

1 THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY, 10TH OCTOBER 2003

2 AT 10.00 AM:

3

4 CHAIRMAN: Morning, Mr. Gallagher.

5

6 MR. GALLAGHER: Morning. Good morning, Mr. Caldwell.

7

8 On the 20th November last or thereabouts, you furnished a statement to the

9 Tribunal, which has not been read in public and I now propose to read it.

10 A Mr. Gallagher, sorry, just before you start that, I would like to raise two
11 matters arising out of the, yesterday's evidence and matters that the members
12 brought up and raised.

13

14 The two, the first one is in relation to tax and Mr. Gallagher had asked me a
15 question in relation to taxation, where you put to me that it made no
16 difference whether the shares were in my name or in the name of Mr. Bullock and
17 I said to him that that was correct in that statement.

18

19 That, in fact, is not correct because the, it was important that the shares
20 were owned legally and beneficially by Mr. Bullock, because of the issue Judge
21 Keys raised, which is the domicile issue. And it was important that in case my
22 domicile would come under pressure from living in Ireland, that someone who
23 would own the shares who is domiciled, under no circumstances could come under
24 pressure and that was the situation with Mr. Bullock. He was born in the Isle
25 of Man, domiciled person so it was important for that reason and that the
26 domicile issue was important from another tax aspect we didn't cover yesterday
27 which was from capital acquisitions point of view, because assets were
28 non-Irish assets and were owned by a non-domicile person at that time, and the
29 rules have changed. At that time it was a situation where no inheritance tax
30 or gift tax would apply to any disposition, VAT didn't apply to them.

1

2 The second thing that I just wanted to clarify was in relation to the question
3 of asset protection. That was a very important part of this structure that I
4 established. It was -- I had had incidents where at a personal level, one's
5 own personal wealth and personal financial circumstances could be put under
6 pressure. I was practising as a solicitor in a large law firm. The potential
7 exposure to claims and to liabilities was large. So in terms of my own
8 personal planning I felt that it was important that this structure was there
9 and that was, at that time, was a primary purpose for establishing it. And the
10 tax matter was the bonus associated with it. Sorry, for interrupting,
11 Mr. Gallagher.

12 Q 1 Not at all. Just one question which perhaps may be slightly related to that,
13 was the company or entity known as FICIL the source of any of those monies that
14 we discussed yesterday?

15 A In terms of the monies that would have been available for investment?

16 Q 2 Yes.

17 A Yeah. Yes, I would have --

18

19 CHAIRMAN: What's the, sorry, what was the name used?

20

21 MR. GALLAGHER: FICIL?

22 A Financial Indemnity Company Ireland Limited, FICIL for short. Would I explain
23 what it was, Mr. Gallagher?

24

25 Q 3 MR. GALLAGHER: If you would, please.

26 A That was a cap which was established in Ireland to carry on a business called a
27 capital redemption business, which is a form of insurance business, and that
28 had been established by Mr. Taylor, the gentleman, Mr. Taylor and myself, and
29 it carried out that business in Ireland and effectively, because it was an
30 insurance type business, it was profits that arose to it were not subject to

1 Irish tax because of the computational rules that apply for insurance, for that
2 type of insurance business.

3 Q 4 And that was a, business people like Mr. Thomas Brennan, Mr. Joseph McGowan and
4 others had put their money in and perhaps invested their money, isn't that
5 right?

6 A Yes, effectively it was a company, a type of insurance company, which ran
7 developments. And people like Mr. Brennan, Mr. McGowan and a plethora of other
8 individuals as well and companies would take out insurance policies with it and
9 the company would buy land and the land would be developed or sold and the
10 profits were sheltered from tax as a result of the computational rules which
11 applied to capital redemption business.

12 Q 5 So that's related to Carrickmines at this stage --

13 A No, it's not.

14 Q 6 -- so far as one can see?

15 A But FICIL was a business, I don't know, was it a company? It was a company.

16 Q 7 It was a company which effectively invested money for developers in this
17 country?

18 A Yes.

19 Q 8 And gave them a mechanism whereby they could invest their money in a very tax
20 efficient way and where the proceeds very often ended up in the Isle of Man or
21 elsewhere.

22 A No. In the instance of FICIL, I can't recollect how many occasions it might
23 have ended up in the Isle of Man, there would have been very few, the benefit
24 of FICIL, capital redemption policies that were issued by the company were not
25 subject to capital gains tax so it was, so when FICIL would realise a profit on
26 a transaction then the policy that the individual or the company had was
27 effectively a tax-free instrument. So when they cashed in their policy, they
28 received the proceeds tax-free. So, in those circumstances people took the
29 money back into their own personal wealth or took it back into their companies
30 in Ireland.

1 Q 9 And correct me if my recollection is wrong, because it is something that only
2 occurred to me as you spoke to the Tribunal earlier, did you operate accounts
3 on behalf of FICIL, and who I recall there was evidence from one of the
4 directors of Oak Park in relation to, was it Jack Foley, in relation to the
5 receipt or transfer of money from abroad by you on his behalf, monies that were
6 handed over by you to him in your office?

7 A One of the directors of Oak Park, there was a structure set up which was before
8 I was involved with the directors in Oak Park and that structure owned land in
9 Ireland and that land was subsequently sold and the monies arising from that
10 were held by the, I think it was an Isle of Man company, it may have been a
11 Jersey company, but as I say, the structure was set up by somebody else.
12 The funds were placed in a series of companies for the individual directors,
13 but the tax affairs were set, were dealt with by the revenue and settled by the
14 revenue so the funds within those companies were tax paid funds.

15 Q 10 Am I correct, some evidence was given by one or other of the directors of Oak
16 Park about the transferring of monies from abroad?

17 A Mr. Cooke, in fact, gave that evidence.

18 Q 11 Mr. Cooke.

19 A Mr. Cooke gave evidence that, and Mr. Cooke was incorrect in the evidence that
20 he gave but as nothing turned on it, I didn't make an issue of it.

21 Q 12 I see. Sorry, I hadn't intended to deal with that matter at this stage but
22 I'll now turn back to the statement, narrative statement in relation to the
23 Carrickmines lands which you provided to the Tribunal on the 20th September
24 2002. It's on page, the first page is on page 707.

25

26 "The Carrickmines lands. Paisley Park Investments Limited and Jackson Way
27 Properties Limited:

28 I have prepared this narrative based on my recollection of events and a review
29 of the Paisley Park and Jackson Way files and the papers available to me as at
30 the 19th November 2002.

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Ownership:

Jackson Way Properties Limited holds the lands at Carrickmines for Renzenbrinck Investments Inc. and Maskani Management Limited as tenants in common with equal shares. Renzenbrinck Investments Inc. is the beneficial owner of the lands held for it.

Renzenbrinck Investments Inc. Is a company owned Mr. Martin Bullock in respect of which he is the sole director. I have the power to direct the transfer of the shares in that that company. Mr. Bullock has agreed not to transfer the shares without my consent. Until recently this arrangement was undocumented and was based upon trust. Notwithstanding that, it is not the legal position I consider myself to effectively have been the de facto beneficial owner of the company at all material times.

A letter of direction dated the 3rd July 2001 which is in my sole control has been executed by Mr. Bullock. I do not now -- I do not and have never held any interest directly or indirectly or on foot of any understanding or arrangement, any interest, power or authority with regard to Renzenbrinck Incorporated, sorry, Renzenbrinck Investments Incorporated on behalf of any politician, civil servant, developer, lobbyist, landowner, councillor, his or its servant, agent adviser or consultant.

Maskani Management Limited is a company which I believe is owned by Mr. RP Harker and his wife Helen, both of whom are resident in the Isle of Man and are the sole directors of the company. A letter of direction was completed by Mr. And Mr. Harker and is dated the 6th July 2001, a declaration of trust dated the 7th November 2001 was subsequently entered into by Mr. and Mrs. Harker in favour of Pertland Limited, (a company incorporated in Liberia). The letter of direction and the declaration of trust have been provided to Mr. Nicholas

1 Morgan, solicitor, by Mr. Harker. Until the letter of direction was completed,
2 I had an arrangement with Mr. Harker and through him with his wife where I had
3 power to direct the transfer of shares in the company, coupled with an informal
4 arrangement where Mr. and Mrs. Harker agreed not to transfer the shares without
5 my consent. This was a loose arrangement, undocumented and based completely
6 upon trust.

7
8 The arrangement ended with the completion of the above documents. I believe
9 that Pertland Limited is a company associated with Mr. James Kennedy. I
10 acknowledge that at any time prior to the completion of the above documents
11 with respect of Maskani, I would have used my arrangements with Mr. and Mrs.
12 Harker as directed by Mr. James Kennedy. I have never had any beneficial
13 interest in Maskani. No politician, civil servant or councillor or lobbyist or
14 anyone acting or purporting to act on his, her, its behalf, whether as servant,
15 agent, ^ advisor or consultant has at any time indicated or asserted directly
16 or indirectly any interest in Jackson Way, Renzenbrinck or Maskani to me and to
17 the best of my knowledge have not done so to any of the directors or
18 shareholders of any of these companies. Mr. Kennedy has never informed or
19 notified me that any such person has or had any interest in Maskani.

20
21 The ownership and control was structured as set out above for reasons of tax
22 planning and asset protection.

23
24 I recollect that a short agreement was entered into between Mr. Kennedy and
25 myself as to the future of the lands. My recollection was that it was for a
26 10-year period. I am uncertain of the content, not having seen the document
27 for over 10 years but I think it encompassed a view that the land was a
28 long-term investment, catered for our respective debts and the winding up of
29 the venture. I also recollect sending a precedent co-ownership agreement to
30 Mr. Morgan. I do not recollect if this co-ownership agreement was modified and

1 completed by Mr. Morgan and executed by Renzenbrinck and Maskani.

2
3 There is no copy with Mr. Bullock's files. Mr. Morgan retains these documents
4 and to date, despite repeated requests, I have not been provided with copies by
5 them.

6
7 After a swimming accident some two years ago, during which Mr. Kennedy nearly
8 drowned, Mr. Kennedy became concerned about his structures position, due to the
9 absence of documentation on rights. A further short document was entered into
10 by Mr. Kennedy and myself to follow on from the earlier document. Mr. Morgan
11 also held this document and despite repeated requests, has not provided a copy
12 to me. This short document was followed by the Maskani documents of July and
13 November 2001.

14
15 Roles/Actions: John Caldwell, Paisley Park.

16
17 During the period of Paisley's ownership, I was active on the legal side of
18 completing this sale and dealing with the antics of Mr. Stanley. I dealt with
19 matters through Mr. Bullock who instructed Reddy Charleton & McKnight and
20 Mr. Frank Friel, solicitors, of Binchy & Partners with regard to the land
21 purchase and letting.

22
23 Mr. Friel did the property aspects of the Paisley Park liquidation. I assisted
24 in the preparation of a rezoning submission with Mr. Finnegan and discussed its
25 contents with Mr. Kennedy. This was I believe in early 1992, and used in part
26 Monarch's own submission.

27
28 I was not involved in preparing the initial submission made by Mr. Finnegan in
29 late 1991. I met with Mr. Dunlop in my capacity as Paisley Park solicitor as
30 solicitor to provide him with the Paisley Park submission. I did not give any

1 instructions to or make any payment to Mr. Dunlop or make any arrangement with
2 him for the payment of fees or monies to him for himself or for any other
3 person.

4
5 I did not disclose to Mr. Dunlop nor I believe did Mr. Kennedy disclose any
6 association of mine other than as legal advisor with Paisley.

7
8 Initially with Mr. Synnott, auctioneer, and subsequently directly, I was
9 involved as Paisley Park's solicitor in negotiation with the Carrickmines gold
10 club over a sterile strip in an attempt to get a no objection or positive
11 attitude from the club to the proposed rezoning of the adjacent to Paisley
12 lands. I informed Mr. Kennedy on the golf course negotiations and he kept me
13 apprised of his discussions with Mr. O'Halloran and in late 1992 of Monarch's
14 wishes on the SEM alignment. At no time did he tell me that money had been
15 paid to Mr. Dunlop by him, as Mr. Dunlop alleges. So some councillors -- to
16 obtain councillors support for the Paisley Park rezoning motion or for any
17 other purpose.

18
19 I recollect Mr. Kennedy told me he had negotiated a success fee with Mr. Dunlop
20 and I recollect a letter issuing from Paisley to a company nominated by
21 Mr. Dunlop. No copy of that letter can be found by me.

22
23 I recollect attending a meeting with Mr. Kennedy, Mr. O'Halloran and
24 Mr. Kilcoyne at which Mr. Kennedy discussed terms with them for access and the
25 lifting of the Restrictive covenants. Mr. Kennedy negotiated and informed me
26 of the deals over access and the buy out of the covenant. I also met with Mr.
27 O'Halloran's solicitors. I attended all meetings at Paisley Park's solicitor.

28
29 Jackson Way:

1 In late 1994, on my recommendation to Mr. Morgan, solicitor, Mr. Miley was
2 instructed by Mr. Holland, a director of Jackson Way to act for the company
3 with regard to a company compensation claim and land locking arising from the
4 SEM and the dealings generally with the county council.

5
6 After the liquidation of Paisley Park, Mr. Holland was the interface with Miley
7 & Miley and for a couple of years, 1994 to 1995 up to 1996, he gave the
8 majority of instructions regarding the company. I had no contact with
9 Mr. Holland. He received his instructions from Mr. Morgan, a lawyer based in
10 Jersey, to whom Mr. Kennedy and/or myself spoke. From 1996 onwards, I
11 increasingly dealt directly with Mr. Miley of Miley & Miley on the
12 miscellaneous matters that arose, e.g, gas pipeline, foul sewer, ESB cables,
13 letting of the property, Dunloe Ewart and attempts to sort out access to the
14 lands and attendant litigation.

15
16 Mr. Dunlop/Paisley Park:

17
18 I had met Mr. Dunlop before his involvement with the Paisley Park for example,
19 by 1989 diary shows a meeting in December of 1989. I do not believe that this
20 meeting related to Paisley Park. Mr. Dunlop has stated that I met him on the
21 17th January 1991, with regard to Paisley Park. I do not recollect any such
22 meeting on Paisley Park. I do recollect that I met him on the 15th January
23 1991 with regard to an unrelated matter and a meeting of the 17th January 1991
24 may have been a follow up meeting to the 15th January 1991 meeting. I
25 recollect meeting Mr. Dunlop as Paisley Park's solicitor at his offices I think
26 in early 1992, to provide him with the submission that was submitted to Dublin
27 County Council by Mr. Finnegan, putting the case for the rezoning of the
28 Paisley Park lands. Mr. Finnegan made the submission on the 2nd March 1992 to
29 the oral hearing. Mr. Dunlop was acting for Paisley Park. I believe that I
30 had met Mr. Dunlop to provide this submission to him at the request of

1 Mr. Kennedy. I do not know whether he contacted Mr. Kennedy or vice versa. I
2 know that I did not initiate contact with Mr. Dunlop on Paisley. It is my
3 understanding that in his dealings with Mr. Dunlop, Mr. Kennedy's position was
4 that he was the only person associated with Paisley Park. I did not give any
5 instructions to Mr. Dunlop with regard to the lobbying of county councillors.
6 I recollect being asked by him if I knew any county councillors and I mentioned
7 to him that I did not, save that my now ex-wife knew Mrs. Helen Keogh. I made
8 no request nor representation, nor did I request any servant or agent or my now
9 ex-wife to do so on behalf of Paisley Park or myself to make any request for
10 representation to any politician or civil servant or councillor.

11
12 I understood Mr. Dunlop's role was to put the case for the rezoning of the
13 Paisley Park lands to the county councillors. So far as I can recall, a
14 company nominated by him was to be paid by Paisley Park a fee of 200,000 pounds
15 in the event he successfully lobbied the elected members of Dublin County
16 Council and procured a rezoning of the lands. Mr. Kennedy negotiated the
17 success fee with him. I do not believe that Mr. Kennedy had any knowledge at
18 that time or for many years afterwards (and probably not until 1999 at the
19 earliest if even then) that I had any direct or indirect interest in Paisley
20 Park."

21 A Just to correct that sentence --

22 Q 13 I said Mr. Kennedy, I should have said Mr. Dunlop.

23 "I have a recollection, though I am not certain, that he was also provided with
24 the summary memorandum (4/2/1992) outlining the case for rezoning as industrial
25 and district centre. Between Mr. Finnegan's attendance at the representation
26 with the council on the 2nd March 1992 and the 1st April 1992, the district
27 centre part of the proposal was dropped for one seeking an all industrial
28 rezoning. I cannot recollect why this occurred. A memorandum dealing with why
29 the Southeastern Motorway road line should remain largely the same as the
30 alignment contained in the 1983 Development Plan was also provided to him. I

1 do not recollect when.

2

3 I do recollect updating him on the state of the Carrickmines Golf Course
4 negotiations. I do not recollect whether this was by telephone or at a
5 meeting.

6

7 It was my understanding from Mr. Kennedy that Mr. Dunlop was also lobbying for
8 Monarch. This to my mind could have created a conflict as the interests of
9 both companies were not necessarily complimentary to each other. Monarch's
10 aspirations to have a district centre, an industrial rezoning on their lands
11 and in relation to the route of the Southeastern Motorway were not identical.

12

13 Jackson Way:

14

15 As to Mr. Dunlop, I do not recollect any meeting with Mr. Dunlop on Jackson Way
16 prior to the two meetings in 1999. One alone to ascertain if I was prepared to
17 meet a Mr. Bird of RTE and the other at a supposedly off the record meeting
18 with Mr. Bird.

19

20 I believe Mr. Kennedy informed me that Mr. Dunlop had been retained by Mr.
21 O'Halloran to obtain -- to assist Mr. O'Halloran's lobbying for the rezoning of
22 the joint submission lands. I have a recollection of Mr. Miley informing me
23 that Mr. Dunlop had contacted him. There is nothing on the files of Mr. Miley
24 that I have reviewed to assist in preparing this narrative which indicates
25 Mr. Dunlop in effect contacted Mr. Miley. On Mr. Miley's file is incompletely
26 dated note, (4.5.year) (from the file sequence the year appears to be 1996) of
27 a telephone call message left by Mr. Holland for Mr. Miley. (I had no
28 knowledge or of input into the making of this call). It may have been that
29 this contact, which we both vaguely recollect. It may also have been the case
30 that Mr. Dunlop did contact Mr. Miley or it may have been the case that

1 Mr. Miley was informing me that Mr. Holland had asked him to contact
2 Mr. Dunlop. Both our recollections are uncertain in this regard. I have a
3 memory of asking Mr. Miley to contact Mr. Dunlop arising out of whatever
4 conversation Mr. Miley had with me.

5
6 I also have a recollection of Mr. Kennedy informing me that Mr. Dunlop wanted
7 several acres of land if the Jackson Way 1997 rezoning of the lands was
8 successful but that he, Mr. Kennedy, had negotiated a fee equal to the value of
9 one acre of zoned land if that zoning occurred. I do not recollect any
10 discussion or mention by Mr. Kennedy of a fee for Mr. Dunlop in relation to the
11 joint submission on zoning. I do not know whether Mr. O'Halloran was carrying
12 all the costs of Mr. Dunlop's fee. The original joint submission deal of 1995
13 had been a 50/50 cost sharing agreement with Mr. O'Halloran. I do not know
14 what, if any, costs deal with Mr. O'Halloran applied for the 1996/1997
15 submission. My view is that there was no cost sharing deal, none being
16 referred to in the correspondence that I reviewed in Mr. Miley's files nor did
17 Mr. Kennedy ever mentioned one to me.

18
19 Mr. Kennedy:

20
21 I consulted with Mr. Kennedy on some matters as they arise and often left it to
22 Mr. Kennedy to liaise with Mr. Morgan and Mr. Morgan with Mr. Holland. I never
23 had any contact with Mr. Holland until we spoke in October 2002 about the
24 compensation claim. We spoke on a second occasion about the compensation claim
25 and my view that he should consent to and comply with the discovery request of
26 the Tribunal. Mr. Holland as the channel for instruction declined through
27 1996.

28
29 Mr. Kennedy contacted me on the conacre letting of the property and on his view
30 as what should occur with regard to the foul sewer and access and submissions

1 and when he saw newspapers articles and adverts for submissions or reports that
2 might be of interest/relevance to the Carrickmines lands. As these inputs
3 became largely repetitive, it was increasingly unnecessary to seek or obtain
4 any input from him and I largely, during 1996, took on the role of directly
5 instructing Mr. Miley as and when the need arose.

6
7 Mr. Kennedy continued to deal with Mr. O'Halloran insofar as it was necessary
8 to communicate with him over the years on the various joint submissions. A
9 series of joint submissions began in 1995 between Mr. O'Halloran and Jackson
10 Way. These related to the lands to the east of the Southeastern Motorway.

11
12 In February 1997, Mr. Kennedy negotiated a new right of way and release of the
13 restrictive covenant with Mr. O'Halloran, and in August 1997 agreements were
14 entered into with Mr. O'Halloran with regard to access and a release of the
15 benefit of a restrictive covenant.

16
17 Mr. Lawlor:

18
19 1. I never discussed the Carrickmines lands with Mr. Lawlor at any time nor had
20 I any dealings with him in relation thereto. As far as I am aware, he did not
21 know that I had any involvement with those lands. Mr. Kennedy wanted only
22 himself seen as the person associated with the lands. I believe this was a
23 self-esteem matter arising from his many financial set backs of the 1980s.

24
25 2. Mr. Lawlor, to the best of my knowledge and belief, does not and never had
26 any interest whatever in the Carrickmines lands or any of its associated
27 companies.

28
29 3. Media materials produced by the Carrickmines Valley Association show that
30 Mr. Lawlor voted in the May 1991 county council vote to revert to the 1983 plan

1 updated. The vote was 21 to 19. This vote reinforced the exclusion of the
2 Paisley Park lands from future development to the benefit of Monarch
3 Properties. If Mr. Lawlor had voted the other way, it would have been a tied
4 vote with the chairman then having the casting vote, which might have been in
5 favour of the planners' proposal. His vote was a vote against the planners'
6 proposals and against Paisley Park. It was only after the failed 12th June
7 1992 rezoning vote and the manager's use of the vote on the motorway line
8 (inter alia) against the Paisley Park motion for rezoning that I appreciated
9 the significance of the May 1991 vote for the Paisley Park lands for the
10 foreseeable future.

11
12 Paisley Park submissions, 1991/1992, background and content:

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14 1. On the 7th and 21st September, 1989, on behalf of Paisley Park, Mr. Frank
15 Finnegan of D McCarthy & Co. was requested to prepare submissions for the
16 rezoning of the lands. On the 9th November he was asked to prepare drawings
17 for a planning application. I do not recollect if any submission or drawings
18 were prepared at that time.

19
20 2. In October 1990, the county planners brought forward a rezoning plan for the
21 Carrickmines Valley which inter alia provided for all of the Paisley Park lands
22 to be rezoned as industrial and related areas and new residential areas. The
23 planners' vision for the valley was greeted with anger by the councillors. The
24 media reports of December 1990 reported the voting down of the planners'
25 October 1990 proposal and that the vote significantly reduced the amount of
26 land for industry and limited development to the eastern side of the proposed
27 motorway. The media reported that the vote was 20 to 8. I tracked events then
28 and subsequently often through the media or Carrickmines Valley Preservation
29 Association bulletins/Monarch free sheets.

1 3. A Carrickmines Valley news bulletin reported that on the May 24th 1991, the
2 county councillors voted on a resolution to revert to the 1983 plan updated and
3 in so doing, rejected the council planners original proposal of October 1990
4 and also rejected a slightly amended version of the county planners' proposed
5 plan. The vote in May 1991 was made in the face of the upcoming local council
6 elections and a vigorous media campaign by the very influential Carrickmines
7 Valley Preservation Association which had issued news letters and statements
8 and held public meetings against the planners' vision for the Carrickmines
9 Valley. The planners' vision would have catered for 30,000 people but was
10 rejected by the councillors and the Draft Development Plan that went on display
11 for the Carrickmines Valley reverted to the 1983 plan. I do not recollect
12 Mr. Kennedy ever raising or discussing either before or indeed afterwards the
13 May 1991 vote. In May 1991 the focus was on completing the purchase of the
14 lands which eventually occurred on the 6th June 1991.

15
16 4. Until the lands purchase was completed on the 6th June 1991, Paisley Park
17 was an interested but irrelevant bystander at the Cherrywood saga. Paisley
18 Park wrote to James Kennedy on the 11th November 1991 asking him to identify a
19 suitable town planner to prepare a submission to the planning authority. By
20 letter of the 13/11/1991, D McCarthy & Company was his suggestion.

21
22 5. In late 1991, November/December, a submission was made to the Draft
23 Development Plan on behalf of Paisley Park by D McCarthy & Company and Grainne
24 Mallon with respect to the company's lands at Carrickmines. The rezoning
25 submissions made by Paisley Park sought a change in zoning from agricultural to
26 (A) a district centre and (B) a business park (at this time the motorway was
27 north of the Paisley Park lands) an alternative of residential and
28 neighbourhood centre was also proposed. I was aware in early 1992 of an
29 extensive campaign by Monarch to lobby for a major new town on their lands at
30 Cherrywood. This was reported extensively in the media.

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6. Mr. Frank Finnegan attended an oral hearing on the 2nd March 1992 and submitted a submission on the case for industrial/district centre rezoning. An alternative zoning to residential community A1 and the neighbourhood centre was suggested.

7. A motion to rezone all of the Paisley Park's 108 acres lands as industrial was lodged on 4th May 1992. The motorway was still largely to the north of the lands at that time.

8. The motion was lost at a meeting on 12th June 2000."

That should read 1992.

"Paisley Park, the Southeastern Motorway (SEM):

When the land was being purchased, the line of the Southeastern Motorway (euro route) traversed a small northern corner of the lands. The euro route proceeded into the nearby lands of Mr. Galvin and Monarch Properties Limited. Insofar as Monarch was concerned, the proposed euro route traversed lands which was zoned under the 1983 residential plan on a density of one house to the acre on septic tanks. It is my understanding that Monarch undertook a detailed analysis of an alternative route to the west of the site on the basis that it was shorter, less costly and had a significant reduction on the social impact of the euro route. I am aware of this by virtue of a paper dated 17th July 1989 circulated by them, I believe, when they were intending to sell that site for residential development.

Paisley Park's perspective was:

1: The original line of the motorway did not divide the Paisley Park land and

1 left it as one developable unit with a substantial area of level or relatively
2 level developable land.

3
4 2: Paisley Park (in early 1992) in was in favour of moving the Southeastern
5 Motorway from its existing line at the edge of the it's lands to a line much
6 further north which would enable the motorway to link with the N11 and operate
7 via the line of the N11, a direct access to the Bray/Shankill Motorway. The
8 plan on display in 1991 after the adoption of the 1983 plan with modifications
9 had moved the line of the motorway to the edge of Paisley Park's lands and had
10 moved it from its 1983 line which was through Monarch's land. This had
11 cemented in place for Monarch an acreage gain of some 30 acres of land which
12 would otherwise have been taken for the motorway and was consequently available
13 for residential/commercial development.

14
15 3: Mr. Galvin sought planning permission for a golf course on his lands at
16 Cherrywood in 1991. I did a memo (I cannot recollect the precise date) to
17 myself. It must have been prepared after I became aware of Mr. Galvin's golf
18 course proposal and of the possibility of the road moving into the Paisley Park
19 lands and a perceived imminence of a CPO. The memo flagged my concern over
20 access if the road moved into the Paisley Park lands. It was a reaction to
21 this possibility. It mentioned negotiating a position under which none of the
22 land is landlocked, obtaining maximum value for the lands compulsorily acquired
23 and the possibility of a land swap with Mr. Galvin to consolidate Paisley
24 Park's holding to the western side of the motorway in exchange for Paisley
25 Park's lands to the east of the motorway.

26
27 This memo contains nothing showing any perceived need for desire to move the
28 Southeastern Motorway into Paisley Park's lands. The contemplated Galvin swap
29 showed a lack of awareness of the negative significance of the county
30 councillors' vote to keep development to the east of the Southeastern Motorway

1 or of any desire to get the land to the east increased by a movement further
2 into Paisley Park's lands or to have the eastern severed part rezoned
3 separately.

4
5 4: I remember getting a planning search done in respect of Mr. Galvin's golf
6 course application. This was on the 29th January 1992 the object was to
7 ascertain what were the consequences of Mr. Galvin's proposals. His plan
8 objected to the Southeastern Motorway being on his lands. Mr. Galvin made a
9 representation under the Development Plan to have a golf course on his lands.
10 The revised 1991 route made it impracticable to carry out the proposal.
11 Mr. Galvin's request was that the line of the motorway be as shown in the 1983
12 plan or alternatively that it be moved north eastwards a sufficient distance to
13 facilitate his golf course proposal.

14
15 Monarch wanted to avoid this happening. The media were indicating serious
16 financial fallout for Monarch if it did not get a rezoning result in
17 Cherrywood.

18
19 5: I remember doing up a note in I think February 1992 based on a report
20 prepared by H J. Lyons for Monarch when they were arguing for the movement of
21 the 1983 line to a line further east. The February 1992 note argued for the
22 location of the motorway to be moved to link with the existing Bray/Shankill
23 Motorway at the Loughlinstown end of the N11. This moved the motorway north of
24 Mr. Galvin's proposed golf course and left Paisley Park's lands undivided by
25 the Southeastern Motorway. It also left Paisley Park's lands right at the
26 proposed Carrickmines interchange on the Southeastern Motorway. Paisley Park's
27 wish was that the Southeastern Motorway would be well to the east leaving
28 Paisley Park's lands unaffected by the Southeastern Motorway. (By coincidence
29 this proposed routing was very similar to that which was the preferred
30 comparative route used by the consultants who in 1995/'96 advised the council

1 on the best route for the Southeastern Motorway, i.e. the route through the
2 Paisley Park lands.)

3
4 6: I assume the proposals of late May 1992 which Monarch brought forward which
5 involved the movement of the motorway into the Paisley Park lands emerged
6 because Monarch feared that the county council favoured moving the Southeastern
7 Motorway to facilitate Mr. Galvin's golf course and any movement would either
8 be into Monarch's lands (which from their point of view if that movement
9 occurred would create attendant development and financial loss for Monarch) or
10 into the Paisley Park lands. In addition, Monarch said the route was shorter
11 and less costly to the council.

12
13 7: Monarch negotiated with the Dun Laoghaire/Rathdown County Council with
14 regard to the realignment of the Southeastern Motorway and produced the letter
15 for the manager setting out why they wanted -- reasons they wanted put to the
16 councillors to justify the realignment of the Southeastern Motorway. I
17 understood from their letter of the 26th May 1992 that they provided that the
18 reasons for the realignment were:

- 19
20 1. To allow the motorway to run parallel to the two major 38 kv lines without
21 the loss of any houses (to their developments).
22 2. To allow Sean Galvin's golf course to proceed in until 175/189 acres.
23 3. To avoid interference with any archeological sites.
24 4. To enable the golf course to create a buffer between Monarch's Development
25 and the motorway.
26 5. To lessen visual impact.
27 6. To avoid the use of septic tanks.
28 7. To generally project and enhance the Tully church area.

29
30 8: I remember discussing the Monarch letter with Mr. Kennedy and being

1 concerned that it was agreed to. Proper access to both sides of the divided
2 land and the various water services connections to drain each part of the land
3 would have to be obtained. I recollect wanting Mr. Kennedy to obtain
4 assurances in this regard from the council and Monarch, Mr. Kennedy told me
5 they would not be obtained.

6
7 9: I have no recollection of any discussion with Mr. Kennedy about Mr. Fox's
8 resolution referred to in the May 26th letter. My recollection was that I
9 believed the letter and its contents were a creation of Monarch's requirements.
10 Mr. Kennedy's attitude was that the Southeastern Motorway was Monarch's
11 problem, not Paisley Park's. Mr. Kennedy attached great weight to the fact
12 that the county council's Planning Department itself had brought forward in
13 their October 1990 draft zoning proposals to the Draft Development Plan 1990
14 proposals to rezone a substantial part of the Paisley lands as industrial. If
15 the movement of the Southeastern Motorway into Paisley Park's lands was
16 contemplated by Mr. Kennedy as a feasible/desirable outcome of the rezoning
17 process, I would speculate that a second motion would have been requested from
18 Mr. Fox to cater for such a contingency and as an alternate to the one motion
19 actually filed.

20
21 The need to do so was never raised with me by Mr. Kennedy. I thought at the
22 time and believed that the rezoning to industrial zoning motion for all of the
23 Paisley Park's lands that was lodged on 4th May 1992 was the only shot in
24 Paisley Park's gun. Further, when I was dealing with the Carrickmines Golf
25 Course negotiations which were ongoing from 26th March 1992 to the 15th June
26 1992, the only motion that I was in contemplation of was initially the rezoning
27 to industrial and district centre and from the 1st April 1992, the rezoning to
28 industrial. If any other proposal was critical and relevant to Paisley Park's
29 development future, i.e. a motion to move to the line of the Southeastern
30 Motorway. Mr. Kennedy would have told me to include it and it would have been

1 in the bundle of deal items with the Carrickmines golf club, so as to obtain
2 their de facto support for it by non-objection.

3
4 No such element formed any part of the Carrickmines golf club discussion.

5
6 No recollection of Mr. Kennedy ever raising the need for a motion to move the
7 Southeastern Motorway line into the Paisley Park lands.

8
9 10. I sent a copy of the Monarch letter of the 26th May 1992 to Paisley Park
10 which was in voluntary liquidation at the time. I cannot recollect if it was
11 returned signed or not.

12
13 Jackson Way submission. 1995 submission:

14
15 In early 1995, Ms Auveen Byrne at Mr. Miley recommendation was initially
16 appointed planning consultant to the company. I do not recollect seeing any of
17 the correspondence Mr. Miley had with Miss Byrne.

18
19 In early 1995, through an Irish Times report provided by Mr. Kennedy, it was
20 discovered that Dun Laoghaire/Rathdown County Council had put on display a
21 draft variation to the Dublin Development Plan which allowed Monarch Properties
22 to build housing on a 19.5 hectare site as part of an overall agreement with
23 the council under which the council would become a partner in developing a
24 science and technology park on Monarch's Cherrywood property. Representations
25 were open until 10th March 1995.

26
27 Mr. Miley's files show that he was instructed by Mr. Holland to use
28 Mr. Finnegan to prepare a draft submission for consideration by the council.

29
30 I recollect at Mr. Kennedy's suggestion meeting with Mr. Finnegan to provide

1 him with a copy of the earlier submissions he made for Paisley Park.

2

3 In late February 1995, a joint submission with Mr. O'Halloran was proposed by
4 Jackson Way and agreed to by Mr. O'Halloran. I had no conversations or contact
5 with Mr. O'Halloran with regard to this joint submission.

6

7 I knew from Mr. Miley that progressing by way of a joint submission for the
8 eastern lands was agreed by Mr. O'Halloran with his planning consultant
9 preparing the submission. I paid little attention to these matters as I
10 respected Mr. O'Halloran's professional expertise, he being an experienced
11 architect and I was of the view that his interest equated with that of Jackson
12 Way. Mr. Miley sent me a copy of the joint submission on the date for
13 submission, 9th March 1995. I was happy with it. I do not remember discussing
14 it with Mr. Kennedy.

15

16 Mr. Meehan, consultant planner, dealt with progressing the joint application.
17 I did not have any communication with Mr. O'Halloran or the planning consultant
18 or any input into the joint submission. The joint rezoning submission was
19 unsuccessful.

20

21 Mr. Finnegan also lodged a submission on the larger area. I do not recollect
22 liaising with Mr. Finnegan on the preparation of his submission. The rezoning
23 submission was unsuccessful.

24

25 1996 submission:

26

27 On the 12th August 1996, Mr. Miley requested Mr. Finnegan if he would act as
28 the company's planning consultant. This was done with a view to a submission
29 being put in on Jackson Way's western lands.

30

1 Mr. Miley's files show that Mr. O'Halloran was in September 1996, moving
2 forward a further joint submission for the eastern lands. He and his planning
3 consultant were in direct contact with the county council planners regarding
4 the joint submission and he kept Mr. Miley informed mostly through
5 correspondence. There was no input from myself nor, so far as I know,
6 Mr. Finnegan or Mr. Kennedy into this submission, Mr. O'Halloran's discussions
7 with the county council planners (letter 10th September, 1996). His
8 correspondence said he was confident about the outcome of the submission. I
9 wanted to achieve an arrangement with Mr. O'Halloran which, if he was
10 successful, would avoid disputes with access and services and provided for
11 mutual services and roads access and cooperation on planning in the future. To
12 this end I gave Mr. Miley a note of the relevant requests (c 1/2/'96) and he
13 sought agreement on these issues with Mr. O'Halloran. The joint zoning
14 submission was filed by Meehan & Partners for industrial.

15
16 A separate submission was filed by Mr. Finnegan for all the Jackson Way lands
17 excluding the Southeastern Motorway on the 13th September 1996. I do not
18 recollect meeting Mr. Finnegan on his submission. His submission was returned
19 in September 1996.

20
21 1997 submission:

22
23 In June/July 1997, the draft Development Plan was on display. From Mr. Miley's
24 file, Mr. Holland wrote to Mr. Miley on the 26th June 1997 and requested him to
25 contact Mr. Finnegan to do a submission to the county council (letter of the
26 7th July 1997), I assume Mr. Kennedy made the request to Mr. Holland.

27
28 On the 24th July 1997, Mr. O'Halloran wrote to Mr. Miley proposing a further
29 joint submission to the draft Development Plan 1997, and this was agreed on the
30 basis of mutual access to services and roads as proposed in September 1996.

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Mr. Miley's papers show that Mr. Finnegan was instructed on the 7th July 1997 by Mr. Miley on behalf of Jackson Way to file the company's rezoning submission to the planning authority.

Mr. Miley's papers show that by letter dated 25th August 1997, Mr. Finnegan filed a submission for all of the Jackson Way lands (excluding the motorway) to be rezoned residential.

Mr. Miley's papers show that Mr. Meehan submitted on the 22nd August 1997 a joint submission for the lands to the east of the motorway to be rezoned industrial or residential.

I had no meeting or contact with Mr. O'Halloran or Meehan & Company, the town planners, nor did I have any input into the submission. I do not believe Mr. Finnegan had any contact either. I do not know whether Mr. Kennedy did or not have contact on the submission but view it as unlikely as he would have nothing to add to the arguments of the joint submissions proffered by Mr. Meehan who, because of his years of involvement, would have been fully aware of all aspects of lands.

I did not see a copy of the Meehan joint submission lodged in August 1997. Mr. Miley requested and received a copy in September 1997. Mr. O'Halloran in his letter of 11th September 1997 to Mr. Miley stated that it was his intention to have a motion put down. I do not remember seeing this letter before the review of Mr. Miley's files, which I undertook for the purposes of preparing this statement.

At the time of the 1997 submission and rezoning, I was very occupied with flotation of rapid technology and its aftermath.

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The papers provided by the Tribunal show that four motions were filed on the 28th October 1997 in relation to the joint August 1997 rezoning proposal. I had no input or involvement in their number, formulation, obtaining or filing nor did I know of their existence, though I knew that the process required that a motion be lodged. My attitude [and I believe Mr. Kennedy] was that Jackson Way was piggy-backing on Mr. O'Halloran's efforts which, if successful, was great and if not, Jackson Way was at no loss.

The motorway was years away, nothing could be done for years and infill rezoning was inevitable once the roads infrastructure was in place, subject to the issue of access. The land was debt free and any compensation claim would recoup the investment in the land which would only improve in value over time.

Mr. Miley's papers also contain a letter of the 29th October 1997 from Mr. O'Halloran setting out the motion background. I have no recollection of seeing his letter prior to seeing Mr. Miley's files for the purposes of this statement. I never received from Mr. Holland or Mr. Morgan copies any correspondence sent by Mr. Miley to Mr. Holland.

I do not recollect when but at some date prior to the drafting of the Southeastern Motorway objection letter of the 21st November 1997, Mr. Kennedy/Mr. Miley I do not recollect who informed me that motions had been filed for the rezoning of the Jackson Way lands. I assume it was in or around the 30th October 1997.

In reviewing Mr. Miley's file, there is a letter dated 19th December 1997 from Mr. O'Halloran advising Mr. Miley of changes that had occurred in relation to the submission that had been made on the 22nd August 1997. Mr. O'Halloran recites the advice he was given in relation to excluding part of the land and

1 in terms of applying for a rezoning for industrial. This appears to have
2 occurred on the night of the vote. They made the changes after discussions
3 with the council. This appears to have occurred on the 15th December 1997. A
4 letter of the 15th December 1997 issued to the council on behalf of Mr.
5 O'Halloran et al and Jackson Way in relation to access.

6
7 I do not recollect being consulted about the letter of the 15th December 1997
8 or the changes. I have a recollection of seeing it but that may have been a
9 copy forwarded to me by Mr. Miley. It is my recollection that he sent
10 Mr. O'Halloran's letter of the 29th January 1998 with enclosures to me. I do
11 not remember the matters in the 15th December 1997 letter being concluded.

12
13 In researching computer records for the purpose of this narrative and
14 discovery, I have located the text of two undated draft motions to rezoning the
15 Jackson Way lands excluding the motorway on my former secretary's computer at
16 Binchys. I have no recollection of these drafts. I did not prepare them. I
17 assumed they were telephoned in for typing by Mr. Kennedy and a telephone note
18 of my then secretary says that he telephoned about their selection. I suspect
19 that the motions were not collected.

20
21 Jackson Way, Southeastern Motorway access:

22
23 In October 1995, Mr. O'Malley was instructed to act on making submissions on
24 access on both sides of the Jackson Way severed lands consequent on the
25 motorway location and did so on the 9th November 1995. Access was sought and
26 the location of the interchange at Carrickmines was supported.

27
28 Mr. Kieran O'Malley was appointed planning consultant on Mr. Miley's suggestion
29 in late March 1996 to deal with rezoning Southeastern Motorway location and
30 access to the lands if severed. He made a road access submission on the 11th

1 April 1996.

2

3 In June 1996, the county council and their consulting engineers produced their
4 recommendations for the route of the Southeastern Motorway. The route moved
5 the Carrickmines interchange away from the lands and moved the line further
6 into the lands and again (June 1996) Mr. O'Malley wrote on the issue of access.
7 Mr. O'Malley was requested to write again pressing the access issue.

8

9 My concern over access increased in 1996/1997 with the proposed Southeastern
10 Motorway display maps which showed that none of the access submissions had been
11 taken into account by the roads designers/county council. Over the coming
12 months I provided S. Miley with draft letters for the council on the
13 services/access issues.

14

15 I recollect meeting with Mr. Finnegan immediately prior to the lodgment date
16 for the August 1997 rezoning proposal. I do not remember discussing the
17 submission with him. I had little interest in the 1997 submission as I
18 regarded it as a waste of time, as all the old 1992 reasons (notwithstanding
19 their lack of substance) would be trotted out again by the manager. I remember
20 raising with him his going into the county council roads people to ascertain
21 their current access views. My pressing concern was the access issue because a
22 satisfactory resolution was necessary if the lands were to have any development
23 future.

24

25 I provided Mr. Miley with a draft letter to the county council on the 28th
26 August 1997 arising from Mr. Finnegan's meeting with the roads design section
27 of the county council.

28

29 In late September 1997, the Southeastern Motorway scheme was made and it went
30 on public display until the 7th November 1997 with objections to be in by the

1 24th November 1997.

2

3 On the 24th November 1997, I furnished Stephen Miley with a draft letter of
4 objection to the Southeastern motorway scheme.

5

6 I had prepared the objection letter and examined it with J. Kennedy on the
7 21st November 1997. He suggested that Mr. O'Donnell, formerly an engineer with
8 Dublin Corporation, be contacted to advise on connections into the wide mains
9 pipe. I put that part of the letter in square brackets and left it for
10 Mr. Miley to decide in view of the shortness of time whether he would seek
11 advice. He did not do so.

12

13 Jackson Way objected to the Southeastern Motorway and Mr. Miley attended the
14 hearing on behalf of the company.

15

16 It is clear that the council officials had a Janus approach to the lands. In
17 effect they created a catch 22 for Jackson Way. On the one hand they denied
18 development standard access (an agricultural underpass was incorporated into
19 the road design) the land was zoned agricultural and on the other hand, they
20 said no rezoning from agriculture use, as it was not clear how development
21 access could be provided to the site or the accesses were substandard.

22

23 Against this background, the strategy for Jackson Way was to try and solve the
24 access issue through negotiation and then litigation and to advance a
25 compensation claim that the lands could have been developed, but for the
26 motorway and thirdly, to make a deal with Dunloe Ewart which regarded the lands
27 as landlocked.

28

29 It is my recollection that the county council were sticking to their
30 agricultural access position and submissions were lodged before 16th January

1 1999 as objections to the making of the CPO. I believe that Mr. Ambrose Kelly
2 did that on behalf of Jackson Way though I have no recollection of ever seeing
3 the submission that he put in on the 23rd December 1998. I did not instruct
4 him.

5
6 I prepared and faxed some notes to Mr. Miley headed 'agenda discussion items'
7 on the 4th January 1999. Mr. Ambrose Kelly attended a meeting with Mr. Miley
8 with Dun Laoghaire/Rathdown County Council to try and resolve the roads issue
9 on the 18th February 1999.

10
11 In March 1999, after the judicial review proceedings were issued, Frank Benson
12 & Partners were instructed by Mr. O'Halloran on his behalf and on behalf of
13 Jackson Way to negotiate the access position.

14
15 Mr. Ambrose Kelly made submissions on the 30th June 1999 on behalf of Jackson
16 Way with regard to access.

17
18 As the access issue could not be resolved through negotiation, proceedings had
19 to issue.

20
21 I was in Paris sometime around the 8th/9th December when the settlement was
22 being negotiated.

23
24 An agreement was reached with the National Roads Authority on the 10th December
25 1999, which ended the proceedings with Dun Laoghaire/Rathdown County Council.

26
27 In addition, I tried to resolve the access issue by negotiating a deal with
28 Dunloe Ewart to swap the lands for lands on the other side of the motorway
29 hence removing the access issue. This came to nothing.

1 At Mr. Kennedy's request, I believe Mr. Ambrose Kelly also met Dunloe Ewart in
2 early February of 2000 on behalf of Jackson Way to explore a solution. This
3 came to nothing.

4

5 Foul sewer:

6

7 The engineering department, Sanitary Services Section of Dublin County Council
8 issued a letter on the 4th March 1991 to Mr. Robert Tracey, the former owner of
9 the Carrickmines lands in relation to the proposed Carrickmines Valley foul
10 sewer seeking a wayleave for the construction of the sewer through the lands.

11

12 This notice was in July 1991, subsequent to completion of Mr. Tracey's sale
13 re-issued to Paisley Park the company completed the wayleave notice and it was
14 returned to the County Council Sanitary Services division without agreement on
15 a connection to the foul sewer.

16

17 A further notice issued in 1995 to Jackson Way and it was completed on terms
18 giving access to the foul sewer subject to obtaining planning permission.
19 (county council letter 1st February 1996).

20

21 Cherrywood area action plan:

22

23 The joint submission rezoning on the eastern side of the motorway was subject
24 to (inter alia) the completion of a Cherrywood Action Plan.

25

26 In May 1999, the council invited representations to the draft action plan
27 before 30th June 1999.

28

29 On the 30th June 1991, Mr. Ambrose Kelly submitted a representation for
30 connection and services for the Jackson Way zoned and unzoned lands.

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on the 30th June 1999, Meehan & Associates submitted a representation on behalf of the Jackson Way zoned lands (23.63 acres) seeking access from the proposed Carrickmines interchange and east west spine road and the servicing of the lands."

John Caldwell, 20th November 2002.

CHAIRMAN: I'm sure you'd like a break, Mr. Gallagher, we'll rise for ten minutes.

THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED

AS FOLLOWS:

MR. GALLAGHER: Mr. Caldwell, do you have page 4789, please, of the Carrick brief. In 1992 in the Sunday Business Post, I think April 26th of 1992 --

A There's nothing up here on screen?

Q 14 There's nothing on screen, it will come up in just a moment.

A OK. Thank you.

Q 15 You have a hard copy of it.

A Yes.

Q 16 Just a document I want to put to you. It's a report by Ted Harding in the Sunday Business Post, which related to Paisley Park and canvassing of residents in the Carrickmines Valley for a major land rezoning in the area:

"A project where the rezoning of the 108 acres site currently designated for agricultural use under the County Development Plan, Dublin County Council is due to consider the rezoning application later this summer. as a result, Paisley Park is anxious to avoid the negative publicity surrounding the rezoning proposal necessary for the 125 [presumably it is 125 million, I'm not

1 quite sure what it is] residential and commercial scheme proposed by Monarch
2 Properties at Cherrywood.

3
4 Monarch's project has met opposition from residents who claim it will result in
5 the destruction of the one last green areas in south Dublin. A spokesman for
6 Paisley Park declined to name the directors of the company or any developers
7 associated with it. However he stated that a number of Dublin solicitors were
8 involved in the company."

9 Were you the spokesman for Paisley Park referred to there?

10 A No, I was not.

11 Q 17 Who was the spokesman?

12 A I would assume that it was Mr. Dunlop.

13 Q 18 On the basis which he states, a number of Dublin solicitors were involved in
14 the company?

15 A I can add no clarification to that at all.

16 Q 19 The report went on to say:

17 "The land for the proposed business park was acquired from the former owner Bob
18 Tracy by well known developer Jim Kennedy in the late 1990s for about 850,000
19 pounds. According to the spokesman for Paisley Park Kennedy sold the lands to
20 a company and he has no connection with Paisley Park."

21 Were you aware of that report at the time?

22 A I was because that's my handwritten note with the yellow sticker on it, the, on
23 the top of it.

24 Q 20 Yeah. Did you know or did you enquire who the spokesman was at that time?

25 A I assume the spokesman would have been Mr. Dunlop, it certainly wasn't myself.

26 Q 21 Well, did you welcome or did you resent the fact that that report had appeared?

27 A No, I would be indifferent to the report appearing.

28 Q 22 I want to come back to your statement, if I may, Mr. Caldwell. In relation to
29 the ownership, and we have this on page 707, this is the November 2002
30 statement which I have read this morning. I put this in the way of revisiting

1 some of the material we covered yesterday. In that statement you say:

2 "I have the power to direct transfer of shares in that company".

3 A Yes, I do.

4 Q 23 I take it that means that if you tell Martin Bullock to transfer the shares
5 into the name of John Caldwell, he will do so.

6 A Yes, he would.

7 Q 24 You say:

8 "Until recently this arrangement is undocumented and based upon trust",
9 notwithstanding that it is not the legal position you consider yourself to be
10 the defactor beneficial owner of the company at all material times.

11 I take it "at all material times" means since its incorporation?

12 A Sorry, where is it/

13 Q 25 It's on the first page of your statement.

14 A Page 707?

15 Q 26 Page 707 on my brief?

16 A And the Renzenbrinck: Yes, that's correct, I consider myself to be the de
17 facto beneficial owner.

18 Q 27 At all material times since the company was incorporated?

19 A Yes.

20 Q 28 Effectively?

21 A Effectively, yes.

22 Q 29 A letter of direction --

23 A Mr. Gallagher, sorry to interrupt, that's in the context, you know, of all the
24 things we talked about yesterday. When I am using the word "de facto
25 beneficial owner" I am talking about that in the sense de facto, not in the
26 sense of being legal, or

27 Q 30 Dejure, yes, I understand, yes. What you are saying is you had effectively you
28 had this de facto beneficial ownership since the company was incorporated. Not
29 since Renzenbrinck was incorporated.

30 A I don't know when Renzenbrinck was incorporated, Mr. Gallagher, but since

1 Renzenbrinck's involvement with the lands at the Carrickmines.

2 Q 31 That's what I am asking about. Now:

3 "I say that a letter of direction dated 3rd July 2001, which is in my sole
4 control has been executed by Mr. Bullock."

5 May I have page 234, please.

6 You see that letter of direction which is on screen?

7 A Yes.

8 Q 32 Is this the letter of direction that you are referring to there?

9 A That's correct.

10 Q 33 This is a letter which reads as follows:

11 "We confirm that we will transfer all our right, title and interest to and in
12 the shares of Renzenbrinck Investments Inc. to your designee when called upon
13 to do so by your successors or assigns."

14 A Yes.

15 Q 34 And then it's: "To --

16

17 MR. FINLAY: Just for the record, I am most sorry to interrupt, if
18 Mr. Gallagher wouldn't mind re-reading the first, in fact the only sentence in
19 that document, because he missed out, I am subject to correction, an important
20 word and it if it could possibly be re-read.

21

22 CHAIRMAN: Very well. Perhaps you might read it again, Mr. Gallagher.

23

24 MR. GALLAGHER: "We confirm that we will transfer all our right, title and
25 interest to and in the shares of Renzenbrinck Investments Inc. to your designee
26 when called upon to do so by you or your successors or assigns."

27

28 MR. FINLAY: Thank you.

29

30 Q 35 MR. GALLAGHER: "To" and the person to whom it is addressed is left blank and

1 then: "Signed, sealed and delivered by Martin Bullock."

2 It's dated the 3/7/2001. Is that right?

3 A That's correct, yes.

4 Q 36 Now, you say this is a letter of direction?

5 A Yes, that's right.

6 Q 37 Who is it directed to?

7 A It's directed -- well, he gave it into my possession but the person, there was
8 no one named on the letter, that's how that piece of paper still remains.

9 Q 38 But is it not a valueless piece of paper when he doesn't address it to a
10 specific person or entity?

11 A It is. Some attempt at control in relation to it in terms of -- this is
12 getting control in terms of the transfers -- but it was, the same point was
13 made, in fact, by Mr. Morgan in relation to Maskani when the same piece of
14 paper was produced for him vis-a-vis the Harkers, that he felt it didn't have
15 any legal substance as such, it was an inadequate document. But from my
16 perspective, I was happy to have at least some piece of paper for the first
17 time vis-a-vis Mr. Bullock.

18 Q 39 But as it appears on the screen before you and in the hard copy before you, it
19 is valueless in that it does not identify the person to whom it is addressed.

20 A I don't disagree that it's in terms of giving, you know, me an absolutely
21 secure legal position, that it is of limited value. That most is a statement
22 of intent by Mr. Bullock.

23

24 JUDGE FAHERTY: Who drew it up Mr. Caldwell? Who drew up the document?

25 A I actually drew the document up.

26

27 JUDGE FAHERTY: Why didn't you insert your name in it?

28 A I didn't want to insert my name into it, because it may be that at some stage
29 in the future it would be my children's name that would go into it.

30

1 JUDGE FAHERTY: You are a solicitor, you know the language you would have to
2 use to, if you wanted it to run for the benefit of your estate, your heirs and
3 assigns and successors, etc, etc.

4 A I did that to the extent in that the document was done for the, it was issued
5 to me to my successors. It was issued, it was handed over to, unnamed but to
6 whoever would go on it, successors and assigns.

7
8 JUDGE FAHERTY: But if that document went out of your possession or you didn't
9 have a copy and somebody had the document, who knows who could put their name
10 there in the blank "to".

11 A Yes, I don't disagree with that.

12
13 JUDGE FAHERTY: It seems extraordinary that you would, if you had worries
14 obviously, and in July 2001, because you said while you were de facto, you had
15 the structure, you were at the mercy, as I understand it, vis-a-vis
16 Renzenbrinck.

17 A Yes.

18
19 JUDGE FAHERTY: And the title to the lands of Mr. Bullock solely. His mother
20 is not involved in this one.

21 A No, his mother is not involved in this one.

22
23 JUDGE FAHERTY: You have all the problems you said to us yesterday. You then
24 decide you will do something about it because you are worried and you have
25 concerns obviously, you want to regularise it.

26 A What I was doing it, because of the incident with Mr. Kennedy, where Mr.
27 Kennedy had nearly died in a drowning incident --

28
29 JUDGE FAHERTY: Yes, well he went on his own path vis-a-vis Maskani, didn't he?

30 A Yes, he did, that's right. And as part of that process I decided at that stage

1 to do the same document effectively that was being done for him in terms of the
2 same type of document as this.

3
4 I have -- I don't disagree that, you know, from -- if I was advising a client
5 in relation to this at the time I would have been saying to the client, this is
6 a very dangerous thing to do, not to put a name on this document, but in terms
7 of myself in relation to it, I was happy to leave it in that state. I had
8 the -- I had the document and, you know, no-one could interfere with it.

9
10 JUDGE FAHERTY: But I would suggest if it escaped your possession or indeed
11 Mr. Bullock's possession, if he had died and somebody else had this document,
12 who knows where the benefit would end up, Mr. Caldwell

13 A If that happened, if I lost the document -- if the document was --

14
15 JUDGE FAHERTY: What surprises me is given that you have gone to the trouble to
16 regularise this and to somehow try and establish your right and entitlement on
17 paper, because rather than being at the mercy of Mr. Bullock and his successors
18 in title, if he doesn't make proper provision for you, that it's really only a
19 half hearted attempt to do so.

20 A Yes, this is a half hearted attempt to do so. There's no doubt. I have
21 subsequently gone and got a fuller document from him in terms of controlling
22 his actions in relation to the shares.

23
24 JUDGE FAHERTY: I see.

25 A That's not a document which is, that occurred after the discovery was done but
26 I can get a copy of that for you.

27
28 JUDGE FAHERTY: I think we would probably want to see that, Mr. Caldwell. I am
29 sure Mr. Gallagher will be seeking that document --

30 A Yes. That's fine, judge.

1

2 JUDGE FAHERTY: -- as a matter of urgency.

3 A I'll get a copy.

4

5 Q 40 MR. GALLAGHER: You drafted this document. Who is the "we" referred to in the
6 document?

7 A It's Mr. Bullock is --

8 Q 41 You refer to it in the plural, "we confirm we transfer".

9 A It's, it mirrors the document which was done for the Harkers, there were two
10 Harkers, so --

11 Q 42 Mr. Caldwell, you have spent your life engaging in the drafting with great
12 precision documents, legal documents which confer certain rights. You have
13 done so in circumstances where liabilities for tax would not arise, where
14 beneficial ownerships would be held in companies offshore and you have great
15 expertise in that general area. Why was the wording so loose in this
16 particular document?

17 A Because I didn't -- I don't want, didn't want and still do not want to create a
18 situation in which Mr. Bullock declares a beneficial ownership in my favour or
19 in the favour of any other individual or company, by that I mean my family.

20

21 The reason for that is that given where I have been in terms of him owning this
22 legally and beneficially, that if he does that, that will crystallize -- that
23 would create a disposal for capital gains tax purposes. That disposal for
24 capital gains tax purposes would create a liability to capital gains tax
25 immediately and would create a liability to capital gains tax in circumstances
26 where there's no money in the system, because it's all land, but the land has
27 increased dramatically in value to pay that tax. So, I have been careful in
28 doing what I have done to try and button down the control issue in relation to
29 it without stepping over the line into a disposal of a beneficial interest
30 which will incur a major tax liability.

1 Q 43 But this document as drafted would have enabled you to write in your name or
2 the name of any nominee of yours or designee of yours at any time, and, in
3 effect, it left you with the control of when and how that, this transfer might
4 take place --

5 A Yes, that's correct.

6 Q 44 -- once that document was executed.

7 A Yes, that's correct Mr. Gallagher, I could choose the time for effect waiting
8 the document and, therefore, on the back of effect waiting the document you
9 would choose the time for actioning a transfer of the shares and, therefore,
10 choose the time when the capital gains tax liability was to be --

11

12 JUDGE FAHERTY: Mr. Caldwell, are you saying that if Mr. Bullock were to there
13 and then in that document, and you were to ask him to do that, to direct him,
14 that you would have a capital gains tax?

15 A Absolutely, Judge.

16

17 JUDGE FAHERTY: And transfer shares in the company. And down the road then, if
18 that happened and I suppose you desire is to do so, and you then dispose of the
19 lands, you, I would have to --

20 A All of these things, the sequencing of the events in terms of dealing with the
21 taxes is important.

22

23 JUDGE FAHERTY: Am I correct in saying if you then went to sell the lands, you
24 would have a further capital gains tax?

25 A Precisely.

26

27 JUDGE FAHERTY: My question is this, if that is the case, that seems to be a
28 double whammy on you. If in the first instance you had simply, once the lands
29 were brought and put them in your name, my understanding, and I may be wrong,
30 of capital gains tax would be that when you went to dispose of the lands, you

1 would certainly have to pay capital gains. But you are telling us now, in
2 fact, you put yourself into a position where there's a double whammy in respect
3 of capital gains?

4 A No, in limit --

5

6 JUDGE FAHERTY: Why would you put yourself as a solicitor in that situation in
7 the first instance? I understand it's the law, but why would a solicitor
8 specialising in tax do that?

9 A I haven't done that with respect. What I have done is this: Is that if -- if,
10 at the moment we have a company which has got land in it so given that there's
11 land, holding land, if the shares in that company are disposed of, then their
12 shares that's arrived at value from land in Ireland subject to tax.

13

14 JUDGE FAHERTY: Yes.

15 A So, that's something I want to avoid. So, the -- so if the company disposes of
16 it, it would then, disposes of all the land, it would then pay tax on it. So
17 the sequence of events for implementing this document is, the company disposes
18 of its land and it deals with its tax liability in Ireland, it's then a company
19 full of money after tax so it has an after tax money. In those circumstances,
20 the Irish tax doesn't apply to it because it's -- the share doesn't apply --
21 doesn't apply to the shareholder, because thereafter the shares are held in a
22 company which doesn't derive it's value from land in the state. It derives its
23 value from money and, therefore, not subject to capital gains tax.

24

25 So it's, therefore, crucially important to me in the documentation which I
26 tried, which I get from Mr. Bullock and put in place that I don't, in advance
27 of there being a disposal of the Jackson Way lands, down. In other words,
28 Renzenbrinck share the Jackson Way lands an advance of that, that I trigger a
29 tax liability which I know and you correctly say is there.

30

1 So, the sequential, the timing sequence is what's strictly important and that's
2 why these documents have got to be less than a disposal of the beneficial
3 interest.

4
5 JUDGE FAHERTY: You are saying essentially all of this is a holding operation
6 until you benefit down the road from the sale of the land down in Carrickmines.
7 A Precisely, it's a holding operation because what would happen the land in
8 Carrickmines, when the land in Carrickmines is sold or realised or in whatever
9 shape or fashion at some date in the future, the company would be cash rich.
10 The land is land in Ireland, subject to tax, it is placed at 20 percent, as it
11 is, capital gains tax now. It's then a company which owns money, not land. So
12 at that point in time, it's, you can then trigger the transfer of the ownership
13 of the shares to, you know, myself or to my family without incurring the double
14 whammy as you rightly describe it. So, what I was doing was putting
15 documentation into place to improve the very open situation, the very fluid
16 situation that I have with him.

17
18 JUDGE FAHERTY: I just come back to the first point I made, maybe I'm missing
19 something, Mr. Caldwell. If you had simply held the land in your own name from
20 day one or your share in it, a sale down the road would still need 20 percent
21 capital gains tax to the revenue here and you would have the proceeds then.
22 Isn't that right?

23 A Well, if I had held it in my own name -- there's two things. If the land was
24 owned by the company -- the land was owned by the company.

25
26 JUDGE FAHERTY: Forget about the company, if you had never incorporated, if you
27 simply decided, I am going to invest in those lands --

28 A Absolutely, on an individual basis.

29
30 JUDGE FAHERTY: There's capital gains still to be paid on this land.

1 A Absolutely, that's right:

2

3 JUDGE FAHERTY: I am saying all of this seems to be rather an extraordinary
4 sequence of events to achieve the same result on a much simpler formulation.

5 A You could -- you could -- I could have bought, the land could have been bought
6 in my name. Now -- and some people do that, but most people don't buy
7 development land in their own name, development land finishes up going into the
8 companies and people take shares in those companies in a traditional sense.
9 Rarely in my dealings with developers over 20 years, I did see on some
10 occasions but rarely saw them actually own it themselves.

11

12 So, the property is owned by the company. It would pay its tax and then after
13 that, it's, you know, you are evading that second charge that you talked about.

14

15 The other thing about me owning the land in my own name would be adverse from a
16 capital acquisitions tax point of view as well, because then it would be an
17 asset which was an Irish asset and on my death would be subject to capital
18 acquisitions tax which at that stage was something in the order of 40 percent.
19 By structuring it this way, I stayed out of that area as well.

20

21 JUDGE FAHERTY: All right.

22

23 JUDGE KEYS: Mr. Caldwell, could I just, out of curiosity, I ask the question,
24 is that dependent that you are non-resident in Ireland then? If you triggered
25 it off while you are resident in Ireland, would the double whammy apply --

26 A If --

27

28 JUDGE KEYS: -- or is it because there's no tax in the Isle of Man?

29 A Well if I was -- there's a number of aspects to that. If I was resident in
30 Ireland and I was domiciled in Ireland, yes, I would be subject to tax on it.

1

2 JUDGE KEYS: I see.

3 A But by being non-resident and non-domiciled, I won't. I live in the Isle of
4 Man.

5

6 JUDGE KEYS: Grand.

7

8 Q 45 MR. GALLAGHER: Did the signing of the document on the 3rd February, sorry, the
9 3rd July 2001, change the position in relation to your tax liability or
10 potential tax liability in any way?

11 A No, I mean the document was formulated not to trigger a tax liability.

12 Q 46 But you, from that date, had in your possession a document which you, whereby
13 you could, by entering your name or the name of somebody designated by you,
14 effectively require the immediate transfer of those shares; isn't that right?

15 A Yes, I do, yes.

16 Q 47 And you didn't have that ability, that power up to that time?

17 A I had it on a non-written basis up to that time, I believe.

18 Q 48 Why get it on a written basis at that time? What was the purpose or reasoning
19 or thinking behind it?20 A Well, none of us are getting any younger, Mr. Gallagher. This land, this
21 structure has been there for quite a number of years. I have gone into my 50s,
22 I am not a young man any more. I don't -- when this was done, 15 years ago,
23 whatever, you think these things get done quickly and they end quickly but this
24 has dragged on and dragged on. I am starting to make sure your affairs are in
25 order. On top of that, I had had a stroke in 1990 and lost my hearing, so I
26 was very conscious of my own health as well.27 Q 49 Yes. Generally, just so I can try to follow this, the -- we have seen that the
28 lands owned by Messrs. O'Halloran, Darragh and Kilcoyne are for sale at
29 present, by tender I understand and according to one newspaper report I read,
30 they expect to obtain for than 25 million for 22 acres or thereabouts. That

1 would value their lands at something of the order of 1.2 million. If you have
2 80 acres left after the, or 80 plus acres after the CPO and re-applied that
3 value per acre, it would mean that the balance of the Jackson Way lands left
4 and excluding whatever compensation it's paid on foot of the claim, at
5 something of the order of 100 million pounds, if that is so, isn't that right?

6 A If that is so. It's not -- it isn't as -- 60 acres of the land at Carrickmines
7 is not zoned. So the sum, the 26 or 20 whatever acres it is, that is zoned so
8 it's more comparable to the figure that was in the newspaper than the figure
9 that you have extrapolated.

10 Q 50 Assume for the moment, we take the figure at 100 million for a rounding, and I
11 am not saying that, I don't know. If it were to realise that, if it were to be
12 sold and the proceeds were to be one hundred million pounds, how much tax would
13 be paid on that one hundred million pounds given the structure that is referred
14 to and to which this document relates?

15 A Because the land is so small, and there is then discount out of any calculation
16 at this stage, so you would take a straight 20 percent capital gains tax on the
17 land itself so you would have 20 million in tax to pay, which would leave the
18 company with 80 million of net cash on your figures and that from my
19 perspective would be an end of the tax.

20 Q 51 I see and that 80 million could, on the basis of what you told us, be split 50
21 and 50 between Renzenbrinck or Maskani or Pertland?

22 A Pertland.

23 Q 52 And Renzenbrinck and no further tax would be available and that 40 million, for
24 example, in Pertland's case would go to Liberia?

25 A Well, I don't know it would go to Liberia.

26 Q 53 It would certainly go to the country that it's registered in?

27 A Precisely.

28 Q 54 I see. Thank you. Now, in or about the same time, you had another document in
29 similar terms executed by Mr. and Mrs. Harker, and may I have page 223, please.

30 A Just before you move on to that, the situation in relation to the tax from an

1 individual point of view is no different than it would be for any investor
2 investing in Ireland. I mean the full Irish tax that rises on the land
3 transaction is paid. If I was Irish Life, or one of these institutions, then,
4 you know, they would or, sorry, if I was Canada Life coming out of the London,
5 I would have no more Irish tax to pay either in relation to it.

6 Q 55 I am referring to page 233, which you will see on screen before you, you may
7 have the hard copy also. And this reads as follows:

8 "We confirm we will transfer all our right title and interest to and in the
9 shares of Maskani Management Limited to your designee when called upon to do so
10 by you or your successors or assigns. To: "
11 And "signed, sealed and delivered by Roderick Harker"
12 I presume and Helen Harker.

13 A That's right.

14 Q 56 It's dated 6th July 2001.

15 A Yes.

16 Q 57 And it appears to have been sealed by both of them.

17 A Yes.

18 Q 58 There's no consideration for the execution of that document or the earlier
19 document?

20 A No, they were done under deal.

21 Q 59 That was a document which was provided I take it at your instigation for the
22 benefit of Mr. Kennedy?

23 A It was provided at Mr. Morgan/Mr. Kennedy's instigation if they wanted
24 documentation to deal with the Maskani situation, so I provided this document
25 for them and gave the document to Mr. and Mrs. Harker to complete.

26 Q 60 I see. Did you dictate the document?

27 A I must have dictated it, yes, because I don't recognise the type, it's not --
28 it's probably.

29 Q 61 It's in identical wording to the document executed by Mr. Bullock.

30 A Yes.

1 Q 62 And again, the name of the addressee or the person on whose behalf it's
2 executed is not shown.

3 A Yes, that's right.

4 Q 63 You have said to, that if you had been advising a client, you would have said
5 that this is a very dangerous thing to do?

6 A Absolutely, yeah.

7 Q 64 Why, in acting for Mr. Kennedy did you involve him in something that was a very
8 dangerous thing to do?

9 A I was not acting for Mr. Kennedy.

10 Q 65 Who were you acting for?

11 A I wasn't acting for him in relation to this. In terms of the document that was
12 done which Martin Bullock signed I was acting for myself in relation to that,
13 in terms of this document, Mr. Morgan was acting for the Kennedy interest.

14 Q 66 You dictated this document and you obtained the signature of Mr. and Mrs.
15 Harker as I understand it.

16 A Yes, but not in any legal capacity, not in a solicitor/client relationship in
17 relation to it.

18 Q 67 Well, you did, in a solicitor's capacity, when you set up the structures?

19 A When I set up the structures, yes.

20 Q 68 And they were even looser than they appear to be after the execution of this
21 document, in that this document was to give some written acknowledgment or
22 recognition that shares were held to the order of whoever happened to be the
23 addressee on the document.

24 A Yes, this was to give some comfort.

25 Q 69 You say that the letter of direction and the declaration of trust were provided
26 to Mr. Nicholas Morgan by Mr. Harker.

27 A Yes.

28 Q 70 May I have page 435 please.

29 Is this the declaration of trust that you refer to?

30 A Yes, it is.

1 Q 71 This is declaration of trust which was read yesterday, declaration by Maskani
2 in favour of Pertland.

3 A Yes, that's correct.

4 Q 72 Now, who prepared that declaration of trust?

5 A Mr. Morgan.

6 Q 73 And how do you have it in your possession?

7 A Because he had no relationship with the Harkers and he wanted to get this, a
8 different document from the letter of direction, a stronger document. And he
9 provided this and drafted this and I provided it to the Harkers.

10 Q 74 When you say you "provided it", do you mean to say you deliberately went to the
11 Harkers to have it executed?

12 A I don't recollect that, I think what happened is he sent it to the Harkers and
13 the Mr. Harker would have contacted me about it and I would have discussed its
14 contents with him.

15 Q 75 Did you authorise Mr. Harker to sign it?

16 A Yes, I did.

17 Q 76 Were you in touch with Mr. Morgan at that stage in relation to the declaration
18 of trust?

19 A I believe I would have been.

20 Q 77 Were you in touch with him about the letter of direction?

21 A I would have been in touch about the letter of direction as well, yes.

22 Q 78 Did you send those to him?

23 A In terms of the letter of direction, the letter of direction got sent to him by
24 Mr. Harker. I think that the covering letter that you have among the papers
25 there at 232, 6th July 2001, and I would think that the declaration of trust
26 would also have been sent by Mr. Harker to him.

27 Q 79 How did they come into your possession?

28 A Mr. Harker would have given me a copy of it.

29 Q 80 Why?

30 A I asked him for a copy of it.

1 Q 81 Why?

2 A To have it.

3 Q 82 Why?

4 A To have the paperwork that related to the Maskani transaction.

5 Q 83 You say you are not advising solicitor, what business is it of yours if you
6 weren't acting as solicitor in advising Mr. Kennedy and whether directly at
7 the time?

8 A No, I wasn't advising Mr. Kennedy in relation to it, and in all fairness I
9 probably should not have had a copy of the document, but I did get a copy of
10 the document and having had a copy of the document provided to the Tribunal.

11 Q 84 When did you last speak with Mr. Kennedy?

12 A A couple of days ago.

13 Q 85 How regularly are you in contact?

14 A It varies, from time to time, it depends on what's happening. There are times
15 when there's quite an amount of contact and there's times that go by without
16 any contact.

17 Q 86 Did you discuss these documents and the execution of them?

18 A These documents with Mr. Kennedy?

19 Q 87 Yes.

20 A Well, at the time that these documents were being produced, Mr. Kennedy would
21 have said to me that he wanted them done.

22 Q 88 May I have page 592, please. This is a document dated 29th October 2001. Do
23 you have -- sorry, this is a document I have just been handed, it may not be
24 available, perhaps we can copy it and in the meantime, we might try and operate
25 from the copy on screen. It's a document dated the 29th October 2001. It's to
26 John Caldwell by fax from Mr. Harker re: Maskani Management.
27 Dear John, Martin Bullock has forwarded to the me the attached draft
28 agreement."

29 A If I could see the document.

30 Q 89 Yes, certainly. This came from Mr. Harker to you?

1 A Yes.

2 Q 90 And he says that:

3 "Dear John,

4 Mr. Bullock has forwarded to me the attached draft agreement. I have a number
5 of comments.

6 1. I presume that this is in some way connected with the Jackson Way
7 Properties.

8 2. Who is the other party to the agreement? I don't think I should execute a
9 deed in blank.

10 3. What consideration is to be inserted?

11 4. The agreement does not seem to make clear who is responsible for
12 maintaining the good standing of the company, filing annual returns, filing tax
13 returns and preparing accounts etc.

14 5. The agreement does not appear to be in English."
15

16 In the second line, the brackets before "agree" does not seem to be closed
17 anywhere. In paragraphs 2, 3 and 4, "nor to procure" makes no sense to me.
18

19 "6. Paragraph 3, appears to prohibit the passing of any resolutions whatever,
20 does that mean we cannot hold an AGM?

21 7. At present there are two issues in issue, one held by me and the other
22 which Helen, I presume that Helen will have to execute a similar deed.
23 Alternatively perhaps Helen should transfer her share to me.

24 8. Maskani Management Ltd has an interest in Regency Administration Limited.
25 The shareholders in Regency are RP Harker one share, RP Harker and Maskani one
26 share. It would appear to be to me sensible if the Maskani share was
27 transferred to Martin Bullock making the share shareholders RP Harker and
28 Martin E Bullock, however there are other implications of which I am unaware.

29 I look forward to hearing from you in due course."
30

1 Now, that document appears to be, I have to say, a different document to the
2 trust document that we have just looked at.

3

4 MR. FINLAY: I wonder if I might just briefly intervene, Mr. Chairman. This
5 may be a personal failing on my part. I don't recollect any -- before, I am
6 just wondering when it was circulated.

7

8 MR. GALLAGHER: It's a document that was furnished by Mr. Caldwell to the
9 Tribunal as part of his discovery.

10

11 MR. FINLAY: Very good.

12

13 Q 91 MR. GALLAGHER: Now, this is -- it appears to relate to a document which is
14 attached to it from --

15 A Yes, the document that's --

16 Q 92 BHAGA international at 0 --

17 A I think, Mr. Gallagher, what's happened in relation to this, if you look at the
18 top of the faxed copy of page, I am not sure, 316 or 593, the two numbers are
19 on it.

20 Q 93 It's from Morgan Whitehead. That's Mr. Morgan's solicitor?

21 A So this is his document prepared by him on sort of, it looks like the 15th
22 October 2001, which was the date that's on the word processing note at the
23 bottom. That was faxed by him.

24 Q 94 To Martin Bullock?

25 A To Martin Bullock.

26 Q 95 Because Martin Bullock, BHAGA International is Martin Bullock's company.

27 A That's correct. And I would suspect the reason he would have had that is he
28 had Martin Bullock's fax number and may not have had Mr. Harker's.

29 Q 96 He wouldn't have already received communication from Mr. Harker, according to
30 your evidence, he would have received this declaration of trust and the letter

1 of direction?

2 A Yes, he would, I am at a loss as to why he sent it.

3 Q 97 Mr. Harker is communicating with you, he is forwarding the document that he has
4 received from Martin Bullock and he is acting, he is asking you for
5 instructions?

6 A Yes, and, that's correct. That's the way that I have dealt with Mr. Harker and
7 his --

8 Q 98 On whose behalf were you giving the instructions?

9 A Well, I was -- Mr. Harker was taking instructions or would have taken
10 instructions from me and that was the arrangement that was there which I have
11 described.

12 Q 99 On whose behalf were you giving the instructions?

13 A Well, what he was doing, he was coming to me for clarification in relation to
14 the document that was being put to him for him to sign and approve.

15 Q 100 On whose behalf were you giving instructions?

16 A I wasn't giving instructions on anyone's behalf in relation to it. What I was
17 doing is, I was assisting him in clarifying the document that had been put to
18 him.

19 Q 101 When he asks you what consideration is to be inserted, what answer did you give
20 him for that?

21 A I presumably would have said to him it's signed as a deed. There would be no
22 need for any consideration in the document. Mr. Harker is by training a
23 chartered accountant, I as a lawyer. Some of these questions I could answer
24 literally from a general knowledge point of view to assist him in this. I was
25 not acting as a solicitor for Mr. Kennedy in relation to this. Mr. Harker is a
26 long time associate and someone that, who was in the position of, with this
27 company Maskani. He would look to me for guidance if someone came out and
28 started to give him documents to sign and that's not unexpected or unreasonable.

29 Q 102 He had been dealing, according to your evidence, with Mr. Morgan, he had
30 forwarded a declaration of trust and a letter of direction to Mr. Morgan in

1 July of 2001.

2 A Yes, he had.

3 Q 103He is now receives a document from Mr. Morgan which relates to Maskani.

4 A Correct.

5 Q 104He doesn't go back to Mr. Morgan and say, I don't understand it, he doesn't
6 send it to him, he sends it to you and looks for clarification and he asks you
7 who was the other party to the agreement?

8 A Yes.

9 Q 105Why would he ask you who was the other party to the agreement unless he knew
10 that you knew?

11 A He is the person that -- I am the person with whom he had dealt for many years.
12 He would, as a matter of course, turn to me for clarification in relation to a
13 document that was presented to him in relation Maskani.

14 Q 106How could he turn to you for clarification unless you were acting for or on
15 behalf of somebody at that stage?

16 A I wasn't acting for or on behalf of anyone. I was someone who was in
17 possession of the, who had been in this relationship with him. I was the
18 person that he, historically had turned to if issues arose, there weren't very
19 many issues in relation to Maskani. Maskani now was in a situation where
20 documentation was being produced and he wanted clarification.

21 Q 107All right. Well, the first thing he asked you, I presume this is in some way
22 connected with the Jackson Way Properties. What did you tell him?

23 A That it was.

24 Q 108How did you know?

25 A Maskani -- this is a document that he is writing to me re: Maskani Management.

26 Q 109You were able to say because the word "Maskani Management" was in the draft
27 document that it was therefore related to Jackson Way?

28 A We have a document which comes from Morgan Whitehead. I know that Morgan
29 Whitehead is Nick Morgan's firm. I know that Maskani Management is the company
30 which, you know, has the Carrickmines Jackson Way interest, so I know it's two

1 facts. It's self-evident to me looking at those two pieces of information,
2 this is something which relates to Jackson Way.

3 Q 110Mr. Harker was a man, a chartered accountant, many years experience whom you
4 had dealt with for many years. He also knew those facts. He knew that Maskani
5 was related to Jackson Way?

6 A I --

7 Q 111He knew that Nick Morgan was acting for Maskani in, and in relation to
8 Pertland. Why would he have to ask you the simple question, or put it as he
9 has, "I presume that this is in some way connected with Jackson Way," why would
10 we have to come to you for confirmation?

11 A It's His use of language says he presumes it, the presumption in his mind it is
12 Jackson Way and it is Jackson Way.

13 Q 112I suggest to you the reason is that you were acting and controlling and
14 directing all the affairs at that time and that you were attempting to erect
15 another facade, that you distance yourself from Maskani and Pertland and indeed
16 Mr. Morgan?

17 A What I was doing at that time, Mr. Gallagher, I was reacting to the desire of
18 Mr. Morgan and Mr. Kennedy to increase their control in relation to Maskani
19 then. And that in, that was generating documents, that they were generating to
20 increase that control element and I was merely reacting to that.

21 Q 113I suggest that you were intimately involved in all of these transactions and
22 had intimate knowledge of all of these transactions and that you have attempted
23 to and have described yourself as a solicitor acting as a solicitor when it
24 suited you, and you have described yourself as somebody who was not acting as a
25 solicitor but as a businessman when it suited you also in relation to these
26 lands and various companies.

27 A Well, it's not so much when it suits me, Mr. Gallagher. It's a question of
28 when the, when I'm in different roles in relation to it. I mean there are
29 times when I acted as a solicitor and there are times when I did not act as a
30 solicitor. In relation to this, this aspect of it which was the creation of

1 documentation which Mr. Morgan would be happy on behalf of his client, in those
2 circumstances, I was certainly not acting as a solicitor for Mr. Morgan or for
3 his client.

4 Q 114In response to the question: Who is the other party to the agreement, what did
5 you tell Mr. Harker?

6 A I wouldn't have known who was going to go in as the other party. When this --
7 this document would have appeared to me as it appears here.

8 Q 115Did you reply in writing to Mr. Harker?

9 A No, I would have met Mr. Harker, but I --

10 Q 116What did you tell him about the suggestion from him that the agreement doesn't
11 seem to make clear who is responsible for maintaining the good standing of the
12 company?

13 A Probably on reading the agreement, I may well have agreed with him if it didn't
14 cater for it, I haven't read the agreement yet.

15 Q 117What advice did you give him about the question of shares that were held, one
16 by him and one by his wife Helen?

17 A This is the very last point at .8?

18 Q 118.7.

19 A I wasn't too sure. Well, we would have discussed that and I would have said to
20 him that there would be no point in changing the shareholding, just leave it as
21 it is, Helen and yourself as shareholder.

22 Q 119Had you discussed with Mr. Morgan or Mr. Kennedy the wording or the drafting or
23 the execution or the need for, or anything associated with this draft document?

24 A The -- I don't think I was involved in the generation of this document and the
25 creation of this document. I have no recollection of that. I would have
26 thought that this was a document which came out of Mr. Morgan's office and, as
27 part of his tightening up of the Maskani control.

28 Q 120The question was, had you -- did you at that time or any time discuss with
29 Mr. Morgan or Mr. Kennedy the wording or the drafting or the excuse or the need
30 for the document or anything else associated with this document?

1 A This particular document?

2 Q 121Yes.

3 A I have no recollection in discussing this particular document with Mr. Kennedy.
4 The -- I may have discussed it with Mr. Morgan and said, you know, something in
5 relation to it, but I have no clear recollection of that, Mr. Gallagher.

6 Q 122Why would you discuss it with Mr. Morgan?

7 A Because if Mr. Harker had these sort of issues in relation to it, and this is a
8 very bear document, but I might have phoned him and spoken to him about it, I
9 might have done that.

10 Q 123When did Mr. Morgan start to act as solicitor for Mr. Kennedy?

11 A I am not quite sure when Mr. Morgan started acting as solicitor, certainly it
12 was quite a few years ago.

13 Q 124Approximately.

14 A Mr. Kennedy was, had a relationship with that firm in the time of Mr. Morgan's
15 father.

16 Q 125David.

17 A David Morgan and subsequently then with the son Nicholas.

18 Q 126And that's Mr. David Morgan and Mr. Nicholas Morgan who have acted for
19 Mr. Lawlor?

20 A Yes, the same gentlemen, yes.

21 Q 127Have they acted, has that firm acted for Mr. Kennedy for many years?

22 A I believe they have.

23 Q 128Since what year, approximately?

24 A I don't know when they started to act for Mr. Kennedy.

25 Q 129Could we go back to, say, 1988?

26 A It may well but I don't know because it's, what Mr. Kennedy's affairs are with
27 them, it was a matter for Mr. Kennedy.

28 Q 130Has Mr. Morgan ever acted for you as a solicitor?

29 A I'm not sure that the relationship has been that. I mean I have to think about
30 that because there are so many times that I was in contact with them and some

1 of those may fall into the category that he was acting for me, but some of them
2 were just on a business basis because it was a function of an interface between
3 me and what was happening with Mr. Kennedy.

4 Q 131Has he ever acted for you in any capacity, sorry, in relation to any matter as
5 a solicitor?

6 A I don't believe, not in relation to Carrickmines.

7 Q 132Has he acted for you, acted as solicitor for you in relation to any matter?

8 A I would have to take sometime to think about that.

9 Q 133Perhaps you might do that.

10 A Yes.

11 Q 134We are unlikely to conclude this before Tuesday you might give that some
12 thought, please.

13 A Yes, I will.

14 Q 135Can you remember the names of any solicitors who have acted for you out of this
15 jurisdiction?

16 A I can't think of solicitors, the people who have acted outside of jurisdiction
17 have tended to be accountancy firms that provide services in relation to
18 companies, but at the moment again I'll give that some thought over lunch.

19 Q 136And you can't off the top of your head think of any firm that may have acted
20 for you as solicitors outside this jurisdiction over the past 22 years?

21 A In terms of being, personally? I would have to think about that over the last
22 22 years.

23 Q 137Acted for you either personally or on behalf of any of the companies with which
24 you were associated.

25 A Well, at various stages, solicitors firms would have provided, I am trying to
26 think of the sorts of advice that we would have had to instruct someone, but
27 they would have provided certificates in relation to the power of an overseas
28 company to enter into a particular transaction. For example, on 85
29 Developments, when it did borrowing, a firm in the Isle of Man would have
30 provided that to bank. In fact that would have happened a couple of times as a

1 result of the refinancing that took place. So I can't recollect what that firm
2 was. It may have been two different firms so that's, that's one instance.

3 Q 138 Can you remember the name of any firm outside the jurisdiction who acted on
4 behalf of Renzenbrinck?

5 A The firm in Panama who acted in terms of doing searches and providing some
6 information in relation to Renzenbrinck, I don't think at any stage that I can
7 recollect it was necessary to generate some legal documentation on behalf of
8 Renzenbrinck as in a certificate to a bank, as in to get certificate of good
9 standing or something like that which is required, a legal firm to be appointed
10 to produce that.

11 Q 139 Has Mr. Morgan or his firm advised you and/or Mr. Bullock and/or Renzenbrinck
12 in relation to the -- and/or Mr. Miley in relation to the lands at
13 Carrickmines, relating to those lands?

14 A I have a recollection that Mr. Morgan, I may be wrong in the recollection, had
15 some discussion with Mr. Miley once in relation to it and, I don't know whether
16 that was a meeting or a telephone call that occurred. It was in the very early
17 stages of the, of Mr. Miley coming on board as the solicitor representing
18 Jackson Way. I have got -- in terms of the other people named in your
19 question, I think if you would repeat the question to me and see what I can
20 respond to.

21 Q 140 The question that I asked was: Has Mr. Morgan or his firm ever advised you or
22 acted for you or for Mr. Bullock or Mr. Renzenbrinck, for Mr. Miley & Mr. Miley
23 solicitors in relation to, arising from in connection with the lands in
24 Renzenbrinck directly or indirectly?

25 A I think in relation to Mr. Bullock, it's unlikely that he would have done
26 anything there. In relation to myself, there was a period of time when I was
27 discussing with him the possibility of his firm acting, creating a structure
28 for Renzenbrinck but that came to nothing.

29 Q 141 Has Mr. Morgan or his firm ever advised you or acted for you or Mr. Bullock or
30 for Renzenbrinck or for Mr. Miley arising from or in connection with the lands

1 in Carrickmines or any of the companies which are associated with those lands?

2 A Mr.-- it's a very wide question.

3 Q 142It's a very simple question.

4 A In terms of --

5 Q 143It's a very simple question.

6 A Mr. Morgan acted in relation to Maskani. So, taking that as one example in
7 relation to it, he also acted in relation to Jackson Way itself and he acted in
8 relation to dealing with Mr. Holland on behalf of Jackson Way. So, it is a
9 complex question to run through.

10 Q 144All right. Try and make it as simple as possible if you would, for the
11 Tribunal. Tell me about Mr. Morgan's dealings with Mr. Holland, with Maskani,
12 with Jackson Way and with you.

13 A In relation to Maskani. Mr. Morgan was the lawyer, the attorney dealing, who
14 was charged with getting these documents, for example, put in place.

15 Q 145Who requested that?

16 A Mr. Kennedy arising from the accident.

17 Q 146Did you advise Mr. Kennedy to do that?

18 A No, I did not.

19 Q 147So, he would have been involved in preparing those --

20 A Getting those documents prepared. He would have been active in giving
21 instructions to Mr. Holland, and I think there's probably a file, some papers
22 in relation to this in terms of discovery. As I said, I have a recollection
23 that he had spoken to Mr. Miley in the very early stages of Jackson Way, of
24 Mr. Miley being instructed. I had recommended, I think, to Mr. Morgan that my
25 instructions, sort of, in relation to --

26 Q 148Miley & Miley be instructed in relation to Jackson Way?

27 A In relation to Jackson Way, yes.

28 Q 149So you are instructing Mr. Morgan?

29 A I recommended to him that he use --

30 Q 150You recommended him. Did you recommend him as solicitor for Jackson Way?

1 A No, not -- not me in the capacity as solicitor of Jackson Way.

2 Q 151No, but you are recommending to Mr. Morgan in his capacity as solicitor for
3 Jackson Way?

4 A In his -- yes, I suppose it was in his capacity as solicitor for Jackson Way.

5 Q 152So he was acting for Jackson Way and you advised him, or -- sorry, I forgot the
6 word you used?

7 A Recommended.

8 Q 153You recommended to him that he would instruct Mr. Miley to act on behalf of
9 Mr. Jackson Way in this jurisdiction. Is that what you say?

10 A Yes, that's correct.

11 Q 154And I take it that Mr. Morgan acts on your recommendations in relation to
12 Jackson Way as he would act on Mr. Kennedy's recommendations in relation to
13 Jackson Way?

14 A He would have looked to both parties to be satisfied or to give him the
15 recommendation.

16 Q 155What's the difference between a recommendation and an instruction in the
17 context of which we speak?

18 A Well, an instruction, I would be telling this is the firm that he should use.
19 A recommendation, I would be suggesting to him, this is the firm that I find,
20 that are people you might consider using, but he may have gone elsewhere.

21 Q 156Would you explain to the Tribunal what the difference between the
22 recommendation and the instruction was.

23 A Well, instruction is telling him that these are people he must use and there's
24 no discretion in it, you know?

25 Q 157An the recommendation is?

26 A Suggesting that --

27 Q 158Choose who you like?

28 A Yes, but these people are good.

29 Q 159Now, what other dealings did you have with Mr. Morgan in relation to the land,
30 whether through Jackson Way or otherwise?

1 A Well, I would have spoken to Mr. Morgan at some stages over the six, seven --
2 Jackson Way came in Ireland in 1993, so I would have spoken to him at the time
3 that Jackson Way was put in place as the nominee to hold the Renzenbrinck and
4 Maskani interests in terms of, as you know, there was a distribution in specie
5 from Paisley Park in liquidation on and the property was transferred out of the
6 company into the name of Jackson Way which has a nominee for the two
7 shareholders, Maskani and Renzenbrinck, and I certainly would have had
8 discussions with him in relation to that.

9
10 Subsequent to that, I would have had discussions with him in relation to the
11 co-ownership agreement, that was -- he was keen to have a co-ownership
12 agreement put in place between the two interests and --

13 Q 160The Renzenbrinck, this was the two interests, your interest and Mr. Kennedy's
14 interests?

15 A Yes, and he was keen to have that so I actually provided him with a precedent
16 document that I had and he would have worked on that document. I think he
17 produced then another document on that, but it didn't come -- Renzenbrinck
18 didn't sign that document. I don't remember actually ever seeing that document
19 in the form that he put it together. I would have dealt with him after that
20 period in relation to the sort of ongoing affairs of Jackson Way.

21
22 I would have spoken to him in terms of, if some instructions, some issue came
23 up and instructions that he was to go to Mr. Holland, I may have talked to him
24 about those. I would have also talked to him about the accounts for Jackson
25 Way, because those accounts were trustee accounts, so I would have spoken to
26 him about the way in which those accounts should be put together.

27
28 I would have spoken to him about the tax position of Jackson Way. I would have
29 spoken to him obviously, as I said, about this issue of this new documentation
30 going into place on the ownership aspects of Maskani.

1 I would have spoken to him about the compensation claim and some of the issues
2 that came up on that.

3
4 There probably was other matters as well. I mean this is a period of 10 years
5 so I mean if I went back through the files, I could list them all, but those
6 are sort of the main, I felt the main issues.

7 Q 161The, you seem to be indicating you had extensive contacts with Mr. Morgan over
8 that 10 or 12 year period?

9 A When you condense it all down in six or seven sentences, it all runs together,
10 but it was over a considerable period of time. So, I would have contact with
11 him in relation to these documents. It was a bit of a flurry of activity about
12 that and then it all dies down. Because what you have, what we have here is a
13 company which owns land and unless some incident arises in relation to that,
14 then it just -- nothing has to be done in relation to it, so you could go for
15 quite long periods of time without having any contact with him.

16
17 JUDGE FAHERTY: Has Mr. Morgan ever billed you, Mr. Caldwell or Mr. Holland or
18 indeed Mr. Bullock or Renzenbrinck in relation to all of these contacts?

19 A No, he has never billed, he has never billed Renzenbrinck or Mr. Bullock in
20 relation to those contacts and he has never billed me in relation to his
21 contacts.

22
23 JUDGE FAHERTY: He is obviously carrying out work for all of those entities
24 over a period of 15 or more years.

25 A Yes.

26
27 JUDGE FAHERTY: He is not doing it for the good of his health presumably?
28 A I would say he has quite a lot of work in progress on his books in relation to
29 this, which he hasn't been paid for and that that would be a matter of some, it
30 would be aggravation on his part.

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JUDGE FAHERTY: When he is billing, who will he be billing, Mr. Miley?

A He wouldn't -- when he comes to bill, I presume he will bill Jackson Way in relation to it, in terms of the situation --

JUDGE FAHERTY: Yes, but we know that he acts for Mr. Kennedy.

A I presume he will bill --

JUDGE FAHERTY: He will bill Mr. Kennedy vis-a-vis his dealings with Maskani.

A Presumably.

JUDGE FAHERTY: Who will be billing vis-a-vis the owner of the lands, Renzenbrinck?

A Well, Renzenbrinck has not asked him to do anything as such. I can't think of anything where Renzenbrinck has actually asked Mr. Morgan to do something on its behalf.

JUDGE FAHERTY: Well, Mr. Holland would have presumably asked him, he is the nominee for both Maskani and Renzenbrinck, is that right?

A Mr. Holland's actions would have been on behalf of Jackson Way, so what could have happened was that Mr. Morgan would have spoken to Mr. Holland about whatever action was collectively agreed on.

JUDGE FAHERTY: Ultimately somebody will have to pay Mr. Morgan.

A That's right.

JUDGE FAHERTY: You don't expect Mr. Kennedy to take the full hit on that.

A Mr. Kennedy will deal with whatever Mr. Morgan dealt with in relation to him, but as far as Mr. Morgan did work for Jackson Way, Jackson Way, Jackson Way will discharge those costs.

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JUDGE FAHERTY: Back to the issue. Jackson Way is the nominee of Renzenbrinck and Maskani.

A It is, that's right. And effectively what people were looking to do here would have been the compensation claim as a source of money to discharge the costs, but the compensation claim has finished up bogged down in litigation after litigation and it may be some considerable time before that's resolved.

CHAIRMAN: I think we might rise, because we are hopeful to we might be able to rise early this afternoon. So, I was going to suggest we would rise until about 20 past one and then sit for about an hour after lunch. All right?

THE TRIBUNAL THEN ADJOURNED FOR LUNCH

1 THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

2

3 Q 162MR. GALLAGHER: Mr. Caldwell, before lunch, we were dealing with the
4 relationship between Jackson Way, Mr. Morgan, yourself, Mr. Kennedy and others.
5 And I just want to establish from you whether my understanding of that
6 relationship is accurate. My understanding is that Jackson Way is an English
7 company whose registered office is in Birmingham?

8 A That's correct.

9 Q 163And that the director, sole director and shareholder in Jackson Way is
10 Mr. Holland.

11 A That's correct.

12 Q 164And my understanding is that Mr. Holland takes his instructions from
13 Mr. Morgan.

14 A Yes.

15 Q 165Does he take instructions from anybody else?

16 A I am not aware of Mr. Kennedy contacting him directly, though he may have done
17 so at some stage over the years. I myself spoke to him a couple of times in
18 recent times but not in the past.

19 Q 166So, he has taken instructions from you, from Mr. Morgan and from you in the
20 recent past?

21 A Yes, in the recent past in relation to two issues. One issue was the
22 compensation claim, I spoke to him in relation to that. The second issue was
23 in relation to compliance with the Jackson Way order that the Tribunal had
24 issued. I spoke to him in relation to that. And urged him to comply with that
25 order. That's the sum total of my communication. As I say, it's time -- it's
26 a recent time communication.

27 Q 167And do you say that Mr. Kennedy may have given him instructions from time to
28 time?

29 A It's a possibility but it's -- I wouldn't put it at more than a possibility. I
30 have no direct recollection of that occurring.

1 Q 168 Can the Tribunal take it, on occasions when you want to give instructions to
2 Mr. Holland and when you don't or have not spoken to him yourself, that you
3 arrange to have such instructions conveyed to him by Mr. Morgan?

4 A I would either speak to Mr. Morgan or speak to Kennedy. If I had spoken to
5 Mr. Kennedy about it, he may well speak to Mr. Morgan and I wouldn't
6 communicate at all with Morgan in relation to it.

7 Q 169 So, the instruction would come, therefore, to Mr. Holland either through
8 Mr. Morgan or through Mr. Kennedy?

9 A As I say, it would be very much the exception, I would have thought, where
10 Mr. Kennedy would have given instruction, yes.

11 Q 170 Generally speaking then, you would get instructions from Mr. Morgan?

12 A Correct.

13 Q 171 And Mr. Morgan would get instructions from you and/or from Mr. Kennedy?

14 A That's correct. And I think probably on some occasions he may have got
15 instructions from Mr. Bullock, but I can't think of an instance, can't
16 recollect one at the moment.

17 Q 172 Taking those instructions from Mr. Bullock would have been instructions on your
18 behalf?

19 A Those would be the matters I would have discussed with Mr. Bullock and he would
20 have then conveyed, yes.

21 Q 173 There's a memorandum which was discovered to the Tribunal, but I think, is it
22 Isadore Goldman Solicitors, they are London based solicitors who now act for
23 Mr. Morgan, isn't that correct?

24 A I am not sure whether they act for Mr. Morgan and/or Mr. Holland, but they are
25 acting, yes.

26 Q 174 Well, what's your understanding? You have dealt with Mr. Holland, who are his
27 solicitors as far as you are aware?

28 A He was taking advice, as I understand it, from solicitors in the north of
29 England.

30 Q 175 Who are Goldman acting for, to your knowledge?

1 A They appear to be acting for Jackson Way in relation to the discovery matter
2 and I don't know whether they are acting for Mr. Holland.

3 Q 176Well, Mr. Holland is somebody who acts on instructions.

4 A In relation to the affairs of Jackson Way, yes, he has acted on instructions in
5 relation to it. But in relation to what has transpired recently, he is acting
6 on his own in relation to that, in getting whatever advice he got. So --

7 Q 177He holds the share. He has no beneficial interest, good, bad or indifferent in
8 Jackson Way or in the assets of Jackson Way.

9 A Well there's a distinction, he owns Jackson Way in that he owns the shares in
10 Jackson Way.

11 Q 178Yes, he owns the shares.

12 A So, that is his company. But the company correctly, as you correctly say, does
13 not own the asset that it's a nominee for.

14 Q 179He doesn't have any beneficial interest in any of the assets of Jackson Way?

15 A In any of the land assets, that's correct, he doesn't, yes.

16 Q 180What other assets does Jackson Way have?

17 A It may have some money in a bank account or something like that.

18 Q 181But those monies in the bank account would be from rental receipts or something
19 of that nature, would be fairly nominal?

20 A Nominal, yes, absolutely.

21 Q 182So to all intents and purposes, Mr. Holland has no interest in the land,
22 beneficial interest in the lands or in the assets of Jackson Way.

23 A He has the -- correct, that's right, he has no interest in the land or the
24 assets of Jackson Way, yes.

25 Q 183He is a nominee who does who he is told, effectively.

26 A He is a direct for, of the nominee company, yes. And he is the instrument of
27 Renzenbrinck and Maskani or Pertland.

28 Q 184And he does what he is told effectively?

29 A Effectively.

30 Q 185In return for a fee?

1 A Correct.

2 Q 186The document that you have before you is one that is prepared by Mr. Holland on
3 the 13th August 1993 in relation to Jackson Way Properties and it's a
4 memorandum from him, from Mr. Holland to his colleague and associate Red
5 Vuckovic and it reads as follows:

6
7 "I have not had a chance to speak to you at length about this matter but will
8 do so. Basically we have been invited to function as directors of a holding
9 company in respect of some land in Ireland. I have made exhaustive inquiries
10 to ascertain that this responsibility in no way conflicts with our moral or
11 ethical duty and can confirm that I have agreed an initial fee of two thousand
12 pounds plus VAT plus expenses per annum in respect of this position. I must
13 point out that Nick Morgan has expressed concern as my position as sole
14 director of the company and in consequence has asked that I seek another
15 trustworthy individual to assume a directorship on the basis that I might be
16 present in the event of some emergency. As you will see from the
17 correspondence on the file, we hold as mandatories for David Morgan Whitehead
18 and our responsibility is really confined to a letterbox.

19
20 Please carefully consider the file. I am asking David to send through the
21 appropriate papers appointing you as director of the company and if you are
22 content, where indicated on the agreement as a mandatory, whereupon one copy of
23 the agreement will be returned to David Morgan Whitehead."

24

25 And it's signed AG Holland.

26 A Yes.

27 Q 187He is describing the role as that of a letterbox.

28 A As I say, they were an instrument of the parties giving those instructions.

29 Q 188Now, in your statement you have said that you have called, that a short
30 agreement was entered into between Mr. Kennedy and yourself as to the future of

1 the lands.

2 A Yes.

3 Q 189And you say that this was for a 10 year period. May I have page 439, please.

4 A Is that hard copy?

5 Q 190Yes, 439, you should have it. It should be after tab 1 I think if you have
6 tabs.

7 A I have got tab 1, yes, I have it.

8 Q 191Is this the agreement that you referred to at page 2 of your statement?

9 A Yes, it is.

10 Q 192Letter of intent?

11 A Yes.

12 Q 193"1: It is our intention that the profit at Carrickmines, County Dublin,
13 Ireland and any additional property acquired to facilitate its development be
14 rezoned from an opportunity to a developable zoning and that the lands be sold
15 in one or more lots as soon as possible thereafter and the proceeds net of
16 sales expenses be divided 50/50, each of us being responsible for his
17 proportion of the tax, if any, payable on such proceeds.

18

19 2. It's our wish this if either of us die that the managing co-owner of the
20 property would exercise its powers to continue to manage the property towards
21 this objective until the 31st July 2003, thereafter sell as possible as
22 reasonably practicable to obtain the best price.

23

24 3. It is our wish that we may by agreement between us and this is not a right
25 of our successors or personal representatives, request the managing co-owner to
26 sell the property prior to the 31st July 2003 and divide the proceeds between
27 the co-owner companies."

28

29 Who is the managing co-owner?

30 A Jackson Way. That was the intention that Jackson Way be the managing

1 co-ownership. I think there's a co-ownership document on the papers somewhere
2 which will confirm that for us.

3 Q 194 I am afraid I don't have it, I am not -- maybe I can turn it up, I don't have
4 it immediately available to me.

5
6 "4. If we do not act as specified at number 3 above and the property has not
7 been rezoned by the 31st July 2003 and is unlikely to be rezoned within a
8 reasonable period thereafter, not to exceed one year, then the managing
9 co-owner may sell the property as soon as is practical thereafter and not
10 divide the proceeds as set out in clause 1 above.

11 5. If the property is subject in whole or in part to one or compulsory
12 purchase orders, then the proceeds are to be tied 50/50 net of expenses between
13 the co-owners."

14
15 And it's signed by you on the 17th September 1993.

16 A Yes.

17 Q 195 And it doesn't appear to have been signed by any other person.

18 A The document was signed.

19 Q 196 Do you know where, why the original isn't, the document we have here is not
20 signed, do you know why that is?

21 A I am assuming the lawyers have redacted it.

22

23 JUDGE FAHERTY: I missed that, Mr. Gallagher? I want to clarify something, is
24 that your signature?

25 A It is.

26

27 JUDGE FAHERTY: Are you saying it was also co-signed.

28 A It was.

29

30 JUDGE FAHERTY: By Mr. Kennedy?

1 A It was.

2

3 JUDGE FAHERTY: I missed that, sorry Mr. Gallagher.

4

5 Q 197MR. GALLAGHER: Now, you said that you recall sending a precedent co-ownership
6 agreement to Mr. Morgan.

7 A Yes, I do.

8 Q 198You say:

9 "I do not recollect that this co-ownership agreement was modified and completed
10 by Mr. Morgan and executed by Renzenbrinck and Maskani. There's no copy on
11 Mr. Bullock's files."

12 A That's correct, and this is where the timing of the statement as opposed to
13 what one subsequently finds from the review of other documents changes what you
14 have in the statement on the discovery process of gathering documents together
15 for the purpose of discovery. That draft document turned up on one of
16 Mr. Morgan's files and the worked-up version of that into a Jackson Way, and I
17 can't remember at the moment who the other parties to it were, we can clarify
18 that, I think it was Jackson Way as co-owner. He had prepared a document which
19 customised it for this particular set of circumstances.

20 Q 199Yes. You say that:

21 "Mr. Morgan detained these documents and despite repeated requests I have not
22 been provided copies by him."

23 A At that time, yes.

24 Q 200Why did he not furnish you with copies?

25 A Well, there was a dispute as to the entitlement of Renzenbrinck to the
26 documentation, particularly to the ownership documentation. And the view that
27 was being taken by the other co-owner was that I had no rights whatsoever in
28 relation to that and I took a different view in relation to that. I took the
29 view that I wasn't, I, in terms of Renzenbrinck were entitled to those
30 documents and I was entitled to this document as I was a party to it. And I

1 pressed that position with Mr. Morgan and with Mr. Kennedy and ultimately
2 succeeded in getting these documents, which I felt I had to get to be able to
3 provide them to the Tribunal.

4 Q 201 Well, in summary what you are saying to the Tribunal, as I understand it, is
5 that Mr. Kennedy did not agree to these documents being released to your
6 solicitors to provide to the Tribunal?

7 A Absolutely, we were at loggerheads over it.

8 Q 202 But you succeeded in getting them?

9 A Yes, I did.

10 Q 203 Why have you not been able to succeed in getting all the Jackson Way documents
11 for the Tribunal?

12 A I have -- well, in terms of getting the Jackson Way documents, there are two
13 aspects to that. I believe at this point in time that a substantial part -- I
14 can't say all -- but a substantial part of the Jackson Way documents were in
15 fact got by me for the Tribunal and were contained in the Affidavit of
16 Discovery of mine.

17

18 In relation to getting the documents, I got those as a result of persuasion, as
19 a result of pressure and going to meetings and telephone calls and screaming
20 and smiling and doing all sorts of things to get them.

21

22 I finished up getting a substantial part of the documents, but the difficulty
23 that I have in relation to the, to getting the balance of the documents is that
24 I have no, through Renzenbrinck or personally, I have no legal right to get
25 those documents and I have taken advice in relation to that from counsel in
26 England.

27 Q 204 You have the capacity to tell Mr. Holland what to do. You have the capacity to
28 tell him to provide the Tribunal with all Jackson Way's documents.

29 A I don't, with respect, Mr. Gallagher. I have the capacity to tell
30 Renzenbrinck, to tell him what to do and under the mandator's agreement, he has

1 also to get an instruction from the other mandator if he receives both
2 instructions, then he can act on it, but if one mandator turns his face against
3 it and won't give the instruction, then it doesn't happen.

4
5 Mr. Gallagher, this may be a time to raise this issue as it's arisen is that I
6 have been pressing and continuing to press Mr. Kennedy and Mr. Holland in
7 relation to complying with the order of discovery of the Tribunal. And in the
8 last few days, Mr. Kennedy has agreed to give the instruction to Jackson Way,
9 through Portland, to provide an affidavit of discovery to the Tribunal. That
10 has been said orally. I haven't seen anything in writing or anything else
11 which has confirmed that that has or will happen. But the sequence of events I
12 understand that are taking place are that I had a tripartite conversation.
13 After a lot of meetings and a lot of pressure on Mr. Kennedy, with him and
14 Mr. Nick Morgan, where I went to Mr. Kennedy as a result of having some prior
15 meetings with him and where he had told me that he would contact Mr. Morgan
16 and, but that he failed to do so. So, I went to him and I had a meeting.

17
18 Before the meeting I had phoned Mr. Morgan and said to him I was going to go to
19 Mr. Kennedy and that I would get him on the telephone in the presence of
20 Mr. Kennedy and ask Mr. Kennedy to give him the instruction that he had told me
21 he was going to give in relation to the provision of the documents. We made
22 the telephone call and that instruction was given to Mr. Morgan.

23
24 Since that, Mr. Morgan has -- that was last week -- since that Mr. Morgan has
25 gone and spoken to Mr. Holland as of the day before, yeah, the day before
26 yesterday. And Mr. Holland has told him that he is going to take legal advice
27 in relation to his position given, that he has not had instructions from the
28 two mandators to provide the Affidavit of Discovery.

29
30 CHAIRMAN: Why would he require to take, why would he have to take these

1 advices, as he has the two mandatorys?

2 A As I think came up previously on this, he is concerned about his own position.
3 He wants to review, have legal advice in relation to his own position. I am
4 not privy to that and I haven't been in a discussion with him directly about
5 that, so other than wanting to get legal advice and two, his concern about
6 coming in to Dublin, into this sort of media frenzy that would surround it.

7
8 CHAIRMAN: But the previous legal advice was to the effect that because only
9 one mandatory was required, compliance with the discovery order, it couldn't be
10 put into -- it couldn't be complied with. Now, that hurdle has been overcome.

11 A Precisely, and so I don't -- I don't expect him not to comply. In the
12 positive, I expect him to comply with the two instructions that he now has.
13 One that he has had from Renzenbrinck for sometime, because Renzenbrinck wrote
14 to him a considerable period of time ago and said that as far as it was
15 concerned it wanted this order complied with and now. The second consent has
16 gone to him so he should do what he has been told to do, given the document
17 which controls the relationship with him.

18
19 JUDGE FAHERTY: Well you know, you accept, Mr. Caldwell, Mr. Holland knows his
20 way to Dublin. He was here, as I understand it, for the arbitration, is that
21 right?

22 A He was indeed.

23
24 JUDGE KEYS: Mr. Caldwell, maybe I'm jumping the gun a little bit on this, but
25 who gave the instructions for Jackson Way to cease instructing Miley & Miley to
26 appear at the Tribunal on behalf of Jackson Way?

27 A That came from Pertland the Pertland side.

28
29 JUDGE KEYS: But sure under the mandatory agreement, that would have to be
30 jointly agreed by both. In other words, the instructions would have to come

1 from both --

2 A No.

3

4 JUDGE KEYS: Sorry, why not?

5 A Effectively we have a situation where for something to happen, two people, two
6 entities have to agree to it and we have a situation here where one of the two
7 is not agreeing and that one was Pertland and they --

8

9 JUDGE KEYS: Does it not work both ways? Maybe I'm wrong on this. Who
10 physically gave the instructions to Miley & Miley, informing them that they are
11 no longer to appear for Jackson Way?

12

13 MR. FINLAY: Judge, as a matter of, I might intervene to correct the factual
14 position. With respect, I can't recollect whether at this particular historic
15 point in time you have been elevated to your present position, but what, in
16 fact, happened, to my recollection and again and always subject to correction,
17 is that in detailed correspondence, all of which the Tribunal has and has
18 considered and has had opened in this forum, there was an exchange of letters
19 between Mr. Miley, and as I recollect it, lawyers in London acting for Jackson
20 Way.

21

22 The letter, as I recollect them from Mr. Miley were in the end of the sequence
23 of correspondence, trenchant terms in relation to the importance of complying
24 with the Order for Discovery made by this Tribunal. And my recollection is
25 that Mr. Miley made it clear in that correspondence that if the company did not
26 comply with the Order for Discovery, that Mr. Miley would no longer be in a
27 position to be able to represent the company before this Tribunal.

28

29 All of that correspondence I dealt with here at an earlier stage when I think
30 Mr. Justice Flood was Chairman, I apologetically cannot remember the precise

1 composition of the Tribunal at that time, it was a long time ago, and what then
2 happened was that pursuant to and consistent with that correspondence,
3 Mr. Miley ceased to act.

4
5 JUDGE KEYS: Because of the failure on the part of Jackson Way to make
6 discovery?

7
8 MR. FINLAY: Make an Affidavit of Discovery. That is indeed, correct, Judge.

9
10 JUDGE KEYS: I see.

11
12 MR. FINLAY: You correctly summarised it. I apologise for intervening but I
13 was personally involved.

14
15 JUDGE KEYS: Fine, absolutely, it clarifies the matter.

16
17 MR. FINLAY: Mr. Caldwell I don't think was here in this forum when all of that
18 occurred, but that is, to my best recollection and subject to correction, what
19 in fact occurred. And all of that correspondence is with the Tribunal and
20 opened to the Tribunal at the time and that morning Mr. Miley was here and he,
21 on foot of that order, having explained to Mr. Justice Flood, he ceased to act
22 before the Tribunal.

23
24 JUDGE KEYS: Well, that explains that, thank you. Just following up from
25 that, Mr. Caldwell, I take it you then heard what happened, that Jackson Way,
26 through either Isadora Goldman -- I think they were the solicitors, Mr. Finlay,
27 is that correct?

28
29 MR. FINLAY: Yes, indeed. To my recollection they were the solicitors.

30

1 JUDGE KEYS: -- strong instructions came apparently that the company wasn't
2 going to provide an Affidavit of Discovery and Mr. Miley then said he wasn't
3 going to act any more. When did that come to your attention when this was
4 happening?

5 A That would have come to my attention at the time, Judge.

6
7 JUDGE KEYS: And what steps did you take to diffuse that? I take it you have
8 always represented to this Tribunal that you were fully prepared to cooperate
9 and by cooperating, that would entail your personal cooperation, but also any
10 companies in which you would be in any way connected with or would have any
11 power of instructions, that you would do everything that could possibly be done
12 to ensure that those instructions would be carried out, which would have ended
13 up, I would have thought, with Jackson Way coming back in and making an
14 affidavit of discovery. I am just wondering what did you do to make sure that
15 happened didn't happen or undo what happened?

16 A In the lead up to the decision that was taken and the position Mr. Miley found
17 himself in, I vigorously and consistently argued against that course of action
18 and said that as far as I was concerned Renzenbrinck Investments was absolutely
19 and unconditionally in favour of complying with the order. And I continued to
20 press them in terms of getting documentation from them so that I could provide
21 the bulk of that documentation to the Tribunal or all of the documentation I
22 got to the Tribunal.

23
24 What I did on the legal side of it is, I got a legal opinion in relation to
25 what the rights were in the United Kingdom so far as Renzenbrinck was concerned
26 and that opinion was to the effect that neither, Renzenbrinck could do nothing
27 unilaterally to require Jackson Way to complete their end of discovery.

28
29 What I did subsequent to that is that over the succeeding months took place, I
30 would be frank, and less than that if I said -- getting Jackson Way to comply

1 with the Affidavit of Discovery wasn't in the forefront of my mind for several
2 months, because I was dealing with a lot of other matters for the Tribunal, we
3 had a lot of correspondence, Carrickmines was going on, affidavits of discovery
4 were being done, other narratives and so on. But I was in touch with
5 Mr. Kennedy at various stages during that time and we pressed him about
6 completing the Affidavit of Discovery.

7
8 When I saw the transcript of the, your own comments and other members of the
9 Tribunal's comments on the 30th July, I had a consultation with Mr. Finlay and
10 with Mr. Miley in relation to it. And against the background of those comments
11 and against the inference that I hadn't done all that I could do in relation to
12 it, I got Mr. Miley to reinstruct counsel in London on a, with all the
13 documentation that applies to this, the various letters of intent and mandators
14 agreement and so on. And early September after the summer break, I got an
15 opinion back from the counsel and it was as it had been there, that I had no
16 rights, no, neither John Caldwell or Renzenbrinck had any legal rights or any
17 ground under English law, under the mandator's agreement or under the trustee,
18 to force these people to do what I wanted to them to do, which was to complete
19 this affidavit.

20
21 So, what I did then was I went and spoke to Mr. Kennedy, I said to him that the
22 situation that was being created was intolerable, that there was absolutely no
23 reason for not completing this Affidavit of Discovery and I got nowhere in that
24 conversation.

25
26 Before I did that, I went and had a meeting in London with Mr. Morgan, that was
27 within a couple of days of coming back from holidays in the first week of
28 September. And I spoke to him about it and impressed on him the urgency of
29 doing something about this and trying to persuade Mr. Holland to do something.
30 If I couldn't persuade Mr. Kennedy to do it, try and persuade Mr. Holland to do

1 it. So, he said he would do that and we had some conversation with him, none
2 of which resulted in Mr. Holland agreeing to do it.

3
4 At the end of September, I had some meetings again with Mr. Kennedy in relation
5 to it and I told Mr. Kennedy that this, from the company's point of view was
6 complete and absolutely economic suicide, it was just complete stupidity not to
7 do this Affidavit of Discovery, that the documentation was largely with the
8 Tribunal. I felt that I couldn't believe that there would be any other
9 documentation which would have in any way be prejudicial to the interests of
10 Jackson Way or him and that he should, you know, he should turn his face
11 towards complying with this order.

12
13 He rebuffed, he said he wouldn't hear of it. And what happened? I went, I had
14 a meeting with him, two or three days later. I went back and had another
15 meeting. This was all within the last two or three weeks, two or three days
16 later I went back and had another meeting and pressed them on him again in the
17 context of the compensation claim, put this in the context of his economic
18 interests and as well as compliance, his responsibility to comply with the
19 Tribunal's order. So, I explained to him the potential consequences that could
20 occur from this not happening, not, I hasten to add, as his lawyer as such but
21 as someone who is aware of what the consequences might be from failing to
22 comply with the order and he, at that meeting, it was quite late at night,
23 agreed that he would phone Mr. Morgan and tell him that he changed his mind and
24 the affidavit would be given.

25
26 JUDGE KEYS: Do I take it, if I can stop you there, do I take it then because
27 of the discussions you had with Mr. Kennedy when you pointed out to him the
28 effect it could have in relation to his interest in the property, should it --
29 in that when it is sold and could generate a huge profit, that that might be
30 affected? And as a result of warning him of the damage it could do to him, and

1 obviously to you as well, that he then relented and decided to cooperate?

2 A I put it up in stark facts to him what the consequences were.

3

4 JUDGE KEYS: Are you telling me that up to then you couldn't go to any court
5 within the jurisdiction you reside and make that case and get the relief
6 contrary to the agreement which you received from your counsel?

7 A I was advised, Judge, by the counsel in London, which is the jurisdiction that
8 would apply to them, so there was no cause of action in, there's no grounds
9 upon which I could bring an action in England and succeed.

10

11 JUDGE KEYS: Even though Mr. Kennedy's conduct could lead to severe, well
12 causing serious damage to yourself and to himself as well?

13 A Absolutely, that's right. Absolutely. I had no cause of action and it caused
14 me great distress and great worry in relation to it, because I was faced with a
15 situation where this company has got enough problems in terms of dealing with
16 the county council and compensation claims and so on, without finishing up with
17 all of the additional problems that this conduct, which was completely and
18 absolutely unnecessary --

19

20 JUDGE KEYS: If we were to take an example, and I am not saying it applies in
21 this situation, if we have two people who are signatures to a mandatory
22 agreement, one is committing fraud, for the sake of argument, and because both
23 won't agree to take a certain course, which would correct that situation, that
24 there's no relief in any court in England to seek directions that the other
25 mandatory, the other person assigned in the mandatory agreement, won't comply
26 and do what he should do to correct a fraud, let's say a potential fraud or a
27 current fraud being committed at the time?

28 A Well, if he had committed a fraud, if one of the co-signatories committed --

29

30 JUDGE KEYS: I am not applying this to your situation, I am saying, giving an

1 example. I find it very difficult to accept that where you have two people,
2 signatures to a mandatory agreement, one by his virtue of contact is in the
3 course of committing a crime or a fraud of that nature. There's no court in
4 England that you could seek relief from?

5 A If it were a case that in the example that you have given that someone was
6 committing a fraud, then I'm sure the action would lie in tort as opposed to
7 out lie in terms of the agreement itself so yes, in the specific circumstances
8 of that, you would. But I am not in that situation here. I mean what we have
9 is a contractual document. A contractual document requires and required two
10 entities to consent and those two entities failed to consent.

11

12 JUDGE KEYS: But your asset was at risk, is that correct, by the conduct of
13 Mr. Kennedy?

14 A Absolutely.

15

16 JUDGE KEYS: And you are telling me that there's no relief you can seek from any
17 court in the land in England to assist you from stopping Mr. Kennedy to act in
18 such a manner that would affect your interest?

19 A I am so advised.

20

21 JUDGE KEYS: I find that extraordinary.

22 A I am so advised.

23

24 JUDGE FAHERTY: Just to clarify one matter. You have now told us that, in
25 fact, as a result of your recent meetings and discussions with Mr. Kennedy, he
26 has instructions from Mr. Morgan and presumably Mr. Holland to cooperate.

27 A That's correct.

28

29 JUDGE FAHERTY: I want to ask you a fairly basic question. Why do you think in
30 the first instance Mr. Holland, who is the director of Jackson Way, a nominee

1 of Renzenbrinck and Maskani, would have preferred Mr. Kennedy's instruction
2 over your instruction as equal persons equally entitled to the land?

3 A Well there's -- I don't think -- it's not a question of equality of instruction
4 in terms of acting on the instruction given. It's the -- for him to act he
5 needs two instructions, so he has had, to an extent he has half an instruction
6 when he gets an instruction from Renzenbrinck and he has to get the other half
7 of the instruction from Maskani and in those circumstances he can then safely
8 move forward. And he didn't get that second instruction.

9

10 JUDGE FAHERTY: I see.

11

12 MR. FINLAY: Just if I may, for completeness, the Tribunal may not be involved
13 at that time. I'll postscript to what I described to Judge Keys some moments
14 ago, and members of the Tribunal. Even at that time, I wish to make it clear,
15 Judge, even at the time of which Mr. Miley was, amongst the correspondence
16 which was available in that time and which the Tribunal has obviously, the
17 members can't be aware of all the correspondence all the time, were letters in
18 strong terms not only from Mr. Miley but from Mr. Caldwell to Mr. Morgan.

19

20 We are already at that stage where there's open correspondence from
21 Mr. Caldwell relative to Mr. Miley to relevant parties, I simply wanted to
22 mention that for the record.

23

24 I think in ease perhaps of the Tribunal and of Mr. Caldwell, I might just
25 mention one other matter. As Mr. Caldwell's Irish counsel, I have had the
26 opportunity of seeing and reading the lengthy opinion from Queen's Counsel.
27 The second opinion, both opinions, but for the present purposes, the second
28 opinion to which Mr. Caldwell has just referred, and insofar as it may not be
29 relevant to the Tribunal, in my respectful submission, Mr. Caldwell has
30 correctly and accurately summarised the conclusions and effect. I just wanted

1 to mention that.

2

3 JUDGE KEYS: The opinion could be wrong, couldn't it? I mean you have a
4 situation, as I understand it, where you have two parties to a mandatory
5 agreement, one is acting in such a manner that can seriously hurt the other
6 party in relation to his assets. He could be acting in such a way that's of a
7 criminal nature. And you are saying that the law is that nothing could be
8 done, there's no court in any jurisdiction can intervene and say this must
9 stop? Because that seems to me to be the effect of the opinion that's being
10 told to us anyhow --

11

12 MR. FINLAY: I am not --

13

14 JUDGE KEYS: Or is it as simple as that?

15

16 MR. FINLAY: I don't believe with great respect, Judge, it's as simple as that.
17 If one pauses for a moment to recollect what the issue here is, the issue is
18 whether a sole director of a company can be compelled by one of the two parties
19 in this case unilaterally to swear an Affidavit of Discovery on behalf of the
20 company. There may well be circumstances in which other corporate issues would
21 arise. I think I recollect you mentioning a situation of fraud as between
22 effectively two shareholders. There may well be legal remedies open to a party
23 in such a circumstance as against the other party but the specific issue which
24 the Tribunal asked me to deal with at the end of July and which issue led in
25 turn to my advice to Mr. Caldwell that he should seek further advice from a
26 Queen's Counsel in England on that issue, namely whether Mr. Caldwell or
27 Renzenbrinck could unilaterally procure the swearing by the director of the
28 company of the required Affidavit of Discovery. That is the issue on which
29 Queen's Counsel were asked to advise and correctly to advise.

30

1 JUDGE KEYS: What about instructions to the effect, please cooperate with the
2 Tribunal in another jurisdiction which is investigating into corrupt payments?
3 Not just swear a simple affidavit, it's more than swearing a simple affidavit.
4 It is cooperating fully in every way with the Tribunal when it seeks
5 information about its dealings. It's not just simply swearing an affidavit,
6 Mr. Finlay.

7
8 MR. FINLAY: With respect, Judge, that is of course the effect of it but the
9 issue with which we are concerned -- I don't think anything turns on it for
10 factual purposes -- but the legal issue whether the director of the company,
11 Jackson Way, can be in the circumstances which exist factually and legally, can
12 be compelled to comply with the order of this Tribunal. It happens to be an
13 order to swear an affidavit. I don't think very much may turn on what the
14 contents of the order are. The effect is whether he can be compelled to comply
15 with the order of the Tribunal. And an English Queen's Counsel has given a
16 lengthy and detailed opinion, in my understanding of it, fully identifying all
17 the relevant factual circumstances on which the Tribunal and this Tribunal is
18 aware and against that background, as it existed at that time, he has advised
19 in my view comprehensively and the effect of that advice has been summarised by
20 Mr. Caldwell and I think it is only fair and essential that the Tribunal
21 recognises that what Mr. Caldwell, the steps that Mr. Caldwell has taken since
22 that time have been taken by him against the background of that advice, in
23 other words, he has taken those steps despite the fact --

24
25 JUDGE KEYS: Quite correctly.

26
27 MR. FINLAY: With great respect it's most important that the Tribunal is fully
28 aware of the fact he has taken the steps despite the fact that he has been
29 expressly advised by Queen's Counsel that he has no legal power to achieve that
30 objective. He has used other means as you have just heard him describe but I

1 just wanted to put that situation in context and so the Tribunal would be aware
2 of it and also in fairness to Mr. Caldwell.

3
4 JUDGE KEYS: It may now become irrelevant because apparently we have now got
5 the consent of Mr. Kennedy to give the instructions, as I understand, to swear
6 the affidavit but was Queen's Counsel told that the effect of not swearing the
7 affidavit could lead to Mr. Caldwell's asset being severely damaged and was
8 Queen's Counsel told what the Tribunal were investigating? Corrupt payments,
9 fraud, all of that and that not to swear an affidavit or to go by the wishes of
10 Mr. Caldwell could lead to Mr. Caldwell, his asset being seriously damaged?

11
12 MR. FINLAY: I think that the issue as to what steps ultimately Mr. Caldwell
13 might have as against a co-interest in this case, for example, Mr. Kennedy,
14 without preempting any findings of this Tribunal would be a subsequent issue if
15 you have a situation where the Tribunal's order could not be complied with or
16 whether there was, where there was patent damage to an interest of, say,
17 Mr. Caldwell, so it might be that he might have remedies against a co-interest
18 but of course as a matter of law and practical consequence, the fact that
19 Mr. Caldwell may have a remedy, some corporate remedy against a co-interest or
20 co-shareholder as one might, for example, have in this jurisdiction where there
21 was a deadlock between two interests, two shareholders in a 50 percent
22 controlled company, that remedy, which is available, would not secure the
23 objective in sight here. One for example, could petition for the winding up of
24 the company, but the winding up of the company is not an event, if that is the
25 sort of relief in mind, the winding up of the company would not at all be an
26 event which would secure of course the Tribunal agreement. It might resolve a
27 dilemma for a frustrated shareholder but would not secure the objective of the
28 Tribunal, which is to obtain the compliance with the order of discovery.

29
30 JUDGE KEYS: And cooperate with the Tribunal.

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MR. FINLAY: Just for clarification.

JUDGE KEYS: I take your point.

MR. FINLAY: They may well be intershareholder remedies but they would not necessarily achieve the objection of compliance.

JUDGE KEYS: I think a court would be sympathetic to an application which is being made, however this is comment.

CHAIRMAN: We have a meeting to attend to so I think this might be an appropriate time to wind up for -- unless you have something very short to --

MR. GALLAGHER: No, I am --

CHAIRMAN: Assuming you are going to --

MR. GALLAGHER: If it's convenient for the Tribunal, it's convenient for me.

CHAIRMAN: And if we adjourn until half ten on Tuesday?

MR. GALLAGHER: Yes.

CHAIRMAN: All right. Half ten on Tuesday.

THE TRIBUNAL THEN ADJOURNED UNTIL TUESDAY, 14TH OCTOBER 2003

AT 10.30 AM.

