, Mr. Hussey, on your behalf, when
30 talking about the bank statements from Foxtown, which

1 have just come to hand, were being delivered or
2 furnished to the Tribunal, he indicated, at page 123,
3 the following. And this is in relation to you.
4 .
5 "He has given as much information as he possibly can
6 from his own recollection of events. I explained, I
7 think yesterday, that Mr. Finnegan up until yesterday
8 was unable to instruct me in any way in relation to
9 these transactions, outside the bounds of the
10 documents, which have been furnished from this Tribunal
11 to Messrs. Kennedy McGonagle Ballagh. I have explained
12 this, and I have been at pains to explain this. I
13 think I introduced this when I cross-examined
14 Mr. Brennan, that I had no further information than the
15 Tribunal had in respect of these transactions."

16 .
17 He continues: "Up until, basically this morning, I was
18 in no position to be able to suggest a contrary view."

19 .
20 This is in relation to the investments, whether monies
21 were put in to the earlier transactions.

22 A. Yes, sir.

23 293 Q. Just so that you understand the position from Messrs.
24 Brennan and McGowan, their understanding of the
25 position is, and their instructions have been and their
26 evidence has been that their only recollection of any
27 investment in the context put by you financially would
28 have been in relation to the St. Stephen's Green and
29 then onwards into Sandyford. You recollect that that
30 was their evidence. I think you have given evidence

1 since the arrival of these bank statements that you had
2 put in earlier sums, but Mr. Hussey went on at page 123
3 to state the following:

4 .
5 "Up until, basically this morning I was in no position
6 to suggest a contrary view. However, this morning, as
7 you know, certain Foxtown accounts have become
8 available....I haven't had an opportunity" - it just
9 goes on.

10 .
11 The next page that I would draw your attention to in
12 relation to the transcript is at page 125. Again, it
13 is Mr. Hussey on your behalf.

14 .
15 "I have never, in any respect, sought to mislead Ms.
16 Dillon or this Tribunal, nor has my client, insofar as
17 his understanding of these matters. He had been unable
18 to assist me or instruct me in respect of these
19 transactions. Therefore, I was unable, until now, to
20 suggest that Mr. Brennan's testimony was untrue. I
21 felt it was my professional standing not to contradict
22 the witness who had given sworn testimony, unless I had
23 a firm basis to do that."

24 .
25 That was when the evidence was being put or the
26 position was being put that investments or sums had
27 been put in.

28 .
29 We have, of course, Mr. Turvey's statement which says
30 that he has reviewed the statements at this stage.

1 .
2 Am I correct in saying, Mr. Finnegan, or am I correct
3 in understanding your evidence to be that up until the
4 arrival of these statements, you had no recollection,
5 good, bad or indifferent, as to whether you put money
6 into the earlier transactions, the Monkstown, the
7 Bellevue, the --

8 A. No, sir.

9 294 Q. Yes?

10 A. The position that I had, I was maintaining on our side,
11 sir, that I felt I had, but I just couldn't, as it was
12 some time ago, I hadn't got the amounts, sir, or
13 whatever was involved. And it was only when these
14 documents arose that they confirmed what the position
15 was, sir.

16 295 Q. So is it the case that you always felt you had put in
17 money, but couldn't put your hand on a document to show
18 that it had happened?

19 A. Yes, sir.

20 296 Q. How, then, does Mr. Hussey say, when he does in the
21 sections I have opened to you, that you couldn't assist
22 one way or another?

23 A. You see, because I hadn't anything - I did have a chat,
24 actually, I did discuss this, sir, and it was always my
25 feeling that I had. I hadn't anything to substantiate
26 it.

27 297 Q. Are you saying, then, when Mr. Hussey indicated he
28 couldn't put a contrary view to Mr. Brennan, prior to
29 the arrival of these statements, that you had, in fact,
30 discussed it with Mr. Hussey and had indicated to the

1 effect that you had put investments or sums into these
2 earlier transactions?

3 A. No, sir. What I said there, that I had maintained that
4 I had put in something, but I couldn't - I had put
5 monies in, sir, but I couldn't say what amount or
6 otherwise, or when.

7 298 Q. Yes. Just so that everybody knows exactly where we all
8 allegedly stand, I will just read to you - I don't wish
9 to be unfair to you, and people may have a different
10 view of this. I wish to be as fair as possible to you,
11 but obviously, from the point of view of Messrs.
12 Brennan and McGowan - at page 125, on Day 294,
13 Mr. Hussey on your behalf states:

14 .
15 "He had been unable to assist me or instruct me in
16 respect of these transactions. Therefore, I was unable
17 until now to suggest that Mr. Brennan's testimony was
18 untrue."

19 .
20 Are you telling us that, in fact, Mr. Hussey was wrong
21 when he said that you hadn't told him before this?

22 A. No, sir. I don't want to mislead you in any way.

23 299 Q. You are not, fear not on that.

24 A. Or indeed, Mr. Hussey.

25 300 Q. That is, I think, where we are going?

26 A. No. Well, in the course of discussions, I felt that I
27 had put money in, but I couldn't say anything. And Mr.
28 Hussey said that if I wasn't sure of the situation, I
29 couldn't be - I couldn't be stating facts, that I had
30 to known did I, or did I not. And I couldn't - I

1 couldn't confirm to him. And that was the situation,
2 sir. But I did, deep down, feel that I had put monies
3 in.

4 301 Q. Well, it is for the Chairman from here on in, then, in
5 the light of what evidence has unfolded thus far to
6 make of that what he will.

7 .

8 Can I ask you then to look at page - these are the bank
9 statements, sir, that are not meant to go up on the
10 main screen. At page 4838.

11 .

12 Actually, I suppose, if all the bank statements would
13 be handed up to you, because I just want to refer to
14 one or two of them.

15 .

16 As I understand it, this is on page 14 of the internal
17 pagination. You will see up on the top page, page
18 number 14.

19 A. Yes, I have that, sir.

20 302 Q. And I think at the bottom of that page it is the
21 33,333, and Mr. Hanratty has gone into great detail to
22 do with that.

23 .

24 The next page, then, to deal with that. And am I
25 correct in saying that your understanding of these have
26 flown from the fact, or arisen from the fact that these
27 notes, the handwritten notes, they are not of your
28 making, they are not of your hand?

29 A. No, they are of Mr. Turvey.

30 303 Q. And are all the notes of Mr. Turvey, from Mr. Turvey?

1 A. Yes, sir --

2 304 Q. And it is Mr. - sorry, I didn't mean to cut you off.

3 Therefore, in reality, is it the fact that these notes
4 have been, these notes have been made somewhat
5 contemporaneous to the notes of the bank statements?

6 A. Yes, sir.

7 305 Q. In that regard, we have Mr. Turvey's handwritten note
8 made contemporaneous in or about the same time, in or
9 around the same time. It need not have been fixed. We
10 have - "M Town" is at the bottom of that as an
11 indication?

12 A. Yes.

13 306 Q. The other transactions then appear on page 4844, and so
14 forth.

15 A. Sorry.

16 307 Q. That would be the internal pagination, page 20, on the
17 top right-hand corner.

18 A. Sorry. I have it. Yes, sir.

19 308 Q. It is the overall Tribunal reference, page number 4844,
20 but the bank statements - it is a reference on the top
21 right-hand side of page number 20. Do you see that?

22 A. Yes, I have.

23 309 Q. And there is two inserts there, that is "N Park 333,"
24 and then "B View" then down further, "50".

25 A. Yes, sir.

26 310 Q. I think, in relation to B View, on Day 306, at page
27 104, question 305:

28 .

29 "Question: How much do you say you invested?"

30 Answer: 50,000 Sir.

1 Question: And, again, are you saying this on the basis
2 of this bank statement which you produced recently?

3 Answer: Yes, sir.

4 Question 307: Are you saying it on the basis that your
5 colleague wrote in beside '50,000, debit', which is
6 dated the 10th or 20th of November, 1978, the word 'B
7 View'

8 Answer: Yes, sir.

9 Question: Can you point to any other document - sorry
10 - for the record, the document to which I am referring,
11 which won't go on the screen."

12 .

13 So, as I understand it, you are saying, at page 4844,
14 that reference to "B View" --

15 A. Yes, sir.

16 311 Q. Are you saying that is Mr. Turvey's insert?

17 A. Yes.

18 312 Q. You see, in his statement Mr. Turvey says his notes
19 only go up to page 14.

20 .

21 MS. DILLON: I can clarify that, Sir.

22 .

23 Mr. Turvey, when he was preparing his statement, had an
24 unpaginated bundle of documents, which he numbered 1
25 through to 14. The documents that were received by the
26 Tribunal were paginated by the Tribunal, and they went
27 to number 24. If My Friend looks at the bottom of the
28 page he is referring to, he will, in fact, see that on
29 the bottom right-hand corner a circle, there are
30 handwritten numbers which are the numbers being

1 referred to by Mr. Turvey in his statement. Mr. Turvey
2 does not use the Tribunal pagination in any of his
3 statements.

4 .

5 313 Q. MR. HAYDEN: I was reading the statement I got.

6 .

7 Can you help me, then. If that is his handwriting on
8 page 4844 - if you look at page 4845. It is the next
9 page. It is the same page. It is the same inserts,

10 Mr. Finnegan. Do you see that?

11 A. Sir, where - sorry. Again, just quickly.

12 314 Q. Yes. You see, if you look at it, 9th of June, 1978 -

13 9th of June, 1978. It is the same numbers, just one

14 page goes further than the other on the photocopy. It

15 is a photocopy of the same page?

16 A. Yes. July, is that the one?

17 315 Q. You see, on 4945 it starts off on the 9th of June,

18 1978?

19 A. Yes, I have it.

20 316 Q. You see the page before, it is 9th of June, 1978?

21 A. Yes, I have that.

22 317 Q. Yes?

23 A. Yes.

24 318 Q. The same numbers?

25 A. Yes, I have it.

26 319 Q. The only difference between the two, being that one

27 goes a little bit further in the photocopying.

28 .

29 How, if it is the case that it is the one individual

30 who is putting in the handwritten notes, Mr. Finnegan,

1 given that this is a photocopy of the same page, how

2 come it is different --

3 .

4 MR. HUSSEY: -- no, sir, that is not correct. That is

5 not a photocopy of same page.

6 .

7 320 Q. MR. HAYDEN: I am sure the witness is going to be able

8 to answer this without assistance from Mr. Hussey. If

9 you look at "B0826 N Park", on page 4844. You see

10 that, the first three down, four down?

11 A. Yes.

12 321 Q. That is the Newtownpark investment. I presume, that

13 you are suggesting - is that Mr. Turvey's handwriting?

14 A. Sorry, this is 4844?

15 322 Q. 4844?

16 A. Whereabouts again?

17 323 Q. Four down from the top?

18 A. Yes, sorry.

19 324 Q. Is that Mr. Turvey's handwriting?

20 A. 484. I am sorry for being slow here. What date again

21 on that?

22 325 Q. July '78. If you look at the numbers, it is 12.7, in

23 the first of the number columns.

24 .

25 MR. HANRATTY: That's the value date?

26 A. Sorry, sorry about that. Sorry. I have it.

27 .

28 326 Q. MR. HAYDEN: You see "N Park" there? Is that Mr.

29 Turvey's handwriting?

30 A. Yes, sir, as far as I am aware.

1 327 Q. And then, when you go down to the value date, for B
2 View - you see the "B View" there, the 50,000, the 28th
3 of the 11th?

4 A. I have it. Sorry. Wait now. Yes, I have it.

5 328 Q. Yes. Now, if you turn to the next page, 4845. Again,
6 it is a bank statement for the same dates?

7 A. Is it BO826, sir.

8 329 Q. "BO826, N Park" - you see it is different. If you
9 compare the two pages, there is now an area erased
10 beside "N Park". The "AK" has - there is a different
11 "AK" on the top of the page?

12 A. Yes.

13 330 Q. If you look at "B View", it is an entirely different
14 hand. It is a different "B". It is certainly
15 different from "B View". If you look at the same time
16 to the two inserts to "J Maguire at 20,000", and the "J
17 Maguire HCT at 5,000", it is an entirely different hand
18 than the hand on page 4844.

19 .

20 Can you explain that?

21 A. What I can say to you is that I understood that they
22 were all Mr. Turvey's, and that's as far as I know.
23 And I think that he - I think he also - I think, apart
24 from this, I think he did give some evidence or some -
25 he did have some discussions with the members of the
26 Tribunal, sir.

27 331 Q. I am not privy to those. I don't want to be. But you
28 see, as I understand it, Mr. Finnegan, what you are
29 telling this Tribunal is that your view of your
30 involvement in these various transactions, up until

1 this, was predicated on an inability to identify what
2 actual involvement you had. However, these bank
3 statements came to hand, and on the basis of the
4 handwritten notes that are contained therein, which on
5 the dates that I have opened to the Tribunal already,
6 you say are the handwritten notes of Mr. Turvey?

7 A. Yes, sir.

8 332 Q. You are able to piece it together, or it triggered a
9 memory, or did something, anyway.

10 .

11 But we have two different hands?

12 A. Well, the only person --

13 .

14 CHAIRMAN: I don't want to interrupt this, but surely,
15 as Mr. Turvey is a witness, he is the person to put
16 this question to. Isn't that the reality?

17 .

18 MR. HAYDEN: In due course, yes, Sir. The only point I
19 put to this witness, is that if his recollection is
20 based upon a position of recollection, a position based
21 upon other peoples' conduct and action, the witness has
22 indicated to you, Sir, that the notes are that of Mr.
23 Turvey.

24 .

25 CHAIRMAN: If you are going to challenge Mr. Turvey's
26 handwriting or not, the person to ask is Mr. Turvey.

27 .

28 MR. HAYDEN: I accept that. What I am asking to this
29 witness --

30 .

1 CHAIRMAN: All right, carry on. Get on with it.

2 .

3 333 Q. MR. HAYDEN: Well, thank you, Sir.

4 .

5 Could I ask you to look - if you look on page 4844,

6 again you will see, just below the ú50,000, there is

7 handwritten references to interest. Do you see that,

8 2,627.88 and 625.14?

9 A. 4844.

10 334 Q. 4844.

11 A. Would you just --

12 335 Q. If you go to January '79 and go across from there.

13 A. January '79.

14 336 Q. You see the two handwritten for "interest"? You see

15 the way that the "interest" is written there?

16 A. "Interest." Yes, I have it.

17 337 Q. If I could ask you to look at page 4874, which was the

18 daybook, I think that Mr. Turvey kept. By way of

19 comparison as to how he writes "interest".

20 A. Yes.

21 338 Q. You see, on the 2nd of the 8th, '73 there - yes, 2nd of

22 the 8th, '73, you see how Mr. Turvey - I understand

23 that that page --

24 A. The 8th --

25 339 Q. The 2nd of the 8th, '83?

26 A. What number is down on that?

27 340 Q. On the dates it would be the third date down.

28 A. IBI.

29 341 Q. Accrued interest.

30 A. Sorry about that. 4974.

1 342 Q. 4974.

2 .

3 MS. DILLON: We are just getting it up for the witness,

4 Sir.

5 A. Sorry. (Document handed to witness.)

6 .

7 343 Q. MR. HAYDEN: 2nd of the 8th, '73. It is the third,

8 fourth - sorry, there is another one on the top. It is

9 - there is the 5th of the 1st, '73, there is a gap?

10 A. I have it.

11 344 Q. You see, I understand this is Mr. Turvey's hand?

12 A. Yeah.

13 345 Q. And you see the way he writes "interest" there?

14 A. Mm-hmm.

15 346 Q. You see the way that - and how it compares with how

16 interest is written on 4844?

17 A. Well --

18 347 Q. A different "I", an entirely different "I", isn't it?

19 It seems to be different people are writing these

20 things?

21 A. Well, all I can say to you is this, to the best of my

22 knowledge and belief, that these were Mr. Turvey's

23 notes. I didn't know of anybody else, but that's the

24 situation, so whether - that is as I know it.

25 348 Q. And then, just for completeness, in relation to the --

26 A. It was done at the time. They were done at the time.

27 349 Q. For completeness, in relation to Mr. Turvey's

28 statement, he furnishes a schedule, and it is the first

29 schedule where it is listed out.

30 .

1 I will just read you what he says in relation to
2 N Park: "Newtownpark Avenue, Mr. Maguire's land, 333."
3 There is no comment other than that on it. And then
4 when he says "To B View, Bellevue re property, same
5 name, no knowledge of details." That is Mr. Turvey's
6 evidence on the B View. He has no knowledge of the
7 details?

8 A. Right.

9 350 Q. So, as I understand it, it is in reliance upon Mr.
10 Turvey that you identify the €50,000 as being an
11 investment in B View?

12 A. Yes, Bellevue, B View.

13 351 Q. He has no knowledge on the details; he has no details
14 in relation to it?

15 A. Well, he confirmed the 50,000, sir.

16 352 Q. He just says "B View". He doesn't confirm any details
17 about it. That is what he says in his statement.

18 A. Yeah.

19 353 Q. So, it is - at least on the statement that Mr. Turvey
20 has furnished, he hasn't confirmed where the 50 went,
21 he just says "B View name. No details."

22 .

23 So how is that - how had Mr. Turvey assisted you, then,
24 if that is his understanding of it?

25 A. Well, these are notes that he did a short time after,
26 whenever these were produced. It is quite a long time
27 ago. And that was - "B View", that was Bellevue, and
28 that is what the - the amount.

29 354 Q. But there is no evidence, or certainly no documentary
30 evidence of showing how that money was supposedly - I

1 don't wish to go over territory covered by Mr. Hanratty
2 in any great detail, but for the purpose of making sure
3 that Messrs. Brennan's and McGowan's position is
4 properly set forth, there is no evidence of any
5 investment into B View by you, that is maybe - sorry
6 about that - by Foxtown?

7 A. Well, I don't know what - well, I can say to you that
8 this is the situation, and it is his handwriting. And
9 --

10 355 Q. Well, which version is his handwriting, 4844 or 4845?
11 Can you offer us any explanation as to how for the same
12 bank page statement we have two different handwritings
13 on the notes?

14 A. Well, as I say, that the only thing is that perhaps - I
15 got this from - I got this as being Mr. Turvey's, and
16 there was never ever a question that it wasn't, sir.

17 356 Q. You can't help the Chairman any further, anyway, on the
18 differential, it is up to Mr. Turvey from here on in.
19 Is that basically it?

20 A. Say that again?

21 357 Q. You can't offer an explanation as to why there is a
22 different hand?

23 A. No. If it is - but I think it can be confirmed with -
24 as I say, with Mr. Turvey when he comes in.

25 358 Q. Yes. As I understand it, then, just to move on from
26 that, and just to - so that you are clear.

27 .

28 As I say, Messrs. Brennan and McGowan's position is
29 that there wasn't an investment by you, a financial
30 investment. Certainly you assisted in relation to the

1 transactions, etc., but there wasn't a financial input
2 in relation to the earlier ones. That is their
3 position, as best they can recollect?

4 A. Perhaps I will have - well, that is the detail I have,
5 and that is --

6 359 Q. That is where?

7 A. -- where I am coming from.

8 360 Q. Can I then just ask you - as I understand your evidence
9 to the Chairman, and in reply to Mr. Hanratty, the
10 events leading up to the 26th of June, '84 were events
11 predicated upon your concerns in relation to the
12 prospect of some of the land in Sandyford having been
13 sold to Kilnamanagh, in '79. The earlier contract, I
14 think stock relief was referred to?

15 A. Yes, sir.

16 361 Q. And that all -- sorry. And that also you were
17 concerned that there might have been a lien on the land
18 to some financial institution?

19 A. Yes.

20 362 Q. And can you tell us where or at what stage did you come
21 to know of these two events that caused you the
22 concern, as you say, resulting in the meeting of the
23 26th of June, '84?

24 A. I think that the question of the stock relief
25 transactions were, I think - they were - they were
26 implemented, I understand, about a year after the
27 acquisition of the property.

28 363 Q. I understand that, but when are you saying you found
29 out about them, in a manner that caused you concern?

30 A. Well, it was naturally after that, and when I - I can't

1 give you the exact dates, but I know I queried - I
2 queried, I think it was Joe McGowan. And I said that
3 these were only temporary, and in fact, that there was
4 no - there was no concern, and that they guaranteed
5 that these wouldn't affect --

6 364 Q. Your evidence is that you didn't know about them, you
7 didn't know about the contract, the Kilnarnagh, the
8 original Kilnarnagh contract. That is what --

9 A. Not when they were put in place.

10 365 Q. And you can't help us at all as to what year you might
11 have come across this piece of information that caused
12 you the concern that resulted in the meeting on the
13 26th of June?

14 A. But I think that the meeting that came about with the
15 late Mr. Russell was definitely at around that time.
16 Prior to that I had heard that there was a charge on
17 the property.

18 366 Q. And correct me if I am wrong, but as I understood it,
19 that is what you wanted the meeting to sort out, that
20 you had gotten this information?

21 A. Yes.

22 367 Q. From somewhere at a time as yet we have to find out,
23 and from whom we have yet to find out. You got this
24 information, you wanted satisfaction, you wanted
25 comfort that these issues are not a problem for your
26 shareholding; am I correct?

27 A. Yes.

28 368 Q. That is what you say the June 26th meeting was all
29 about?

30 A. Whatever - I think the most urgent thing, then, was the

1 question of whether there was a charge.

2 369 Q. Yes. Well, yes. I am not putting them in any
3 particular priority, whether it is the contract or the
4 charge that you had heard about, that was the
5 motivating factor, as you say, for the meetings of the
6 26th of June, 1984. And what I am asking you is, at
7 what stage prior to that meeting - was it that year?
8 Was it 1984? Was it in 1983? Was it early '84?
9 Surely, if it was a matter that caused you such
10 concern, you have some recollection as to when you
11 might have heard about it, and from whom, and in what
12 circumstances? Take the lien, even, as an example.

13 A. Well, I don't think it was too - I don't think it was
14 too far away, from the time when we had the - before we
15 travelled. The exact - let me get this around my head.
16 .
17 I am not quite sure whether I heard from Mr. Russell or
18 whether I heard from Stokes Kennedy Crowley or
19 something like that. I am not quite sure.

20 370 Q. About the lien, is it?

21 A. About the lien.

22 371 Q. Well, if you heard from Mr. Russell, why then,
23 Mr. Finnegan, when you sat down on a meeting on the
24 24th, 26th of June, '84, and Mr. Russell says there is
25 no charge, if you heard from him, prior to this,
26 leading up to the requirement for the meeting, then how
27 did - how do you square off the result of the meeting,
28 if he is saying the exact opposite?

29 A. I am saying that I am not quite sure where I heard. I
30 certainly talked to Joe McGowan about it. I am not

1 quite sure where I heard, but I asked Joe McGowan --

2 372 Q. And Joe McGowan told you about the lien?

3 A. He discussed it with me.

4 373 Q. Yes. Well then, when he was at the meeting on the 26th

5 of June, he too confirmed that there was no lien. Well

6 then, how do you explain --

7 A. Well, all right. He said that there - that Mr. Russell

8 - my recollection is this: That Mr. Russell may have

9 done something in error or there might have been

10 something temporary, but it was nothing that could be

11 - all of this could be ironed out and would be ironed

12 out and -- sorry.

13 374 Q. Is it the case that what discussion was about the

14 facility with AIF, was that there had been a lien

15 granted in favour of AIF in relation to monies

16 advanced, but only in the context of monies to be

17 advanced for the Sandyford lands, that it wasn't to be

18 an undertaking for AIF for advances made to Kilnamanagh

19 elsewhere? Is that the context of the discussions that

20 you had?

21 A. Well, now, let's say that the detail of it I can't give

22 you, because I didn't know. It wasn't all spelt out to

23 me. But what I didn't know then, and I know now, that

24 there was actually - Mr. Wheeler had done a memorandum

25 and signed it off, that - giving authority for the

26 lands to be charged. And I didn't know anything about

27 that, and that was back, I believe - actually, a much

28 longer time ago than I had understood, and that was, I

29 think, in - it is on one of the --

30 375 Q. 1981 -

1 A. -- exhibits.

2 376 Q. You say, if I can go back to the question, you say you
3 have a recollection of Mr. McGowan talking to you about
4 the lien, or a lien?

5 A. Yes.

6 377 Q. If that is the case, when do you say he had that
7 conversation, roughly? I mean, I am not holding you to
8 the day, but the month, the year even, might be a help,
9 but when?

10 A. Well, I didn't have any piece of paper about the actual
11 lien, but that there might have been a pledge. That
12 would have been quite - I think quite close to the
13 time, because Mr. McGowan did say to me, when I was
14 discussing this, he said, "Look, there is no - anything
15 to do with any - the title - the title is clear on the
16 lands."

17 378 Q. You heard the evidence, you may not have - but are you
18 aware of the evidence of Mr. McGowan to the effect that
19 the undertaking to AIF was only for the purposes, in
20 his mind and understanding, as was instructed to
21 Mr. Russell, for the purpose of any monies advanced on
22 the Sandyford land? Do you remember Mr. --

23 A. Well, I tell you what, maybe just --

24 379 Q. That doesn't ring a bell with you in relation to --

25 A. Maybe it mightn't be a bad idea if I could get,
26 because I do recollect this piece of paper, that you
27 might see where Mr. Wheeler authorised --

28 380 Q. Don't worry about that, Mr. Finnegan. Perhaps if you
29 just answer the questions I am asking you. I am sure
30 you can clear it up at the end. What I am trying to

1 find out is, you say, you had a discussion with Mr. -
2 it is your recollection you had a discussion with
3 Mr. McGowan, in relation to two things, it seems: This
4 lien undertaking, call it what you will, with AIF; and
5 the contract.

6 A. And contracts.

7 381 Q. The earlier contract for Kilnamanagh?

8 A. Yeah.

9 382 Q. Yes. And as I understand it, Kilnamanagh had the
10 contract, and then there was an onward sale to Grange.
11 You indicated to Mr. Hanratty that this was a matter of
12 grave concern to you, that both of these matters were
13 matters of grave concern to you. That was your
14 evidence to the Chairman, in reply to Mr. Hanratty?

15 A. Yes.

16 383 Q. Resulting in the meeting of the - if there were matters
17 of grave concern to you, you think it is some date
18 prior to this meeting of the 26th, and that's what gave
19 rise to the meeting of the 26th of June, to give you
20 comfort on these two issues?

21 A. Okay, let's get it straight.

22 384 Q. Am I correct on that?

23 A. Can I come in for a moment?

24 385 Q. If you could answer the question and then clarify it.

25 A. No, it wasn't a few days - well --

26 386 Q. Weeks, months, whatever?

27 A. It could be weeks, months.

28 387 Q. It is going to take a little bit of time to arrange the
29 meeting. In any event, nobody is - everybody is not
30 going to be available at the drop of a hat. A few

1 months before the meeting these issues had arisen, the
2 contract for the sale and the undertaking?

3 A. They didn't arise together.

4 388 Q. Oh, yes, I accept that. I am sorry. Sorry, I am just
5 trying to - maybe I am trying to hurry it along.

6 A. No.

7 389 Q. I understand the two of them were not in the one
8 conversation. As I understand you, these were two
9 issues that had come over a period of time prior to the
10 meeting. Would that be fair?

11 A. Yes.

12 390 Q. Your recollection is that they were items - both items
13 were referred to you by Mr. McGowan, and in relation to
14 the meeting on the 26th of June, Mr. McGowan is there,
15 and we have all the details as to what was said. We
16 have gone through in some detail the reference to the
17 note by Mr. Barry of the meeting, isn't that correct?

18 A. Yes.

19 391 Q. If that is the case for those, for that meeting, there
20 is no reference to the contract to Kilnarnagh, in Mr.
21 Barry's minutes of the meeting?

22 A. No. No, the meeting --

23 392 Q. Yes, there is no reference to the contract to
24 Kilnarnagh, isn't there?

25 A. They were there, the contracts.

26 393 Q. These meetings were - this meeting was supposed to
27 clarify these two points?

28 A. I think we are in the wrong track all together. What
29 it was mainly to clarify, the most serious of all,
30 because I was told that it was to clarify, clear the

1 position, "Was there a lien on the title deeds in
2 favour of a bank?" And Mr. McGowan said to me, "Look,
3 whatever you may have thought about this, that is all
4 sorted out. There is nothing there."

5 394 Q. Mr. Russell confirmed that?

6 A. "Mr. Russell will confirm that, that there is nothing.
7 And what he will do is this, that he will actually, to
8 prove all of this, he will bring the title deeds to
9 Jersey and will leave them there. And so then you will
10 know that that is where they are, and they will confirm
11 that they are clear of all encumbrances."

12 395 Q. And that would seem to tie-in with Mr. McGowan's
13 understanding, and Mr. Russell's understanding, that in
14 their mind, certainly, they did not see AIF having a
15 charge over the Sandyford lands, because in Mr.
16 McGowan's mind there had been no monies advanced on the
17 strength of that undertaking, and he has said that on a
18 number of occasions to this Tribunal. So as far as
19 they understood. I accept - I mean, people took a
20 different view as to the wording of the undertaking,
21 and AIF took a different view, that it covered a
22 broader range, but so-be-it. And I don't wish to delay
23 the Tribunal too long on that, but a contrary view was
24 taken. But certainly Mr. Russell and Mr. McGowan, and
25 the people at that meeting, indicated, as we see in Mr.
26 Barry's notes, that as far as they were concerned --

27 A. It was clear.

28 396 Q. It was clear, and Mr. Russell certainly --

29 A. Confirmed that.

30 397 Q. -- felt that to be the position. And the title deeds

1 were brought?

2 A. The title deeds were brought.

3 398 Q. But there is no reference in the meeting minutes to the

4 contract, that you say was something that was also

5 exercising you, the contract for the sale to

6 Kilnamanagh?

7 A. Well, I think that there was a sweeping statement by

8 Mr. Russell that it was free from encumbrances, and

9 that there were no charges on --

10 399 Q. Wouldn't you think that if this was a matter that was

11 exercising you, Mr. Finnegan, as much as you said it

12 was exercising you when answering to Mr. Hanratty, that

13 you would want that referred to in the minutes, if

14 there was - if there is any reality to your suggestion

15 that you didn't know about the contract, and that it

16 was a matter of grave concern to you?

17 A. What are you saying to me, sir?

18 400 Q. If it is the case, albeit the secondary of the two

19 concerns; if it is the case that the sale contract, or

20 the contract with Kilnamanagh was a matter of grave

21 concern to you, and that it was, albeit in order of

22 priority ranking behind the bank facility; I have to

23 put it to you that if there was a reality to that being

24 the position, if there was a reality to you not being

25 aware of that and wanting it cleared up on the 26th of

26 June, you would have insisted, or Mr. Barry would have

27 insisted on that being confirmed in the minutes?

28 A. But I think wasn't - I think that the minutes were,

29 from what I recollect, were clear that they were

30 confirming that it was, the land was clear.

1 401 Q. So you are saying by inference that that gets rid of
2 the contract?

3 A. Well, yes, wouldn't - if you would like to see what he
4 said. But yes, by inference that would be --

5 402 Q. Perhaps you might be able to help me, then,
6 Mr. Finnegan.

7 .
8 The meeting, as we know, on the 26th June, was, as you
9 say, as I understand it also, and your evidence has
10 been to date that you were unaware of any pending loan
11 application or loan application to Lombard and Ulster,
12 on the, at that meeting on the 26th of June?

13 A. Yes.

14 403 Q. Can you turn to page 656, please.

15 .
16 And this is a letter from Mr. Owens to Mr. Wheeler, on
17 the 6th of March, 1984.
18 .
19 It says:
20 .
21 "Dear Mr. Wheeler, Canio is a wholly-owned subsidiary
22 of Ardcar Limited, reference is A334, and one-third of
23 the shares in Ardcar are beneficially owned by Foxtown
24 Investments Limited of Guernsey.
25 .
26 I have had a meeting with the beneficial owner of
27 Foxtown, and he is concerned that if anything happened
28 to him that the lands owned by Canio might be sold and
29 the one-third share would not go to Foxtown.
30 .

1 Accordingly, I have arranged that David Barry of
2 Guinness & Mahon (Guernsey), who are the trustees of
3 Foxtown, will contact you with a view to setting up
4 machinery whereby, in the event of a sale by Canio, the
5 proper proportion of the proceeds will find their way
6 to Foxtown."

7 .

8 That is the 6th of March of 1984.

9 .

10 So Mr. Owens is confirming that he has had a meeting, I
11 presume that is a meeting with you?

12 A. Yes, it must be.

13 404 Q. At that stage the extent of your concern seems to be if
14 something happened to you --

15 A. Yes.

16 405 Q. -- you wanted to make sure that Foxtown's interests
17 were properly looked after?

18 A. Yes.

19 406 Q. And you went to Mr. Owens to ensure that that was the
20 position?

21 A. Yes.

22 407 Q. So, therefore, as you saw it, Mr. Owens was - is he
23 looking after your interest in that regard, or do you
24 just want to make sure that your interest was looked
25 after?

26 A. That my interest would be looked after.

27 408 Q. I presume you trusted Mr. Owens? You wouldn't have
28 gone to him asking this question if it wasn't to look
29 after your interest?

30 A. Well, he was the port of call here.

1 409 Q. Yes. As we know from your testimony to date, he was
2 the individual - if these investments were made, you
3 would have made - in the other transactions, you would
4 have done them on the strength of advice you received
5 from him. You gave him money, whatever he did with it,
6 he did with it, you got your money back when it
7 happened?

8 A. Yes.

9 410 Q. This was an individual that you obviously held some
10 trust in, and, you know, would feel would do the job
11 properly?

12 A. Yes.

13 411 Q. Why, if you were concerned about a lien; why, if you
14 were concerned about a contract to Kilnamanagh, did we
15 not see any reference about that in this meeting? The
16 extent of your concern there seems to be if something
17 happened to you, presumably --

18 A. I would say this to you; I wouldn't have gone to him,
19 it would have been - whether I spelt it out absolutely
20 to him there, or not, or - that I was, I was concerned
21 that acts might take place on this property without my
22 knowing.

23 412 Q. Right. So it may be that you didn't impart to him the
24 full extent of your concerns, is that it? That you
25 mightn't have mentioned --

26 A. Maybe I did, I am not quite sure what - but when was
27 that, again?

28 413 Q. The 6th of March, 1984.

29 A. Yeah, because at that time, then, there was, in fact -
30 at that time there was, in fact, a pledge of the deeds.

1 414 Q. Oh yeah, that had happened since 1981?

2 A. Yes.

3 415 Q. The contract with Kilnamanagh had happened since '79.

4 So everything is in place that caused you the grave and
5 absolute concern that you were telling Mr. Hanratty
6 about, that propelled you towards the 26th of June
7 meeting, but you see, there is nothing in - now, I
8 understand this is not your letter, therefore you are
9 not to be visited with the language of it, but I have
10 to put to you that if there is any reality to you
11 having been as concerned then, as you contained you are
12 now in your evidence to Mr. Hanratty, we would have
13 seen some reference to that in the letter from
14 Mr. Owens to Mr. Wheeler, and the extent of all we see,
15 is that you're concerned if something happened to you
16 that your interests, or the interests of Foxtown would
17 be properly looked after, if there was a sale.
18 Isn't that the extent of it?

19 A. Well, I think that the position - I hear what you are
20 saying, but - that if - if you have a property and you
21 realised that things have happened, like what I said
22 about the contracts and a pledge, it would mean,
23 actually, that pledge were to be held up, which
24 subsequently there was a war over, there was a court
25 case over, that it would be deemed that the - if
26 anything like this were to stick that the property
27 would be unsalable.

28 416 Q. Sorry? Are you seriously telling the Chairman, that
29 the extent of your concern in relation to what you
30 perceived to be dealings with these lands without your

1 consent or reference, namely the lien, namely the
2 contract for sale, that the extent of your concerns
3 when you go to Mr. Owens is your own mortality, as
4 distinct from the actual real issue that you say was
5 what was causing you a concern? Because the extent of
6 what Mr. Owens is talking about is, I presume, is
7 chopping off the mortal coil, when he says if something
8 happens to you?

9 A. I feel that what I was trying to do, whatever way it
10 came across, was trying to put some controls in situ,
11 that I would know what was happening.

12 417 Q. Well, it might shed even more light on your concerns,
13 if you look at page 659.

14 .

15 It is a letter of the 20th of March, 1984, from
16 Mr. Barry of College Trustees to Mr. Wheeler.

17 .

18 It is:

19 .

20 "Dear Mr. Wheeler..." - you have that yeah - "...Canio
21 Limited/Ardcarn Limited.

22 .

23 We refer to Mr. HV Owens's letter to you, dated the 6th
24 of March, 1984." So obviously Mr. Barry has been given
25 a copy of that. Presumably that was given to him by
26 you. I presume you contacted Mr. Barry?

27 A. It probably was, yes.

28 418 Q. Mr. Owens sent the letter to Mr. Wheeler, gave you a
29 copy, and presumably you contacted Mr. Barry then to,
30 not propel it, but to advance it from that side of

1 things.

2 .

3 So, obviously you knew what Mr. Owens was sending to
4 Mr. Wheeler, and the concerns expressed therein, and
5 you didn't express any concern about the extent of the
6 concerns of what would happen if anything happened to
7 you. I mean, presumably if Mr. Owens' letter didn't
8 accurately reflect your concerns you would have told
9 him?

10 A. Well, I suppose that - if you look at the gravity of
11 it, that I suppose the - it may be just a way of
12 putting it, if anything - "Is the proper documentation
13 around the houses here in case anything would happen to
14 myself?"

15 419 Q. Of course - it is your evidence so far that of course
16 something might have already happened. We are not
17 talking about what might be in your mind, surely at
18 this stage. We are talking about what had possibly
19 happened. Yet the 6th of March letter, '84, that we
20 have just seen and this letter, of - well, sure I will
21 open the letter of Mr. Barry.

22 .

23 "This company is a subsidiary of Guinness & Mahon
24 Limited, and is the trustee of a settlement which owns
25 Foxtown Investments Limited. Foxtown owns one-third of
26 Ardcarn Limited" - there was some confusion in the
27 earlier days, that will be cleared up later on. At
28 that stage I think Mr. Barry thought Foxtown owned
29 one-third of Ardcarn, and Ardcarn in turn owned Canio.
30 There is a bit of back and forth.

1 .
2 "We shall be obliged if you will provide us with the
3 following information in regard to both Canio and
4 Ardcarl:
5 .
6 1. Present registered shareholders of all the issued
7 share capital, and number of shares held by each
8 shareholder.
9 .
10 2. Names and addresses of all present directors.
11 .
12 3. Copies of the most recent audited or unaudited
13 accounts, if accounts have been prepared.
14 .
15 4. Statement of Affairs, i.e. details of assets and
16 liabilities at the present time.
17 .
18 You will note from Mr. Owens' letter that our client
19 would like to be confident that Foxtown's investment is
20 entirely secure, and this is not unnatural, in view of
21 the value of the investment. We would therefore
22 appreciate receiving your confirmation that you are
23 aware that Foxtown Investments Limited is beneficially
24 entitled to a one-third share in the capital of Canio
25 Limited and its subsidiary.
26 .
27 Please telephone the writer on or after 2nd April if
28 you wish to clarify our question. We would be happy to
29 arrange a meeting in Jersey to discuss these companies,
30 if necessary.

1 .
2 We look forward to hearing from you."
3 .
4 So this is effectively Mr. Barry on Foxtown's behalf
5 writing to Mr. Wheeler, having received from you a copy
6 of Mr. Owens' letter to Mr. Wheeler, of the earlier
7 date, the 6th of March, 1984, presumably you having
8 contacted Mr. Barry and gone through it with him, what
9 your concerns were.

10 .
11 And again, in the words of Mr. Barry, the extent of
12 what Mr. Barry is saying, in relation to the concerns
13 as expressed by you, in 1984, as distinct in the year
14 2001, is, "That you will note from Mr. Owens' letter
15 that our client would like to be confident that
16 Foxtown's investment is entirely secure, this is not
17 unnatural in view of the value of that investment."

18 A. Yes.

19 420 Q. Where is the reference to the lien that you say you
20 knew had already possibly happened? Where is the
21 reference to the contract that you say you knew had
22 already possibly happened, if you were really concerned
23 about your interests?

24 A. Had they happened?

25 421 Q. Well, we know that - you have just told me a few
26 minutes ago in answer to another question, that the
27 undertaking was in 1981, the contract for sale was '79?

28 A. Yes.

29 422 Q. Where are references to those two major events, albeit
30 one of greater importance than the other? Where, if

1 Mr. Barry is looking after Foxtown's interests, and if
2 you feel that Foxtown's interests had been overborne
3 without your knowledge, where are the references to
4 these two events? Whatever about Mr. Owens, where in
5 the reference to Mr., in Mr. Barry's letter to these
6 matters of concern, if they were concerning you, if
7 there was a reality to the fact that you didn't know
8 about them --

9 A. He is doing his job, as I see it, here, to try and
10 ascertain what the position is, to be kept updated as
11 to what was happening.

12 423 Q. I have to put it to you - sorry, Sir.

13 .
14 I have to put it to you, Mr. Finnegan, if it is the
15 case, that in 1984 you knew of, or any of the parties
16 in 1984 were aware of an undertaking in the fashion
17 that AIF subsequently sought to rely upon it. If it is
18 the case that that was a matter that was concerning
19 you, or for that matter, if Mr. Russell understood that
20 undertaking to be able to be used by AIF, as it
21 ultimately was, or Mr. McGowan knew that AIF were going
22 to ultimately use this undertaking in the way it
23 ultimately was, as distinct from what they understood
24 the position to be, that unless monies came down on the
25 Canio lands, AIF could not use it.

26 .
27 Where, in that letter, do we see from Mr. Barry a
28 reference to an event that you say was in your mind,
29 namely the undertaking/lien? And where, in that
30 letter, do you say there is a reference to an event

1 that was in your mind, namely the contract for sale,
2 both of which, in reply to Mr. Hanratty, you say caused
3 you extreme concern when you found out?

4 A. Well, perhaps he would have been a little bit more
5 polite than I would have been. I think he was working
6 himself into the situation.

7 .

8 Mr. McGowan did say to me, prior to - just bad on dates
9 - is that before - what date is that?

10 424 Q. The 20th of March, 1984. The College Trustees is the
11 20th of March, 1984.

12 A. Well, of course subsequently Mr. - the lawyer did say
13 that - he came over to Jersey and did, and confirmed
14 that there were no, there were no fears.

15 425 Q. We will be getting to that. I mean, there is one or
16 two letters to land on before we get to there,
17 Mr. Finnegan.

18 .

19 What I am trying to find out, and given that this is
20 all down, Mr. Finnegan, to evidence of individuals, and
21 documentation, and the Chairman has the task,
22 ultimately, of distilling the whole lot to make up, as
23 best he can, his mind as to what, in fact, truly
24 happened. I have to put it to you, that if the events
25 that lead to the meeting of the 26th of June were the
26 events that you say, namely the undertaking, the
27 concern over the security of the land, and namely the
28 contract for sale, I have to put it to you that the
29 documentation as we have it, even documentation from
30 Mr. Barry, makes no reference to such, and, in fact,

1 the letter of the 20th of March, 1984, is a
2 housekeeping letter.
3 .
4 It is a letter putting in place proper structures along
5 the lines as had been originally identified by
6 Mr. Owens, which were your concerns expressed to him,
7 that you were concerned that if anything ever happened
8 you wanted to make sure that those, I presume, that
9 came after you, their - your estate would be protected,
10 or Foxtown's interests would be protected. So that
11 having maintained aminity, having maintained your
12 position, the silence in relation to your involvement
13 in this, you wanted to make sure that Foxtown's
14 interests were going to be protected, no matter what,
15 in the event of anything happening to you. Isn't that
16 what the letter of the 6th of June from Mr. Owens says?
17 You are concerned about what might happen if - "and he
18 is concerned if anything happened to him the lands
19 owned by Canio might be sold, and a one-third share
20 would not go to Foxtown"?

21 A. That's right, yes.

22 426 Q. So that was your concern, that if anything ever
23 happened to you, that at least the structures were in
24 place, the paperwork was in place to make sure your
25 interests, or Foxtown's interests are properly noted.
26 Isn't that what we see in Mr. Barry's letter of the
27 20th of March, 1984, that you want to be confident that
28 Foxtown's investment is entirely secure, that is not
29 unnatural in view of the value of that investment.
30 That is the extent of this.

1 .

2 This was a large investment, "We better make sure
3 everything is in order." Isn't that what Mr. Barry's
4 letter said?

5 A. Yes.

6 427 Q. Nothing about the shock, concern that we have heard of
7 from you in relation to replies to Mr. Hanratty. And
8 what we get next, is a reply to that letter, at page
9 663, on the 22nd of March, 1984. Which is Mr. Barry,
10 or sorry, Mr. Wheeler back to Mr. Barry.

11 .

12 "Thank you for your letter of the 20th of March. And
13 it is becoming apparent that something will have to be
14 done urgently to sort out both these companies and
15 their ownership.

16 .

17 There is nothing in our records to show that Canio
18 Limited is a subsidiary of Ardcarne Limited or
19 visa-versa.

20 .

21 At the beginning of your letter you say that Canio
22 Limited is a subsidiary of Ardcarne Limited, but towards
23 the end of your letter you imply the opposite. My
24 records show that Canio Limited is one-third owned by
25 Foxtown Investments Limited, but Ardcarne Limited is
26 owned by three individuals."

27 .

28 MR. HUSSEY: Sorry, Mr. Hayden, if you would go a
29 little bit more slowly. I know Mr. Finnegan has
30 difficulty reading on the screen. So just a little bit

1 more slowly please.

2 .

3 428 Q. MR. HAYDEN: Sorry. I will start off at the start

4 again.

5 A. It is all right.

6 429 Q. Fair enough then. I will start at the second

7 paragraph.

8 .

9 "I am disturbed by the statement in your letter that

10 Canio's investment is valuable, because Canio's minute

11 book does not disclose that the company has purchased

12 or acquired anything. In the case of both companies,

13 all that is shown is the first meeting of the

14 directors, the opening of the bank account, and the

15 resignation of one Sark director, to be replaced by

16 another.

17 .

18 It seems, therefore, that the records are wholly

19 incomplete, and this is another aspect that will have

20 to be looked into.

21 .

22 The answers to your questions are as follows:"

23 .

24 Mr. Barry had earlier asked four questions on the 20th

25 of March, '84. He gives the answers.

26 .

27 "The shareholders of both Canio and Ardcarn are myself,

28 Howard Oke Dart, Edward Richard Morin, and Mary Rochele

29 Mourant, each holding three 1/1 shares.

30 .

1 In the case of both Canio and Ardcar, the directors
2 are Mrs. HLG Gibson or Mr. G King and myself.

3 .

4 3. No accounts have ever been prepared.

5 .

6 4. You will appreciate that I am not able to give such
7 a statement."

8 .

9 That is a reply to the question No. 4 in Mr. Barry's
10 letter, which was on the 20th of March, '84, at page
11 659, which states: "Statement of Affairs. Details of
12 assets and liabilities at the present time."

13 .

14 Mr. Wheeler reply is: "You will appreciate, I am not
15 able to give such a statement."

16 .

17 And then, the next page, 664:

18 .

19 "It may be that you will have to meet up to sort out
20 what could prove to be a disastrous muddle."

21 .

22 This is the correspondence leading up to the meeting of
23 the 26th of June, Mr. Finnegan?

24 A. Yes.

25 430 Q. You don't see any reference anywhere, in any of that,
26 to the events that you say gave rise to the 26th of
27 June meeting, do we?

28 A. I think what he was doing was getting his fundamental
29 facts right, first.

30 431 Q. Are you - do you seriously expect the Chairman to

1 accept that what you wanted to do was get your Ts
2 crossed, and your Is dotted, in the circumstances where
3 you knew, as a matter of fact, that you were, Foxtown
4 was a one-third owner of the lands, and you say to this
5 Tribunal, as a matter of fact, in 1984 you were
6 concerned about events that you say you knew nothing
7 about, the undertaking and the contract sale to
8 Kilnamanagh? Is that what you expect the Chairman -
9 sorry - is that what you are saying? That really
10 before anything at all was going to happen, we were
11 going to have an afternoon picnic, getting the Ts
12 crossed, the share certificates signed, and everything
13 sorted out?

14 A. Is it right or not, that there was concern at that time
15 that, if there were contracts in existence, let it be
16 for - let it be for stock relief or otherwise, although
17 I was told, by the way, that I shouldn't be concerned
18 about them, that they wouldn't, they wouldn't be put in
19 action, there were contracts there. And actually, I
20 was gravely concerned, that if there were contracts
21 that weren't - that things weren't cleared up.

22 .

23 Now, the question of - which was great, that it was
24 cleared up, that Mr. Russell did clear, that he - he
25 did give an undertaking at the meeting that everything
26 was right.

27 432 Q. I accept that, and we will be getting to the meeting,
28 but not this evening, I suspect.

29 .

30 But all I am saying to you is, that the next event that

1 occurred before the meeting, is a letter of the 11th of
2 June, at least on the documentation, which is at page
3 690, which is Mr. Barry's reply. 690.

4 .

5 He goes through, having had a meeting with Mr. Wheeler,
6 going through the paperwork - "Allowing me to examine"
7 - as you can see:

8 .

9 "You confirmed that Canio is a wholly-owned
10 subsidiary."

11 .

12 In No. 2: "You confirmed that the issue share capital"
13 - now, it seems at that stage that there has been some
14 tidying up between the events of the 22nd of March,
15 '84, and the 11th of June, '84, because the share
16 capital of Ardcarne is now identified, whereas, as you
17 will see from Mr. Wheeler's original letter of the 22nd
18 of March, '84, he had Ardcarne down as being owned by
19 three individuals.

20 .

21 So obviously the tidying up is going on in between, all
22 at a, I won't say a hurtling pace, but moving along at
23 pace.

24 .

25 He identifies having been, seeing the Declaration of
26 Trust.

27 .

28 "3. I have informed you that it is our, i.e. Foxtown's
29 undertaking, that the assets of Ardcarne Limited and
30 Canio, being principally land in Ireland, are not

1 subject to any mortgage, pledge, bond or charge, and
2 that they should not be so encumbered, nor disposed of
3 without Foxtown's prior written consent. You have
4 accepted this point.

5 .
6 4. You have agreed to supply me with Statements of
7 Affairs for both Ardcarn Limited and Canio Limited
8 detailing the companies' assets and liabilities. You
9 have also agreed to ascertain and confirm that Canio
10 Limited has good clean title to its assets, and that
11 such assets are unencumbered by any mortgage, pledge,
12 bond or charge, etc. I would appreciate receiving
13 these confirmations as soon as possible.

14 .
15 You have agreed that I shall be appointed a director of
16 both Ardcarn Limited and Canio Limited as a
17 representative of Foxtown's one-third interest in these
18 two companies. Please confirm in due course that my
19 appointment has been effected."

20 .
21 And the next event that occurs is the actual meeting?

22 A. Yes.

23 433 Q. On the 26th.

24 .
25 CHAIRMAN: Well, we will continue with that tomorrow
26 morning. Half past ten tomorrow morning.

27 .
28 THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
29 THURSDAY, THE 25TH OF OCTOBER, 2001, AT 10:30 A.M..

30

