

1 THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY, 26TH
2 OCTOBER, 2001 AT 10.30AM:

3

4 MR. HANRATTY: Before Mr. Hussey resumes his examination
5 of his client. As you are aware, Sir, we have
6 scheduled three further witnesses for today, Mr. Tom
7 Brennan, Mr. Stephen Treacy and Mr. Hugh Owens. I
8 understand from Mr. Hussey that he expects to be
9 approximately an hour with Mr. Finnegan. I anticipate
10 that my re-examination of Mr. Finnegan will be
11 relatively brief, approximately fifteen minutes or so.

12

13 Mr. Brennan, as you will recall, was provided with a
14 list of outstanding items where he indicated in the
15 course of his testimony that he would check out certain
16 matters, that he was not in a position to assist us
17 with at the time. We have been provided with a list,
18 and it will be necessary to go through that with him.
19 That is going to take some little time, and there are
20 one or two matters that have not yet been dealt with
21 with Mr. Brennan because they have, by and large,
22 arisen out of the testimony ever since. And so I
23 anticipate Mr. Brennan will certainly take some time in
24 the witness-box.

25

26 And Ms. Dillon believes that Mr. Treacy will certainly
27 be at least an hour, possibly somewhat more than that
28 in the witness-box. I wonder, in the circumstances, I
29 wonder, would you consider it necessary to have him
30 here for the rest of the day.

1

2 CHAIRMAN: No, there is no point in that. I suggest
3 that if he could attend Tuesday morning at half past
4 ten. There is a reality that he will be taken
5 certainly shortly after that point in time.

6

7 MR. HANRATTY: Yes, I would think so.

8

9 CHAIRMAN: Very good. Thank you.

10 .

11 CONTINUATION OF CROSS-EXAMINATION OF MR. FINNEGAN BY

12 MR. HUSSEY:

13 .

14 1 Q. MR. HUSSEY: Now, Mr. Finnegan, we will resume where we

15 left off yesterday afternoon. I think I had just put
16 up the handwritten indemnity at number 436. I don't
17 need TO put up at the moment. It was dated 25th
18 February, 1981. And I think the point was that I think
19 you had confirmed that you had not seen, or you were
20 not aware that that indemnity had been given?

21 A. That's correct, Sir.

22 2 Q. Now, I just want to move on to something else before I

23 come back to the Wheeler/Barry relationship. There is
24 one other thing I want to deal with, and that is the
25 Mr. Owens' contribution to the affair. Can I just put
26 up document 367, please, in the first instance.

27 .

28 Mr. Finnegan, this is a note dated 25th June, 1980,
29 addressed to Bedell Cristin in Jersey, and it's re:

30 .

1 "Victa Investments Limited, R 356."

2 .

3 The R 356 is simply the Bedell Cristin internal
4 reference for the company, Victa Investments Limited.

5 Under that we have:

6 .

7 "Would you please note that we have transferred our
8 interest the in above can have to Worland Investments
9 Limited, care of your office which company is now the
10 beneficial owner of Victa Investments Limited."

11 .

12 We know that you were a beneficial owner and Mr.
13 Brennan and Mr. McGowan of Victa Investments, I think.

14 I think we also know, I think it's been accepted that
15 Messrs. Brennan and McGowan were the beneficial owners
16 of Worland, and you had not a beneficial ownership in
17 Worland.

18 .

19 What I am coming to is under - that there is the first
20 three, there is a signature of Thomas Brennan, which
21 Mr. Brennan has confirmed that is his signature and he
22 signed that document. We have a signature of Joseph
23 McGowan, and that is Joseph McGowan's signature, and he
24 has confirmed that. And then there is a "handwritten
25 John Finnegan", and a "typed John Finnegan". Can you
26 say if that John Finnegan, the "handwritten John
27 Finnegan", is that your signature?

28 A. No, sir.

29 3 Q. Had you been presented with this document before this
30 Tribunal, before documents came out from this Tribunal

1 to you? Did you know of this document?

2 A. No, sir.

3 4 Q. Had you been asked to sign that document?

4 A. No, sir.

5 5 Q. Do you know who signed that document, "John Finnegan"?

6 Who put the legend "John Finnegan" on to that document?

7 A. No, sir.

8 6 Q. I think Mr. Brennan and Mr. McGowan stated that they

9 were presented with this document in, I think, if I

10 remember correctly, in Mr. Owens' office, but they

11 signed their names and left. Your signature wasn't

12 appended, or I won't say your signature, your name

13 wasn't handwritten on that document when they signed

14 the document. That's their evidence.

15 A. Yes, sir.

16 7 Q. OK. Now, I just wanted to clarify that that that was

17 not your signature.

18 A. Thank you.

19 8 Q. Perhaps Mr. Owens will be able to explain that when he

20 comes to give his evidence.

21 .

22 Now, to come back to something more relevant to what we

23 were talking about yesterday. I want to put up

24 Document 3318, please. I think, Mr. Finnegan, we had

25 this document before, I think it was introduced when I

26 was cross-examining. It was Mr. Smith from the Lombard

27 and Ulster, I think the Lombard and Ulster witness.

28 This is a letter from Owens Murray & Company of the

29 20th October, 1983.

30 .

1 Now, this is before Mr. Barry was introduced as a
2 director of Canio and before there was any application
3 for a loan to Lombard and Ulster on behalf of Canio.
4 And this is a letter from, as I say, October 1983 to
5 Mr. Ken Wall. Do you know Mr. Ken Wall?

6 A. Yes, sir.

7 9 Q. Who is he, or what is he in the bank?

8 A. He is the managing director of Lombard and Ulster, sir.

9 10 Q. I see. And this is a letter:

10 .

11 "Re: Kilnamanagh Estates Limited.

12 Dear Ken, Joe McGowan has asked me so set out the
13 present financial position of the above company and its
14 medium term plans, which are as follows:"

15 .

16 He goes on to list the assets and the borrowings on
17 various properties that that company purportedly owned.

18 I think you can see that the first page it have is

19 Blakesfield, the next page, 3319, Castleheaney, then

20 Hartstown. Then we have borrowings, Bank of Ireland.

21 And then we have AIF. Do you see that?

22 A. Yes, sir.

23 11 Q. And we have AIF, and on the fifth line down from AIF
24 you have, "Aikens land, Sandyford approval for 300
25 houses, spring 1983." Do you see that?

26 A. Yes, sir.

27 12 Q. And that seems to be an indication to Lombard and
28 Ulster that Kilnamanagh Estates owns the lands at
29 Sandyford and it has planning permission, planning
30 approval for 300 houses. Isn't that so?

1 A. Yes, sir.

2 13 Q. It also indicates that there is - if I just go on to
3 the next line: "300 houses in the spring, plus 600
4 more eventually. This security is released when OD
5 reduces below 800,000." Do you see that?

6 A. Yes, sir.

7 14 Q. That seems to be a reference to the undertaking or at
8 least to the special resolution that we have seen
9 already made in May of 1981. I think I can have that
10 again - 423. If you just skip down, I think it's
11 paragraph 3 - paragraph 2. This is the special
12 resolution to give the undertaking on Canio Limited to
13 guarantee the Kilnamanagh debt.
14 .
15 "That the company do guarantee payment to Allied Irish
16 Finance of all sums from time to time remaining unpaid
17 to Allied Irish Finance by the said Kilnamanagh
18 Estates. Whether as principal or surety or on any
19 account whatsoever provided that the maximum liability
20 on the company under the said guarantee shall not
21 exceed the sum of ú800,000, together with interest and
22 provided further that the liability of the company
23 shall cease as soon as the indebtedness of Kilnamanagh
24 Estates is reduced to ú1 million."
25 .
26 But the ú800,000 in the Hugh Owens' letter to Mr. Wall
27 seems to be a reference to that. I don't think there
28 is anything else that we have come across that would
29 indicate - it seems to be a reference to that ú800,000?
30 A. Yes, sir, it does.

1 15 Q. It seems that Mr. Owens' knowledge in October of 1983
2 is that the Sandyford lands, there was borrowings
3 secured on the Sandyford lands up to ú800,000. That
4 seems to be his knowledge in October of 1983?

5 A. Yes, sir.

6 16 Q. He also seems to think that that land was Kilnamanagh
7 Estates' lands when, in fact, it was Canio lands?

8 A. Yes, sir.

9 17 Q. That seems to be the case.

10 .

11 Now, I am coming back now to the Wheeler/Barry
12 relationship and what was known when they were
13 communicating with each other. We have seen that
14 special resolution signed by Mr. Wheeler in May of
15 1981. We have seen the handwritten indemnity that
16 Mr. McGowan gave in February of 1981. Can I have the
17 undertaking, please? It's 3062.

18 .

19 I think this is a letter from Read and McNabb to the
20 manager of Allied Irish Finance. And I think it's
21 conditional on "Providing facilities to your clients,
22 then we undertake as follows:"

23 .

24 And if we can go down to the last paragraph of that
25 letter, please. And you just see the very last
26 paragraph is the undertaking that we are talking about.

27 .

28 "We also undertake to hold the deeds and land
29 certificates of 86 acres at Sandyford, County Dublin
30 purchased by Canio Limited in trust for you and on

1 completion of stamping and registration to lodge same
2 with you."

3 .

4 That's the undertaking. That's the famous undertaking
5 to Allied Irish Finance, which was authorised in May of
6 1981, and it's now given in this letter.

7 A. Yes, sir.

8 18 Q. And I think we know that monies were advanced by AIF on
9 foot of that undertaking so that, therefore, the
10 condition was fulfilled and the undertaking came into
11 fruition. That undertaking came about.

12 A. Yes, sir.

13 19 Q. We know that Mr. Wheeler, in 1985, said that that
14 undertaking was again without the knowledge or
15 authority of any of the directors of Canio Limited, and
16 we know that Mr. Wheeler also said in 1985 that he had
17 no knowledge of that undertaking.

18 A. That is correct, sir.

19 20 Q. Did you have any knowledge of that undertaking?

20 A. No, sir.

21 21 Q. We know that Mr. Wheeler, in 1985, also, or in 1984, in
22 one of his first communications with Mr. Barry, said
23 that he was surprised, he was disturbed, is how he put
24 it, that the company had a valuable asset in Ireland.
25 We now know, and indeed we have heard from Mr. Howard,
26 who is a partner of Mr. Wheeler's - as I understand it,
27 we are not going to hear from Mr. Wheeler - where
28 Wheeler has been requested to give evidence here and
29 has refused to come over. So we have to do the best we
30 can with what we know from Mr. Howard and from the

1 documents. But Mr. Howard has confirmed, to me
2 actually under cross-examination when he was here, that
3 there is a conflict in Mr. Wheeler's position when he
4 said he didn't know about the undertaking or he didn't
5 know that there was a valuable asset of Canio, that
6 that didn't square with the record that Mr. Wheeler had
7 kept in Jersey.

8 A. Yes.

9 22 Q. Because we know that Mr. Wheeler knew in a May of 1981
10 that there was --

11

12 MR. HANRATTY: Sorry, if we could have that document on
13 screen, it would help; the document to which he refers
14 to from Mr. Wheeler, as I understand it.

15 .

16 I should also perhaps indicate for the record that it
17 is true that the Tribunal has requested Mr. Wheeler to
18 attend to give evidence. He has been requested again
19 to attend to give evidence, and he has been informed of
20 the testimony of Mr. Finnegan, and in particular, the
21 point that was put to Mr. Finnegan, that if
22 Mr. Finnegan is correct in his testimony to the effect
23 that he was not informed of the true purpose of the
24 deduction of ú10,000 for his money, then it would
25 appear to follow that Mr. Wheeler was involved in a
26 deliberate deceit.

27 .

28 Mr. Wheeler has been involved of that evidence and has
29 been furnished with the relevant extracts from the
30 transcript, and he has again been invited to attend in

1 the Tribunal to give evidence in relation to this
2 matter. We are not yet aware whether he has made any
3 division on the matter, but we haven't heard from him
4 since. I thought it might be appropriate to put that
5 on the record at this point in time.

6 .

7 MR. HUSSEY: Thank you very much, Mr. Hanratty.
8 However, Mr. Wheeler would have been aware from the
9 cross-examination of Mr. Howard that his integrity was
10 being questioned, certainly from this side of the
11 house.

12 .

13 I don't think I left any doubt in the mind when I was
14 questioning Mr. Howard in respect of these records.

15 .

16 Now, sorry, Mr. Hanratty, you did ask for a particular
17 document --

18

19 MR. HANRATTY: Sorry. I thought Mr. Hussey had
20 referred to a document that wasn't on the screen.

21 Perhaps I am mistaken in that.

22 .

23 MR. HUSSEY: I had actually put it up on the screen
24 yesterday. The one from Mr. Wheeler to Mr. Barry.

25

26 MR. HANRATTY: Yes, I think it would be helpful if we
27 could see that again.

28 .

29 MR. HUSSEY: Sorry, it's 1024. Sorry, I beg your
30 pardon, 3269. I had referred to this yesterday. I

1 had put it up on the screen yesterday. This is on the
2 8th August, 1985 - Mr. Wheeler is writing to Mr. Barry.

3 And on the third paragraph there you will see:

4 .

5 "I repeat that I had absolutely no knowledge of any
6 undertaking given by Russell to Allied Irish Finance.

7 I put the direct question to him in June of 1984 and
8 submitted with this message is a copy of Russell's
9 reply of the 20th July 1984. Moreover, Russell

10 deposited with me a hand search carried out by Messrs.
11 Brennan and Son Limited law searchers, which did not
12 disclose any obligation to Allied Irish Finance."

13 .

14 Now, this was again at a time when the minutes of Canio
15 Limited - sorry, the special resolution which was
16 documented and signed off by Mr. Wheeler and certified
17 to be an extract from the minutes of Canio Limited,
18 dated 15th May, 1981, was in Mr. Wheeler's possession,
19 where it specifically referred to the undertaking to be
20 given by Mr. Russell.

21

22 MR. HANRATTY: Sorry, again Sir, I am sorry to interrupt
23 Mr. Hussey, and I don't propose to get involved in his
24 questioning.

25 .

26 In the light of that document, we had another look at
27 correspondence which was exchanged in 1989 between
28 Mr. Wheeler and Binchy & Partners in connection with
29 testimony which Mr. Wheeler was being required to give
30 in the context of the proceedings. I was proposing to

1 put these documents to Mr. Finnegan in re-examination,
2 but it occurs to me that perhaps, in fairness to
3 Mr. Hussey, he should have seen them, and perhaps may
4 wish to put them himself to his client. He has been
5 furnished with a copy of these documents, which I don't
6 think have previously been circulated, and it's at his
7 option whether he wishes to explore them or not, but
8 we will be exploring them.

9 .

10 Unfortunately, they don't carry the weight of testimony
11 from Mr. Wheeler himself, but they are, nonetheless,
12 documents which were, or correspondence which was
13 exchanged between Mr. Wheeler and Messrs. Binchy &
14 Partners in 1989 and do touch on this particular point.

15 .

16 MR. HUSSEY: As I say, I have only just been handed
17 these documents. They hadn't been circulated before.
18 I wonder, might I have an opportunity to have a read of
19 these, because it seems to be the very matter I am
20 dealing with Mr. Finnegan right now. Maybe if I could
21 have five minutes to read these.

22

23 CHAIRMAN: Ten minutes. Is ten minutes adequate?

24 .

25 MR. HUSSEY: I think so.

26

27 CHAIRMAN: If you are under any pressure, let me know.

28

29 MR. HUSSEY: Thank you, Sir. Thank you very much.

30

1 THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND
2 RESUMED AS FOLLOWS:

3

4 MR. HUSSEY: I just want to say I am very grateful to
5 the Tribunal for making these additional documents
6 available to me at this stage because they are very
7 important in the context of this present line of
8 questioning. If I can just put it up, Sir.

9 .

10 It appears to be in the context of the - this
11 correspondence arises in the context of the dispute
12 between Allied Irish Finance and Lombard & Ulster as
13 regards their respective priorities to the charges, and
14 it's in the context that the litigation - that this
15 inquiry - this correspondence arises and initially
16 there is a letter from Binchy & Partners, Mr. Caldwell,
17 5088. Can I have that, please?

18 .

19 Yes. Mr. Finnegan, this is a letter addressed to
20 Mr. Wheeler from the firm of solicitors, I think,
21 acting for Lombard & Ulster, Mr. Caldwell. It's
22 writing to Mr. Wheeler.

23 .

24 "We write to advise that the hearing of this matter is
25 scheduled to commence on the 18th July next in the High
26 Court in Dublin. You are required as a witness to
27 give evidence that the board of directors of Canio
28 Limited was never requested in or around or prior to
29 20th May, 1981 to give any guarantee to Allied Irish
30 Finance Company Limited in respect of the borrowings of

1 Dollanstown Estate Company or Kilnamanagh Estates
2 Limited and that the company did not authorise
3 Mr. George Russell of Messrs. Read & McNabb to give any
4 undertaking to the defendant Allied Irish Finance, such
5 as is contained in the letter dated 20th May 1981 from
6 Messrs. Read & McNabb to Allied Irish Finance Company
7 Limited."

8 .
9 You see there he is being asked to attend Dublin as a
10 witness to give evidence, basically, to deny the
11 contents of what we now know to be the resolution of
12 the 15th May 1981. He is being required to deny that
13 there was ever a request to give a guarantee, and that
14 the company did not authorise Mr. Russell to give the
15 undertaking.

16 .
17 We have seen from the resolution in May of 1981 that
18 that's exactly what was authorised in the course of
19 that resolution.

20 .
21 Now, sorry, I'll just continue with the letter:

22 .
23 "You will also have to bring the relevant minute book
24 of the company to court relative to the undertaking or
25 equitable mortgage.

26 .
27 We will obliged if you contact the writer as a matter
28 of urgency and indicate your availability to attend
29 without the issuing of a subpoena. If the writer is
30 unavailable, please ask for Dermot Furey."

1 .
2 Mr. Wheeler's response to that is 5090, and it's dated
3 17th July, which you will notice is the date before the
4 court.

5 .
6 He writes:

7 .
8 "Mr. Smyth, I have just tried to speak to you, but was
9 told that you were in court. I will myself be out of
10 the office for most of this afternoon and so that there
11 are no delays in your considering what I have
12 discovered, I am conveying to you the following
13 information."

14 .
15 This is where it gets critical:

16 .
17 "I will not be able to give the sort of evidence that
18 you envisage in your letter to me of the 10th July.
19 The facts are that on the 12th May, 1981, Mr. Hugh
20 Owens of Owens Murray & Company sent me a letter, a
21 copy of which is being faxed to you, but which
22 doubtless your principals have on file."

23 .
24 Unfortunately, we don't have that.

25 .
26 "On the 15th May" --

27
28 MR. HANRATTY: Sorry, we do actually, Sir. That's in
29 the bundle of documents.

30

1 MR. HUSSEY: Sorry, I beg your pardon.

2

3 MR. HANRATTY: Perhaps Mr. Hussey inadvertently wasn't
4 given it, but we do have that.

5

6 MR. HUSSEY: I beg your pardon, I am sorry.

7

8 MR. HANRATTY: I'll get a page number now.

9

10 MR. HUSSEY: It's when I read further on, this seems
11 that this resolution, or a copy or draft resolution was
12 enclosed with the letter of the 12th May.

13

14 MR. HANRATTY: Yes, 443.

15

16 MR. HUSSEY: The earlier letter of the 12th May, where
17 Mr. Owens encloses a resolution for signature by the
18 chairman and secretary of the company.

19

20 "The title deeds of Canio Limited are being deposited
21 on a short-term basis in support of borrowings of
22 Kilnarnagh Estates Limited, a company owned by Brennan
23 and McGowan. Could you please return this to me at
24 the very earliest opportunity."

25

26 So it's quite clear from that letter that Mr. Owens is
27 telling Mr. Wheeler that the title deeds of Canio are
28 going to be used as an equitable mortgage to support
29 borrowings of Kilnarnagh Estates Limited. Isn't that
30 so?

1 A. Yeah, yes.

2 23 Q. And that that was the reason for the resolution, the
3 requirement of the resolution in order to keep the
4 company law aspect of the matter in order?

5 A. Yes, sir, it looks like that.

6 24 Q. It's quite clear from that letter in May that
7 Mr. Wheeler is informed that the title deeds were to be
8 given as security. As we know, it was - they
9 were - the title deeds were to be held in trust, was
10 the way the undertaking was actually framed, but it
11 amounts to the same thing.

12

13 I am sorry, could I go back to the other letter now,
14 5090.

15

16 I am just in the middle of that paragraph:

17 .

18 "On the 15th May, 1981, Mr. AF McDonald" -

19 .

20 I think we now understand that to be the second
21 signatory on the special resolution in May.

22 Mr. Wheeler and Mr. McDonald seem to be the signatories
23 of that.

24 .

25 "- who was then my assistant, returned the resolution
26 enclosed with the letter of the 12th May, and a copy of
27 Mr. McDonald's letter will also follow. The contents
28 of the resolution were never considered by the board of
29 directors of the company nor by the shareholders, nor
30 was a copy taken. At a much later date I was supplied

1 with a copy by Mr. Brennan and a copy of that
2 resolution follows. Although the purported resolution
3 bears my signature and that of Mr. McDonald, I repeat
4 that it was not considered by the shareholders.

5 .
6 I shall await your telephone call with your reactions
7 and that those of counsel."

8 .
9 So here he is confirming in 1981 that he will not be
10 able to give the evidence that he was requested to
11 give.

12 A. Yes, sir.

13 25 Q. Now, can I just bring you now to letter 1048, please.

14 .
15 This is a letter dated 4th September, 1985, a letter
16 from Mr. Wheeler to Messrs. A & L Goodbodies. I think
17 at the time A & L Goodbodies were going to, I think - I
18 don't think they ever did eventually, but they were
19 going to - they were going to act for Canio Limited in
20 respect of trying to sort out the difficulty with the
21 undertaking and the nondisclosure of the undertaking
22 and as far as the Lombard & Ulster thing was concerned.

23 .
24 But this is a letter from Mr. Wheeler to Messrs.
25 Goodbodies in 1985.
26 .
27 "I act for Canio Limited and I am also a director of
28 the company. The company is owned by three sets of
29 beneficial owners, two of which I represent, but the
30 third owner is represented by Mr. Barry of College

1 Trustees. I would be very grateful if you would
2 cooperate fully with Mr. Barry in supplying any
3 information he requires.

4 .

5 The next paragraph, we go on to his explanation in 1985
6 of the undertaking.

7 .

8 "In 1980, Canio Limited purchased approximately 86
9 acres of land at Sandyford, County Dublin. In May of
10 1981, I was instructed to hold a meeting of the
11 directors of Canio Limited for the purpose of granting
12 a guarantee to Allied Irish Finance Company Limited of
13 a loan to an Irish company called Kilnamanagh Estates
14 Limited up to a total maximum of ú800,000 Irish. The
15 instruction came from an Irish chartered accountant who
16 had in fact instructed me to incorporate the Canio
17 Limited on behalf of his three clients. A copy of the
18 resolution was sent back to the accountant, but
19 unfortunately was not minuted by Canio Limited. This
20 omission has only recently come to light when a copy of
21 what was sent back to the accountant was made available
22 here in Jersey. A copy is attached hereto and you
23 will see that the resolution authorises one George A
24 Russell to sign the guarantee on behalf of Canio
25 Limited. Mr. Russell also gave an undertaking to
26 Allied Irish Finance limited that he would hold the
27 title deeds to the Sandyford property to their order."
28 .
29 I will just go through the next paragraph for
30 completeness sake.

1 .
2 "The letterhead of Kilnamanagh Estates suggests that
3 the company is owned by two of the three persons
4 interested in Canio Limited and it is thought that the
5 guarantee of Kilnamanagh's debt was not known to that
6 third owner."

7 .
8 I think that may be a reference to the guarantees, the
9 handwritten guarantees we saw yesterday, for Lombard &
10 Ulster, under the instructions not to reveal to anybody
11 else the personal guarantees of Messrs. Brennan and
12 McGowan.

13 A. Yes, sir.

14 26 Q. But in respect of Mr. Wheeler's position - sorry, can I
15 just scroll back to that. The earlier paragraph there.
16 Mr. Wheeler's position in 1985 was that he was
17 instructed to hold a meeting of the directors of Canio
18 for the purpose of granting the guarantee and of
19 granting the - of authorising the undertaking, and in
20 1985, what appears from that paragraph, is that he is
21 confirming that that resolution and those
22 authorisations were in fact given in May of 1981 by the
23 company. That seems to be his position from that
24 paragraph.

25 A. Yes, sir.

26 27 Q. It seems - sorry, Sir, I am just making a comment now.
27 It seems all the more important, therefore, that we
28 hear from Mr. Wheeler in this regard.

29 .

30 Now, if I can move on now, Mr. Finnegan. We had this

1 document yesterday, but I think now would be a good
2 time to revisit it.

3 .

4 1024, please. This is a communication between Mr.
5 Barry to Mr. Smith of Lombard & Ulster. We had it
6 yesterday. But in the context of this letter, Mr.
7 Barry had clearly had spoken with Mr. Wheeler, and I
8 think - if we can scroll down through this. I don't
9 need to read it all because I think it was read into
10 the record yesterday.

11 .

12 Paragraph 3 of that, the numbered paragraph 3. He is
13 saying to Lombard & Ulster:

14 .

15 "I understand the caution relates to an undertaken
16 given in 1981 by a Dublin solicitor to Allied Irish
17 Finance in respect of the title deeds to Canio land.

18 I was not a director of Canio at the time but I am
19 advised by Mr. Wheeler that the undertaking was given
20 with neither the knowledge of nor the authority of
21 Canio's directors."

22 .

23 That seems to be what Mr. - well, Barry's account of
24 what Mr. Wheeler recorded to him in August of 1985.

25 Isn't that so?

26 A. Yes, sir.

27 28 Q. That seems to be at odds with what Mr. Wheeler told
28 Goodbodies in September of 1985. That --

29 A. Yes, indeed.

30 29 Q. That the undertaken was again with full authority,

1 isn't that so?

2 A. That's so.

3 30 Q. So Mr. Barry wasn't being kept up to date or abreast of

4 Mr. Wheeler's position. Certainly this is quite

5 different to the position that Mr. Wheeler expressed in

6 September of 1985 to Messrs. Goodbodies?

7 A. It is indeed very different, yes, sir.

8 31 Q. Now, I'll just bring you back now to 1984. This is at

9 a time when you were concerned that Mr. - to impose

10 Mr. Barry on the Canio situation in order to protect

11 your interests. And the first communication from

12 Mr. Wheeler to Mr. Barry, again I think we had it

13 yesterday, but I think it's important to revisit it at

14 this point. Page 663, please.

15 .

16 This is the 22nd March, 1984, Mr. Wheeler to Mr. Barry.

17 Again, I don't think I need to read the first paragraph

18 of that. I read it into the record yesterday. Just

19 the second paragraph:

20

21 "I am disturbed by the statement in your letter that

22 Canio's investment is valuable because Canio's minute

23 book does not disclose that the company has purchased

24 or acquired anything. In the case of both companies,

25 all that is shown is the usual first meeting of

26 directors, the opening of the bank account and the

27 resignation of one director to be replaced by another.

28 It seems therefore that the time records are woefully

29 incomplete and this is another aspect which will have

30 to be looked into."

1 .
2 Now, we know in 1985 that Mr. Wheeler was able to say
3 - well, he was able to say a number of things, all
4 contradictory. One, that there was a resolution
5 authorising the guarantee and indeed the undertaking.
6 Another, that there was an undertaking and
7 guarantee given without any authority. And here he is
8 saying to Mr. Barry, there is nothing; there is nothing
9 on the record to show either that the company is a
10 substantial company or that there is anything in the
11 minutes. Isn't that so?

12 A. That's so.

13 32 Q. You see, we know that Mr. Wheeler- he obviously,
14 certainly on the record, he had signed a resolution in
15 May of 1981, but we also know that he - that he knew
16 about the contracts between Canio and Kilnamanagh and
17 Canio and Grange that had been entered into in '79 and
18 '80. Can I just have memo 406, please.

19 .
20 This document, Mr. Finnegan, as far as the evidence is
21 concerned at this stage, as far as we know, this
22 document originated with Mr. Owens, and seems to have
23 been - the files that they emerged to this Tribunal to
24 - were Mr. Russell's files and the Bedell Cristin file.
25 So Mr. Wheeler had it in Jersey and Mr. Russell had it
26 here, as well as obviously Mr. Owens. And that seemed
27 to have been confirmed to me by Mr. Howard when
28 Mr. Howard was in the witness-box. He had seen this
29 document before, and it was on the Bedell Cristin file.

30 .

1 Now, this document appears to accompany a letter of the
2 26th February, 1982 - sorry, maybe we should have the
3 letter first. This is a letter to Mr. Russell, 504.

4 This is from Mr. Owens to Mr. Russell.

5 .

6 "Dear George, I enclose contracts between Laurence
7 Wheeler in trust and Kilnarnagh Estates dated 24th
8 September, 1979."

9 .

10 So you see that even at that stage Mr. Wheeler had
11 executed contracts in trust. I think it may have been
12 because, in 1979, Canio had yet to be - had yet to be
13 formed, and you may remember Mr. Gleeson had acquired
14 the property in trust. The company was still to be
15 formed, and Mr. Wheeler may have executed contracts
16 onto the Kilnarnagh Estates, but he signed in trust
17 because Canio hadn't been formed yet?

18 A. Yes, sir.

19 33 Q. But it would suggest that Mr. Wheeler knew that the
20 company owned a substantial tract of land in Sandyford
21 and was selling on foot of a contract, certainly parts
22 of that land, to Kilnarnagh Estates and indeed to
23 Grange Limited. So he knew in 1982, or before it, of
24 the value of the Canio lands in Ireland. It would
25 suggest that. He signed contracts in trust dated 24th
26 September, 1979.

27 .

28 I will proceed with the letter.

29 .

30 "Would you please note that provisions should be made

1 there for a deposit of ú20,000. Also enclosed is a
2 contract dated 16th December, 1980 between Canio
3 Limited and Grange Developments Limited in which
4 provision should be made for a deposit of ú10,000.
5 A contract for the sale by Kilnamanagh to Grange for"
6 - this would be a further contract on now - "ú840,000
7 should be dated 17th November, 1981 and carry a ú20,000
8 deposit. The contract dated 1982 is OK, but will
9 probably never even be prepared.

10 .

11 It would appear that the tax plan is that all these
12 contracts will be revoked and that the ú20,000 deposit
13 in the 1979 agreement and the ú10,000 deposit in the
14 16th December agreement will both be forfeited.
15 Grange will then acquire the property through a
16 different route. I also enclose a memorandum of these
17 transactions.

18 .

19 Would you please confirm to me that you applied for and
20 obtained exchange control permission for Canio to buy
21 the property."

22 .

23 And we know that in 1982 Mr. Wheeler executed and
24 obtained contracts in respect of this land. There is
25 no mention of that when he speaks with Mr. Barry or he
26 communicates with Barry in 1984?

27 A. That's correct, sir.

28 34 Q. Sorry, can I come back now to the particular document,
29 the 406. I think that is the Owens' plan in respect of
30 the particular lands at that particular time, the

1 contract to purchase. The land was taken into Canio in
2 December 1980 for tax purposes. Kilnamanagh Estates
3 wanted to acquire a certain portion of it for 1.3, and
4 as Canio Limited was not incorporated at the time,
5 James Gleeson was acting as pure nominee. "It is
6 desired that LA Wheeler execute the contract in trust."
7 .
8 That is, in fact, what seems to have happened, that he
9 did execute the contract in trust, the contract between
10 what was to become Canio and Kilnamanagh. That seems
11 to have happened.

12 A. Yes. Yes, sir.

13 35 Q. You see the last paragraph there, "The effect of 6, 7
14 and 4 will not be completed and that Grange will take a
15 conveyance of the entire on the 31st March, 1982."
16 Were you ever aware of that?

17 A. No, sir.

18 36 Q. We know it never happened, but were you aware that that
19 was planned to have come to pass?

20 A. No, sir.

21 37 Q. And we know at page 663, when Mr. Wheeler was
22 communicating with Mr. Barry in March of 1984, he made
23 no mention of either the special resolution or indeed
24 these contracts between Canio and Kilnamanagh and
25 Kilnamanagh and Grange in his communication with Mr.
26 Barry in 1984.

27 A. That's right.

28 38 Q. In fact, he was surprised there was anything there,
29 there was nothing put - the very opening paperwork for
30 forming a company, there was nothing else there at all.

1 And he expressed his disturbance that the company was a
2 valuable - that their investment was valuable.

3 .

4 I suggest that that - at its best, Mr. Barry would have
5 been misled by that statement from Mr. Wheeler. He was
6 disturbed he didn't know that the company had a
7 valuable investment. The very opening of the second
8 paragraph Mr. Wheeler says:

9 .

10 "I am disturbed by the statement in your letter that
11 Canio's investment is valuable."

12 .

13 We know, at this stage, that Mr. Wheeler had already
14 executed - signed off a resolution in respect of 86
15 acres in Sandyford. We know that he had signed
16 contracts in trust in respect of this land, and now he
17 is decrying a state of knowledge to Mr. Barry, which is
18 clearly against the record, isn't that right?

19 A. Yes, sir.

20 39 Q. If it was revealed - we know from Mr. Owens'
21 communication with Lombard & Ulster that he had, in
22 general terms, and in the context of a disclosure of
23 Kilnamanagh Estates Limited's property, that he had
24 placed the Sandyford lands in the Kilnamanagh Estates
25 portfolio as far as this communication with Lombard &
26 Ulster was concerned, and he also revealed that the
27 lands in Sandyford was encumbered to ú800,000, to
28 Lombard & Ulster, in 1983. We know that from the
29 earlier documents we have seen from Mr. Owens?

30 A. Yes, sir.

1 40 Q. Sorry, encumbered with ú800,000 to Allied Irish

2 Finance. I beg your pardon, my mistake.

3 A. That's right.

4 41 Q. However, what Mr. Owens did not reveal to Lombard &

5 Ulster, I am not saying it's deliberate or not, it just

6 simply isn't in the letter, is the clarification that

7 the lands in Sandyford was not a Kilnamanagh Estates

8 company property, it was Canio lands. That does not

9 appear in the communication from Mr. Owens to Mr. Wall

10 of Lombard & Ulster. Sorry, this is not on the screen

11 now Mr. Finnegan. This is a document we had earlier.

12 A. Yes, sir, I remember that, yes.

13 42 Q. However, we are coming now to the application for the

14 Lombard & Ulster loan. If Lombard & Ulster - remember

15 that they were being asked to provide half a million

16 pounds, a lot of money - if Lombard & Ulster were made

17 aware of the, let's say, the exposure to Allied Irish

18 Finance in the sum of ú800,000, how would that have

19 effected the application for further funds from Lombard

20 & Ulster?

21 A. I would say, sir, that it would have been - I'd have

22 thought that it would have been difficult for Lombard &

23 Ulster to grant the loan.

24 43 Q. We have seen, I think, three - well, one primary

25 application and three facility letters and variations

26 on those facility letters, ultimately culminating in a

27 facility letter in November of 1984. In none of the

28 applications, nor indeed in any of the correspondence

29 that we have seen with Lombard & Ulster, have we seen

30 any reference to any exposure to Allied Irish Finance

1 in respect of the Canio lands?

2 A. That's right, sir.

3 44 Q. I would suggest to you, Mr. Finnegan, that it was very
4 important to secure the loan, that Lombard & Ulster
5 were not informed of the undertaking?

6 A. It appears, sir, what we know now and what we didn't
7 know then, sir, that that would be the case, yes.

8 45 Q. We know that up to March of 1984, insofar as this
9 undertaking is concerned, you hadn't been informed of
10 it?

11 A. No, sir.

12 46 Q. I think you had got wind of the word of it and you made
13 inquiries about it?

14 A. I did, sir, yes.

15 47 Q. And you were reassured in June of 1984 that there was
16 no such exposure?

17 A. Yes, sir.

18 48 Q. I think we have seen that. So two critical players,
19 therefore, say, in June of 1984 - I mean, in so far as
20 we can say it, it's certainly up to March of 1984, the
21 last - the communication between Mr. Wheeler and Mr.
22 Barry in March of 1984 - two critical players, yourself
23 and Lombard & Ulster, were not aware in the course of
24 these loan applications of the undertaking to AIF?

25 A. Yes, sir.

26 49 Q. Now, can we come on to meeting - I think it's - sorry,
27 just before we come to the meeting in June, there is a
28 Document 690, Barry to Wheeler. There obviously had
29 been some communication between the pair of them since
30 the March - since the early sort of reconnaissance

1 mission by Barry to Wheeler, and Wheeler coming back to
2 him saying, "This is just a shelf company, there is
3 nothing except the very preliminary matters on file.
4 It has moved on then by June and obviously been in
5 communication with you." And this is Mr. Barry
6 writing to Mr. Wheeler, 11th June:
7 .
8 "Thank you for your time on Friday. I am writing to
9 summarise the points we covered at our brief meeting.
10 .
11 You confirmed that Canio Limited is a wholly-owned
12 subsidiary of Ardcarne Limited and kindly allowed me to
13 examine declarations of trust demonstrating that all 12
14 issued shares of Canio Limited are held by
15 officers/employees of your firm as nominee for Ardcarne
16 Limited.
17 You confirmed that issued share capital of Ardcarne
18 Limited, being 12 shares, is owned as follows. There
19 are listed there.
20 You allowed me to examine declarations of trust
21 evidencing these holdings and you delivered to me four
22 declarations of trust and stock transfer forms in
23 respect of Foxtown's beneficial interest, receipt of
24 which is hereby acknowledged.
25
26 I have informed you that it is our, Foxtown's
27 understanding, that the assets of Ardcarne Limited and
28 Canio Limited being principally the land in Ireland,
29 are not subject to any mortgage, pledge, bond or charge
30 etc. and that they should not be encumbered nor

1 disposed of without Foxtown's prior written consent.

2 You have accepted this point."

3 .

4 Clearly before this point, Mr. Barry had made the
5 inquiry and he had been informed that there had been no
6 mortgage, pledge, bond or charge, and further, it was
7 agreed that he'd be supplied with a statement of
8 affairs for both Ardcarne and Canio Limited detailing
9 the companies assets and liabilities. You also agree
10 to confirm at that "Canio had good clean title to the
11 its assets, vis land holdings in Ireland, and that such
12 assets are unencumbered by any mortgage, pledge, bond
13 or charge, etc. You have agreed that I shall be
14 appointed a director of both Ardcarne Limited and Canio
15 Limited as a representative of Foxtown's one third
16 interest in this these two companies. Please confirm
17 in due course that my appointment has been effected."

18 .

19 Following on from that meeting, he had a confirmation
20 and we have the notes of the meeting. 698. Sorry,
21 that's a letter following the meeting. I beg your
22 pardon. Sorry, 699 is the minutes of the meeting.

23 .

24 Now, Mr. Finnegan, you remember this meeting. This
25 was a fairly formal affair, Mr. Wheeler, Mr. Brennan,
26 Mr. McGowan, Mr. Finnegan, Mr. Russell and Mr. Barry
27 were all present?

28 A. Yes, sir, I do remember it. And the principal - the
29 main matter to be confirmed at the meeting was that
30 Mr. Russell was going to - was coming along, was

1 travelling, and he was going to bring the title deeds
2 with him to Guernsey, and that he would confirm that it
3 was free of any charges.

4 50 Q. I think at paragraph 3 there we see there:

5 .
6 "Mr. Russell confirmed that Joe had good clean title to
7 its land assets in Ireland and that they were not
8 subject to any mortgage, pledge, bond or charge etc.
9 He agreed to confirm this fact to Mr. Wheeler in
10 writing so as to enable Mr. Wheeler to give a similar
11 confirmation to Mr. Barry. Mr. Russell stated that
12 the title deeds had been in the custody of his firm
13 since the land's acquisition by Canio. He listed the
14 deeds and delivered them to Mr. Wheeler for safekeeping
15 against an acknowledgment of receipt."

16 .
17 We now know that the lands had in fact been the subject
18 of an undertaking. We have seen the undertaking and
19 we have seen not only that, but we have seen also that
20 Mr. Owens had written to Mr. Wheeler in 1981, telling
21 him that the lands, the title deeds were going to be
22 used as security. We have seen that already this
23 morning?

24 A. Yes, sir.

25 51 Q. You see, we know that at this particular meeting, the
26 confirmation by Mr. Russell that he had - the title had
27 been in his custody since the lands acquisition, and
28 that they were not the subject of any mortgage, pledge,
29 bond or charge. We also know that time moves on and
30 mortgages get repaid and had Mr. Wheeler's knowledge,

1 in 1981, been superseded by events, this
2 confirmation - and that the money had been paid back
3 and the undertaking released, then this confirmation
4 could well have been perfectly in order?

5 A. Yes, sir.

6 52 Q. We now know that that wasn't the case. We now know
7 that the undertaking was still extant.

8 A. Yes, sir. We now know that.

9 53 Q. And I think it took years of litigation up to 1989,
10 1990 before the banks were finally - before a
11 compromise was reached with the banks or the thing was
12 finally settled with the banks and Brennan and McGowan?

13 A. Yes, sir.

14 54 Q. Can I have number 706, please.

15 .

16 I think on the 4th July, this is again following on the
17 meeting a week or so later, Mr. Wheeler again writes to
18 Mr. Barry.

19 .

20 "Thank you for your letter of the 27th June. I confirm
21 that the notes of the meeting accurately reflect what
22 was discussed.

23 .

24 "I confirm that your appointment as director of Canio
25 and Ardcam has been put into effect and enclose copies
26 of the two minutes.

27

28 I find the balance sheet of Canio with you enclosed
29 with your letter a little puzzling because on the face
30 of it the three contributions do not seem to be equal.

1 However, I do not think that this is worth pursuing
2 until I hear from Mr. Owens, since I believe that the
3 figures that he will produce will clarify the position.

4 .

5 I have now written to Mr. Russell inquiring about the
6 whereabouts of the cash which features in the balance
7 sheet and the current amount."

8 .

9 Again it was taken as a fait accompli, that what Mr.
10 Barry had said, clear title not pledged, no nothing, is
11 accurately reflected in his notes, and he had nothing
12 to add at that point to suggest otherwise.

13 A. That's right. And it was, I must say at that stage,
14 that was a great relief to hear that, sir.

15 55 Q. Yes.

16 .

17 Now, Mr. Finnegan, it has been suggested to you that at
18 this time that you were aware of the application for a
19 loan to Lombard & Ulster, that that was, in fact, the
20 purpose of this meeting, was to clear the decks for
21 that matter to come to pass?

22 A. Sorry, would you say that again?

23 56 Q. It has been suggested to you that at this particular
24 time in June/July of 1984, that you were, at that
25 stage, aware of the loan application made by Messrs.
26 Brennan and McGowan to Lombard & Ulster, the loan
27 which eventually came out in November and out of which
28 you were paid a sum of money?

29 A. No, sir. The purpose of this meeting was very, very,
30 very definitely for Mr. Russell, because - for

1 Mr. Russell to come along and produce the title deeds,
2 and more importantly, to confirm what the position was
3 regarding any charges or pledges or whatever, and
4 because without that, sir, I would say that there
5 wouldn't be much point in talking about - in any event,
6 talking about any loans or otherwise, sir.

7 57 Q. I would suggest to you, Mr. Finnegan, that if the loan
8 application was in your mind or was being talked about
9 between you and between Messrs. Brennan and
10 Mr. McGowan, Mr. Russell - and who else was at that
11 meeting? - Mr. Barry and Mr. Wheeler, that that would
12 have been discussed at that meeting?

13 A. Yes, sir.

14 58 Q. You see, we know from an earlier communication from
15 Mr. Owens to Mr. Wheeler - I'll just see if I can find
16 it now - on the 14th June, of 1984 - 692. Sorry, I was
17 giving the date instead of the number. His is some
18 twelve days before the meeting. This is a
19 communication from Mr. Owens to Mr. Wheeler, and it's
20 "Re: Canio Limited."

21 .

22 And Mr. Wheeler is being informed here:

23 .

24 "Borrowing on the security of lands owned by Canio is
25 being negotiated with Lombard & Ulster Bank, who
26 require the following information."

27 .

28 All right?

29 .

30 So we know that Mr. Wheeler knows in 19 - on the 14th

1 June of 1984 that there is a borrowing on the security
2 of lands being negotiated with Lombard & Ulster.

3 A. Yes, sir.

4 59 Q. Isn't that the first paragraph there?

5 A. Yes, it is.

6 60 Q. However, Mr. Wheeler says nothing of that at the
7 meeting; says nothing of that to Mr. Barry in their own
8 communication with each other; and says nothing of that
9 in his letter of the 4th July, when he is confirming
10 that there is a clear title. At that point, he was
11 aware that there was a borrowing being negotiated with
12 Lombard & Ulster?

13 A. Yes, sir.

14 61 Q. However, certainly there is nothing on the record, and
15 nothing on the record between Mr. Wheeler and Mr. Barry
16 to confirm that that knowledge was imparted to Mr.
17 Barry by Mr. Wheeler from the 14th June, 1984, right up
18 to the last communication, the 4th July, 1984, despite
19 the very formal meeting that you had in Jersey?

20 A. That's right, sir.

21 62 Q. I'll come back to that document again in a moment, but
22 it's just - I just wanted to make that point; that
23 Mr. Wheeler, on the 14th June, knew about the loan
24 application, and yet nothing was said and silence was
25 maintained between that time and the 4th July, as
26 between himself and certainly on Mr. Barry, and indeed
27 in respect of the meeting that took place in June. I
28 notice also nothing is recorded by Mr. Barry in respect
29 of any statements by either Mr. Brennan or Mr. McGowan
30 in respect of that loan application or indeed nothing

1 recorded by Mr. Wheeler.

2 .

3 I think Mr. Howard has said, again under

4 cross-examination from me, that there is no -

5 Mr. Wheeler did not keep any record of that meeting

6 with Mr. Barry. There is nothing on the Bedell Cristin

7 files in respect of that. Isn't that so? There was

8 no mention of loan application?

9 A. No, sir, there wasn't.

10 63 Q. I am just going to now change topics slightly and move

11 on to the particular loan applications that were made

12 on this land by Messrs. Brennan and McGowan and to,

13 indeed, to Lombard & Ulster. Now, can I start with

14 Document 3522, please.

15 .

16 Now, just before we come to that, Mr. Finnegan. Were

17 you aware at any time, certainly early in 1984, of any

18 suggestion of allowing Canio lands being used as a

19 security for loans to Kilnamanagh Estates?

20 A. No, sir.

21 64 Q. You see, this is a communication between, I think, Mr.

22 Reid, is it Stokes Kennedy Crowley accountants, and

23 Mr. Caldwell, who is the solicitor for Messrs. Brennan

24 and McGowan, and it's a letter of the 13th January,

25 1984.

26 .

27 "Dear John,

28 .

29 I had a further meeting with Tom Brennan on Friday

30 last. He is very anxious to proceed quickly with the

1 trust arrangement. I think that you are trying to get
2 the Land Commission consent and to go ahead with
3 drafting the various documents. If I am not correct in
4 my recollection or if I am delaying you for anything,
5 perhaps you would let me know.

6 .

7 For part of the meeting Joe McGowan attended. The
8 matter under discussion was basically to replace part
9 of the AIB funding in Kilnarnagh with a new loan from
10 Bank of Ireland, and I gather" - now, remember, this is
11 January 1984, when there's been great play that
12 everybody had forgotten about the borrowings from AIB
13 and the undertaking - "that Jack Stanley of the Bank of
14 Ireland is to get in touch with me about this. While
15 they put a rather complicated formula to me as to how
16 this might be achieved, it seemed to me that the net
17 objects would be fairly shortly stated.

18 .

19 A. That Kilnarnagh would borrow in sterling from Bank
20 of Ireland.

21 B. That the security given would really consist of the
22 Sandyford lands owned by Canio."

23 .

24 Now, was that ever discussed with you Mr. Finnegan,
25 that the land in Canio would be used as security for a
26 Kilnarnagh debt with Bank of Ireland?

27 A. No, Sir.

28 65 Q. "C. That the fund would be used to repay part of the
29 AIB borrowing, that that substantial resources were
30 becoming available to further reduce the AIB borrowing,

1 which is, I think somewhere around the figure of 2
2 million. They expect to be able to arrange that the
3 Bank of Ireland borrowing would have a rollup of
4 interest for three years and that the AIB borrowing
5 would disappear in the relatively short term.

6 .
7 Their own proposals of this would have been somewhat
8 complicated involving sales of lands etc. etc. and
9 could not have been achieved without a lot of round the
10 houses intercompany lending of money. While it seems
11 to me that the same object would be achieved by
12 basically having:

- 13
14 1. Kilnarnagh borrow, whether with or without
15 security, but if with security it might be such as
16 would be more apparent than real.
17
- 18 2. Canio would guarantee the borrowing by way of an
19 entirely independent guarantee which would not be
20 referred to in the correspondence between the Bank of
21 Ireland and Kilnarnagh. The property at Sandyford
22 could be used to support Canio's guarantee."

23 .
24 Can I just go back to the reverse page again, that very
25 last paragraph that straddles the two pages.

26 .
27 "Canio would guarantee the borrowing by way of an
28 entirely independent guarantee which would not be
29 referred to in the correspondence between the Bank of
30 Ireland and Kilnarnagh. The property at Sandyford

1 could be used to support Canio's guarantee."

2 .

3 Was anything like that discussed with you,

4 Mr. Finnegan, that the lands in Canio would be used as

5 a guarantee of the Kilnarnagh and then to support the

6 guarantee? In other words, the surety for - was that

7 discussed with you?

8 A. No, sir.

9 66 Q. It seems to be very similar to what in fact was the

10 case with the AIB, since 1981, that --

11 .

12 MR. HAYDEN: That's incorrect. The undertaking was to

13 AIF.

14 .

15 MR. HUSSEY: I am sorry, I am confusing AIB to AIF.

16

17 MR. HAYDEN: I think My Friend should put to him, if

18 there was ever such a facility, that was in that

19 letter.

20

21 67 Q. MR. HUSSEY: I am sorry, I was going to come to that.

22 This facility was never taken out. That's not the

23 point. The point is that this proposal was never in

24 any way discussed with Mr. Finnegan. That's the only

25 point I am making here, that Mr. Finnegan was not

26 consulted or these matters were not discussed, although

27 his lands were being discussed and the security of his

28 lands were being discussed to support Kilnarnagh, but

29 Mr. Finnegan was not told of that.

30 .

1 Isn't that so, Mr. Finnegan?

2 A. That's correct, sir.

3 68 Q. As far as we know, this never proceeded with. Can I

4 just have the next document then, 3521. It's a

5 communication between Mr. Caldwell and Mr. Reid, in

6 answer to the previous letter:

7 .

8 "Thank you for your letter dated 20th January. I agree

9 that plain control consent would not be necessary for

10 the Canio guarantee.

11 .

12 I do not have a copy of the memorandum and Articles of

13 Association of Canio Limited to ascertain whether or

14 not it has the appropriate power to give guarantees

15 suggested. I hope to procure one shortly."

16 .

17 In any event, the Bank of Ireland, that borrowing, as

18 far as we know, never proceeded?

19 A. That's right, sir.

20 69 Q. The next thing that happened I think, Mr. Finnegan, was

21 there was a loan application made by Kilnarnagh to

22 Lombard & Ulster, I think it's 669.

23 .

24 This is an application that's made on the 18th April,

25 1984, and it's an application by Kilnarnagh Estates

26 Limited for a loan facility to Lombard & Ulster. "The

27 purpose of the proposed advance, as indicated in

28 the" - the little pointer is pointing to it - "is to

29 enable the subject company, that's Kilnarnagh Estates

30 Limited, pay a deposit on 87 acres of freehold land at

1 Ballyogan, Sandyford, County Dublin. The contract
2 price will be ú2 million."

3 .

4 Now, two things arise out of that, Mr. Finnegan. Was
5 there, to your knowledge, in or around April 1984, any
6 negotiations between Canio and Kilnamanagh to sell to
7 Kilnamanagh for ú2 million?

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

9 70 Q. Were you - well, you wouldn't necessarily be aware that
10 Kilnamanagh were seeking to borrow for that purpose?

11 A. No.

12 71 Q. But what I am pointing to is that, as far as
13 Kilnamanagh and Lombard & Ulster were concerned,
14 Lombard & Ulster were informed that the contract price
15 was to be 2 million between the owners of the Sandyford
16 lands and Kilnamanagh Estates.

17 A. No, sir. There wasn't discussions about that, sir.

18 72 Q. Just to confirm, Ballyogan, Sandyford, that is the
19 Canio lands, is it?

20 A. Yes, sir.

21 73 Q. There is no other lands in - Ballyeogan isn't distinct
22 from what we have been talking about?

23 A. No, you can take it that's all the same.

24 74 Q. Right. That application was made on the 18th April,
25 1984, and on the very following day, the 19th April -
26 671, please, we get a letter from Lombard & Ulster:

27 .

28 "Further to your recent application, I am pleased to
29 advise that this bank is prepared to place at the
30 disposal of Kilnamanagh Estates Limited an additional

1 facility of ú75,000 to assist the company pay a deposit
2 on the 78 acres of freehold land to Ballyogan,
3 Sandyford, County Dublin ..."

4 .

5 On the very next day - sorry, just to confirm
6 something. I think the 78 acres in that thing - but in
7 the actual application it was 78 acres. Just a small
8 point. But again you were not aware of any contract
9 with Kilnamanagh to acquire --

10 A. No, sir.

11 75 Q. Or to have paid a deposit to it of ú75,000.

12 A. No, sir.

13 76 Q. Sorry, the next application is the application of the
14 15th June 1984, number 694.

15 .

16 Now, here we have the application from Canio
17 Investments Limited or Canio Limited, directors LA
18 Wheeler plus three other managing directors, three
19 other nominee directors."

20 .

21 And just move down:

22 .

23 "The purpose of the proposed advance sterling ú420,000,
24 to enable the applicant company make a distribution to
25 its beneficial shareholders, in particular, ú180,000
26 sterling will be utilised to enable two of the
27 beneficial shareholders acquire the interest of the
28 remaining party."

29 .

30 Now, we have heard about the friction of Mr. Wreford

1 afterwards, what you say about that. Was there ever
2 any agreement that two of the shareholders would buy
3 out the third shareholder, the third shareholder would
4 buy you out for ú180,000?

5 A. No, sir.

6 77 Q. In fact, I would hazard to say that it would be
7 distinctly odd for a company to borrow, so enable one
8 shareholder to buy it from another shareholder, it
9 would be far more usual for that shareholder, if he
10 needed to borrow money, would borrow the money and buy
11 the other shareholder's shares. The company would not
12 borrow to buy one shareholder out. I would suggest
13 that it would be unusual for the company to borrow
14 money to buy out its own shareholding - to facilitate
15 one shareholder to buy out another shareholder?

16 A. It would be.

17 78 Q. In any event, that never happened?

18 A. No, that didn't happen.

19 79 Q. No shareholder was bought out on foot of anything here.

20 And it wasn't, I think on your evidence, it wasn't to
21 happen?

22 A. No, sir.

23 80 Q. So whatever else the money was going to be used for, it
24 wasn't to be used to buy out one shareholder by the
25 other two?

26 A. That's correct, sir.

27 81 Q. And in fact we know it was never used for that purpose?

28 A. That's right, sir.

29 82 Q. The second page of that document, I think is - now,
30 this is where Mr. Wreford was introduced to the bank.

1 And we have heard from the bank, and we have heard that
2 Mr. Wreford actually came into the bank and introduced
3 himself as the beneficial owner. Did you know
4 anything about that, Mr. Finnegan?

5 A. Certainly, sir, that was not - I never gave my consent
6 for that, sir.

7 83 Q. And I think - sorry, just to scroll down to the bottom
8 of that.

9 .
10 "The latter two now wish to acquire the interest of the
11 former for the sum of 180, and the balance of the
12 monies now requested, apart from the monies to be
13 placed on deposit account, will be utilised by Canio
14 Limited to purchase property in the United Kingdom."

15 .
16 Again, do you know anything about the purchasing
17 property in the United Kingdom?

18 A. No, sir. At a later stage, sir, there was some
19 discussion and another application about that, sir.

20 84 Q. Now - but in any event, the money was distributed to
21 the beneficial owners?

22 A. Yes.

23 85 Q. Subject to the holding back of the ú105,000, which was
24 part of the interest, part of the bank's own internal
25 back-to-back arrangements?

26 A. That's correct, yes.

27 86 Q. Right. Now, if I am wrong in this, I can be
28 corrected, but I think the actual loan offer that came
29 out of that was at page 3400, and we have seen that
30 already. I don't think - I just merely want to record

1 it at this point, that it was a loan facility for what
2 we have been told about, and the provision is:

3

4 "Partial provision of interest charges and the balance
5 is to be utilised to make a payment to a Mr. Wreford
6 with the remainder being to utilise lands in the United
7 Kingdom."

8

9 I think I have already highlighted that the guarantees
10 in that document included personal guarantees of
11 Messrs. Brennan and Mr. McGowan.

12

13 Now, between that and the next loan offer, because
14 there was - there was another loan offer in October of
15 1984. Given that the bank had made their offer to
16 lend the money in July, I think that's the 5th July, do
17 you know why it was necessary to go back to the bank to
18 ask for another loan offer?

19 A. Did I know why?

20 87 Q. Do you know why it was necessary to go back to the
21 bank, given that the bank had said, "Yes, you can have
22 all the money you want?" Do you know why it was
23 necessary to go back to the bank? We know that two
24 further loan offers were given by the bank. Do you
25 know why?

26 A. No, sir.

27 88 Q. Can I just draw your attention to - one is a letter
28 from Mr. Smith in Lombard & Ulster to Messrs.
29 Fitzpatrick's, Mr. Caldwell. Sorry, it's number 724
30 please. This is a letter on the 19th September, 1984,

1 from Mr. Smith, one of the officials within the Lombard
2 & Ulster, and Messrs. Fitzpatricks.

3 .

4 "Dear John, Re: Canio Limited.
5 Messrs. Joe McGowan telephoned yesterday and requested
6 if any progress had been made towards drawing down the
7 funds in the above mentioned commitment letter. I
8 advised him that you are still considering the question
9 relating to guarantees, but he asked me to contact you
10 in the hope that early decision could be made."

11 .

12 Following on that, there is an internal memo - 725
13 please - dated 21st September, 1984, between - to
14 Messrs. Smith. One is - sorry, maybe it is Mr. Smith
15 and Mr. Crookes within the bank, within the Lombard &
16 Ulster Bank. And it's the 21st September.

17 .

18 "Attached is a copy of the bank's Letter of Offer dated
19 5th July to the above mentioned company. The company
20 requires the completion of the following from the
21 opening paragraph of the bank's letter which reads as
22 follows:

23

24 And the balance is to be utilised to make a payment to
25 Roger Wreford with the remainder being utilised to
26 purchase lands in the United Kingdom."

27 .

28 That was going to be completed. Do you know why that
29 was completed within the bank?

30 A. No, sir.

1 89 Q. It didn't affect the loan. It didn't affect the amount
2 of money to be lent. The company required this to
3 happen. Do you know why that - were you told why that
4 was done?

5 A. No, sir.

6 90 Q. Additionally - continue back on the memo.

7 .
8 "Additionally, the company has requested that condition
9 number 8" - I think that's the guarantee
10 provision - "Be amended by the deletion of the names
11 Messrs. Brennan and McGowan. For tax reasons, it is
12 not considered advantageous for these names to be
13 inserted in the Letter of Offer. This objection can be
14 overcome by relying partly on guarantees already
15 executed by Messrs. Brennan and McGowan in support of
16 existing lendings to Kilnarnagh Estates Limited.
17 Remember this wasn't a lending to Kilnarnagh. This
18 was a lending to Canio. The bank guarantee is so
19 widely drafted as to catch remedies available against
20 Messrs. Brennan and McGowan should that contingency
21 arise."

22 .
23 So between July and September, the company had
24 requested that the actual conditions of the Letter of
25 Offer would be altered to take away any reference to
26 payment to Mr. Wreford and to take away any reference
27 to the guarantees, the personal guarantees, and we know
28 that the next loan that came out, the next loan offer
29 that came out was dated 25th October, 1984, number 735.
30 It is in exactly the same terms as the first one,

1 except that it has deleted what has been requested by
2 the company, and it has taken out the reference to the
3 personal guarantees of Messrs. Brennan and McGowan.
4 But we know that immediately before this particular
5 facility came out, that the bank had taken from Messrs.
6 Brennan and McGowan the handwritten guarantees at 734.
7 So even though they had taken them off as a condition,
8 they had actually secured their personal guarantees.

9 A. Yes, sir.

10 91 Q. And this was the guarantee that is not to be disclosed
11 to you?

12 A. Yes, sir.

13 92 Q. And we know that that second loan offer with the
14 Wreford connection undisclosed, and the guarantees
15 undisclosed, was the subject of a letter which you
16 wrote to your solicitor, Mr. McGonigal, in the end of
17 September, the 2nd of October of 1984?

18 A. Yes, sir.

19 93 Q. Do you know why you were not requested to give a
20 guarantee in the same way that they were requested to
21 give a guarantee?

22 A. No, I don't, really sir.

23 94 Q. We know that Lombard & Ulster did not know that you
24 were related to this company or had any interest in
25 this company until the following year.

26 A. Mm-hmm. I don't know, sir, but I suppose if - your
27 question is did I - why --

28 95 Q. Do you know why you weren't asked to produce a personal
29 guarantee?

30 A. Well, I suppose to that - of course, looking back, sir,

1 and I suppose the only thing that one would be looking
2 at is this: If you were looking - if one were looking
3 to giving a guarantee, if it had been sought from me,
4 naturally I would want clearance that this was the only
5 loan that was being granted, sir.

6 96 Q. Yes.

7 .

8 Now, I'd suggest that it was important that Lombard &
9 Ulster did not know about the AIF undertaking, because
10 if they had known, if that was revealed, there would
11 have been difficulty getting this loan, isn't that so?

12 A. Yes, sir.

13 97 Q. We know from the Lombard & Ulster that it didn't matter

14 who else was on the loan application with Brennan and
15 McGowan, as to whether the loan was going to be given
16 or not; they felt that they had adequate security and
17 it didn't matter. It wouldn't have mattered had your
18 name been on it or not on it, as far as Lombard &
19 Ulster were concerned, and indeed, I think I put to one
20 of the Lombard & Ulster witnesses when he was here,
21 that it didn't matter if they were going to splash this
22 money in Disneyland, the money was going to be given to
23 Brennan and McGowan because they felt they were
24 adequately secured at the time by Brennan and McGowan.
25 .

26 But I am saying that it was important that Lombard &
27 Ulster did not know of the undertaking to AIF, because
28 that position, that comfortable position that Messrs.
29 Brennan and McGowan had with Lombard & Ulster would not
30 have been so comfortable had that exposure been known

1 to Lombard & Ulster?

2 A. Yes, sir.

3 98 Q. Now, at the time the loan application was being made,

4 you were making - you were creating something of a

5 storm with your Mr. Barry and Mr. Wheeler?

6 A. That is correct, sir.

7 99 Q. And we know the result of that, and

8 Mr. Wheeler - whether by accident or design - did not

9 reveal to Mr. Barry all that he might have revealed,

10 had he remembered everything that had gone on in this

11 company, or everything that he had participated in in

12 this company. Isn't that so?

13 A. That's correct, sir.

14 .

15 MR. HAYDEN: I just wonder, sir, in relation to that -

16 and I don't wish to interrupt. I am not sure how

17 Mr. Hussey gets to that position, because Mr. Barry,

18 after all, is Mr. Finnegan's man. It's up to -if Mr.

19 Barry is going to give evidence on behalf of - to the

20 effect that there was no conversation between him and

21 Mr. Wheeler, so be it.

22 .

23 MR. HUSSEY: I know that Mr. Hayden wasn't here earlier

24 on. I thought this groundwork had been very well laid

25 this morning. I am sorry, Mr. Hayden --

26 .

27 MR. HAYDEN: I think, in fairness, that remark by

28 Mr. Hussey is unnecessary in the context of the

29 objection I made. The objection has nothing to do with

30 whether I was here or not, nor was the groundwork made

1 or not. What Mr. Hussey has done, sir, is purport to
2 give evidence on behalf of Mr. Barry to the effect that
3 in any conversation or discussion with Mr. Barry,
4 no - information was or was not imparted.

5 .
6 Now, I cannot see how My Friend can lay that
7 groundwork, because Mr. Barry hasn't told us, good, bad
8 or indifferent, what his position is. At least I
9 haven't seen any correspondence from him.

10 .
11 MR. HUSSEY: I am sorry, Sir, I had understood that I
12 had covered that so well, that territory so well this
13 morning, with communications from Mr. Wheeler to Mr.
14 Barry ranging over a number of decades, as it happens,
15 certainly from - well 1984 to 1989. I am sorry, I
16 really - I'd ask for permission to press on.

17
18 CHAIRMAN: Carry on, because I think you are correct.
19 I think you are correct. Mr. Barry's situation is
20 being clearly set out relative to Mr. Wheeler.

21
22 MR. HANRATTY: If I might just interject at that point,
23 Sir. Of course there is the difficulty of the Barry
24 documents, or the Credit Suisse documents, or indeed
25 Mr. Barry himself. We do not have the benefit of Mr.
26 Barry's testimony. We do not have any of the Credit
27 Suisse documents whatsoever, and it is, in fairness to
28 all parties, a conclusion that Mr. Hussey, the
29 statement that he made, there is a conclusion that he
30 makes from the documents that he did open. Ultimately,

1 I respectfully submit, that's a matter for you, what
2 the correct conclusion is.

3

4 CHAIRMAN: Of course.

5 .

6 100 Q. MR. HUSSEY: Absolutely. I am not - I am suggesting a
7 scenario from the documents that I have been able to
8 unearth, and that has been unearthed for me by the
9 Tribunal.

10 .

11 Now, can I come back now to the Document 692, the
12 document of the 14th June, 1984.

13 .

14 This is a document now that precedes the meeting on the
15 26th June. It also precedes the actual formal
16 application for the loan application of the 15th June.

17 This document is dated 14th June, and it's addressed
18 from Mr. Owens to Mr. Wheeler. And we have already
19 touched on the first paragraph of this, that Mr. Owens
20 is telling Mr. Wheeler that borrowing on the security
21 of Canio lands is being negotiated with Lombard &
22 Ulster and they require certain information.

23 .

24 Scroll down to the third paragraph there.

25 .

26 "Names of the beneficial shareholders, Tom Brennan Joe
27 McGowan and Roger Wreford. Wreford's name is being
28 substituted for that of Mr. Finnegan, because
29 Mr. Finnegan wants to remain silent."

30 .

1 Now, Mr. Finnegan, did you instruct Mr. Owens that you
2 wanted to remain silent as far as Lombard & Ulster were
3 concerned?

4 A. No, sir, not in regard - no, sir.

5 101 Q. Now, we know that Mr. Wheeler did not discuss this
6 loan, which he knew about from that day with Mr. Barry,
7 at the later meeting.

8 .

9 Now, can we move on now to the events in November of
10 1984. This is the distribution of the monies by
11 Mr. Wheeler and the payment that we know went to Caviar
12 Limited.

13 A. Yes, sir.

14 102 Q. Now, I think, just for the sake of completeness, if I
15 scroll through a number documents here, and then we can
16 refer to them.

17 .

18 This won't take very long, sir, I don't think. The
19 first one, I think, is 749. This is the Barry to
20 Wheeler letter of the 8th November, 1984, where he
21 clearly, at that stage, has a copy of the Lombard &
22 Ulster facility letter that came out in October or
23 November.

24 .

25 I should explain, sir, that there is a fourth loan
26 facility letter of the 16th November of 1984, which is
27 in exactly the same terms as the facility letter of the
28 25th October, 1984, simply the name of the company,
29 Canio Limited rather than Canio Investments Limited.
30 That seems to be the only difference. The actual

1 operative loan facility, I think, is in fact the 25th
2 October 1984. Sorry, this is Mr. Barry's request of
3 Mr. Wheeler.

4 .
5 "We require written undertaking from Bedell Cristin
6 that immediately on receipt of ú420,000, they will
7 transfer one third thereof to an account in the name of
8 Foxtown Investments Limited, details of which will be
9 supplied to you."

10 .
11 We have seen this already. That was the communication
12 leading up to the loan having been granted and leading
13 up to the distribution of the loan.

14 .
15 The next document was the 2949. This is Mr. Wheeler
16 to Mr. Owens.

17 .
18 "I briefly saw Mr. McGowan yesterday and he raised with
19 me his wish and that of Mr. Brennan and each of the
20 parties should reserve ú20,000. For possible future
21 expenses such as architects' fees should the present
22 negotiations not succeed. I put this to Barry of
23 College Trustees Limited who said that this was not
24 agreed. By the time I learned this I was not able to
25 recontact Mr. McGowan but perhaps you would inform him
26 and hopefully the three parties can agree in Ireland.
27 In the meantime, I am writing to Mr. Barry along the
28 lines discussed with Mr. McGowan with the one proviso
29 relating to three pounds 20,000 retentions."

30 .

1 That's Mr. Wheeler writing to Mr. Owens, and in that he
2 talks about future expenses, architects' fees and
3 retentions. This is not a letter to Mr. Barry, it's
4 not a letter to you, and it's not a letter to Messrs.
5 Brennan and McGowan. It's a letter from Mr. Wheeler to
6 Mr. Owens.

7 .

8 We know that Mr. Wheeler met with Mr. Burke - sorry, I
9 stand to be corrected on this, but I think we know that
10 Mr. Wheeler met Mr. Burke on the 13th November, 1984 in
11 Jersey, and I think also, as I understand from
12 Mr. McGowan's testimony, that Mr. Wheeler knew at this
13 stage that Mr. Burke was going to get ú60,000. Can
14 you explain to me, Mr. Finnegan, or can you hazard any
15 explanation as to why Mr. Wheeler, not in communication
16 with you now, or not in communication with Mr. Barry,
17 but would tell Mr. Owens and talk about future
18 expenses --

19

20 MR. HANRATTY: Sorry, just on that, Sir. We believe
21 that the date, and we'll check it over lunch, but we
22 believe that the date on which Mr. Wheeler met Mr.
23 Burke was the 15th November. Mr. McGowan --

24 .

25 MR. HUSSEY: I beg your pardon. I stand corrected.

26

27 MR. HANRATTY: He met Mr. McGowan on the 13th.

28 .

29 103 Q. MR. HUSSEY: I beg your pardon. That's my mistake.

30 So Mr. Wheeler met Mr. McGowan on the 13th. Sorry,

1 that's my confusion then. I am sorry.

2 .

3 In any event, Mr. Wheeler, at this stage, is talking
4 about future expenses, architect fees, and retentions
5 in that letter to Mr. Owens. You see that?

6 A. Yes, sir.

7 104 Q. Now, the next letter is 756, please. This is

8 Mr. Wheeler to Mr. Barry. That's your representative.

9 .

10 "I confirm the following:"

11

12 1. I executed a contract for 1.5 million.

13 .

14 The second one, receipt of a letter from Kilnarnagh
15 Estates whereby the company agrees to release Canio
16 from the contract on demand.

17 .

18 A letter from Read & McNab asking for title documents
19 to be returned.

20 .

21 Paragraph 4 is the important one.

22 .

23 "So as far as the undertaking which you require from
24 me, this has been complicated by the apparent lack of
25 agreement concerning a total retention amount of
26 ú60,000 against future expenses should Dublin Council
27 not proceed with the purchase of the land. I have
28 passed this problem on to my client's representatives
29 in Dublin and hope that this aspect can be cleared up
30 at that end and full instructions relayed to us."

1 .
2 Now, that's - sorry, the date on that
3 again - 14th - now, we know that Mr. McGowan has
4 already spoken with Mr. Wheeler about a retention of
5 ú60,000. I am not quite sure whether Mr. Wheeler knew
6 at this particular point that that money was going to
7 go to Mr. Burke. But he still talks, in his letter,
8 of future expenses should Dublin Council not proceed
9 with the purchase of the land.

10 .
11 There was some deal afoot between Canio and - sorry,
12 Dun Laoghaire Corporation, I think, isn't that right?

13 A. Yes, sir.

14 105 Q. And that's probably what Mr. Wheeler is referring to
15 there, a negotiation with Dublin Council?

16 A. Yes, sir.

17 106 Q. He goes into quite a little detail there, talking about
18 retention of expenses against the possibility of that
19 sale not proceeding with.

20 A. Yes, sir.

21 107 Q. So he knows some more than just this is for architects'
22 fees and retention of monies. He talks about an
23 actual deal that was in the pipeline or in the - at
24 least in the air at the time, isn't that so?

25 A. Yes, sir.

26 108 Q. So if it is the euphemism that has been put to
27 Mr. Brennan, that this was a euphemism to cover a
28 payment to Mr. Burke, he has, as a man in Jersey, he
29 has a considerable imagination to think of something
30 about a contract with Dublin County Council. It was a

1 considerable move away from future expenses,
2 architect's fees. He actually knows a specific detail,
3 he is talking about there?

4 A. Yes, sir.

5 109 Q. Sorry, the next document, 757. This is a letter from

6 Mr. Owens to Wheeler:

7 .

8 "Confirm ú10,000 has been agreed as a reserve and Barry
9 has been advised.

10 .

11 Mortgage being closed at 2 million Monday 19th at your
12 office."

13 .

14 I think this is a confirming that you had in fact

15 agreed ú10,000 would be held by --

16 A. Yes, sir.

17 110 Q. You had agreed either with Mr. McGowan or communicated

18 either to Mr. McGowan or Mr. Owens --

19 A. Yes, sir.

20 111 Q. -- that you had agreed the ú10,000?

21 A. I had agreed, yes, sir.

22 112 Q. Did you understand that the other two parties had also

23 agreed the ú10,000?

24 A. Yes, sir.

25 113 Q. You see, we know that from their evidence, that in fact

26 the other two parties had agreed ú25,000 a piece?

27 A. For?

28 114 Q. We now know that the other two parties - and they have

29 conceded - in that evidence they had agreed that they

30 would give ú25,000?

1 A. Yes, sir.

2 115 Q. So this communication, to be accurate, should read:

3 .

4 "Confirm, ú10,000 agreed by one, ú25,000 agreed by the
5 other two as reserve."

6 .

7 Isn't that so?

8 A. Yes, sir.

9 116 Q. If it was to be accurate, that would be the way it
10 should be?

11 A. Yes, sir.

12 117 Q. Right. So if Barry had been advised that the other two
13 parties had agreed ú10,000 each, that would have been
14 wrong, wouldn't it?

15 A. Yes. Yes, sir.

16 118 Q. Well, it would have been wrong to the extent that it
17 didn't reveal that they had actually agreed much more
18 than the ú10,000?

19 A. That's right, Sir.

20 119 Q. Now, document 3349. This is the Lombard & Ulster
21 solicitor's memo of the closing of the mortgage in
22 Jersey attended by Messrs. Brennan and McGowan,
23 Russell, Wheeler and Michael Bell.

24 .

25 Sorry, I think Mr. Bell would have been the accountant
26 within Bedell Cristin. I am not quite sure. Can you
27 confirm just for the record, were you at that closing?

28 A. No, sir.

29 120 Q. Was Mr. Barry, do you know, at that closing?

30 A. No, sir.

1 121 Q. That's all I really - we have seen that document

2 before. I don't think we need to go into it any

3 further.

4 .

5 186 is the next document, and we have seen this many

6 times here, Mr. Finnegan. This is the distribution of

7 the monies. This is Mr. Wheeler's handwritten note,

8 it seems, of the distribution of the monies. And the

9 first item was:

10

11 "2 by 25, plus ú10,000 to Caviar Limited, Hill Samuel."

12 .

13 What do you - what did you know of Caviar Limited?

14 A. I didn't know about it at all, sir.

15 122 Q. Did you give an instruction to Mr. Wheeler to pay

16 ú10,000 to Caviar Limited?

17 A. No, sir.

18 123 Q. Did you give an instruction to Mr. Wheeler to pay

19 ú10,000 to Mr. Burke?

20 A. No, sir.

21 124 Q. Now, we know that that ú10,000 came out of monies - it

22 was the monies that you had agreed to have retained, we

23 know that.

24 .

25 Following on that distribution, there is a further

26 communication to Mr. Barry from Mr. Wheeler, 776.

27 Again we have seen this fairly regularly here. He

28 talks about having received the monies, taking his own

29 deduction from it for his own expenses, and he says:

30 .

1 "This leaves a figure of 409,308.37. ú10,000 has been
2 deducted as agreed from Foxtown's one third share and
3 placed on a call deposit account."

4 .

5 Now, Mr. Wheeler wrote this to Mr. Barry in the past
6 tense, "this has happened." Right. We know that
7 didn't - that actually never happened.

8 A. What, sir?

9 125 Q. That the monies were placed on a call deposit account.

10 A. Right, sir.

11 126 Q. We know that it went to Caviar Limited immediately.

12 It had gone to Caviar Limited before this. The
13 agreement that had been made between yourself and
14 Mr. McGowan as communicated to Mr. Barry was an
15 agreement to retain ú10,000 as a sort of a contingency
16 fund against expenses?

17 A. Correct, sir.

18 127 Q. I think we know that it was anticipated that funds
19 would obviously, the site would require expenses to be
20 spent on it?

21 A. Indeed, sir.

22 128 Q. And we have seen in 1989 indeed the sort of level of
23 expenses that could arise in 1989, I think for planning
24 permission and bye-laws, it was going to be something
25 like ú40,000. So that sort of figure, that was just in
26 respect of fees?

27 A. There is a lot of work to be done, sir.

28 129 Q. Would you have expected - and I know the weakness in
29 your case has been pointed out that this sum had never
30 been sought again. Right?

1 A. Yes, sir.

2 130 Q. This has been pointed out.

3 .

4 Did you ever expect to see any of that money again,
5 having been retained for architects' fees,
6 administrative fees, whatever, that sort of preliminary
7 work fees on that site?

8 A. No, sir. As I think I said before, there was a lot of
9 work to be done regarding the drainage and pre-planning
10 application work on the site, sir, drainage, road
11 reservations, and in particular to lack of water
12 supply, where there was a lot of work had to be done.

13 131 Q. Yes. Now, when he talks about, "Has been deducted as

14 agreed," certainly on the record, what has been agreed
15 in the communications between both himself and
16 Mr. Owens, and himself and Barry, is what was agreed
17 was a retention fund, a reserve fund. We know that at
18 some point during the course of the, from the 16th to
19 the 21st November, Mr. Wheeler knew that this money,
20 ú60,000, was going to go to Mr. Burke via Caviar
21 Limited, and yet he persists in using words like
22 "Deducted" "Reserve" "Retained as against future
23 expenses". It's been suggested, you see, Mr. Finnegan,
24 that you knew this money was going to Mr. Burke.
25 .

26 Mr. Wheeler knew this money was going to go to Mr.
27 Burke. Mr. Brennan knew this money was going to go to
28 Mr. Burke. Mr. McGowan knew this money was going to go
29 to Mr. Burke. Can you suggest why Mr. Wheeler would
30 keep talking about "reserve fund", "retention monies as

1 agreed", these sort of things, without telling - and
2 telling - saying that it went into a call deposit
3 account, when in fact he knew it had gone somewhere
4 else? Can you suggest any reason why I would have
5 done that, if all the parties knew where his money was
6 going?

7 A. No, sir.

8 132 Q. The height of Mr. McGowan's testimony is that you
9 agreed to pay ú10,000 to Fianna Fail. Did you instruct
10 Mr. Wheeler in any respect to send ú10,000, this
11 ú10,000 to Fianna Fail?

12 A. No, sir, definitely not.

13 133 Q. Thank you, Mr. Finnegan. I think Mr. Hanratty has to
14 revisit some matters with you.

15 .

16 THE WITNESS WAS RE-EXAMINED AS FOLLOWS BY MR. HANRATTY:

17 .

18 134 Q. MR. HANRATTY: Mr. Finnegan, the 26th June, 1984 was the
19 date when this meeting was held in Jersey to which
20 yourself, Mr. Brennan and Mr. McGowan and their
21 solicitor, Mr. Russell, travelled and met in the
22 offices of Bedell Cristin in Jersey.

23 A. Yes, sir.

24 135 Q. And this meeting was held in circumstances where Mr.
25 Barry had previously met with Mr. Wheeler himself, and
26 had, subsequent to that meeting, written to Mr. Wheeler
27 setting out in a letter his understanding of the
28 assurances that Mr. Wheeler had given him. But he had
29 also taken the trouble of having all parties attend a
30 meeting, or somebody at least had taken the trouble to,

1 once and for all, presumably, finally sort out the
2 position and deal with the concerns which he had on
3 your behalf?

4 A. Yes, sir.

5 136 Q. Do I understand your evidence correctly to be that you
6 did not, at any time prior to that, know of any
7 application or attempt by Brennan and McGowan to obtain
8 borrowed money from a bank, Lombard & Ulster, or
9 anybody else indeed, on the security of this Sandyford
10 land?

11 A. Correct, sir.

12 137 Q. Not just the particular loan that we now know, or the
13 loan application that we now know was extant at the
14 time, but any loan on the security of this land?

15 A. No, sir.

16 138 Q. Are you sure about that?

17 A. Yes, sir. The only thing that we were - because at the
18 particular time what we were all very concerned about
19 was the question of whether or not the land was clear
20 from encumbrances, and I think that was the big thing,
21 sir, to clear and it was more important as well that
22 when Mr. Russell said that he would bring the deeds
23 with him, and that is to confirm absolutely that that
24 was the situation, and as I said before, that was a
25 great relief to me, sir.

26 139 Q. The reason I am asking this is because Mr. Hussey, in
27 the course of his questioning of you, specifically
28 asked you, were you aware of any loan or any
29 application for loan by Brennan and McGowan to be
30 secured on this land prior to the meeting in June of

1 1984, and your answer to that was you were not so
2 aware?

3 A. Yes, sir.

4 140 Q. So we do now know, of course, that there was in fact a
5 loan application extant, and that indeed by the time
6 the meeting took place on the 26th June, it had
7 actually been sanctioned?

8 A. Sorry.

9 .

10 MR. HUSSEY: I am sorry, I think the sanction came in
11 July - maybe I am wrong.

12

13 MR. HAYDEN: I think the sanction was the 22nd June.

14

15 MR. HUSSEY: I beg your pardon.

16

17 141 Q. MR. HANRATTY: We now know that not only had there been
18 an application for a loan of ú525,000 on the security
19 of this land, but that that loan sanction had been
20 provided by Lombard & Ulster; that had agreed to make
21 such a loan on the 22nd June, 1984, and your testimony
22 is that you did not know of that loan application or
23 the fact that such a loan application had been
24 sanctioned prior to the meeting on the 26th June?

25 A. Correct, sir.

26 142 Q. You go further and say, not only did you not know of
27 that loan, but you did not know of any application that
28 Brennan and McGowan ever had made in connection with
29 this property?

30 A. No, sir.

1 143 Q. Can I refresh your memory, Mr. Finnegan, and ask you to
2 consider whether there was, in fact, a proposal to
3 borrow money on the security of this land in 1979, to
4 which you were privy?

5 A. To borrow money? Not that I can recollect, sir.

6 144 Q. If we could have page 301. This is a letter of the
7 20th December of 1979 from Mr. Don Reid of Stokes
8 Kennedy Crowley, who was advising you, and it's to
9 Mr. Turvey, your accountant. And it says:

10 .

11 "Dear Des, thank you for your letter of the 12th
12 December enclosing the facility letter.

13 .

14 If the interest is to be paid by Kilnarnagh Estates,
15 it is essential that the borrower should be that
16 company. This would fill the space for borrower on
17 page 1. It would also change the second guarantor on
18 page 2 of the draft facility letter. You will always
19 have serious difficulties in having interest allowed if
20 he interest is not in fact paid by the original
21 borrower.

22 .

23 Consequently, the amendments we will need in the draft
24 facility letter are as follows:

25 .

26 Borrower: Kilnarnagh Estates Limited.

27

28 Purpose: To finance the purchase by X Limited and Y
29 Limited of ...

30 .

1 Security: Delete paragraphs 1 and 2.
2 .
3 Guarantors: At 2, delete "Kilnamanagh Estates and" and
4 insert.
5
6 "3. Guarantee by X Limited, secured by a first charge
7 over the 85 acres of residential land located at K,
8 County Dublin."
9
10 "4. Guarantee by Y Limited secured by a first charge
11 over the factory premises and lands located at Cramer
12 Lane, Ballsbridge."
13 .
14 "From this you will see that I would prefer to see the
15 lands at K and the factory premise guaranteed by
16 separate companies. I think we would have much more
17 flexibility this way.
18 .
19 If I can be of any further help, please let me know.
20 .
21 Sincerely, Don Reid."
22 .
23 There is a letter from Mr. Turvey to Mr. McGowan in
24 connection with the same matter at page 304. This is
25 dated 28th December, 1979, and it says:
26 .
27 "Re: purchase of land at Ruth Aiken farm, Sandyford."
28 .
29 Which is the Aikens lands, isn't that right?
30 A. Yes, sir.

1 145 Q. Mr. Turvey says:

2 "Dear Joe,

3

4 You will recollect that at the recent meeting which
5 you, John and I had, with Don Reid in connection with
6 the above purchase, it was agreed amongst other things
7 that a declaration of trust be obtained from the
8 purchaser in favour of the new company.

9 .

10 I have now received a letter from Don Reid in which he
11 emphasises the importance of obtaining the new company
12 immediately.

13 .

14 It is essential therefore that George Russell be
15 instructed to provide us with an investment company for
16 this purpose.

17 .

18 John should one third of the shares and the remaining
19 two-thirds should be held by yourself, Tom and
20 Kilnarnagh Estates Limited, Kilnarnagh's allocation
21 to be 5 percent of the total.

22 .

23 I would suggest that John's shares be held in trust for
24 him by either Terry Dixon of Kennedy McGonagal or
25 myself.

26 .

27 Don Reid has made several other suggestions about the
28 wording of the facility letter, the main purpose of
29 which is to ensure that the interest payable is an
30 allowable charge in the accounts of Kilnarnagh Estates

1 Limited. The vital point here is that the borrower
2 must be Kilnarnagh.

3 .

4 I enclose a photocopy of the Memorandum of Agreement
5 which may be useful for reference, and I would suggest
6 that you look into Part 3 of the particulars with
7 particular reference to the covenants, conditions and
8 right of way mentioned.

9 .

10 In order to have this matter expedited, I will be glad
11 to meet George Russell either by myself or with you to
12 give him the necessary instructions.

13 .

14 Sincerely, Desmond Turvey."

15 .

16 And if I can just refer you to page 337. This appears
17 to be George Russell's note of the meeting where, as
18 you can see, he makes various shorthand notes of his
19 own. He refers to the new company. It's dated 15th
20 January, 1990. He refers to bank charges. He refers
21 to the initials of yourself, Mr. Brennan and
22 Mr. McGowan, reference to Kilnarnagh Estates. He
23 refers to that 5 percent referred to in that letter for
24 Kilnarnagh Estates, and then there is - your initials,
25 again with one third, one third, one third written
26 against them, and so on.

27 .

28 Now, it doesn't appear that that particular application
29 was ultimately proceeded with, but it does indicate
30 that there was serious consideration given, and it in

1 fact almost a decision reached to seek facilities for
2 the benefit, essentially, of Kilnamanagh Estates
3 Limited on the security of this property in Sandyford
4 and also on the property in Cramer Lane.

5 A. Seriously, sir, I have no recollection of that. If
6 that is the case, it is recorded by Mr. Turvey, but I
7 must have - I have no recollection of it, but if it is,
8 it is. But --

9 146 Q. It's quite clear from the correspondence, there was
10 such a proposal which was alive in 1979.

11 A. Was that around the time of the purchase, sir?

12 147 Q. It would have been, yes.

13 A. It could be that they were - would that not be for the
14 financing of the actual purchase of it, or was it
15 refinancing?

16 148 Q. Perhaps.

17 A. Unless there was something then, sir.

18 149 Q. Well, essentially it seemed to be for the purpose of
19 borrowing, from which Kilnamanagh could get the
20 benefit, under which Kilnamanagh essentially could
21 claim relief on the interest on the borrowing. It may
22 well be that the borrowing would have been used to buy
23 the property.

24 .

25 You see what it establishes, Mr. Finnegan, is that
26 whenever it was that you found out about the loan
27 application to Lombard & Ulster, it would not have been
28 the first time that there was a proposal to use this
29 property as security for borrowing.

30 A. I hear what you are saying, sir, but I am

1 certainly - was this - back on the dates again on that,
2 sir.

3 150 Q. December, '79, going into January, 1980.

4 A. That's when I think - well, unless - well, as I see,
5 that was being explored for the acquisition of the
6 land. Was that with Don Reid?

7 151 Q. Yes. Mr. Reid was advising you and he was
8 communicating with Mr. Turvey.

9 A. Unless that was something to do with exploring - of
10 course Kilnamanagh weren't involved, sir.

11 152 Q. Undoubtedly they weren't, but when the proposal came
12 around again, again it was borrowings of Kilnamanagh?

13 A. Well, all I have to say, sir, I don't recollect it.
14 If it's here, it was something that was being explored,
15 but it was - it was completely out of my mind, sir.

16 153 Q. But it does establish that whenever it was that you
17 found out about the Lombard & Ulster borrowing, it
18 would not have been the first time that there was a
19 proposal to borrow monies on the security of this
20 property in Sandyford?

21 A. Yes, sir.

22 154 Q. Why is it that you are so adamant that you didn't know
23 about it before the 26th June?

24 A. Well, sir, at that particular time, we were very
25 concerned about clearing up the question of title.

26 155 Q. Yes. And you have already indicated to us that in a
27 sense, the fact of the ability of Brennan and McGowan
28 to raise ú525,000 from Lombard & Ulster, if they could,
29 would have been a comfort?

30 A. Mm-hmm.

1 156 Q. Would that not suggest that perhaps what was going on
2 was that these two things were running in parallel, and
3 that you did know they were making an application, but
4 at the same time, while waiting to see what happened
5 with their own application, you were having Mr. Barry
6 on the job to do everything he could to sort out the
7 corporate end and the title end?

8 A. Sir, as I said to you, that whilst it may have been
9 going on, but I was not aware of an application having
10 been made, and I think what I did say to you was this,
11 sir, that when we had - I think when we had done the
12 job, which was the major job of getting the title
13 cleared, that at sometime later, Mr. McGowan did say to
14 me, to whenever it was, during the course of
15 conversation, "Well, that now, we can get all that - if
16 we get a loan through, that is very good to get that,
17 because it does confirm everything, that the property
18 is clear," although we had had a clearance at that
19 stage.

20 157 Q. There are clear indications in the documentation that
21 they did want you to know that they were giving
22 personal guarantees for this borrowing.

23 A. Mmm.

24 158 Q. But leaving that aside, there doesn't appear to be any
25 particular reason why you shouldn't have known it prior
26 to 26th June, 1984.

27 A. No, sir.

28 159 Q. And I just wonder how you can be so dogmatic about the
29 fact that you didn't?

30 A. I'd say, sir, I don't think I could have been - if it

1 weren't for the fact that we were so concerned about
2 the time of getting - you see, getting the clearance
3 from Mr. Russell. You see, with a loan --

4 160 Q. But there is nothing incompatible between them. You
5 know, the fact that Mr. Barry was seeking to regularise
6 matters was in no way incompatible with the attempt to
7 get a loan. In fact, if they had got a loan before
8 the 26th June, which in fact we now know they did, that
9 would have been a great comfort to you?

10 A. Yes.

11 161 Q. As you yourself have indicated, it would have been?

12 A. It would, sir. Yes, sir.

13 162 Q. Certainly you would have thought that in those
14 circumstances, they would have rushed to inform you of
15 the fact that they had got a loan sanctioned, to give
16 you a comfort?

17 A. Yes, sir.

18 163 Q. But yet you seem to be adamant that they didn't?

19 A. Well, the reason why I am, sir, is that we were so
20 concerned about getting the background cleared up, and
21 that was what we went over many times. I know the
22 historical thing we weren't such concerned about at
23 that stage, the old contracts, but the lien was the big
24 thing. And that actually, sir, talking that - about
25 getting a loan on having - when the question of that
26 lien hadn't been settled.

27 164 Q. Yes.

28 A. It would have been --

29 165 Q. Would it not be fair to suggest to you that in view of
30 the state of your recollection, and I don't say that in

1 any pejorative sense, but in view of the state of your
2 recollection, as disclosed to this Tribunal from the
3 time you started giving testimony --

4 A. Mm-hmm.

5 166 Q. -- it would be impossible to accept that you can
6 specifically remember that you didn't, that you weren't
7 told about this loan until after the 26th June, 1984.

8 .

9 MR. HUSSEY: I think, in fairness, Sir, that's a matter
10 for yourself, whether it's possible or impossible to
11 accept. You know --

12

13 MR. HANRATTY: I'll phrase it another way.

14

15 MR. HUSSEY: I beg your pardon. I will withdraw that.

16

17 167 Q. MR. HANRATTY: Is it your evidence that you specifically
18 remember that you were not told about this loan until
19 after the 26th June 1984?

20 A. I wasn't told about - that the loan - the loan, yes,
21 sir.

22 168 Q. You specifically remember that?

23 A. Well, sir, the - what I did say was this: My
24 recollection of it is, sir, that because if I
25 hadn't - the problem, you see, that I wanted to clear
26 up with the parties were the background. Now that
27 was --

28 169 Q. I understand all of that. You have told us that
29 before. What I am asking you now is very clear. Do
30 you remember that you were not told about the Lombard &

1 Ulster until after the 26th June 1984?

2 A. That's right, sir.

3 170 Q. You do?

4 A. Well, remember, it is my recollection that it was about

5 a fortnight or so later that I was, that we were told

6 or whatever, days or nearly a fortnight afterwards --

7 171 Q. So you are saying you do remember?

8 A. Well, if that is "remember", yes, sir.

9 172 Q. Yes. Why is it that that's - that detail you can

10 remember, among all of the other things that you have

11 told us you cannot remember?

12 A. Well, I think, sir, because I was a very anxious man

13 about - you see, that was on my mind, was the fact that

14 the investment which we had might have been so

15 encumbered that we couldn't do anything with it. That

16 was foremost on my mind, sir, to get that cleared.

17 173 Q. Now, there is just one other matter that I want to

18 specifically put to you that I hadn't previously put to

19 you.

20 .

21 I did question you extensively on the question of your

22 control over this Trust, and I put to you Mr. O'Shea's

23 evidence, you will recall. I put to you a considerable

24 number of specific documents, which I suggested to you

25 indicated that you did, in fact, control it, but there

26 was one matter that I did not put to you, and that is

27 that Mr. Owens, as you are aware, is going to be making

28 a statement to this Tribunal - sorry, is going to be

29 giving evidence, and he has made a statement to the

30 Tribunal, and in his statement, which is - I believe

1 has been circulated to you, he does say at page 9:

2

3 "Gasche Investments was owned and controlled by Joseph
4 McGowan, and I received instructions through John
5 Finnegan that Foxtown Investments Limited was owned and
6 controlled by himself."

7 A. Mm-hmm. When was this, sir?

8 174 Q. This is in Mr. Owens' statement. As far as I am
9 aware, it doesn't carry a date, but it would have been
10 received in the relatively recent past by the Tribunal.
11 Yes, 24th May. This is the statement that he has
12 provided to the Tribunal, which was, I believe,
13 circulated to your lawyers.

14 A. Yes, sir.

15 175 Q. I just wanted to give you an opportunity to address
16 that, because it hasn't previously been put to you. I
17 have dealt with the substantive issue of control, and
18 you have given your evidence, but --

19 A. When was that? Was that when the thing was being
20 formed, sir?

21 176 Q. He doesn't say when. He simply says:

22 .

23 "Gasche Investments Limited was owned and controlled by
24 Joseph McGowan, and I received instructions through
25 John Finnegan that Foxtown Investments Limited was
26 owned and controlled by himself."

27 A. I think that whatever - I would say - all I can answer
28 to you, sir, is that, to be honest with you, that was
29 my company, and I suppose did he say - that's what I
30 would have been acknowledging, that that's me.

1 177 Q. He says that you said to him that Foxtown Investments
2 was owned and controlled by you.

3 A. Well, I suppose that identifying Foxtown would mean
4 that he knew that I was involved, and Foxtown was a
5 company that I was involved with, sir, and that he
6 was - I think that's the only thing that I think he was
7 probably putting, "This is me."

8 .
9 MR. HUSSEY: I am sorry, I beg your pardon. I really am
10 - I am most reluctant to interject, but the rest of
11 Mr. Owens' statement, when he says that, he says, "From
12 reading the correspondence it appears that Foxtown
13 Investments Limited was registered in Guernsey and
14 apart from its involvement as a shareholder of Ardcar, I
15 had no knowledge of the company, as I did not act for
16 John Finnegan."

17 .
18 I think, in fairness, that should have been read out as
19 well, not just the isolated thing. He had no knowledge
20 of the company. He didn't act for Mr. Finnegan. I
21 think maybe it's a matter for Mr. Owens to deal with.

22
23 178 Q. MR. HANRATTY: No, I think it's a matter for
24 Mr. Finnegan, with respect, to deal with. You have
25 heard the remainder of that passage:
26 .
27 "From reading the correspondence, it appears that
28 Foxtown Investments Limited was registered in Guernsey,
29 and apart from its involvement as a shareholder in
30 Ardcar Limited, I had no knowledge of the company as I

1 did not act for John Finnegan."

2 .

3 So there are two sources of his knowledge. There is
4 the correspondence from which he read, from which he
5 gleaned that it was registered in Guernsey, and there
6 is correspondence - sorry, the statement from you to
7 him where he says that you told him that Foxtown
8 Investments Limited was owned and controlled by you.

9 .

10 Now, why would you have said that to Mr. Owens --

11 A. I don't know.

12 179 Q. -- if it wasn't true?

13 A. The only I thing I can think of is he was identifying
14 anybody - he was identifying - I didn't hear all the
15 others - he was identifying who the other parties were,
16 where he knew who - that was it.

17 180 Q. He says:

18 .

19 "Gasche Investments was owned and controlled by Joseph
20 McGowan, and I received instructions through John
21 Finnegan that Foxtown Investments Limited was owned and
22 controlled by himself."

23 A. I think he said "Owned and controlled." I think the
24 situation that was - this was my connection in it,
25 connection with it, that I don't know if I would have
26 been saying that owned and controlled by me, but that
27 was me, you know, it was my - I was in there and being
28 represented by Foxtown, that it was - it wasn't another
29 Brennan and McGowan company. It was me.

30 181 Q. But why would you have told him you controlled it?

1 A. Well, I suppose that the only interpretation I can give
2 you to that is that if it was controlled, that it
3 wasn't that there were any other persons involved in
4 it.

5 182 Q. Well, there were the trustees of the Trust that owned
6 it?

7 A. Yes, but in my language then. That was - this is when
8 the whole lot was being set up?

9 183 Q. You see, we know that the company was owned by a trust.

10 A. Yes, sir.

11 184 Q. Was owned by Biscay Limited and a number of other
12 nominees on behalf of Sovereign, College or Sovereign,
13 depending on which point in time you take. But yet
14 here you are telling Mr. Owens, A, that you owned it,
15 and B, that you controlled it?

16 A. Well, all I can say is this: I would say my - I can't
17 even recollect that, but if I was saying that that
18 was - yes, that this, Foxtown was my entity, apart from
19 the other boys having - the other gentlemen having
20 their entities and that was putting my slot in there,
21 that that's where I stood.

22 185 Q. Well, can I suggest another more simple and obvious
23 reason, Mr. Finnegan, and that is that the reason that
24 you said that Foxtown was owned and controlled by
25 yourself is because the Trust was a sham and Foxtown
26 was in fact controlled by yourself?

27 A. No, sir.

28 186 Q. As you are aware, sir, I will perhaps leave the
29 remaining of the questions. There won't be terribly
30 many more questions left for Mr. Finnegan, but there is

1 just one particular matter I need to deal with, so
2 perhaps we might resume that after lunch.

3

4 CHAIRMAN: Right. We will resume at twenty past two.

5 .

6 THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

7 .

8 .

9 .

10 .

11 .

12 .

13 .

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25 .

26 .

27 .

28 .

29 .

30

1 THE TRIBUNAL RESUMES AS FOLLOWS AFTER LUNCH:

2

3 187 Q. MR. HANRATTY: Mr. Finnegan, in September of 1984,

4 Capent Limited, which was the company involved in this

5 Cramer Lane development, was in receipt of a loan of

6 ú52,775 from Canio. Do you remember that?

7 A. Yes, sir.

8 188 Q. Can you just tell us briefly how that came about?

9 A. I don't recollect how it came about, sir.

10 189 Q. Why was it deemed necessary, for example, for Canio to

11 make a loan to this company? Was it made for any

12 particular purpose, for example?

13 A. No - only in connection with the acquisition that it

14 was part funding, sir.

15 190 Q. Funding of the purchase?

16 A. Yes, sir.

17 191 Q. Is it your recollection that there was a shortage and a

18 necessity to get funds from Canio to make up some

19 shortfall?

20 A. I am only sort of guessing. I don't recollect,

21 actually.

22 192 Q. You don't recall. All right. There was another issue

23 in that each of the three contributors to Ardcar, at

24 one stage contributed ú10,000 to a fund of ú30,000,

25 which was used to buy shares in a company called Dublin

26 Reinsurance Company. How did that come about, and how

27 did it arise?

28 A. Well, some years ago, whatever the dates were then, I

29 was invited to get involved in United - how it came

30 about, sir, was this: that we were the landlords,

1 myself and two other partners, we were the landlords of
2 a premises in Grafton Street, a shop, offices, and
3 United Reinsurance were tenants in the overhead
4 section. And through that, sir, I was asked would I
5 take up shares in the company, which I did do. And I
6 parted with some of my shares to Mr. Brennan and Mr.
7 McGowan.

8
9 So it went on, the company went on for a number of
10 years, and, in fact, ended up in KPMG's offices in St.
11 Stephen's Green premises there. But later, sir, it was
12 a - it was a reinsurance company.

13 193 Q. Yes.

14 A. And later it got into difficulties. It wasn't making
15 money, sir. And it was eventually wound up.

16 194 Q. As I understand it, Ardcar Limited owned the
17 shareholding, is that right?

18 A. Well --

19 195 Q. An account was set up in Guernsey, apparently into
20 which these three contributions of ú10,000 were put,
21 and the shareholding of approximately ú28,000-odd was
22 purchased.

23 A. Yes, sir.

24 196 Q. I think United Reinsurance was a company of which you
25 were in fact a director?

26 A. Yes, sir.

27 197 Q. And is it the position, then, that this was simply an
28 investment by Ardcar?

29 A. Yes, sir.

30 198 Q. It had no - it doesn't appear to have had any other

1 ostensible connection with anything?

2 A. No, sir.

3 199 Q. So it was just simply an investment on the side, as it

4 were?

5 A. Yes, sir.

6 200 Q. Nothing in particular; it was just seen as an

7 investment at the time, is that so?

8 A. Correct, sir.

9 201 Q. Was there any particular reason why Ardearn Limited

10 became the investor, as it were?

11 A. I don't recollect any particular reason, sir.

12 202 Q. Now, just very briefly to revisit one other matter that

13 we've already dealt with, and that is the question of

14 this development in Herbert Plantation. Am I correct

15 in understanding that you are not clear, or are you

16 clear as to the circumstances in which this

17 indebtedness of ú50,000, for which ultimately Mr. Joe

18 McGowan signed a Promissory Note, arose?

19 A. Sir, I am not clear. It may have been fees or

20 whatever. By the way, when you asked me this the other

21 day, that - I got ú20,000 --

22 203 Q. I know that, in the end there was a settlement?

23 A. Yes.

24 204 Q. I was rather puzzled by your lack of recall of this

25 particular matter, because it was an indebtedness that

26 everybody appeared to acknowledge did exist --

27 A. Mm-hmm.

28 205 Q. -- but that you couldn't remember how it had arisen.

29 A. Yes, sir. We had had a number of - there were a number

30 of fees, as far as I am concerned, as well, I

1 understood. Now, I can't give you the exact detail.

2 206 Q. There were fees in the sum of ú12,000 in addition to
3 the ú50,000 which were apparently acknowledged to be
4 due, and provision was made for that in a variety of
5 different documents. But they were separate over and
6 above the 50?

7 A. Mm-hmm.

8 207 Q. If I can just refer you to a document, or a number of
9 documents. They are not terribly long.

10 A. Okay.

11 208 Q. If we could have 787 first. We may have had this
12 already in a different context. This is an attendance
13 docket of Mr. Russell, and as you can see from the
14 first line he is attending Messrs. Brennan and McGowan
15 and on the 17th of December of 1984.

16
17 So this would have been the month after the
18 distribution of the Lombard & Ulster loan in Jersey.

19
20 If you look at the last paragraph on the bottom of the
21 page, it says - perhaps we'll read the whole document:

22
23 "Attending on Brennan and McGowan when they discussed
24 the above matter and stated that they were going to see
25 what further offers they could obtain for the
26 plantation as McNerneys were very interested in the
27 property and would sign a contract and it was suggested
28 that if they signed a contract that time would be made
29 of the essence of the contract so that they would
30 forfeit the deposit if they didn't pay up on time.

1
2 "I produced a letter dated the 10th December 1984 which
3 I had received from John Finnegan in which he stated
4 that he had located the deeds of the Plantation and I
5 asked Mr. McGowan how Mr. Finnegan would have got these
6 and he was unable to answer that question but I did
7 tell him that I had a note on my file that he, Mr.
8 McGowan, had taken up the deeds from me and it was
9 suggested that I should not mention this matter to John
10 Finnegan and they would speak to him about the matter.
11 Later at lunch I was again told that they would see Mr.
12 Finnegan tomorrow and discuss the matter.

13
14 "The position as far as Brennan and McGowan are
15 concerned, is that John Finnegan is part owner of
16 Herbert Street Plantation and Cramer Lane and their
17 attitude is that they had borrowed on both properties
18 and whatever was over after the two properties were
19 sold would be divided between John Finnegan and
20 themselves and that they would not be dealt with
21 separately. They will discuss the matter with John
22 Finnegan."

23
24 So that appears to suggest that the indebtedness may
25 have something to do with the fact that you were a
26 one-third partner or owner of the property with Messrs.
27 Brennan and McGowan. Is that reasonable?

28 A. No, sir. I was a partner with them. It was not my
29 understanding of it, sir, that I was a partner in the
30 Cramer Lane, sir.

1 209 Q. Yes, but here they appear to be acknowledging that you
2 were a partner in Herbert Street Plantation property as
3 well and entitled to one-third of the net proceeds
4 after a payment of indebtedness.

5 A. Mm-hmm.

6 210 Q. It's not the kind of thing that you would expect
7 anybody, let alone if I may say so, Brennan and McGowan
8 to do, to acknowledge you as a partner if you weren't,
9 in fact, or to acknowledge that you were entitled to
10 ownership of one-third of the property if you weren't
11 in fact.

12 A. Well, I hear what you are saying, sir. That was not my
13 understanding of it, sir.

14 211 Q. So are you saying that it's not your understanding that
15 you were a one-third, or entitled to one-third of the
16 proceeds of sale of this property?

17 A. Yes, sir.

18 212 Q. And that would mean that Brennan and McGowan are
19 incorrect in telling Mr. Russell here in December 1984
20 that you were?

21 A. Yes, sir, that was my recollection, sir, that I was not
22 involved in that.

23 213 Q. But, Mr. Finnegan, if you don't have a clear
24 recollection as to how this indebtedness of \$50,000
25 arose, can you help us as to how you can assert that
26 they are wrong in saying that you were entitled to
27 one-third of the proceeds?

28 A. As I say, I know that I got \$20,000, and I was trying
29 to remember how I got my - how I got the title deeds.
30 And I couldn't actually put my finger on exactly how I

1 got them, unless that they were - either came with
2 other documents or there was some question of a survey
3 of the site when I -- whether I got them from Mr.
4 McGowan or Mr. Russell.

5 214 Q. We do know from the documentation that we have, and I
6 am not going to go through it all in detail, I'll take
7 a sort of a sample of it. But it does appear that
8 between this time, the date of this memo, 17th of
9 December 1984, and sometime early in 1985, in other
10 words, for the entire of - sorry, in 1986, for the
11 entire of 1985, there was a sort of an on-going saga in
12 which Mr. George Russell was trying desperately to get
13 the title deeds off you to complete the sale of the
14 property. Isn't that right?

15 A. Yes. I had - and I think I said to you that I had an
16 understanding with Mr. Russell. Yes. And I said if he
17 came under real pressure I would give them back to him.

18 215 Q. It's recorded, in fact, in two of these memoranda that
19 you had assured him that you wouldn't see him stuck, as
20 it were, but unfortunately when he got to the stage of
21 pleading, nearly begging with you, and when push came
22 to shove, you didn't give them, because you explained
23 that while you sympathised with his position, that you
24 felt that you would never be paid your money if you did
25 hand over the title deeds.

26 A. Mm-hmm.

27 216 Q. Is that fair - a general description of how the matter
28 progressed?

29 A. Yes, sir.

30 217 Q. In fact, it was in the end in litigation, I think, it

1 was between Mimeg, whoever the purchaser was, and the
2 Brennan and McGowan company, Criteria Investments
3 Limited?

4 A. Yes, sir.

5 218 Q. And I think it was in the context of that litigation
6 that an overall settlement was reached where the banks
7 agreed to a release of ú20,000 of the proceeds to you,
8 isn't that right?

9 A. Yes, sir.

10 219 Q. And you apparently agreed to accept ú20,000?

11 A. Yes, sir.

12 220 Q. But what I am still trying to understand is, in the
13 context of all of this, how did it come about that you
14 were owed ú50,000? It seems, for example, from the
15 documents, some of which I'll just open to you to give
16 you a flavour of it, that Brennan and McGowan, that the
17 indebtedness was regarded by Brennan and McGowan not as
18 Mr. McGowan's indebtedness, although he is the one that
19 signed the Promissory Note, but rather as a Brennan and
20 McGowan or Criteria Developments Limited indebtedness ?

21 A. Well, sir - yes, Criteria --

22 221 Q. Did you put up or give them or give Criteria ú50,000?

23 A. No, Criteria was Cramer Lane?

24 222 Q. No, Criteria Developments Limited was the Herbert
25 Street Plantation property?

26 A. I didn't.

27 223 Q. You didn't give either Criteria or Brennan and McGowan
28 ú50,000?

29 A. No, sir, not that I can recollect, sir.

30 224 Q. Well then if that is the case, presumably the

1 indebtedness must have been something to do with your
2 entitlement to a share of the proceeds?

3 A. I thought - I thought that it wasn't to do - that the
4 Cramer Lane premises had been second - that there was
5 either a second charge on them, and either - this is
6 what - I think that there was either an increased
7 borrowing on Cramer Lane, and that when - an increased
8 borrowing, so on the sale I didn't get all of what I
9 was due, sir, or I wouldn't be getting.

10 225 Q. Yes. If I could just refer you to page 820, for
11 example. This is one of the - another of these George
12 Russell attendances. This time it's March, 1985 and he
13 is still clearly trying to get the title deeds:
14 "Attending TF Brennan and JB McGowan when they called
15 and stated that in accordance with the resolution they
16 passed they wanted to be able to sign the contract
17 today and I could lodge the deposit received from
18 Arthur Cox & Co., and they stated that they had
19 explained the matter to Mr. John Finnegan and that he
20 would be paid out of the other property."

21
22 Presumably, Cramer Lane. Would that be a reasonable
23 inference from that?

24 A. Yeah.

25 226 Q. And it doesn't appear from that, and the manner in
26 which it's expressed, that the 50 was originally owed
27 out of Cramer Lane, but simply that they were, perhaps,
28 suggesting that you might be paid your 50 out of Cramer
29 Lane.

30 A. Well, I think, sir, that my recollection, and I just am

1 not clear whether - sorry, there was a second mortgage.

2 And that's what I said to you the last day, sir, out of

3 Cramer Lane. But I think whatever I was to get, I

4 couldn't. I think that's what it was. And I think

5 that - so if it hadn't been - if a second charge - I

6 can't be sure about a second charge or if the mortgage

7 hadn't been increased or something on Cramer Lane.

8 227 Q. There is another memorandum on page 825, again it's a

9 similar attendance by Mr. Russell on his clients.

10 Sorry, an attendance on you. This is April of 1985 he

11 says: "Attending on Mr. John Finnegan when he phoned

12 and stated that he had agreed with Mr. Joe McGowan that

13 he should get ú50,000 out of the sale or out of some

14 other property."

15 .

16 MR. HUSSEY: Sorry, that's a different document.

17 That's not on the screen.

18 .

19 MR. HANRATTY: Just scroll it down.

20 .

21 "John Finnegan when he phoned and stated that had he

22 agreed with Joe McGowan that he should get ú50,000 out

23 of the sale or out of some other property." And then

24 he goes on as well to deal with the fees that were due

25 to you, described as ú3,560 outlay and advertising

26 ú5,000, and 5 percent fees. Obviously, you were, in

27 fact, involved in ú5,000 outlay in respect of the

28 planning. What was that?

29 A. I had actually forgotten about that, sir. I must have

30 funded that, sir.

1 228 Q. But what was the outlay for? What was the ú5,000 for?

2 It's an even sum figure.

3 A. All I can think of, sir, was the planning application

4 fee.

5 229 Q. Would that be ú5,000?

6 A. That's all I can think of, sir.

7 230 Q. It seems a lot for a planning application in 1985 or

8 '84, whenever it was. Am I not mistaken about that?

9 A. Well, I can't be 100 percent sure.

10 231 Q. You can't recall, I gather?

11 A. No, sir.

12 232 Q. All right. Just turning to page 887. This is the

13 actual Promissory Note which Mr. McGowan did sign in

14 May of 1985. This was in the throes now of

15 Mr. Russell, I think, trying to get his hands on the

16 title deeds because he had a sale to complete?

17 A. Mm-hmm.

18 233 Q. Essentially what he is saying in a lot of these memos

19 is he is not even going to send the contracts over to

20 the purchaser because he doesn't want to do so, because

21 he has given an undertaking to the bank in relation to

22 the proceeds of sale, and therefore he has no authority

23 to deduct your ú50,000. That was his problem.

24 A. Yeah.

25 234 Q. And anyway, if you look at the last paragraph of this

26 particular promissory note it says:

27

28 "I further promise and undertake to secure an

29 undertaking from the investor for Criteria Developments

30 Limited to discharge to Mr. Finnegan his fees and

1 expenses amounting to ú12,000, arising out of the sale
2 of the said property known as the Plantation, Herbert
3 Street."

4
5 So, as we are aware, the previous part deals with the
6 50, so this is over and above the 50, your fees for
7 actually selling the property, isn't that right?

8 A. Yes, sir.

9 235 Q. Does that assist you in recalling how this indebtedness
10 of 50 over and above your fees for selling the property
11 had arisen?

12 A. Sir, all I can recollect is this, sir, and I think it
13 is that what I said to you about the Cramer Lane. And
14 I don't know if you have anything about a recharge on
15 that, sir. But I think that's where it came about.
16 That's what I think it was, sir, that it was --

17 236 Q. If I could refer to you page 1012, we are now into
18 July. I am not opening all of thee attendances because
19 this is an on-going saga for the whole year. For
20 example, this is the 23rd of July 1985. This is
21 another attendance on yourself by Mr. Russell. It
22 says:
23 "Attending on John Finnegan when we discussed this
24 matter and he stated that there was no question but
25 that would he come up with the deeds and he would not
26 see me at any loss in the matter and he agreed that he
27 did not hold the deed" -- I don't know what that means
28 -- "as a lien but he wanted to try and hold out as long
29 as he could so that he could get his 50 off Joe McGowan
30 and Thomas Brennan will keep in touch with me and he is

1 going away for a few days."

2

3 So that's one of those instances where you said to him
4 that you wouldn't keep him short, you wouldn't see him
5 short?

6 A. That's right.

7 237 Q. But moving into August, for example, if you could just
8 look at a document on page 1040. Mr. PJ Russell was
9 discussing this matter with you on the phone and he
10 says:

11

12 "I rang John Finnegan but the conversation was a very
13 unsatisfactory one. I told Mr. Finnegan that the Bank
14 of Ireland were really pressing to close the sale and
15 that we therefore need the deeds. I also told him that
16 Joe McGowan had advised us last Friday that he (Mr.
17 Finnegan) would be sending the deeds over to us. Mr.
18 Finnegan merely related that Joe McGowan had told him
19 that "things were being fixed up" and that this was a
20 message left by McGowan at his office today when Mr.
21 Finnegan was out. Mr. Finnegan says he wants to talk
22 to McGowan to find out exactly what the position is at
23 the moment. He said he understood that "something
24 might be done fairly imminently." I told him that
25 McGowan had advised that he had fixed things up with
26 Mr. Finnegan and that there was now no reason why Mr.
27 Finnegan could not send us over the deeds. Mr.
28 Finnegan said that he understood that "they had made
29 arrangements to get the money and it was a question of
30 not all of what is due to me but a fair proportion of

1 it." I told him that Joe McGowan had advised that the
2 Bank of Ireland had agreed to lend ú50,000 to pay
3 Mr. Finnegan and Mr. Finnegan confirmed that Mr.
4 McGowan had told him this also. Mr. Finnegan said that
5 "this is what I am waiting for" and he also said that
6 McGowan had told him that arrangements were being made
7 and the application to the Bank of Ireland was "being
8 processed" and that it should come through this week.
9 Mr. Finnegan assumes that Joe McGowan was in today to
10 tell him that the application to the Bank of Ireland
11 had finally been processed. Mr. Finnegan then said
12 that there "just a question of a eh ... so we just have
13 to talk about the other matters that are outstanding."
14 Mr. Finnegan believes that "they" "were eh, arranging
15 this". All that Mr. Finnegan could assure me was he
16 would "endeavour to get his hands on them as fast as
17 possible." Mr. Finnegan wanted to know if it was all
18 right to relay our conversation to Joe McGowan. I do
19 not know why he asked but told him that I explained to
20 Joe McGowan that he should go onto Mr. Finnegan and
21 that we could not do anything without the deeds. Mr.
22 Finnegan just said that he would be back to me as soon
23 as he had it. (By "it" I presume the monies that he is
24 owed)."
25
26 So again, generally, Russell is trying to get these
27 title deeds. You, while not wishing to inconvenience
28 them, were sticking to your guns, because you felt that
29 you would not be paid unless you held on to the title
30 deeds. Isn't that essentially the position?

1 A. Yes, sir.

2 238 Q. Going into February of 1986, page 1236. This is an

3 attendance on Mr. Stephen Miley. It says:

4 "Stephen Miley rang to say that he understands that

5 John Finnegan will accept ú20,000 in return for

6 releasing the deeds and the Bank of Ireland will accept

7 ú20,000 being deducted from the sale of proceeds."

8

9 So that, in essence, is the arrangement that was made

10 and that we understand was ultimately implemented?

11 A. Yes, sir.

12 239 Q. Are you in a position to say dogmatically whether you

13 actually put up ú50,000? You see all of that memoranda

14 would suggest that the ú50,000 that you were owed was

15 not in the sense of it being your share of the proceeds

16 of sale, albeit that we've seen that memorandum where

17 Messrs. Brennan and McGowan told their own solicitor

18 that you were entitled equally as to a one-third share

19 with them. But the ú50,000 indebtedness had arisen

20 before the sale, it would appear from that - from those

21 attendances. Would you agree with that?

22 A. Yes, sir.

23 240 Q. And it was an indebtedness which you appear to have

24 been insisting would be discharged out of the proceeds

25 of sale.

26 A. Yes, sir.

27 241 Q. And you were, essentially, insisting that you would

28 obtain an undertaking or some sort of a guarantee that

29 the ú50,000, and indeed your ú12,000, would be

30 discharged out of the proceeds of sale before you

1 parted with the title deeds?

2 A. Yes, sir.

3 242 Q. And that would imply that certainly the indebtedness of

4 €50,000 wasn't a debt arising out of your share of the

5 proceeds, because you weren't simply asking for an

6 assurance that you got one-third of the net proceeds,

7 you were asking for the €50,000 that I am owed and I am

8 not giving you the title deeds until I get satisfaction

9 on it. That would imply that the indebtedness of 50

10 arose otherwise in accordance with the contract of

11 sale, either in connection with Herbert Street or

12 perhaps, as you have suggested, some other property.

13 Isn't that right?

14 A. Yes, sir.

15 243 Q. Well, might I suggest to you that it probably arose in

16 connection with Herbert Street.

17 A. What, sir?

18 244 Q. The €50,000 indebtedness.

19 A. No, sir. It was the - what I said to you there, we had

20 the title deeds, sir, but it's my understanding that we

21 would get - I am nearly sure of it, sir, it was that

22 the shortfall at Cramer Lane.

23 245 Q. Well, we've been over that ground before. I don't

24 propose to go over it again.

25 A. Yes, sir.

26 246 Q. Is that on the basis of your recollection?

27 A. Yes, sir.

28 247 Q. You are saying that you recall that there was a

29 shortfall of €50,000 --

30 A. No, sir. A shortfall - I can't say the amount, sir, I

1 am not quite sure on, but that there was a shortfall.

2 I think it was something to do with - as I said to you,

3 sir, I think it was on the remortgaging of that

4 property.

5 248 Q. And is it your evidence to this Tribunal that you did

6 not provide €50,000 either to Brennan and McGowan or to

7 this company of theirs, Criteria Developments Limited

8 for any purpose in connection with Herbert Street

9 Plantation or indeed for any purpose at all?

10 A. No, sir. I am linking the two properties - he did say

11 that Canio make an investment on the other property,

12 sir.

13 249 Q. It made an investment of €52,775?

14 A. Yes.

15 250 Q. But I am talking about this 50,000. I am asking you:

16 is it your testimony to the Tribunal that you did not

17 provide €50,000 to either Messrs. Brennan and McGowan

18 or any company of theirs?

19 A. To the best of my knowledge and belief, sir.

20 251 Q. Right. Thank you, Mr. Finnegan.

21 A. Thank you.

22

23 CHAIRMAN: Anybody else?

24

25 MR. HUSSEY: I'm sorry, one tiny point. It's just out

26 of that very last thing.

27

28 THE WITNESS WAS CROSS-EXAMINED FURTHER BY MR. HUSSEY:

29

30 252 Q. MR. HUSSEY: Do you know, Mr. Finnegan, if Canio was

1 ever paid back the money, the ú52,775 from Capent?

2 A. No, sir.

3

4 MR. HUSSEY: Thank you.

5

6 CHAIRMAN: Thank you very much, Mr. Finnegan.

7

8 MR. HANRATTY: Mr. Tom Brennan, please.

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1 TOM BRENNAN RETURNS TO THE WITNESS-BOX AND IS EXAMINED

2 FURTHER BY MR. HANRATTY:

3

4 There is clearly no prospect, sir, that Mr. Treacy is
5 going to be reached this afternoon. I am sure, if he
6 wishes to be stood down.

7

8 CHAIRMAN: You want to stand him down, yes, Mr. Treacy.

9

10 MR. HANRATTY: Mr. Treacy is not available next week
11 and therefore it will be until Tuesday week.

12

13 CHAIRMAN: Very good. That's all right.

14

15 MR. HANRATTY: Just in relation to Mr. Finnegan, sir,
16 as you are aware, we are waiting to hear what the
17 position is in the litigation in Guernsey. We haven't
18 yet heard anything. I presume My Friend Mr. Hussey
19 hasn't either. And depending upon the outcome of that,
20 it may, of course, in due course be necessary to recall
21 Mr. Finnegan.

22

23 MR. HUSSEY: I quite understand that and I appreciate
24 that. I have some word from Guernsey that, in fact,
25 the parties, including the Tribunal lawyer, have agreed
26 to some strategy with the Court in respect of the
27 documents, and the matter has been adjourned to next
28 Friday for matters to be sorted out, and it may well be
29 that the three lawyers will have been sorted out with
30 the Court before that time.

1

2 As I understand it, that's what has happened.

3

4 CHAIRMAN: Please keep us advised --

5

6 MR. HUSSEY: I don't have firm word on that. We got

7 that message during lunch time. As I say, the Tribunal

8 lawyer is fully participant in the - whatever

9 arrangements are going on and nothing has been done --

10

11 CHAIRMAN: Very good.

12

13 253 Q. MR. HANRATTY: Good afternoon, Mr. Brennan. Mr.

14 Brennan, you will recall that in the course of your

15 previous testimony, a number of issues arose in respect

16 of which you were unable to provide the information

17 which was then sought, but in respect of which you

18 indicated you would make further inquiries, and you

19 have done that, and after your testimony, I think a

20 schedule of those matters was provided to you by the

21 Tribunal.

22 A. Actually, before I finished.

23 254 Q. Before you were finished?

24 A. Two days before that.

25 255 Q. And you then embarked upon the gathering of this

26 information?

27 A. Yes.

28 256 Q. And you have now provided a schedule based on the page

29 numbers and days in the Tribunal schedule, such

30 information as you were in a position to provide?

1 A. That's correct.

2 257 Q. And you've identified those matters in respect of which
3 you were not in a position to ascertain further
4 information?

5 A. That's correct.

6 258 Q. With your permission, Sir, and subject to the agreement
7 of my colleagues, I would propose to lead the witness
8 through this, because I don't think there is anything
9 of any controversial nature in it?

10 A. Certainly.

11 259 Q. The first item was a question of monies that you paid
12 to PJ Burke Sales Limited, this was Mr. Burke's
13 company, and you now indicate that to the best of your
14 information, the last payment to that company was 1982
15 --

16 A. Yes, that's correct.

17 260 Q. You've provided information about the borrowing from
18 Northern Bank Finance Corporation and also the ú50,000
19 deposit from Pagebar?

20 A. That's correct.

21 261 Q. The ú15,000 payment to Mr. Burke, you say, a sales
22 commission was agreed with Mr. Burke for the sale of
23 the Swords lands in a sum of 15,000 and the sale did
24 not proceed, no commission was paid.

25

26 So as I understand what you are now saying to the
27 Tribunal, is that it is your belief that the ú15,000
28 entry on Mr. Owens' document, I believe, is a fee which
29 was preagreed with Mr. Burke, is that right?

30 A. In my statement of '74, which I've received since, I

1 would say last - I had said that --

2 262 Q. I see.

3 A. That would be more accurate.

4 263 Q. That's what you said to the Garda Siochana?

5 A. That's right.

6 264 Q. Yes.

7 A. And I had said that to Mr. - Inspector Joy.

8 265 Q. What that appears to mean is that what you were saying

9 at the time was this was a lump sum fee of ú15,000 that

10 was agreed with Mr. Burke to be paid to Mr. Burke --

11 A. If the sale proceeded.

12 266 Q. Yes. Which it didn't?

13 A. No.

14 267 Q. And, therefore, you say that Mr. Burke was not paid

15 that money?

16 A. He wasn't paid anything, no.

17 268 Q. One of the other items that arose was the question of

18 whether any records could be found anywhere to show

19 that Mr. Burke had made any payment to Oakpark in

20 respect of his dwelling house?

21 A. Yes.

22 269 Q. And the one in this particular category was the

23 Northern Bank, isn't that right?

24 A. Yes.

25 270 Q. And you say now in the schedule that: "Further

26 inquiries were made and that Northern Bank has no

27 record of any kind whatsoever."

28 A. That's correct.

29 271 Q. About a payment, any payment, including this payment of

30 ú15,000 to which reference --

1 A. No documentation.

2 272 Q. -- they have no record of anything?

3 A. None.

4 273 Q. And I think further on you deal with other inquiries

5 from sources other than the Northern Bank, including

6 and in particular, Oakpark itself?

7 A. Yes.

8 274 Q. And I think the position is that Oakpark Developments

9 Limited have no record whatsoever of any payment, in

10 receipt of any payment from Mr. Burke in respect of --

11 A. We have no accounts for that period.

12 275 Q. Yes. Now, you were also asked about this company,

13 Echinus and Worland, and what you say is: "Miley &

14 Miley contacted the solicitors in the British Virgin

15 Islands to appear as the registered office of Echinus

16 Limited. We enquired as to the beneficial ownership of

17 this company. They have been unable to obtain this

18 information. When Victa was struck off for failure to

19 make returns Worland was formed in relation to the sale

20 of the Bellevue lands. After the sale of the Bellevue

21 lands the proceeds were distributed among the

22 beneficial owners and our clients had no further

23 involvement with Echinus. The company has since been

24 dissolved."

25

26 I take it from that that what you are saying is that

27 you don't know what Echinus is about?

28 A. No, but - that's qualified in another paragraph, where

29 I did, myself, through Westpark, receive that, and the

30 other four directors, the ú110,000.

1 276 Q. I understand that. This is the proceeds of sale from
2 Donnybrook, it's the proceeds of sale from the FICOIL
3 policies which were used to pay - by Farrell Homes to
4 pay for the land that they were buying in the sum of
5 1.1 million?

6 A. That's right.

7 277 Q. We were engaging in an exercise trying to account for
8 the full amount of that, and a certain amount was used
9 to pay borrowing -

10 A. 285 - 135 for tax, 550 to the five directors in their
11 companies, and then fees to FICOIL, Laurence Wheeler
12 and Martin Bullock --

13 278 Q. Yes. That accounts for, you say, all of the 1.1
14 million, but where does Echinus come into it?

15 A. That's what I don't know, because nobody could find any
16 information about them.

17 279 Q. The mystery about Echinus of course is that it came to
18 be the legal owner of Worland?

19 A. That's right.

20 280 Q. Which was the legal owner of the property?

21 A. Yes.

22 281 Q. And which therefore became the legal owner of the
23 proceeds of sale of the property?

24 A. That's correct.

25 282 Q. And do you know - you have no idea, then, how Echinus,
26 this company in the British Virgin Islands, how it came
27 to be the owner of the money which was undoubtedly in
28 part at least distributed to yourself and your fellow
29 directors?

30 A. Money was all distributed.

1 283 Q. Yes.

2 A. In total, so I don't know what it was there for. It
3 didn't do much, just distributed the money.

4 284 Q. Did you make any inquiries to Mr. John Caldwell about
5 this?

6 A. No, I think it was done through Miley & Miley. They
7 may very well have been on to John Caldwell. They were
8 handling that.

9 285 Q. Did you yourself make any inquiries with Mr. Caldwell?

10 A. No, I haven't seen Mr. Caldwell.

11 286 Q. To your knowledge, did Messrs. Miley inquire --

12 A. No, I am not sure.

13

14 MR. HAYDEN: I can help the Tribunal. Yes, inquiries
15 were made of Mr. Caldwell and there has been no
16 response.

17

18 MR. HANRATTY: I see.

19 287 Q. Would I be correct in thinking that it must have been

20 Mr. Caldwell that set up this Echinus structure,
21 whatever it may have been?

22 A. Or Laurence Wheeler.

23 288 Q. Well, was he involved in that?

24 A. I think so, yeah.

25 289 Q. You see, if you remember what happened, the money - the

26 FICOIL policies were cashed in Dublin, they were sent
27 over to Mr. Wheeler in the form of four cheques, which
28 he endorsed, and sent to the Royal bank of Scotland in
29 the Isle of Man?

30 A. Yes.

1 290 Q. And there was a query about his power to endorse, but
2 when that was sorted out, that's where the money ended
3 up?

4 A. Yeah.

5 291 Q. That money at the time belonged to Worland as owner of
6 the property?

7 A. That's correct.

8 292 Q. But Worland at that time had been acquired by Echinus?

9 A. Yeah.

10 293 Q. So it wouldn't appear, and given that Echinus is a
11 company in the British Virgin Islands, there is no
12 indication in any of the documents that Mr. Wheeler had
13 had any involvement in that, but there are indications
14 that Mr. Caldwell did have involvement both in the Isle
15 of Man and in relation to the FICOIL policies and so
16 on?

17 A. Yes. He did in relation to the FICOIL policies. I
18 knew that.

19 294 Q. May I infer from the fact that inquiries were made from
20 Mr. Caldwell about Echinus that it was on the basis of
21 a view that he may well have been involved in whatever
22 it was that Echinus was doing?

23 A. Yes.

24 295 Q. Are you aware of who owned Echinus?

25 A. No, I am not.

26 296 Q. Who the directors or shareholders of Echinus were?

27 A. No, I don't have any information.

28 297 Q. Can you think of any reason why Mr. Caldwell would have
29 caused Worland to have been acquired by Echinus?

30 A. No, I don't know - I don't understand the reason.

1 298 Q. All right. Day 271, page 51 you again say: "There was
2 no evidence of any payment by Mr. Burke to Oakpark, and
3 there is no such evidence following detailed payments
4 with Northern Bank." That's the one we've already
5 dealt with.

6 A. Yes.

7 299 Q. The distribution to yourself and Mr. McGowan in
8 relation to Bellevue Avenue, the position in relation
9 to the distribution of the profits arising from the
10 Bellevue sale are now clear; the three companies,
11 Kalabraki, Gasche and Foxtown each received one-third,
12 subject to an adjustment between Tom and Joe.

13

14 Now, you are not talking there about the proceeds of
15 sale of Bellevue Avenue; you are talking about the
16 proceeds of the monies that were sent over by Oakpark
17 to Victa, isn't that right?

18 A. Precisely.

19 300 Q. Now, we have had, as you undoubtedly are aware, further
20 evidence in connection with this, and in particular
21 we've been asking Mr. Finnegan what he thought the
22 agreements were. Can you enlighten us any further
23 still, because, frankly, there are a number of
24 conflicting accounts on the transcript, shall we put it
25 that way.

26 A. The interest was a third each between the three of us,
27 and we sold it on at that price.

28 301 Q. The one thing that you all appear to be agreed upon is
29 that Mr. Finnegan, having received one-third of the
30 monies that were sent by Oakpark to Victa, had no

1 entitlement to any further participation in either
2 development of the property, if it was developed or
3 proceeds of sale, if that ultimately transpired?

4 A. That's correct.

5 302 Q. And that he did not in fact have any participation in
6 the proceeds of sale when it was in fact sold?

7 A. No.

8 303 Q. No. So whatever agreement you had with Mr. Finnegan
9 was confined to what was going to happen with the
10 Jersey company, Victa?

11 A. Precisely.

12 304 Q. And what happened with the Jersey company, Victa, is
13 that 672 - sorry, that ú304,000 was sent over and
14 divided up?

15 A. That's right.

16 305 Q. About 101,000 each?

17 A. Correct.

18 306 Q. These monies were monies which were borrowed by Oakpark
19 in Ireland, isn't that right?

20 A. That's right, from Lombard & Ulster, yes.

21 307 Q. The reason I say that is because Mr. Finnegan says they
22 were profits.

23 A. Well, Oakpark borrowed them to pay us.

24 308 Q. Oakpark borrowed the money to pay Victa?

25 A. Yes.

26 309 Q. And the monies were actually paid under a licence
27 agreement?

28 A. That's right, yeah.

29 310 Q. But they weren't profits?

30 A. The 304?

1 311 Q. Yes.

2 A. Well, I think they might have been, you know.

3 312 Q. If Oakpark Developments Limited borrows €304,000, sends

4 it over under a licence agreement, which - most of

5 which - most of the financial provision of which

6 consisted of an interest-free loan which, as far as we

7 know, doesn't ever appear to have been repaid?

8 A. I think that Lombard, though, perfected that licence

9 and made it a security.

10 313 Q. Lombard?

11 A. They had security over that land.

12 314 Q. There is no doubt Victa - part of the licence agreement

13 was that Victa would use the land as security for

14 Oakpark's borrowing from, so it was a very closely

15 related thing?

16 A. Yeah.

17 315 Q. And, in effect, it was money coming from one Brennan

18 and McGowan related company in Ireland to another one

19 in Jersey?

20 A. Yes. Set up by the professionals, of course.

21 316 Q. Now, I've been over this ground and I've asked you, why

22 did you pay €101,000? Have you anything else to say to

23 us about that?

24 A. No, other than he was a third share.

25 317 Q. All right. Now, perhaps this might be a relevant point

26 to introduce this, but Mr. Finnegan has given evidence

27 that he actually invested money into these projects.

28 Do you remember I asked you about this before, and you

29 said that you believed that he hadn't, and Mr. McGowan

30 then gave evidence that that was his view as well. Mr.

1 Finnegan has now asserted that he did - that in the
2 case of Monkstown, he put up ú33,333, being, obviously,
3 one-third of ú100,000, some ú100,000 investment. He
4 says in the case of Donnybrook he put up 50,000, when I
5 say 'he', Foxtown, and that in the case of Newtownpark
6 Avenue, he put up ú33,333.33. That's the testimony
7 which he has given.

8 A. I was told about that, but I find it hard enough to
9 fit it into this situation. The first one was signed
10 by Kilnarnagh Estates in Monkstown, was ú11,000
11 deposit and subject to planning permission. Now, what
12 happened after permission was granted and the sale
13 closed, I am not quite sure how it fitted in there.
14 But I don't have any details.

15 318 Q. Well, in all three transactions there is, in general, a
16 coincidence in time between the outlay of the purchase
17 monies and one might surmise as a possibility that
18 maybe what he was doing was making a contribution to
19 the purchase price. Did he make a contribution --

20 A. When the sale was closed?

21 319 Q. Yes. For example, in the case of Monkstown we know
22 that the nuns got their money?

23 A. They got their money.

24 320 Q. Their ú210,000 or at least the balance of their 210
25 because they got a deposit of 21 in August of 1976, was
26 it?

27 A. Something like that.

28 321 Q. But in November of 1977, they got the balance of that,
29 approximately ú189,000. Did Mr. Finnegan contribute to
30 any part of that money that was paid to the nuns?

1 A. See, I don't know. I don't have any information. I am
2 not sure about that.

3 322 Q. Well, Mr. Finnegan has drawn our attention to the fact
4 that he's produced some of the accounts, the bank
5 accounts of Foxtown which do indicate a debit of
6 ú33,333 on the 17th November, 1977, which could, in
7 theory, have been put into the purchase?

8 A. Yes.

9 323 Q. Was the deal with Mr. Finnegan that he would put up
10 some of the purchase monies? I mean, that's a fairly
11 simple question.

12 A. I am not sure about that now. The thing I would say
13 about that, I don't think we were stuck for money. I
14 think we would have found the money anyway. Whether he
15 put the money in or not, I am not sure.

16 324 Q. Are you sticking to your evidence that he didn't put up
17 any money, or what's your position?

18 A. I don't have any details to show whether he put up any
19 money myself. I don't have all the details either.

20 325 Q. Well, if he did put up money, what would it have been
21 used for?

22 A. It would be used for the purchase. It wouldn't be
23 needed to buy it for the option --

24 326 Q. Of course not, because we've accounted for, we have
25 accounted for the monies that went over to Jersey and
26 the source of them --

27 A. No monies went in towards the purchase. They were
28 mostly tied up by Kilnarnagh Estates, most of those
29 deals.

30 327 Q. Apart from the monies -- let's just stay with Monkstown

1 briefly -- apart from the monies that were sent over to
2 Jersey and apart from the monies that were used to pay
3 the nuns, was there any other requirement for cash to
4 which the 33,000, if it existed, was applied?

5 A. No, no other requirement.

6 328 Q. Then moving into Donnybrook. Again we've accounted for
7 the monies that were sent over, the ú304,000, the
8 borrowing of Oakpark and so on and the security
9 provided by Victa.

10 A. Yeah.

11 329 Q. But undoubtedly the Pembroke Estate did have to be paid
12 for its property?

13 A. That's right.

14 330 Q. Did Mr. Finnegan. Or was it part of your arrangement
15 or agreement with Mr. Finnegan that he would make a
16 contribution towards the purchase price?

17 A. I am not sure about that, but I think the first
18 contract was with Hinrehan (phonetic) which were the
19 leasehold in Donnybrook. And then from there --

20 331 Q. That was brought in by the Pembroke Estate?

21 A. Is that right?

22 332 Q. The property was actually bought by Victa from the
23 Pembroke Estate.

24 A. From Pembroke, okay. So if they put any money in, they
25 didn't put it on the initial deposit. He may have put
26 it into the purchase.

27 333 Q. To the closing price?

28 A. The closing price.

29 334 Q. Well, are you agreeing that he did or -

30 A. I am not sure.

1 335 Q. He says that - he doesn't say that he put it towards
2 the purchase price; he says that he put it in by way of
3 an investment into the project, but he denies --

4 A. We didn't do any investment in any of those.

5 336 Q. I understand that. I fully understand that. But he
6 specifically denies, and I want you to be clear about
7 this, he says that while he put in ú50,000, he
8 specifically asserts that it was not used for the
9 purchase price. Now if he did put in 50, is there
10 anything else it would have been used for or could have
11 been used for, if not the purchase price?

12 A. No.

13 337 Q. All right. Moving into Newtownpark Avenue. Here again
14 he says he put in ú33,333.33, and again, as he did in
15 the Monkstown case, and as he did in the Donnybrook
16 case, points to a debit on the Foxtown account, which
17 in broad terms, coincides and is consistent with it
18 perhaps having been used as a contribution towards the
19 purchase price. First of all, was it part of your
20 arrangement with Mr. Finnegan that he would make a
21 contribution towards the purchase price of this
22 property?

23 A. I don't think so. If he put it in - I don't think we
24 asked him for any money. I don't remember asking.

25 338 Q. Did he in fact put it in?

26 A. He may very well, but I don't know myself. But I don't
27 remember asking John Finnegan for any contribution.
28 Again, that was a long drawn out closing, again that
29 one, just deposit paid down. The rest was over a
30 period --

1 339 Q. Mr. Brennan, you would have had to gather together the
2 money from wherever it came, you know, to pay the
3 purchaser for the property, in this case it was being
4 bought off Mr. Maguire?

5 A. That's right. And we bought part of Mr. Maguire's.

6 340 Q. Yes. Well there was what was called a front-parted and
7 then the bigger -- and subsequently there was exchange
8 done which had nothing to do with Mr. Finnegan?

9 A. That's right. They were on to Lansdowne.

10 341 Q. We are only dealing with the very early stages because
11 what was done subsequently did not involve Mr. Finnegan
12 and he again agrees that he had no entitlement to what
13 came later?

14 A. Yeah.

15 342 Q. And didn't, in fact, participate in what came later?

16 A. Yes, that's correct.

17 343 Q. But surely, Mr. Brennan, if he made a contribution of a
18 substantial proportion of the purchase price, you would
19 know about it?

20 A. I can't deny that he didn't. I am not sure.

21 344 Q. Well, here again, and we are still on Newtownpark
22 Avenue --

23 A. Yeah.

24 345 Q. Would I be correct in thinking that if he did, the only
25 thing, apart from the monies that were sent over to
26 Jersey, that it could have been used for was the
27 payment of the purchase price?

28 A. Had to be the purchase. Nothing else.

29 346 Q. But yet here again we know, I think, that it wasn't
30 used in the context of the monies sent over to Jersey

1 because we have accounted for that?

2 A. That's right.

3 347 Q. The ú672,000 was sent over?

4 A. Yeah.

5 348 Q. And that was made up as to borrowings of ú400,000 from,

6 was it Chase Bank; ú150,000 from Northern Bank, and

7 ú122,000 from Kilnarnagh Estates?

8 A. Mm-hmm.

9 349 Q. Now, originally, and this is another of these items on

10 this list of things that you were going to check, you

11 were of the view that the ú120,000 was lent by

12 Kilnarnagh to Lansdowne, isn't that right?

13 A. That's right.

14 350 Q. But on checking it, you found that there was an

15 indebtedness recorded but it was only for 37,000?

16 A. 37,000, yes. That's what's shown on the books.

17 351 Q. But that 37, am I right in thinking was at the date of

18 the liquidation?

19 A. No. I think he had it before that. The only debts on

20 that - it reduced by something the following year, by

21 another 10,000.

22 352 Q. It does appear, whatever it was called, whether it was

23 called a loan or whatever, that two sums did go from

24 Kilnarnagh to make up the ú622,000. There was an

25 assembly of the money, I think, perhaps in Miley &

26 Miley?

27 A. Maybe Lansdowne paid it back to Kilnarnagh?

28 353 Q. Perhaps it did.

29 A. It might have put it up first and then gave back some

30 of it to us.

1 354 Q. But it does appear, do you agree, that there were two
2 sums in the sum of --

3 A. Yes.

4 355 Q. And a separate sum of 22 provided by Kilnarnagh under
5 some heading?

6 A. That's what it shows at the moment in the documents.

7 356 Q. But yet your researches appear to show as of the date
8 of liquidation, and you are now saying at an earlier
9 date in fact the indebtedness shown in the books of
10 Lansdowne as ú37,000?

11 A. That's what Grant Thornton told me.

12 357 Q. And is it your belief that that might be explicable,
13 although you can't definitively say on the basis that
14 some of the indebtedness was paid back?

15 A. Yes, I think it was --

16 358 Q. You actually think it was?

17 A. Grant Thornton thinks it was reduced to 37,000.

18 359 Q. I see. Especially then if we could just continue with
19 this list, Mr. Brennan. You were asked at day 272 in
20 relation to page 41 and 42, "Who acted for Green Isle
21 Holdings Trust in the case of the Monkstown land?" And
22 you are now saying to the best of your recollection, it
23 was in fact Vincent and Beatty?

24 A. Yes.

25 360 Q. Which would mean that they acted for both sides in the
26 transaction, isn't that right?

27 A. That's the information we have.

28 361 Q. You were asked at day 272, page 95, "Who acted for
29 Herbert Properties Limited in relation to the
30 Donnybrook transaction?" And again you are now saying

1 that your recollection is that that was also Vincent

2 and Beatty?

3 A. Vincent and Beatty, right.

4 362 Q. At day 273, pages 109 to 114 you were asked for certain

5 information in relation to the Holbourne Trust, and you

6 can put it no further than the fact that you've handed

7 over the files of the Holyburn Trust and you can't give

8 us any other information?

9 A. No.

10 363 Q. You were asked at page 273, pages 145 to 147.

11

12 I think we've given a copy of the schedule to

13 Mr. Hussey, yes, \$304,000 was paid to Victa Investments

14 Limited in relation to the Oakpark.

15

16 And you say that Oakpark paid Victa 304,000 for its

17 interests in the Bellevue lands. You said the profit

18 was distributed between Foxtown, Kalabraki and Gasche,

19 something subject to an adjustment between Tom and Joe.

20 We've dealt with the profit point.

21 A. That's right.

22 364 Q. I am not going to dwell on it. The adjustment arises

23 from the fact that you appear to have got 150 and he

24 appears to have got 50?

25 A. That's right.

26 365 Q. What was the adjustment?

27 A. I really don't know.

28 366 Q. You just believe that some adjustment took place?

29 A. Yes.

30 367 Q. But the point you are making is that it was an equal

1 entitlement?

2 A. That's right.

3 368 Q. You were asked at Day 273, page 153, 155, in relation
4 to Financial Indemnity Company of Ireland Limited, Mr.
5 Caldwell's company, the capital redemption policies and
6 the proceeds thereof; you say that related to the sale
7 by Oakpark to Farrell Homes of ú1.1 million you said -
8 you say that this related to the sale by Oakpark to
9 Farrell Homes of ú1.1 million. You say that payment
10 was made by capital redemption policies on tax advice.
11 Each director of Oakpark received through their
12 respective companies a sum of ú110,000 and we know how
13 this was distributed. And then you give these figures
14 which you mentioned earlier, ú285,000, you say Lombard
15 & Ulster Banking that was a repayment.

16 A. Yes.

17 369 Q. 130,000 towards Oakpark's tax settlement with the
18 Revenue Commissioners?

19 A. Yes.

20 370 Q. Which, in effect, was, I presume, indirectly a payment
21 to the directors of Oakpark or whoever was liable for
22 the tax?

23 A. Tax.

24 371 Q. And then you say there were fees.

25

26 MR. HAYDEN: In relation to that on the revenue
27 settlement, I think it was the whole thing; it was not
28 just the directors, it was Oakpark's own involvement,
29 the job-lot, I think.

30

1 MR. HANRATTY: Well, it's simply a question of where
2 the money went. We've been told it went to the
3 Revenue.

4

5 372 Q. Fees to Financial Indemnity Company and Laurence
6 Wheeler and Martin Bullock in the Isle of Man accounted
7 for the rest, you've told us, is that right?

8 A. Yes. Freaney said if anything was left over, it went
9 into the Oakpark account.

10 373 Q. I think a number of the directors are in fact going to
11 briefly tell us about this - the receipt by them?

12 A. That's correct.

13 374 Q. At page 273, sorry, Day 273, page 159, 160, another
14 query in relation to Echinus Limited. You say that
15 when the name of Worland was changed to Echinus Limited
16 there were no assets left in Echinus at the time. That
17 particular company was never utilised again. Isn't
18 that right?

19 A. Yeah, that's correct.

20 375 Q. Strictly speaking, I think you agree with me it's not
21 quite true to say that the name was changed. What
22 happened was that Echinus acquired Worland, the
23 shareholding in Worland was held by three declarations
24 of trust in Bedell & Cristin, and what happened was
25 they redeclared Declaration of Trust holding the shares
26 of Worland on behalf of Echinus?

27 A. Yes.

28 376 Q. In other words, new declarations of trust?

29 A. Right.

30 377 Q. The point you make, as I understand it, is that after

1 the distribution of the proceeds of the FICOIL

2 policies, there were no assets left in Worland?

3 A. That's right.

4 378 Q. And therefore in Echinus?

5 A. In Echinus, that's correct.

6 379 Q. Day 274, pages 43, 45 and 49, Lombard & Ulster loan to

7 Oakpark, and you say Lombard loaned the sum of ú600,000

8 to Oakpark to finance the purchase, the sum of ú258,000

9 was repaid out of the sale proceeds and the balance to

10 repay Lombard was borrowed from FICOIL. FICOIL were

11 subsequently paid out of the profits arising from the

12 sale. And that ties in with what you said previously

13 about the 285?

14 A. Yes.

15 380 Q. That's in relation to the Donnybrook property,

16 obviously?

17 A. Yes, that's right.

18 381 Q. And at page day 274, page 79, 81, you explained you got

19 this ú110,000 being your distribution in your capacity

20 as a director of Oakpark?

21 A. Yeah, to Westpark, yeah.

22 382 Q. Yes. At day 274, question 132 you've already dealt

23 with it, you say that the indebtedness showing in the

24 books of Lansdowne was not 122 but was actually 39, I

25 think it was - I think I said 37; it was 39.

26 A. 39.

27 383 Q. We've already dealt with that. But you do say at 274,,

28 page 143: "Repayment by Lansdowne to Kilnamanagh of

29 loan of 122 in respect of the Newtownpark Avenue

30 transaction, Kilnamanagh records show that the sum due

1 by Lansdowne to Kilnamanagh was in fact 37,000 and not

2 122." So is it 37 or 39?

3 A. 37 -

4 384 Q. You think it's 37?

5 A. I do, yeah.

6 385 Q. Now, at day 274, page 145 to 147, there was queries in

7 relation to the purpose of the payment of ú404,500 to

8 ABN. You recall out of the ú672,000 that went over to

9 Jersey, 404,500 came straight back?

10 A. That's right.

11 386 Q. And what you say now in relation to that is a sum of

12 404,500 came back from Jersey out of the proceeds of

13 sale and placed in a Miley & Miley client account with

14 ABN. "Why did this money come back into Ireland?" And

15 you answered that: "It would appear at this stage that

16 the fund was utilised to pay off the loan to Chase Bank

17 which freed up Lansdowne's assets to facilitate further

18 borrowings from Chase Bank to cover construction

19 costs."

20 A. That's right.

21 387 Q. So what happened there, in fact, was that 404,500 -

22 sorry, 400,000 in fact was the borrowing, there was

23 another ú150,000 borrowing from Northern Bank, another

24 122 put to it in two lumps of -- sorry. There was

25 ú400,000 borrowed from Chase?

26 A. Yes.

27 388 Q. There was ú150,000 borrowed from Northern Bank. And

28 then there were two separate sums of, in the sum of 122

29 put in by Kilnamanagh?

30 A. That's correct.

1 389 Q. They were gathered together, we think, in Miley & Miley
2 and sent over. But immediately 400 -- 404,000
3 including some bank charges?

4 A. Yeah.

5 390 Q. What was the need to borrow it then to send it back?

6 A. I am a bit confused about that myself. Obviously that
7 was the way it was planned, the way it was set up. But
8 it went to purchase those sites or pay back the bank
9 and take down a new loan.

10 391 Q. I mean, you could just as easily have borrowed 150 from
11 the Northern Bank, added the 122 from Kilnarnagh, sent
12 that over, did the - do up the division without
13 borrowing 400 from Chase and then sending it straight
14 back with an addition of ú4,500?

15 A. But we are quite happy that Lansdowne couldn't develop
16 without that money. So they did develop - they had 48
17 sites.

18 392 Q. Right. Anyway, that's the way it was done?

19 A. Yes. That's correct.

20 393 Q. Where did you get the information that enabled you to
21 give that answer?

22 A. Well, the best information on that was they did get the
23 sites, the 48 sites, and they didn't have any money
24 themselves. So - and the way the loans are set up in
25 Chase Bank, it seems, 400,000, you have to pay it back
26 before you can take down the new loan because that's
27 the way those American banks operate. You must pay one
28 off for it and then you take down a new one.

29 394 Q. But the information as contained in this answer is not
30 information which you were in a position to give us the

1 last time?

2 A. No.

3 395 Q. Did you find it somewhere?

4 A. No. But through Miley & Miley and the - all the

5 inquiries they have made, it is quite clear that that's

6 what happened.

7 396 Q. I understand. Day 275, pages 2 to 10, again relate to

8 Echinus and I think you've dealt with that.

9

10 Day 275, page 15, a question about ú22,500 bank draft

11 from the Royal Bank of Scotland. I think that's the

12 fourth missing bank draft?

13 A. Precisely.

14 397 Q. And you say the proceeds for the sale of Oakpark to

15 Lansdowne came by way of four drafts, and one of the

16 drafts, you say, amounted to that sum ú22,500?

17 A. Yeah.

18 398 Q. And you say that you can only presume at this stage

19 that this draft was endorsed in discharge of fees?

20 A. That's right.

21 399 Q. In other words, it didn't actually go to Bank of

22 Scotland at all?

23 A. That's right.

24 400 Q. And where did you think you got that information from?

25 A. I am not sure. I know it didn't come out of Beachside

26 or any of those places. Therefore, if this were to

27 come from that and it was one of the cheques.

28 401 Q. And one might surmise therefore that the cheques were -

29 at least it was so ordained that one of them would

30 amount to whatever fees had to be paid so that that

1 could be dealt with by a separate draft?

2 A. That's the way I see it, yes.

3 402 Q. There was a query in relation to the repayment of
4 ú229,500 to FICOIL. This is day 275, pages 18 and 19.
5 And you say that the monies borrowed by Oakpark from
6 FICOIL were repaid out of the proceeds of the sale of
7 sites, and that's --

8 A. That's right.

9 403 Q. And are you clear about that?

10 A. I am, yes. That's what Finnegan said, that's the way
11 it happened.

12 404 Q. And the next query, day 275, page 15 and 16 relates to
13 the same four bank drafts. I think you've covered
14 that, you've covered the ú404,500, that was revisited
15 again. You've covered the ú672,000. And you've
16 covered the ú37,000 and as against the ú122,000?

17 A. Yes.

18 405 Q. You've covered the - again, it arose on day 277, page 6
19 to 12 about the assertion that somebody paid - that
20 Oakpark had received ú15,000 from Burke. You've
21 covered that as well?

22 A. I have, yes.

23 406 Q. You've covered the query about the lands, part of the
24 lands having been purchased by Greenmount Properties
25 Limited in Newtownpark Avenue?

26 A. That's correct.

27 407 Q. And you point out that in relation to the queries at
28 Day 277 pages 18, 20, 21, 30, 67, 89, 90, that
29 subsequent evidence has covered that?

30 A. That's right.

1 408 Q. The position in relation to the ownership of the
2 Sandyford lands we've already established, I think?

3 A. That's right.

4 409 Q. And just, have you got a copy of your schedule in front
5 of you there?

6 A. Yes.

7 410 Q. If you look at page - I am looking at fax numbering,
8 what is page 5. Day 277, page 98.

9

10 The second last item on -

11 A. Yes, I see it here.

12 411 Q. You said loss incurred in Sandyford transaction, and go
13 on to deal with the 37,000. I think Sandyford,
14 presumably, is a mistype, is that right?

15 A. It is, yes.

16 412 Q. All right. There was a query in relation to the profit
17 on the sale of the Sandyford lands. I think that has
18 been adequately dealt with?

19 A. That's right.

20 413 Q. Day 277, page 139 we have now in fact established that
21 the leasehold interest in Smiths of the Green was in
22 fact acquired by Green Trees Limited and we've seen a
23 memo, I think, and you say that Miley & Miley acted in
24 that purchase but that all of their files in relation
25 to it are destroyed?

26 A. That's right.

27 414 Q. You've already dealt with the 404,500 which came up
28 again on day 278, page 11. There was an issue about
29 ú75,500 and you say that that sum represented the
30 initial payment to finance the purchase of the

1 leasehold interest in Smithfield -

2 A. It came over from Jersey, from the Tritonville --

3 415 Q. This came out of the 79,500 from the Tritonville Road
4 transaction?

5 A. That's right.

6 416 Q. And that was paid to Miley & Miley?

7 A. Miley & Miley, yeah.

8 417 Q. You say the vendor -- this is in relation to a query at
9 Day 278, page 25 -- the vendor of the leasehold

10 interest in the St. Stephen's Green property was Smiths

11 of the Green. There were a number of other subsidiary

12 leasehold interests acquired. The freehold was held by

13 MEPC, a UK property based company, which we have since

14 established in any event?

15 A. Yes, sir.

16 418 Q. There was a query at day 278, page 26 as to whether Mr.

17 Finnegan acted for Smiths of the Green. And it appears

18 that he did, but in this instance, the query

19 specifically was, did he act for Smiths of the Green in

20 relation to this particular sale? And you say to the

21 best of your recollection, John Finnegan did not act in

22 relation to the sale of the leasehold interest. It

23 does appear however that he did represent the Gallagher

24 Group in relation to the subsequent purchase of the

25 entire interest in the St. Stephen's Green property.

26 A. Yes.

27 419 Q. So is it your recollection, therefore, that Mr.

28 Finnegan did not act for Smiths of the Green, albeit

29 that they were clients of his in this particular

30 transaction?

- 1 A. Yes, that's to the best of our knowledge that he did.
- 2 420 Q. Where did you get that information from?
- 3 A. Through John Walsh of Miley & Miley, that was - he had
- 4 done a bit of research on that, and he did bring Pat
- 5 Gallagher to the table on the sale, I am sure of that.
- 6 421 Q. My understanding of Mr. Finnegan's evidence that he
- 7 says he did?
- 8 A. That he did act?
- 9 422 Q. Yes, he did say that Mr. McGowan also knew the
- 10 proprietor of that --
- 11 A. He did, yeah.
- 12 423 Q. But that he was involved in the sale as well?
- 13 A. That could be right. Because I am not quite sure. But
- 14 I said to Mr. Walsh of Miley & Mileys --
- 15 424 Q. In fact, Mr. Finnegan also says that he did not act for
- 16 Gallaghers.
- 17 A. He did introduce them, though, I think.
- 18 425 Q. Yes.
- 19 A. Because there was other people, and I am quite sure Pat
- 20 Gallagher came from a John Finnegan introduction.
- 21 Whether he got fees for it or not, I am not sure.
- 22 426 Q. All of the files of Miley & Miley in relation to St.
- 23 Stephen's Green, you've already said were destroyed.
- 24
- 25 And that the Tribunal had been so advised. Correct?
- 26
- 27 At day 278, page 116, 117 there was a query in relation
- 28 to the difference between the €1.5 million paid for St.
- 29 Stephen's Green. That was the total proceeds of sale,
- 30 isn't that right?

1 A. That's correct.

2 427 Q. And the figure of ú821,875.96 that was sent to Jersey,
3 we know that was the figure that was sent to Jersey; we
4 know that ú154,000, approximately, expenses was
5 deducted, and that the remaining net figure was divided
6 yielding approximately ú223,000 each?

7 A. That's correct.

8 428 Q. To yourself, to Gasche, Kalabraki or was it Beachside
9 --

10 A. I have --

11 429 Q. -- and Foxtown?

12 A. Yeah, it was Kalabraki at that stage.

13 430 Q. It was Kalabraki?

14 A. Mm-hmm.

15 431 Q. And you say that you confirmed that the sale price was,
16 in fact, ú1.5 million, but that ú600,000 out of that
17 went back to Hill Samuel to pay off indebtedness?

18 A. That's right. Remember we paid the 300,000 for
19 Sandyford out of that bank account. You had the
20 documentation to prove that.

21 432 Q. This is Green Trees borrowing?

22 A. Green Trees.

23 433 Q. So the Green Trees - is this in fact the Green Trees
24 borrowing?

25 A. Green Trees, right.

26 434 Q. Green Trees borrowing was 300,000?

27 A. Then we had another 300 for Sandyford so about 600,000.
28 So we paid back 600,000.

29 435 Q. Presumably something more than that would have been
30 owed?

1 A. We might have carried the interest.

2 436 Q. I see. There was a cheque for ú20,000 sent by you at
3 some stage to Hill Samuel, we had this in evidence.

4 Would that have been interest?

5 A. It might have been interest, yeah. It could have
6 been --

7 437 Q. Yeah.

8 A. -- to keep the account right.

9 438 Q. In any event, what you are now saying is that the -
10 that ú600,000 out of the 1.5 million obtained from the
11 Gallaghers was sent over to pay off indebtedness to
12 Hill Samuel?

13 A. That's right.

14 439 Q. ú300,000 of which we know was borrowed by Green Trees,
15 and the balance, the other 300 of which was borrowed by
16 who?

17 A. Smiths - well there was 600,000 borrowed; 300 for
18 Smiths of the Green, the leasehold, and 300 for the
19 deposit on Sandyford. They were the two, it looks to
20 me like. And all the loose ends, then we carried the
21 rest and kept it - we may very well have a limit on
22 that account, maybe to 700,000. So we weren't under
23 pressure.

24 440 Q. Right. So that in fact the proceeds of sale of St.
25 Stephen's Green, which included ú600,000 borrowing, or
26 a repayment of ú600,000 borrowing and to which each of
27 the three of you were equally entitled, included
28 ú300,000 which was used to pay the deposit on
29 Sandyford?

30 A. Yes.

1 441 Q. And you are absolutely clear about that?

2 A. Yeah, there is no doubt about that.

3 442 Q. I take it that is the basis therefore upon which you
4 proceeded on the basis that insofar as the €300,000 was
5 concerned, Mr. Finnegan, of who was an equal one-third
6 partner in St. Stephen's Green, was therefore an equal
7 one-third contributor towards the deposit?

8 A. Yes, in Sandyford, yeah.

9 443 Q. In Sandyford?

10 A. Mm-hmm, that's correct.

11 444 Q. As he was with the subsequent contributions of 50 and
12 70?

13 A. Yes.

14 445 Q. Which were, as it is said in one document, matched --

15 A. The phased payments, yes.

16 446 Q. There was a query at day 279, pages 29 to 32 in
17 relation to bank statements for Green Trees, and you've
18 been unable to obtain any bank statements for that
19 company?

20 A. Right.

21 447 Q. Now, day 271, page 101, I think elsewhere, but
22 specifically the query arose at that point; there was a
23 query about the Silkeborg Isle of Man account and
24 Martin Bullock. Now you say in your schedule,
25 "Although we've got some further documentation in, we
26 are continuing to pursue Mr. Bullock regarding
27 Silkeborg. Mr. Bullock is currently in the process of
28 preparing a sworn affidavit setting all documentation
29 in his possession regarding this matter."

30

1 Mr. Bullock has produced a document which I think
2 you've seen, which describes the - itself as an
3 affidavit?

4 A. Yes. I've only seen a copy of it, I haven't seen the
5 official signed document.

6 448 Q. Which your solicitor quite rightly points out to the
7 Tribunal is not in the form which she requested?

8 A. Mm-hmm.

9 449 Q. And in which Mr. Bullock, as you are aware, has
10 declined to attend to give evidence before the
11 Tribunal, makes certain assertions. Perhaps we might
12 just put it on the screen. There is no page number on
13 the document there. But it appears to be on
14 Mr. Bullock's headed note paper. And he says:

15

16 "I Martin Bullock, of 53 Strand Street, Douglas, Isle
17 of Man make oath and say as follows:

18

19 "1 Steeplestone Bloodstock Limited," - which is one of
20 the companies we had queries about.

21

22 "I hold no records for the above company which was
23 struck off the register in September, 1998. I have
24 been unable to provide bank statements showing a
25 receipt from Beachside Holdings Limited on the 20th
26 July, 1992 because the bank's own records do not go
27 back to that date, as evidenced by copy letter from the
28 bank, (Exhibit A).

29

30 "2. West Park Securities Limited:

1
2 "I hold no records for the above company which is in
3 the process of being struck off. I have been able to
4 provide bank statements showing receipts from Beachside
5 Holdings Limited namely, 21/2/92, ú70,000; 28th June
6 '93, ú50,000 and payments to Silkeborg Trust Company,
7 namely 26th February '92, ú60,050, and 4th August '93,
8 ú50,000, (Exhibit B).

9
10 "I have asked the bank to provide statements for the
11 entirety of the account but they have not yet replied.

12
13 "3. Ewell Park Investments Limited:

14
15 I hold no records for the company which is in the
16 process of being struck off. I have provided bank
17 statements that the bank was able to extract, but their
18 records are incomplete as evidenced by their letter.
19 (Exhibit C). Copy statements (Exhibit D).

20
21 "4. Silkeborg Trust Company Limited:

22
23 Mr. Tom Brennan has no interest in this company nor
24 does any family member. I have asked the bank to list
25 details of the transactions which have been required
26 and in general the bank has located these, save as
27 detailed in its letter. (Exhibit E).

28
29 "5. I further state that all the transactions executed
30 by these companies were legitimate business

1 transactions outside the scope of the Terms of
2 Reference of the Flood Tribunal. I have never made any
3 payments to the politicians, councillors or any other
4 officials. The companies Steeplestone and Ewell Park
5 were bloodstock owning companies and all monies were
6 rightly expended in the course of companies business
7 either purchasing bloodstock or related expenses
8 thereto."

9 .
10 So, in essence, apart from the specific documents
11 itemising the specific transactions to which he refers
12 in his affidavit, in the case of Steeplestone
13 Bloodstock Limited, West Park Securities Limited, and
14 Ewell Investments Limited, he is saying he holds no
15 records, and in the case of Silkeborg Trust Company
16 Limited, he is saying that you have no interest in it.

17 A. There was only one - the Steeplestone had only one
18 transaction.

19 450 Q. Yes?

20 A. Just one ú30,000 went into that. Bedell & Cristin
21 didn't get us that on the first statement, but the
22 Tribunal asked the question and we checked into
23 Steeplestone, one ú30,000. And that did not come to
24 Ireland. That was used for bloodstock and paying
25 insurance and travel and expenses. That - but all the
26 other, on the other side, the 70 and the 50, they are
27 the same monies, in the next one, as you put into the
28 60 and - he kept 10,000, and he put in 60, into
29 Silkeborg. I don't know why he put it into Silkeborg.
30 It came over to Holburn Trust. I have that lodged

1 myself in the accounts, and it came over as ú60,000.
2 And the other one came over as 50. And they were
3 lodged, but I got more than that, because it - the
4 exchange rate was quite different. So I - one lodged
5 at 64 something. It's on the documentation. I don't
6 think - I think you have it; 64. The other one lodged
7 - one went into a deposit account, 35 grand, and
8 18,000. So we got 53 in that case.

9 451 Q. Yes.

10 A. So that's the only transaction that Westpark had with
11 Holburn Trust, or those two. And he had those two.
12 But we are still looking through Grant Thornton but he
13 can't find it. He said they are out on the - what do
14 you call those places, out the country where they have
15 the big storage place, and it's very difficult to get
16 anything. It takes a long time. I have been
17 pressuring him for months to do this, but he said the
18 banks haven't got it so they send you back - you have
19 to go out there through the banks.

20 452 Q. It's very difficult, isn't it, when you are pumping
21 monies into these things, that you can't get the people
22 who are administering them to give you information?

23 A. You see I am happy that all the monies went in, we got
24 it all back, except for the fees. It's all lodged on
25 Holburn Trust. I've lodged them actually myself.

26 453 Q. Ultimately you provided your own schedule through Grant
27 Thornton, in effect, in which you have concluded that
28 all of the monies --

29 A. I still have the lodgement book. So I know each
30 lodgement, where it was and how much money was lodged

1 and on the day it was lodged. And I - except for about
2 £10,000, which is fees.

3 454 Q. What you are saying to us is that it is your belief
4 that all of these monies ultimately found their way
5 into the Holyburn Trust?

6 A. That's right, except Steeplestone which was used for
7 bloodstock and, and I am quite happy with that.

8 455 Q. One of the things Grant Thornton has said is that "as
9 you have no legal interest in Silkeborg Trust Company
10 we've been unable to obtain any details of the
11 movements of the funds through the Trust." Silkeborg,
12 you remember, when we were going through the various
13 transactions that we were looking at, was in receipt of
14 various substantial sums from Jersey?

15 A. That's right. Because Westpark, when the money went
16 into Westpark, why did it go back into Silkeborg to
17 come back out again? I don't understand that myself
18 either because there was no need for it because
19 Westpark was the oldest company. But that's the way he
20 did it. Then the other monies that went in, went into
21 Westpark and then came back through Ewell Park.

22 456 Q. To the extent that your money became or came into the
23 legal ownership of a trust or entity called Silkeborg
24 Trust Company Limited, do you not find it disquieting?

25 A. Yes, that's the query.

26 457 Q. Outside your legal ownership --

27 A. It should have stayed in the beneficial ownership of
28 the three companies. That's the way I thought things
29 were being done.

30 458 Q. Was this organised by Mr. Caldwell?

- 1 A. Well, the companies, I think were bought off the shelf.
- 2 459 Q. By Mr. Caldwell?
- 3 A. Well, he would ask Martin to get a company, Martin
- 4 Bullock. He would just take those companies off, they
- 5 were names.
- 6 460 Q. Would it be true to say that whatever these movements
- 7 of money were within the Isle of Man, or within the
- 8 Martin Bullock framework, if I might just generically
- 9 describe it, was done essentially under the auspices of
- 10 Mr. Caldwell?
- 11 A. That could be right, that must be right.
- 12 461 Q. And would the same thing apply then in relation to
- 13 Liechtenstein?
- 14 A. Yes, for the first part. He dealt with all of that,
- 15 John Caldwell, from the word 'go'.
- 16 462 Q. Yes. And what you were saying, which of course we
- 17 can't independently verify, is that you are satisfied,
- 18 in any event, that all of the monies that came from
- 19 Jersey to Silkeborg, for example, ultimately were, in
- 20 fact, transferred back into --
- 21 A. I have every penny except the fees. Absolutely. I am
- 22 totally happy with that.
- 23 463 Q. All right. Now there is just one other matter, Mr.
- 24 Brennan, that I would like to ask you about, that I
- 25 haven't gone into any great detail with you before.
- 26 And that is the Herbert Street Plantation?
- 27 A. Yes.
- 28 464 Q. And I just, this afternoon, referred Mr. Finnegan to a
- 29 document, and perhaps I might refer you to it, it's at
- 30 page 787. It's an attendance by Mr. - the late

1 Mr. Russell on yourself and Mr. McGowan of the 17th
2 December, 1984. This, you will recall, would have been
3 a month after the Lombard & Ulster borrowing?

4 A. Yes, yes, yes.

5 465 Q. And it says: "Attending on Brennan and McGowan when
6 they discussed the above matter and it stated that
7 they were going to see what further offers they could
8 obtain for the plantation as McInerneys were very
9 interested in the property and would sign a contract
10 and it was suggested that if they signed a contract
11 that time should be made of the essence of the contract
12 so that they would forfeit the deposit if they did not
13 pay up on time.

14
15 "I produced a letter dated the 10th December 1984 which
16 I have received from John Finnegan in which he stated
17 that he had located the deeds of the plantation and I
18 asked Mr. McGowan how Mr. Finnegan would have got these
19 and he was unable to answer that question but I did
20 tell him that I had a note on my file that he (Mr.
21 McGowan) had taken up the deeds from me and it was
22 suggested that I should not mention this matter to John
23 Finnegan and they would speak to him about the matter.
24 Later at lunch I was again told that they would see Mr.
25 Finnegan tomorrow and discuss the matter.

26
27 "The position as far as Brennan and McGowan are
28 concerned is that John Finnegan is part owner of
29 Herbert Street Plantation and Cramer Lane and their
30 attitude is that they had borrowed on both properties

1 and whatever was over after the two properties were
2 sold would be divided between John Finnegan and
3 themselves and that they would not be dealt with
4 separately. They will discuss the matter with John
5 Finnegan."

6

7 Now, can you just explain that to us from your
8 perspective?

9 A. You want the Plantation or --

10 466 Q. Yes. About what you were saying to Mr. - in that last
11 paragraph, particularly, to Mr. Russell.

12 A. Well, I am not too sure about a borrowing at all in
13 Criteria.

14 467 Q. Sorry?

15 A. Somebody said there was a borrowing in Criteria, a
16 loan?

17 468 Q. Well, what the memo says is they have borrowed on both
18 properties.

19 A. They borrowed on Capent.

20 469 Q. Capent was in relation to Cramer Lane?

21 A. Yeah, Cramer Lane.

22 470 Q. And Criteria --

23 A. That was an investment property. And it had income and
24 we had to borrow X amount of pounds from the bank so
25 the income would meet the interest. That's the way
26 that was done. And that's why the 62,000 had to go in
27 probably from Ardcar.

28 471 Q. Yes.

29 A. Or from some company. Otherwise you wouldn't get it
30 all. So I am quite sure that's the reason for that.

1 472 Q. Well let's just take that particular paragraph in
2 sections. "The position as far as Brennan and McGowan
3 are concerned is that John Finnegan is part owner of
4 Herbert Street Plantation and Cramer Lane." Is that
5 right?

6 A. Yes.

7 473 Q. And --

8 A. I mentioned that before to you when we talked about the
9 eight deals, it was eight deals in all. Six you talked
10 about. I volunteered the other two myself so it
11 wouldn't be coming back to it later. There was two
12 more. And you didn't go too far with them. We are
13 here with them now. So that's the two.

14 474 Q. Indeed we are.

15

16 You heard Mr. Finnegan this afternoon saying that he
17 did not think he was the owner, a one-third owner of
18 Herbert Street Plantation?

19 A. I think he was a one-third owner on all eight deals.

20 That's the way I see it.

21 475 Q. Can you suggest any reason why Mr. Finnegan might deny
22 that he was?

23 A. I don't know why, to be quite honest.

24 476 Q. We'll just take it from the start. How did you come to
25 acquire this particular property?

26 A. That property was bought with some other property, I
27 think.

28 477 Q. There was a little cottage --

29 A. Yes.

30 478 Q. -- in Pembroke Lane, is that right?

1 A. It was -

2 479 Q. Pembroke Row, perhaps?

3 A. Pembroke Row.

4 480 Q. Then the Herbert Street Plantation itself which was a
5 park with a ESB substation on it?

6 A. Yes.

7 481 Q. And both of these properties were assembled by the
8 Pembroke Estate and sold by the Pembroke Estate to you,
9 or to your company, is that right?

10 A. Yes.

11 482 Q. And Mr. Finnegan, I presume, was involved in his
12 capacity as a director. We've dealt with this with Mr.
13 Finnegan. Anyway it was bought off the Pembroke
14 Estate.

15

16 Now, in what circumstances did Mr. Finnegan become
17 equally one-third entitlement with yourself and Mr.
18 McGowan?

19 A. I thought he was always one-third. I think when we
20 paid the money to Hill Samuel they sent John Finnegan
21 the deeds back, because we obviously paid off all the
22 debt.

23 483 Q. Where did the money come from to buy it?

24 A. It must have come through some of the other loans
25 through Hill Samuel.

26 484 Q. What loans?

27 A. The other two we were doing, Smiths of the Green and
28 Sandyford. I think it fit in there because we --

29 485 Q. We do know, for example, that Canio lent ú52,775 to
30 Capent Limited in September of 1984.

- 1 A. Capent, now, was different because that was the
2 investment one.
- 3 486 Q. For Cramer Lane?
- 4 A. I think that was required to get the rest of the money
5 from the bank. There was a loan on that land.
- 6 487 Q. We haven't seen any evidence of any Canio money being
7 used in Herbert plantation. Are you saying that it
8 was?
- 9 A. I think it was used through Hill Samuel.
- 10 488 Q. Through Hill Samuel?
- 11 A. Yes, it cost about 50,000, I think.
- 12 489 Q. Well, who borrowed the money from Hill Samuel?
- 13 A. It must be Criteria, but it might be part of the whole
14 overall thing. We mightn't have any borrowings, just
15 pay the money --
- 16 490 Q. Criteria Developments Limited is the Irish company that
17 was used to acquire this property?
- 18 A. Yes.
- 19 491 Q. And which ultimately sold the property to Mimeg
20 Limited?
- 21 A. Yes. I forget the name of the company.
- 22 492 Q. Yes. And how much of a deposit was paid to the
23 Pembroke Estate?
- 24 A. When we bought it?
- 25 493 Q. Yes.
- 26 A. I think we just bought it out straight for around 50
27 grand, I think.
- 28 494 Q. And cash up-front, was it?
- 29 A. Yes, and it was left there for years.
- 30 495 Q. Yes.

1 A. I don't know how many years we had it. I think we had
2 it since the late '70s.

3 496 Q. The Pembroke Estate owned it and had been unsuccessful
4 in their endeavours to get planning permission over a
5 number of applications. But ultimately, apparently,
6 got planning permission for a source as a car park, but
7 you didn't buy it to run a car park, I take it?

8 A. No, because we didn't know enough about car parks. If
9 it was today, we would be interested, but things have
10 changed.

11 497 Q. What did you buy it for?

12 A. I don't really know. It was just part of the deal and
13 we didn't do anything with it for years.

14 498 Q. I know that. But you bought it with a view to
15 development, we were told, by Mr. Finnegan?

16 A. Well, a long term or short term, I suppose, there was
17 always potential.

18 499 Q. Well a short term as possible, presumably?

19 A. Yes. Better if it was long term though.

20 500 Q. Whatever. But are you in agreement with me that you
21 bought it to develop it?

22 A. Well, if we could.

23 501 Q. What reason did you have to believe that you would be
24 any more successful in respect of the planning
25 difficulties than the Pembroke Estate itself was?

26 A. Well, I suppose things changed. We only got a very
27 small permission on it. It's changed now completely,
28 as you see it's a whole new ball game now.

29 502 Q. You got a residential commercial planning permission --

30 A. Quite small, though.

1 503 Q. -- from An Bord Pleanala in March of 1984?

2 A. I didn't know which year.

3 504 Q. It was in March of 1984.

4 A. Yeah.

5 505 Q. How did you get that?

6 A. Just make an application obviously to the Local

7 Authority and then I am not sure, was it granted by the

8 Local Authority or not -

9 506 Q. It was refused by the Local Authority for a number of

10 reasons, but it was granted on appeal in March of 1984

11 by An Bord Pleanala?

12 A. Yeah.

13 507 Q. When you were buying this property, I take it you would

14 have perceived or would first of all have - would have

15 known of the unfortunate history with regard to

16 planning permission?

17 A. I didn't know a thing about it. It was left there as

18 in the bank, and in John Finnegan's for years, and I

19 never done anything about it. I don't think anybody

20 did. I think we had that back in the - I think it was

21 bought in the late '70s.

22 508 Q. Yes. We know that for the whole of 1985 there was a

23 saga going on where George Russell was trying

24 desperately to get the title deeds of this property so

25 that he could send out contracts to Mimeg, but Mr.

26 Finnegan would not part with the title deeds, because

27 he wanted his ú50,000 which he claimed to be owed and

28 which you appear to acknowledge he was owed, plus --

29 A. That would be the third share, I suppose -

30 509 Q. It wasn't expressed in those terms in Mr. Russell's

- 1 various attendances both on yourselves and on Mr.
2 Finnegan. I mean, if it was a third share he would
3 presumably have simply been insisting that
4 arrangements, appropriate arrangements would be made
5 that when the proceeds of sale came in, he would be
6 given his third share but he wasn't doing that; he was
7 saying 'this sale is not going to proceed at all until
8 I get €50,000 or an assurance that I will get €50,000'.
- 9 A. But I always took it he was shareholder or had an
10 interest in it, a third interest in the property.
- 11 510 Q. Did he ever put up €50,000?
- 12 A. For this?
- 13 511 Q. Yeah.
- 14 A. No, I think this was put up through Hill Samuel. I
15 think he put up his share through the loan in Hill
16 Samuel. I am quite sure.
- 17 512 Q. Who put up the €50,000 that was used to buy the
18 property? That was borrowed?
- 19 A. Borrowed.
- 20 513 Q. Did Mr. Finnegan put up another 50,000?
- 21 A. No, I don't think so.
- 22 514 Q. For any purpose?
- 23 A. I don't remember that.
- 24 515 Q. Was there any other expenditure incurred by Criteria in
25 connection with this property?
- 26 A. No.
- 27 516 Q. Did Mr. Ray Burke make any representations on your
28 behalf or perhaps on behalf of Criteria in relation to
29 the planning application?
- 30 A. I don't think Ray Burke knows anything about this

1 place.

2 517 Q. The question was: Did he make any representations to
3 anybody on your behalf or on behalf of Criteria
4 Developments Limited in connection with this planning
5 application?

6 A. I don't think so. I don't recall that.

7 518 Q. You don't recall?

8 A. No. Never get involved in that.

9 519 Q. Did you know anybody in An Bord Pleanala?

10 A. Well, I - there was a few guys I did know in An Bord
11 Pleanala, but I never had --

12 520 Q. Are you talking about officials or members of the
13 board? I am talking now about 1984. I am talking
14 about March 1984, in fact.

15 A. Well, I knew Jack Keenan was on the board. I knew Jack
16 Keenan.

17 521 Q. Was he the person who designed Mr. Burke's house?

18 A. That's right.

19 522 Q. And was the architect for Brennan and McGowan companies
20 in the seventies and eighties?

21 A. Yes.

22 523 Q. Anybody else?

23 A. I knew another man on the board, I didn't know him very
24 well now. Michael Cooke was on the board. I just knew
25 him, but I didn't know much about him.

26 524 Q. Anybody else?

27 A. There was another man on the board, I can't think of
28 his name now. I am not sure I knew him. I may have
29 met him.

30 525 Q. Perhaps if we write a name on a piece of paper and show

- 1 it to you, would that - would you look at that and see
2 if that would jog your memory?
- 3 A. All right.
- 4 (Paper handed to the witness).
- 5 A. Tony, that's right, Tony, is it.
- 6 526 Q. You don't need to call it out. If you just read it.
- 7 A. Yeah. I met him, yes, I have.
- 8 527 Q. Yes. Well, you met him?
- 9 A. I have met him, yes.
- 10 528 Q. You knew him rather well, did you not?
- 11 A. No, but I've met him with - campaigning.
- 12 529 Q. Indeed. Campaigning for who?
- 13 A. For Ray Burke.
- 14 530 Q. Did you make any representations to any of these
15 individuals in connection with the appeal that was
16 before them?
- 17 A. No, I didn't go near any of those guys.
- 18 531 Q. You knew all of them fairly well?
- 19 A. Well, I didn't know them very well now. I knew Jack
20 Keenan well.
- 21 532 Q. I asked you already, did Mr. Burke make any
22 representations on your behalf in connection with this
23 planning permission, and you said that you couldn't
24 recall.
- 25 A. I don't think he did, but I am not 100 percent sure,
26 but I doubt it very much.
- 27 533 Q. Why do you doubt it?
- 28 A. Because I probably didn't - I wouldn't have asked him.
29 I probably wouldn't get involved.
- 30 534 Q. Well, I was going to ask you that: did you discuss the

1 matter with Mr. Burke?

2 A. No.

3 535 Q. How do you know?

4 A. I don't recall ever discussing that with him.

5 536 Q. It was a serious difficulty when you were refused your
6 planning permission?

7 A. Not really. I thought that was a very small property,
8 and there was never big money involved in it, small
9 money.

10 537 Q. By that you mean that the 50,000?

11 A. Yes, and it was a very small deal. It wouldn't really
12 matter to me personally. I was in no hurry whatsoever
13 with it, it could stay there as long as possible, and I
14 would be in no hurry with that whatsoever.

15 538 Q. But as a result of the planning permission, you were
16 able to sell it, in fact, later that year?

17 A. Well, I wasn't in a hurry with that either. I decided
18 to sell it --

19 539 Q. How much did you sell it for?

20 A. I think it went around a quarter of a million, I think,
21 it was going for very little money first and then we
22 weren't interested at all. People were interested but
23 they were offering very small money.

24 540 Q. This was nothing really without planning permission,
25 isn't that right?

26 A. We got a bad valuation after the planning. Everybody
27 was offering very small money, less than what we paid
28 for it. When we got some kind of a valuation, and that
29 was bad, and then I said 'forget it, leave it there,
30 forget about it, eventually something will happen'.

1 541 Q. When did you actually buy it, can you recall?

2 A. I think late seventies. I think it was in the Hill

3 Samuel deal and when --

4 542 Q. That would be 1979, then?

5 A. When Smiths was closed, that was released.

6 543 Q. It must have been 1979?

7 A. Yes, and I think the deeds were in John Finnegan's for

8 years. That's my information.

9 544 Q. Why was that? Why was Mr. Finnegan in possession of

10 the title deeds. He was not terribly clear himself as

11 to why or how he got them. He thinks he might have got

12 them fortuitously?

13 A. Maybe when he got the settlement and done with the bank

14 he went over and picked up the deeds. I couldn't tell

15 you, but that's my information that they were there for

16 years.

17 545 Q. Well, can you recall the circumstances - you did

18 mention earlier he got them off Hill Samuel?

19 A. Yes, Hill Samuel, when the loan was paid off. I assume

20 it came from there - of course they should have gone

21 to Russell - I don't know how they wound up with John

22 Finnegan. I don't know.

23 546 Q. When and by whom was the loan from Hill Samuel paid

24 off?

25 A. It was paid off Smiths of the Green, that settlement of

26 that 600,000 -

27 547 Q. Out of the 600,000?

28 A. I am quite sure that's when that - that loan was

29 finished, cleaned.

30 548 Q. I see. Well, does that mean then - does it mean that

1 the Herbert Street Plantation property was bought out
2 of the Hill Samuel borrowing which was repaid out of
3 the 1.5 million sale to Gallaghers?

4 A. I think so. Maybe with a little help from somebody
5 else. Maybe Kilnamanagh or somebody, but that's the
6 way I see that happen, when all those deals were dead,
7 finished, the Hill Samuel were paid off. Otherwise the
8 deeds wouldn't be sent back to John Finnegan.

9 549 Q. Why were the deeds sent to Mr. Finnegan?

10 A. I don't know why. I don't know why. They should have
11 gone to George Russell, but of course the settlement
12 didn't come from George Russell, the settlement for the
13 money came from Miley & Miley to Hill Samuel.

14 550 Q. Well then, one would have expected the deeds to be sent
15 to Miley & Miley?

16 A. Miley & Miley.

17 551 Q. Who were acting for you.

18 A. Maybe when the loan was paid off Miley & Miley didn't
19 even know they were there, just paid off the debt that
20 was in the loan and then maybe discovered that the
21 deeds were left in the bank and didn't pick them up.

22 552 Q. Is it possible, for example, that the deeds were given
23 to Mr. Finnegan by yourself and/or Mr. McGowan as
24 security for something?

25 A. I don't think so, no.

26 553 Q. For an advance of ú50,000?

27 A. No, that didn't happen. We wouldn't have to do that .

28 554 Q. So your belief is that the ú50,000 that he was seeking,
29 which is documented in these memoranda and attendances
30 which I am not going to go through in detail with you

1 again, your belief is that what in fact he was looking

2 for was his one-third share of the proceeds of sale?

3 A. That's the way I see it.

4 555 Q. But the sale was for, as you told us, a quarter of a
5 million pounds?

6 A. But then there was obviously ú100,000 expenses in it.

7 I mean it cost 50,000, I suppose you calculate it over

8 a period of five or six years. That would have

9 doubled, anyway.

10 556 Q. What expenses?

11 A. Well, there was - whatever this time was in Hill

12 Samuel, he would be paying interest on that. Even when

13 it was paid off, I suppose, I couldn't tell you

14 exactly, but I would allow that it would have probably

15 cost ú50,000 -- 350, 100 - that would be pretty close.

16 That would be about his share. It might be a little

17 more, but it would be around that figure.

18 557 Q. Criteria Developments Limited was the actual company

19 that was used for - as the vehicle for this property,

20 isn't that right?

21 A. Yeah, I think that's right.

22 558 Q. It owned, it acquired the property and it sold the

23 property?

24 A. Yes.

25 559 Q. Did Criteria Developments Limited ever make any payment

26 of money to Mr. Burke?

27 A. No.

28 560 Q. How do you know that?

29 A. The money went into the Bank of Ireland Rotunda branch.

30 561 Q. The proceeds of sale?

- 1 A. Yeah. And whatever was dealt with then through John
2 Finnegan. I don't know what deal they done there.
3 That came out of that --
- 4 562 Q. I wasn't actually talking about the proceeds of sale, I
5 was just speak generally. Did Criteria Developments
6 Limited ever pay any money to Mr. Burke for any
7 purpose?
- 8 A. No, nothing. And I don't know he had even an account.
9 I don't know he had a bank account. I don't know - I
10 don't think they had.
- 11 563 Q. Well, did they not have dealings with Allied Irish
12 Finance at one stage?
- 13 A. I don't remember that.
- 14 564 Q. There was an account in Bank of Ireland Rotunda?
- 15 A. Was it in Criteria?
- 16 565 Q. Yes.
- 17 A. Or was it in Joe McGowan's name?
- 18 566 Q. It may have been in Mr. McGowan's name?
- 19 A. I think so, yeah.
- 20 567 Q. But I think it was a Criteria account, or am I wrong
21 about that?
- 22 A. I think there was none set up. I couldn't prove that,
23 but I think there was none set up.
- 24 568 Q. Was it set up for the purpose of receiving the proceeds
25 of sale?
- 26 A. No, I think they went straight into the Rotunda branch
27 after payment to John Finnegan.
- 28 569 Q. For how long was the Rotunda branch in existence?
- 29 A. The loan?
- 30 570 Q. Sorry, the Rotunda account, how long was that in

1 existence for?

2 A. Joe McGowan, that would be Joe McGowan's account, I'd
3 say. I don't think - it was for four or five years,
4 anyway. I had an account there too, a separate
5 account.

6 571 Q. Mr. Russell tried very hard over virtually the entirety
7 of 1985, essentially from December, 1984 until, I think
8 February of 1986 to get these title deeds from Mr.
9 Finnegan. You and Mr. McGowan were in and out of his
10 office, you were telling him various things and that
11 you thought you would be able to get them and maybe you
12 would borrow money off Rotunda, I think, to pay him his
13 ú50,000 -

14 A. He could pay it out of the receipts from Rotunda which
15 eventually did happen.

16 572 Q. The difficulty there, Mr. Brennan, was that Mr. Russell
17 was declining to send over the contracts because he had
18 given the bank an undertaking to pay them the proceeds
19 of sale, and he didn't want to send over the contracts
20 until the difficulty with Mr. Finnegan was sorted out?

21 A. Well -

22 573 Q. In other words, until he had the title deeds --

23 A. He had to do that, yeah.

24 574 Q. Yeah.

25 A. He was trying to settle with the bank, obviously to
26 make a payment to John Finnegan out of the proceeds of
27 the sale. That's the way I see it.

28 575 Q. But what was the problem in 1985? Why couldn't you
29 make arrangements to get - given that he obviously did
30 hold up the sale, and in fact matters got to a stage

1 where there was litigation about it, isn't that right?

2 A. Litigation?

3 576 Q. Was there not a specific performance suit by Mimeg,

4 whatever his name was?

5 A. There was, obviously, it settled right away, then.

6 577 Q. And it settled, but in the context of the settlement,

7 the bank who had an interest, obviously, agreed to a

8 release of ú20,000 from Mr. Finnegan, and Mr. Finnegan

9 agreed to accept ú20,000?

10 A. Joe must have settled that with them plus a fee, so Joe

11 must have gone to John Finnegan and settled that amount

12 of money and then was paid, and --

13 578 Q. You are saying Mr. Finnegan got 20 plus the 12,000

14 fees?

15 A. That's what I think. Joe did the deal, so obviously he

16 went to the bank and got it sorted out like that.

17 579 Q. I think Mimeg was a subsidiary of Green Property

18 Company?

19 A. That's right. That's the one.

20 580 Q. What were the circumstances of Mr. McGowan, in May of

21 1985, signing a Promissory Note to Mr. Finnegan for

22 this ú50,000 plus a further ú12,000 fees?

23 A. I didn't know anything about that.

24 581 Q. Well, you witnessed it yourself?

25 A. Did I?

26 582 Q. If we could just look at page 887.

27 A. I don't know why that was. Obviously if he was owed

28 that money.

29 583 Q. You see your signature there?

30 A. I do, yeah.

1 584 Q. So obviously events reached a stage where somebody
2 typed out this Promissory Note and under which Mr.
3 McGowan, rather than yourself or indeed rather than the
4 company Criteria Developments Limited, committed
5 himself in the form of a Promissory Note to a personal
6 liability to Mr. Finnegan in the sum of ú50,000, and
7 you witnessed this event; presumably you must have some
8 recollection of that unusual event?

9 A. I see it there now. So he obviously promised him to
10 pay in 50 grand, but then obviously -

11 585 Q. He was undertaking a personal liability?

12 A. Yes.

13 586 Q. Had he no personal liability prior to this?

14 A. I agree.

15 587 Q. Matters were arranged within the four walls of a
16 company called Criteria Developments Limited, but there
17 was Mr. Joe McGowan now incurring himself personally to
18 Mr. Finnegan after a particular date and you witnessing
19 this, I suggest, most unusual event?

20 A. Yes.

21 588 Q. Do you not remember it?

22 A. Well, now that you - well -

23 589 Q. Well, how did that come about and why did it come
24 about?

25 A. It must have come about because John Finnegan was
26 looking for his third share of the property before the
27 sale would go ahead.

28 590 Q. He still didn't release the title deeds because we know
29 that this saga with the title deeds went on for the
30 remainder of 1985. So what was the point of this

1 particular document?

2 A. John obviously wants to get the proceeds of the sale,
3 rather than a Promissory Note.

4 591 Q. See, if you are correct, Mr. Brennan, that the 50 that
5 he was getting was the proceeds of sale, apart
6 altogether from the fact that it doesn't appear to bear
7 relation to the proceeds of sale, there would have been
8 no basis for him being entitled to ú50,000 at the point
9 in time when this Promissory Note was signed. This
10 gave him an entitlement --

11 A. -- money, though, you would have to proceed against
12 the guy who signed it to get the money so it's not the
13 same as getting paid up when the sale closes.

14 592 Q. But, wait a minute, it's dated the 7th of May, 1985 and
15 he promises one month after that date, in other words,
16 the 7th of June, 1985, to pay ú20,000 plus ú12,000 to
17 Mr. Finnegan. And he can be sued immediately on
18 summary proceedings in the High Court to get that money
19 with no defence to it because he had signed a
20 Promissory Note. Now, that was a present indebtedness,
21 and there was no guarantee at that time that the - that
22 the sale would be closed and in fact it wasn't, and in
23 fact we know that Mr. Finnegan didn't, in any event,
24 hand over the title deeds. So what was point the of
25 this document if the title deeds were not to be handed
26 over in exchange for it?

27 A. There was no point to it at all is the way I see it.
28 You would be better off without that and just settle,
29 which eventually did happen. Whatever you are going to
30 pay John Finnegan, agree to pay him for his share, and

1 settle with that.

2 593 Q. Why did Mr. McGowan decide to undertake this personal
3 liability? Presumably this must have been something
4 that was discussed between the two of you?

5 A. Maybe he had a debt in the bank he wanted to pay off.
6 I am not sure. That's what it looks like. He wanted
7 to get - because with a bank, as you know, if you have
8 debts, you pay it off before you get another loan, to
9 get another deed.

10 594 Q. Can I just refer you to the first three lines of the

11 Promissory Note:

12 "One month after the date hereof I promise to pay to
13 John Finnegan of 17 Merrion Row, Dublin 2 or to his
14 order the sum of ú50,000 value received."

15 What does that mean?

16 A. I am not sure.

17 595 Q. Well, you know what "valued received" means?

18 A. I do, yes.

19 596 Q. Well, this document appears to indicate that value had
20 been received?

21 A. But is value his interest on the lands? The only value

22 --

23 597 Q. He didn't have any interest in the lands.

24 A. He didn't have any -

25 598 Q. Criteria Developments Limited had an interest in the
26 lands.

27 A. Yes.

28 599 Q. He was not, as far as I am aware, a shareholder of that
29 company?

30 A. He wasn't, but he had a third share.

1 600 Q. How did he have a third share if he wasn't a
2 shareholder?

3 A. I don't know. Maybe he didn't want to be a shareholder
4 but he was getting a third share out of the deal.
5 That's how I took it to be, I didn't know it any other
6 way.

7 601 Q. Does this not indicate that value had, in fact, been
8 received, and that, perhaps, Mr. Finnegan had, in fact,
9 put up ú50,000 for some purpose?

10 A. Well, I doubt it myself. I don't think he did.

11 602 Q. Who drafted this?

12 A. I have no idea. It must be George Russell. It was
13 done in Mr. Russell's office, I say it was done there.

14 603 Q. He was a careful and meticulous solicitor, was he not?

15 A. Very, yeah -

16

17 MR. HAYDEN: Sorry, sir, I thought there might have
18 been an address - I am sorry for interjecting. It's
19 only the address of Mr. Finnegan at the top. Sorry.

20

21 MR. HANRATTY: If you scroll it down - it's Mr.
22 McGowan's address that's on the top of it.

23

24 MR. HAYDEN: What I was talking about is John Finnegan
25 of 17 Merrion Row. Sorry. That's what I was talking
26 about. And it was in error.

27

28 604 Q. MR. HANRATTY: All right. Mr. Russell drafted this
29 document and he drafted it on the basis of the ú50,000
30 being promised to be paid for value received. And the

1 natural and ordinary meaning of those words is that

2 value had already been received?

3 A. So John Finnegan gave Joe McGowan 50 grand? I don't

4 know.

5 605 Q. Well, value might be value to you, might be value to

6 Criteria or a joint enterprise. It could be anything,

7 really, but I was just wondering why this phrase was

8 used, because it does, by its terms, appear to suggest

9 that value had been received by somebody for something.

10 A. I didn't get any of it, and I know Criteria didn't get

11 any of it.

12 606 Q. Well, did anybody else get any of it?

13 A. No.

14 607 Q. I mean, if Mr. Finnegan was only entitled to one-third

15 of the proceeds of sale, even though he wasn't a

16 shareholder in Criteria, even though he wasn't on the

17 title of the property, you could have taken out an

18 application for an injunction in the High Court and got

19 an order directing him to hand over the title deeds?

20 A. Yeah, but I wouldn't have done that - it would be much

21 better to go in and settle it with them.

22 608 Q. You got sued anyway by the purchaser?

23 A. Then Joe went into John and settled.

24 609 Q. It caused a lot of trouble over a period of over a

25 year. It caused a lot of agonising with Mr. Russell's

26 office and an enormous amount of visits by yourself and

27 attendances by him on yourself and Mr. McGowan and also

28 on Mr. Finnegan in which he begged with Mr. Finnegan to

29 give him the title deeds. But Mr. Finnegan would not

30 let go.

1 A. And then Joe settled it for the 20,000. Isn't that the
2 end result?

3 610 Q. Mr. Miley settled it.

4 A. Mr. Miley, that's right, yeah.

5 611 Q. And it would appear from the tenor of all of these
6 attendances, is that Mr. Finnegan was adopting the
7 position that he was, as and from the end of 1984, owed
8 ú50,000 for something?

9 A. His share on the deal.

10 612 Q. No. That's not what he was seeking. He was seeking
11 monies that he was owed; not just the 50, but also 12
12 for having negotiated the sale, presumably?

13 A. That's fees for selling the thing so ú50,000 had to be
14 a share of the deal.

15 613 Q. No, but that's what I am putting to you, Mr. Brennan.
16 That's not what - as it appears from this
17 documentation. That's not how it appears. What
18 appears is that Mr. Finnegan regarded himself at that
19 time, from the end of 1984 onwards and throughout 1985
20 and into the beginning of 1986, as being owed ú50,000,
21 even before the sale closed, plus ú12,000 for his fees?

22 A. It's surprising to me because he didn't put that 50,000
23 into that.

24 614 Q. Well, what did he put it into then?

25 A. He didn't put any 50,000 into that deal.

26 615 Q. Well, did he put 50,000 into anything in respect of
27 which he might have claimed to be owed it by yourself
28 and Mr. McGowan or indeed by Criteria?

29 A. No, he didn't put it into Capent, because I explained
30 the 62,000 plus the rest from the bank, that closed

1 that sale. And as I said before, whatever he put into
2 the other things, which was a few years before that, I
3 don't know how much he put into that either, because I
4 have no way of proving that.

5 616 Q. I just want to ask you one final question or two in
6 relation to the Rotunda, the Bank of Ireland account in
7 the Rotunda. What was the purpose of that account?

8 A. Well, Joe had a personal account there and I had an
9 account there too, myself.

10 617 Q. And Criteria didn't?

11 A. As far as I know, they had no account. I couldn't
12 prove that, but that's to the best of my knowledge.

13 618 Q. And into which account were the proceeds of sale paid
14 when they came in?

15 A. I think into Joe McGowan's and if there was a Criteria,
16 I would have to prove that. I don't think I can get
17 that information --

18 619 Q. There was no account for Criteria; it must have been
19 either yourself or Mr. McGowan if it went into Rotunda?

20 A. Yes.

21 620 Q. It does seem that it went into Rotunda?

22 A. Yes, that's my view.

23 621 Q. So it must have been either your personal account or
24 his personal account?

25 A. Mr. McGowan's.

26 622 Q. You think it was his personal account?

27 A. Not mine. I didn't have -- not mine.

28 623 Q. Why would that be?

29 A. That's - I don't know now.

30 624 Q. Criteria Developments Limited, did it have any bank

1 account anywhere?

2 A. I don't recall it having a bank account. I could be
3 wrong, but I don't recall it having any bank account.

4 625 Q. It did, for example, have borrowings from Hill Samuel,
5 so it would have an account in that sense?

6 A. Yeah, that kind of an account it would be in there but
7 maybe the borrowings were on the other two and that was
8 just there, and they - they sent it back when the debt
9 was paid off. They may never have mentioned Criteria
10 in any of the documentation.

11 626 Q. Well, who was the borrower of the \$50,000 that was used
12 to buy the Herbert Street Plantation?

13 A. Either Smiths of the Green or the Canio one, Green
14 Trees, in my view.

15 627 Q. I see. It was borrowed on the basis of being used for
16 Smiths of the Green, but was, in fact, used for the
17 purchase of Herbert Street, is that right?

18 A. Yeah.

19 628 Q. In other words, no bank was approached on the basis
20 that we require \$50,000 or that Criteria requires
21 \$50,000 to buy a property in Herbert Street?

22 A. No. I am quite sure about that. I wasn't involved.

23 629 Q. It was monies borrowed for some other purpose that was
24 used for this purpose?

25 A. The 50,000 was used.

26 630 Q. So that would mean that there was no account, is that
27 correct now? There was no account in any bank at any
28 time either in the form of a loan account --

29 A. None in Hill Samuel, to the best of my knowledge, and I
30 don't remember an account being opened for Criteria. I

1 could be wrong, but I don't remember it. It was for
2 Capent. I knew about that, because it was income
3 coming in and all of that, and I knew about that.

4 631 Q. Were any accounts prepared, I mean company accounts
5 management accounts, audit accounts of any kind for
6 Criteria?

7 A. Oh, I would say there was some work done on that, yes.

8 632 Q. By whom?

9 A. Owens Murray.

10 633 Q. I see.

11 A. I don't know if it's there -- there obviously was --

12 634 Q. And did Criteria, as such, have any dealings in money
13 of any kind during its existence?

14 A. As far as - I don't remember, ever, any dealings.

15 635 Q. So that insofar as there were outgoings of that company
16 or liabilities of that company, by whom would they have
17 been paid?

18 A. Possibly Kilnamanagh or somebody like that. That's
19 what I think, but as I say, I can't prove it. I don't
20 remember an account.

21 636 Q. Would that mean that, therefore, there may be
22 references in the Kilnamanagh accounts to things to do
23 with Criteria to the extent --

24 A. Architect's fees, that's all that would be paid.

25 637 Q. Architect's fees?

26 A. Yes. That's all you would have to pay and they weren't
27 paid for years. There was nothing in the first three
28 or four years.

29 638 Q. And the architect's fees would be for the planning
30 permission?

- 1 A. The planning applications, yes.
- 2 639 Q. Was Mr. Finnegan involved in the planning application?
- 3 A. Not really, no, it was the architect dealt with
- 4 everything himself. I don't think so. I don't know
- 5 what contribution he made to it.
- 6 640 Q. Well, who dealt with it?
- 7 A. The architect?
- 8 641 Q. Brian O'Halloran we understand was the architect?
- 9 A. That's the architect.
- 10 642 Q. And he has told us that, in fact, Mr. Finnegan had a
- 11 pivotal role in the planning - the processing the
- 12 preparation and processing -
- 13 A. Would know far more about this development than I
- 14 would, and I would know very little about that.
- 15 643 Q. Well, you just said a moment ago 'not really, that he
- 16 wouldn't,' in an answer to mine. Did he have an
- 17 involvement in the planning application?
- 18 A. Well, he would know more. I wasn't sure, but now that
- 19 - if he has been dealing with Brian O'Halloran, because
- 20 he does know the office development really well --
- 21 644 Q. The answer to that question is that he did --
- 22 A. Right, advise Brian O'Halloran, but O'Halloran is very
- 23 good himself anyway.
- 24 645 Q. Now that you remember that, what, in fact, was Mr.
- 25 Finnegan's involvement in the planning application?
- 26 A. Other than discussions with Brian O'Halloran? I would
- 27 say, on the type of units he would try and get on the
- 28 site.
- 29 646 Q. Well, Mr. O'Halloran is going to be giving evidence
- 30 next week and we understand that his evidence will be

1 that Mr. Finnegan was the person from whom he obtained
2 his instructions in relation to matters -

3 A. I would agree with that, yeah.

4 647 Q. And that Mr. Finnegan was the person who would have
5 attended meetings with members of the planning staff --

6 A. I didn't attend any anyway.

7 648 Q. Yes, that's the very point that we understand he would
8 make; that Brennan and McGowan were hardly involved at
9 all, and that it was all Mr. Finnegan that was - that
10 they were dealing with --

11 A. Yeah.

12 649 Q. -- on a day-to-day or whatever basis was required to
13 be --

14 A. Yeah.

15 650 Q. But you started off saying that you didn't think he had
16 any involvement at all?

17 A. I said his third share in the property --

18 651 Q. No, no, in the planning, in the preparation and --

19 A. I wasn't totally sure but if they asked him for any
20 opinion, sometimes an architect would go ahead and do
21 things himself and you would have to decide whether it
22 was good or bad.

23 652 Q. Thank you, Mr. Brennan. If you'd answer any questions
24 my colleagues may have.

25

26 The position is, Sir, that I understand Mr. Brennan is
27 going to be abroad next week, and assuming that there
28 wasn't going to be any great length, I am not trying to
29 constrain anybody.

30

1 MR. HUSSEY: I certainly won't be more than five
2 minutes. Certainly less than five minutes.

3

4 CHAIRMAN: Okay. Carry on.

5

6 THE WITNESS WAS CROSS-EXAMINED AS FOLLOWS BY MR.

7 HUSSEY:

8

9 653 Q. MR. HUSSEY: Mr. Brennan, we know that Mr. Finnegan was
10 not paid anything on foot of the IOU in respect of the
11 ú50,000 or the ú12,000. He was ultimately paid ú20,000
12 out of the proceeds of the sale, and I think that was
13 agreed with the bank who had --

14 A. Yes, yes.

15 654 Q. And I think, was it a forced sale at the end?

16 A. It wasn't forced. It just had to be closed because the
17 contract was signed, obviously.

18 655 Q. But Mr. Finnegan did not receive the proceeds of the
19 IOU, the ú62,000 that is mentioned in the IOU?

20 A. Was it totally 20 or did he get the 12,000 fees?

21 656 Q. I think the total was the 20 from the ultimate
22 proceeds, the bank took the rest, and there was
23 certainly expenses and Mr. Finnegan got ú20,000.

24

25 So that's as much as he got out of the Herbert Street

26 Plantation at the - ultimately when the sale closed?

27 A. Okay.

28 657 Q. Do you know did he get anything else out of the Herbert
29 Street Plantation as regards the distribution, as you
30 say, of the beneficial ownership?

- 1 A. Well, I couldn't tell you now that. Whatever he got
2 with that settlement, when the sale closed, is --
- 3 658 Q. I think we've seen where the proceeds went and I think
4 most of it went to the bank?
- 5 A. Yeah.
- 6 659 Q. So that's as much as Mr. Finnegan obtained, arising out
7 of this arrangement, the Promissory Note and the
8 holding on to the title deeds?
- 9 A. Yeah.
- 10 660 Q. Now you told us that Criteria bought the site in the
11 late seventies and at that time it had planning
12 permission for a surface car park. I think Mr.
13 Finnegan described that as sort of the thin end of the
14 wedge in the door for building on --
- 15 A. I didn't actually know that but --
- 16 661 Q. I see. I see. But wasn't until five years later that
17 the actual planning came through or came out?
- 18 A. That's right.
- 19 662 Q. Later that year again when the actual sales took place?
20 A. Yes.
- 21 663 Q. Okay. There is just one other small matter, Mr.
22 Brennan, and can I just bring you back to the - some
23 item in your description, in your latest description of
24 the - that the sum due by Lansdowne to Kilnamanagh was
25 ú37,000 not ú122,000.
- 26 A. 37,000, yeah.
- 27 664 Q. Is that right?
- 28 A. That's what Grant Thornton said to me.
- 29 665 Q. I see. Because we've seen only last week or a couple
30 of weeks ago we were handed documents by the Tribunal's

1 workings on accounts to explain the source of the
2 monies of the ú122,000, I think, it seems - it seemed
3 in so far as the workings had been done, and as were
4 explained to me, that Kilnamanagh borrowed ú100,000
5 from Allied Irish Finance and - are we confused there?

6 A. 100,000 Allied Irish?

7 666 Q. Yes.

8 A. What deals?

9 667 Q. I am sorry. I think in respect of the Newtownpark
10 Avenue transaction. We know that a sum of ú672,000
11 went abroad?

12 A. That's correct q.

13 668 Q. And immediately 400,00-odd came back?

14 A. 404 came back.

15 669 Q. And of the 672 that went abroad, that's made up of, I
16 think, Chase Bank gave 400,000?

17 A. Yes, that's right.

18 670 Q. And I think is it the Northern Bank gave another 150?

19 A. 150 from the Northern Bank and 112 or 120 from
20 Kilnamanagh Estates.

21 671 Q. Yes.

22 A. But I think Lansdowne paid back some of that and
23 that's the reason why the debt --

24 672 Q. That's why it's down to 37. I see. Sorry. That
25 explains it. So Lansdowne had already paid back some
26 of the 122, when ultimately it came --

27 A. According to Grant Thornton, that's what they are
28 saying.

29 673 Q. Very good. Thank you.

30

1 CHAIRMAN: Anybody else?

2

3 MR. HAYDEN: Sir. I'll be even shorter, I hope.

4

5 THE WITNESS WAS CROSS-EXAMINED AS FOLLOWS BY MR.

6 HAYDEN:

7

8 674 Q. MR. HAYDEN: I think Lansdowne Road was discharging it

9 as the sites closed, some funds were being paid out as

10 sales closed to complete the title?

11 A. Yes.

12 675 Q. And that's how it worked back?

13 A. Yeah.

14 676 Q. Just apropos the Capent and Criteria, I think, as I

15 understand it, your position was that Mr. Finnegan was

16 entitled to a one-third of Criteria and a one-third of

17 Capent?

18 A. Yeah, there is no doubt about that.

19 677 Q. I think it is the case that both you and Mr. McGowan

20 always saw Capent/Criteria/Cramer Lane and Herbert

21 Street plantation as a job-lot?

22 A. Yes.

23 678 Q. And I think Cramer Lane wasn't the most successful

24 investment you ever had. I think there was - in fact,

25 it cost money in the end rather than actually making

26 you a profit?

27 A. Is this Capent?

28 679 Q. Capent.

29 A. Yeah, it lost money, yeah.

30 680 Q. And I think in that regard, balancing out the two, so

1 to speak, the profit on one versus the loss on the
2 other, I think, was how you and Mr. Brennan - you and
3 Mr. McGowan saw --

4 A. That could be right, yes.

5 681 Q. Whereas I think the dispute that arose between yourself
6 - both you and Mr. Finnegan was that Mr. Finnegan
7 regarded them as entirely separate, and whatever
8 happened, he wanted his full profit off of Herbert
9 Street regardless of whether or not you were going to
10 have to take a loss?

11 A. On the other one, yes.

12 682 Q. On the sale out of Capent?

13 A. That's right.

14 683 Q. And I think that's the - what happened between you over
15 the year?

16 A. That could be right because we lost money in that.

17 684 Q. And I think if one looks at the memo of Mr. Russell at
18 page 787, and Mr. Hanratty has already brought you
19 through an earlier memo on the same day, the 17th of
20 December '84, but the - on this memo it's the last
21 paragraph I wish to draw your attention to:
22 "The position as far as Brennan and McGowan are
23 concerned is that John Finnegan is part owner of
24 Herbert Street Plantation and Cramer Lane" -- this is
25 on the 17th December 1984, this is what Mr. Russell was
26 being told, and what seems to have been your view at
27 the time -- "part owner of the Herbert Street
28 Plantation and Cramer Lane and their attitude is that
29 they had borrowed on both properties and whatever was
30 over after the two properties were sold would be

1 divided between John Finnegan and themselves and that
2 they would not be dealt with separately. They will
3 discuss the matter with John Finnegan."

4 A. Yeah.

5 685 Q. So the fight that went on for the year '85 was you
6 wishing to lump them together, and the losses in Capent
7 were going to be offset by the profits in Criteria;
8 whereas Mr. Finnegan felt, 'well, you take your losses,
9 I am not bothered with those, well, I am not having
10 anything to do with that, Capent wasn't great, bad
11 luck. But I still want my -' and the figure he sought
12 was the ú50,000.

13 A. Yeah.

14 686 Q. Ultimately, in any event, as the numbers turned out,
15 there wasn't even the 50 in it, and eventually, as
16 Mr. Hanratty rightly points out, it was settled through
17 the intervention of Mr. Miley?

18 A. Miley & Miley.

19 687 Q. And that was as much as it was?

20 A. Yeah, that was the profit then, obviously.

21 688 Q. In relation to the position, just so that you are clear
22 of the question that was put to you by Mr. Hanratty,
23 and your answer, you indicated - Mr. Hanratty asked if
24 Mr. Burke had made any representations on your behalf,
25 on Criteria's behalf in relation to the site in
26 question, the fact that there was planning obtained on
27 it. Is it your evidence that he didn't, as far as you
28 can recollect?

29 A. As far as I can recall, he didn't make any
30 representation.

1 689 Q. Some people may take an answer of that nature, "as far
2 as I can recollect" as being somewhat ambivalent. Are
3 you actually telling the Sole Member that from your
4 position you did not ask Mr. Burke to make any
5 representations?

6 A. That's correct.

7 690 Q. Yes. And as far as your position is, as far as you are
8 aware, he didn't make any - you didn't seek for him to
9 make any representations -

10

11 MR. HANRATTY: Those are rather leading questions,
12 where the witness has already given evidence that he
13 didn't recall having done so.

14

15 MR. HAYDEN: This is cross-examination. He is not my
16 witness.

17

18 MR. HANRATTY: It's leading questions.

19

20 CHAIRMAN: -- establish the state of facts which is
21 suitable and helpful to your client.

22

23 MR. HAYDEN: Which no doubt is the way Mr. Hanratty was
24 putting his questions. But at the end of the day I
25 take the point. It's late on a Friday and I'll amble
26 along to the very end. I am just finished, in any
27 event.

28

29 691 Q. MR. HAYDEN: Moving off from there. I think you've
30 already indicated the individuals that you knew and the

1 relationship. Did you - did you ever make any request
2 of the individuals in the board in relation to this
3 planning?

4 A. No, I didn't, no.

5 692 Q. And I think, ultimately, planning was obtained or not
6 ultimately, planning was obtained for a small
7 development on the site?

8 A. That's correct.

9 693 Q. I don't think that planning was ever advanced?

10 A. No, they changed that and built it different.

11 694 Q. And I think now the same site has a quite substantial
12 edifice?

13 A. Oh, it's huge now.

14 695 Q. Yes. Inhabited by a large firm?

15 A. Yes.

16 696 Q. And I think known to the legal provision. So the site
17 itself in relation to its use within the context of the
18 planning scheme seems to have come to a different usage
19 by the planning authorities. They have gone to
20 planning permission for a very large office block?

21 A. Oh, huge, huge.

22 697 Q. Yes. You'd long sold it before planning permission was
23 obtained?

24 A. Yes, we had.

25 698 Q. In relation to the final matter, I think Mr. Hanratty
26 rightly brings to the - your attention, Sir, the
27 covering letter from Mr. Walsh about the affidavit from
28 Mr. Bullock, but just to draw your attention to Exhibit
29 E in relation to those documents, Sir. You will see
30 that this is the Silkeborg aspect in which Mr. Bullock

1 indicates Mr. Brennan has no interest, therefore he is
2 not entitled. Exhibit E identifies a reply from
3 Standard Bank off-shore that it has - it has furnished
4 a schedule under cover correspondence of the 27th of
5 June, 2001 to Mr. Bullock re Silkeborg Trust Company
6 Limited states the following: "Our archive records are
7 retained for at least six years, and we have been
8 fortunate that certain records that were due for
9 destruction are still available. The task has been
10 complicated in that during the period under review,
11 there have been three different computer systems
12 employed, and a change in the bank's ownership.

13 .
14 I believe that we have identified all the transactions
15 that you have requested confirmation, save three
16 debits, which we cannot trace, as having gone through
17 the account. Attached you will find a schedule
18 detailing the remaining items that appear to have
19 passed over the company's account.

20
21 There has been a considerable amount of staff time
22 involved in this search, and I would appreciate your
23 reimbursing the bank with ú250."

24
25 Annexed to that is a schedule not prepared by
26 Mr. Bullock but by Standard Bank showing the ins and
27 outs on the bank account of Silkeborg relating to such
28 sums as either Beachside or Ewell Park would have an
29 interest in. Again, Sir, the other exhibits speak for
30 themselves.

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Thank you, sir.

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CHAIRMAN: Thank you. Thank you very much. Half past
ten on Tuesday morning.

THE TRIBUNAL THEN ADJOURNED TIL TUESDAY, 30TH OCTOBER
2001, AT 10:30 AM.

