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THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY,

16TH FEBRUARY, 2007, AT 11:00 A.M:

MR. QUINN: Good morning, Sir.

CHAIRMAN: Good morning.

MR. QUINN: Mr. Noel Smyth, please.

11:06:55 1 **MR. NOEL SMYTH, PREVIOUSLY SWORN, WAS QUESTIONED**

2 **BY MR. QUINN AS FOLLOWS:**

3

4 MR. QUINN: Good morning, Mr. Smyth. You have given evidence on two previous
11:07:04 5 occasions so you've already been sworn

6 A. Thank you.

7 Q. 1 Mr. Smyth, you were written to, I think, by the Tribunal on the 7th of February
8 of this year. If I could have 2941, please. And you were furnished with
9 additional documentation by way of discovery received from the Tribunal. And
11:07:21 10 you were asked if you could provide a narrative statement dealing with one, the
11 source of funding for the payment of the deposit monies and the balance
12 thereto. And 2, the destination of the various disbursements of the 185,000
13 pounds loan from Bank of Ireland identifying the persons and bank accounts
14 concerned.

11:07:37 15

16 And I think you did on the 14th of February 2007 provide a further statement or
17 supplemental statement to the Tribunal.

18

19 And that's to be found at pages 2943 and 2944.

11:07:50 20

21 And I propose to read that statement and ask you one or two questions arising
22 out of it, if that's agreeable to you

23 A. That's fine, thank you.

24 Q. 2 You say that:

11:07:59 25

26 I refer to my earlier statement made previously in respect of the Cargobridge
27 Module. I have been asked to make a further statement by the Tribunal in light
28 of the further documents sent to me. Subsequently I have now received some
29 further correspondence on the 7th of February with respect to this Module which
11:08:15 30 appears to be, in the main, to consist of old bank file documentation which was

11:08:19 1 not available to me at the time of making my previous statement, which
2 statement was made at that time to the best of my recollection and on the basis
3 of the file in front of me. I also now make this supplemental statement to the
4 best of my recollection and subject to any necessary correction. It would
11:08:35 5 appear although I cannot be sure, that what perhaps happened in June 1991 in
6 this case based on the documentation I have now seen, was that when it came to
7 the purchase of the lands by Abervanta in or about the 21st of June 1991 when I
8 sent a bank draft to Michael Kennedy solicitor, which was referred to in my
9 earlier statement, that it appears at that time that the matter was extremely
11:08:57 10 urgent. As is evidenced from the letter of the 21st of June from myself to
11 Michael Moriarty in the Bank of Ireland Private that is that Abervanta obtain
12 136,653.57 for the purchase of the lands.
13 As referred to in the statement of Mr. Dunne where he says he produced from his
14 own funds approximately 110,000 pounds to assist the purchase after
11:09:22 15 Mr. Barnicle had approached Mr. Dunne for a loan. It appears what happened was
16 and I cannot at this stage be certain at all where the 26,653 pounds came from
17 but it appears it may have been a term loan from the Bank of Ireland until the
18 full loan of 185,000 pounds was subsequently drawn down from the bank which I
19 believe issued around a month later on the 22nd of July 1991.
11:09:44 20
21 Unfortunately, as I do not have further records at this time, it is not
22 possible for me to be clear on the point. However, it does appear that in July
23 1991 when 185,000 pounds was drawn down, that 136,653.57 of this loan was used
24 to repay the existing temporary facility at the Bank of Ireland as had been
11:10:08 25 granted on the 21st of June 1991. And that 1,500 pounds went towards the
26 bank's arrangement fee. It would appear from page 2876 that I have been
27 shown -- that I have now shown that perhaps the bank advanced the sum of 26,653
28 pounds as a temporary term loan together with the 110,000 provided by Mr. Ben
29 Dunne in order to get a loan and to give a draft of 136,853.57 made payable to
11:10:38 30 Michael Kennedy on the 21st of June 1991.

11:10:41 1
2 It would appear after the arrangement fee that the balance of the monies were
3 lodged to the client account of Noel Smyth & Partners and I can only assume
4 that various expenses were paid out of this balance sum by us on behalf of the
11:10:54 5 client at that time, including stamp duty to the Revenue Commissioners which I
6 calculated approximately 9,000 pounds, together with land registry fees, costs
7 and expenses. While I cannot be sure, the balance of the monies would have
8 been either paid to John Barnicle and/or Ciaran Haughey or alternatively used
9 to pay expenses or bills that may have been requested from time to time.
11:11:23 10 Unfortunately, I do not have any further details or records at this time to
11 give any further information or indication of what may have occurred. But I
12 hope this addition to my earlier statement is of some assistance to the
13 Tribunal.
14
11:11:28 15 And as I say, that's dated the 14th of February and was received by the
16 Tribunal on the 15th of February of this year.
17
18 Just to go back, to recap, Mr. Smyth. You were the solicitor with the
19 responsibility for establishing Abervanta and you've given evidence in relation
11:11:45 20 to that, isn't that right
21 A. Correct.
22 Q. 3 And you had been the solicitor for Mr. Dunne. And it was in that capacity you
23 got involved in this venture?
24 A. Correct.
11:11:52 25 Q. 4 Mr. Dunne had agreed to advance or secure monies to Mr. Barnicle and
26 Mr. Haughey in relation to this matter?
27 A. Yes.
28 Q. 5 And he had instructed you to put in place the arrangements necessary to provide
29 those funds, is that correct?
11:12:05 30 A. Correct.

11:12:06 1 Q. 6 If we could have 2460.
2
3 The lands in question, I think, were purchased from Mr. Morgan for 1 million
4 pounds by contract dated 17th of May 1991. And I think that contract provided
11:12:20 5 that there would be 100,000 pounds deposit paid, isn't that right?
6 A. I'm just looking at the document now.
7 Q. 7 That should be coming up on screen now.
8 A. Yes.
9 Q. 8 The purchaser shown there, I think, was Neptune Freight Limited?
11:12:33 10 A. Yes.
11 Q. 9 A company with which Mr. McGuinness was associated, isn't that right?
12 A. Correct.
13 Q. 10 That contract was signed on the 17th of May with the payment of 100,000 pounds
14 deposit?
11:12:43 15 A. Yes.
16 Q. 11 And the balance of the monies, 900,000 pounds was to be paid on the 21st of
17 June, isn't that correct?
18 A. Correct.
19 Q. 12 Now, we know from the correspondence between Mr. McGuinness and Mr. Kennedy,
11:12:55 20 who was the solicitor acting for Neptune Freight.
21
22 If we could have 2218, please.
23
24 That the consortium who acquired the lands included Abervanta Limited and their
11:13:06 25 percentage holding was 15.182 percent, isn't that right?
26 A. Correct.
27 Q. 13 Which represented 3.58 acres of the lands acquired?
28 A. Yes
29 Q. 14 And I think on the 19th of June 1991.
11:13:19 30

11:13:19 1 At 2940.
2
3 You wrote to Bank of Ireland Private Banking, isn't that correct?
4 A. Yes.
11:13:27 5 Q. 15 And at that time you advised Private Banking of your client's intention to
6 acquire these lands?
7 A. Yes.
8 Q. 16 And I think you identified that the borrower, the proportion costs to your
9 clients to Abervanta would be 151,823.62. I'm not terribly concerned about the
11:13:51 10 slight variation in that letter as opposed to what Mr. Kennedy was advised
11 earlier?
12 A. Okay.
13 Q. 17 But it's in or about 15.1718 percent, isn't that right?
14 A. Correct.
11:14:04 15 Q. 18 Now, I think you advised Private Banking that the monies required would be
16 185,000 pounds to include their proportion for stamp duty, planning and other
17 costs, isn't that right?
18 A. Yes.
19 Q. 19 Now, that figure, presumably, was advised to you by Mr. Barnicle and/or
11:14:23 20 Mr. Haughey, isn't that right?
21 A. Correct.
22 Q. 20 And that was the sum that was agreed to be borrowed, isn't that correct?
23 A. Correct.
24 Q. 21 And of that borrowings 151,000 was to be paid in relation to the lands?
11:14:38 25 A. Correct.
26 Q. 22 And I think if we look at 2511. And 2512.
27
28 We see the bill from your firm dated the 20th of March 1992, in connection with
29 the transaction.
11:14:56 30 A. Uh-huh.

- 11:14:56 1 Q. 23 And I think including stamp duty that comes to a sum of 16,953.49?
- 2 A. Correct.
- 3 Q. 24 So we can the estimate -- we now know the cost, the additional costs insofar as
- 4 they relate to stamp duty and solicitors fees, isn't that correct?
- 11:15:17 5 A. Correct.
- 6 Q. 25 And we know that the land costs were 151 approximately, together now with the
- 7 16,000. That brings it up to about 167 or 168?
- 8 A. Correct.
- 9 Q. 26 And you have borrowed 185, isn't that right?
- 11:15:30 10 A. Correct.
- 11 Q. 27 That leaves 18,000 over, isn't that correct?
- 12 A. Correct.
- 13 Q. 28 Now, there was a time delay, I suggest, to you between the payment of the
- 14 deposit and the borrowings being put in place, isn't that right? The closing I
- 11:15:50 15 think took place on the 21st of June?
- 16 A. That's right.
- 17 Q. 29 So under normal circumstances purchasers, such as your clients, would have to
- 18 come up with their proportionate deposit, which was due in May, isn't that
- 19 right?
- 11:16:01 20 A. Yes.
- 21 Q. 30 And then they would have to come up with the balance of the purchase monies,
- 22 which were due on the closing, 21st of June?
- 23 A. Yes.
- 24 Q. 31 And I think in this case then there was a third date which was relevant, which
- 11:16:16 25 was the date on which the 185,000 was advanced?
- 26 A. 22nd of July.
- 27 Q. 32 22nd of July. So there are three key dates effectively where monies are
- 28 required, isn't that correct?
- 29 A. Correct.
- 11:16:23 30 Q. 33 Now, taking the first such date. That is to say the 17th of May 1991. Your

11:16:29 1 clients were obliged to put up their percentage share of the deposit, the
2 15,000 pounds?
3 A. Yes.
4 Q. 34 Can I ask you, were you involved at that stage?
11:16:38 5 A. No.
6 Q. 35 Okay.
7 A. No.
8 Q. 36 You had no involvement in May '91?
9 A. No.
11:16:44 10 Q. 37 Can I identify for the Tribunal or specify the date, the first date on which
11 you got involved or do you know?
12 A. I don't know but I would say that it has to be after the contract had been
13 signed and before the 21st of June because if you look at the letter, when I
14 started getting involved I went to Bank of Ireland Private looking for the
11:17:12 15 monies coming up towards the completion. So it has to be between those two
16 dates.
17 Q. 38 And why do you think you weren't involved at the date of the signing of the
18 contract?
19 A. Well, I don't have any recollection of it. I mean, I don't have any
11:17:24 20 recollection of being involved in the original deposit where I do have a clear
21 recollection of contacting the bank when it came to the closing.
22 Q. 39 Yes. Well if we look at that document at 2940.
23
24 We see your letter to the bank seeking those monies, isn't that right?
11:17:44 25 A. Yes.
26 Q. 40 And it's dated the 19th of June?
27 A. Yes.
28 Q. 41 And then I think on the 21st of June.
29
11:17:51 30 If we could have 2894, please.

11:17:55 1
2 You sign a document for the bank, isn't that right?
3 A. Correct.
4 Q. 42 Is that a signing authority?
11:18:01 5 A. It's the application for the opening of an account for Abervanta, yes.
6 Q. 43 And you signed it in -- as director, isn't that right?
7 A. Correct.
8 Q. 44 But I think you've agreed in the past that you weren't a director?
9 A. I did, yes.
11:18:14 10 Q. 45 Yes. And I think then you signed a letter of set off.
11
12 At 2893 on the same date.
13
14 On that date. At 2889, we're now dealing with the balance of the purchase
11:18:28 15 monies.
16
17 You write to the bank, isn't that right
18 A. Yes.
19 Q. 46 And you say 'I enclose herewith cheques to the value of 136,653.57 payable to
11:18:37 20 the Bank of Ireland for the account of the above company. I would be obliged
21 if you would arrange to put the monies on deposit in the name of Abervanta and
22 I hereby undertake to sign such necessary liens and documentation as the bank
23 may require in this matter
24 A. Yes.
11:18:53 25 Q. 47 I would be obliged if you would in consideration of this deposit etc. make
26 arrangements to make a loan available to Abervanta in the sum of 136,653.57 and
27 let me have a bankers draft in favour of Mr. Kennedy.
28
29 And we see that bankers draft at 2227, isn't that right?
11:19:09 30 A. Yes.

11:19:09 1 Q. 48 And that's also dated 21st of June 1991?
2 A. Correct.
3 Q. 49 Now, if we look at the bank documentation then at 2874.
4
11:19:18 5 And sorry. 2876.
6
7 We see on the 21st of June 1991 a bank draft being paid out of account number
8 97817745, which is described as a debit current account
9 A. Yes.
11:19:50 10 Q. 50 In the sum of 136,653.57?
11 A. Yes.
12 Q. 51 And I think that that is represented then if we look at 2874. Which is an
13 Abervanta credit current account by the deposit of cheques on the same date in
14 the same amount?
11:20:11 15 A. Yes, 136, yes.
16 Q. 52 Yes. And if we revert now to 2889.
17
18 We see your letter. And we see your letter to the bank enclosing those
19 cheques, isn't that right?
11:20:21 20 A. Correct.
21 Q. 53 And those cheques we will see as we go forward include a 110,000 pounds cheque
22 and either one or several other cheques, isn't that right?
23 A. Several other cheques?
24 Q. 54 Yes. Well we don't know, isn't that right?
11:20:38 25 A. Well, we don't but the reason that I assumed that we got a transfer -- sorry.
26 That we got a term loan is that when you go back to look at the previous
27 documents it says transfer from term loan account. So I assumed that I made
28 some arrangement with the bank to get a temporary facility of the 26, 000
29 necessary to close the sale until the facility of 185,000 came through from the
11:21:07 30 bank.

- 11:21:08 1 Q. 55 That would mean that the bank would have opened a separate account, isn't that
2 right, to create that loan?
- 3 A. I assumed that that's what they would have done. I would have been trying to
4 keep the Abervanta monies on the basis that I had Ben Dunne's money on one side
11:21:27 5 of the house, which is 110. And I had the necessity for 136,000 to come from
6 the bank in order to buy the bank draft. And my reckoning of what I was trying
7 to do was to make sure that all of the monies went through the Abervanta
8 account. So I took Ben Dunne's 110,000 and put that as a lien and
9 hypothecation of that. I got 26,000 term loan from the bank and put that with
11:21:58 10 the Abervanta monies and then liened the 136,000 against the Abervanta account,
11 bought the bank draft and then when the 185,000 came for the actual loan itself
12 paid back the 26,000 that I got in the term loan to complete the sale, which
13 obviously was urgent, and put the Ben Dunne 110,000 as a lien hypothecation.
14 Now that's speculation but that's what I think I did.
- 11:22:28 15 Q. 56 If we look at the correspondence.
16
17 If we look at the letter of the 21st of June. First of all, you agree with me
18 that they refer to cheques being transferred to the value of 136,000 pounds
- 19 A. Yes.
- 11:22:40 20 Q. 57 Being given to the bank?
21 A. Yes.
- 22 Q. 58 There is no question there of a loan being opened for the balance, isn't this
23 right?
24 A. Correct.
- 11:22:46 25 Q. 59 In other words, you were forwarding a cheque, sorry, you were forwarding
26 cheques to the bank?
27 A. Correct.
- 28 Q. 60 Now, if we go then and if we look at 2876.
29
11:23:02 30 Sorry. If we look at 2874.

11:23:04 1
2 We see those cheques being deposited, isn't that right?
3 A. Yes.
4 Q. 61 And the cheques being deposited total 136,653 pounds. And we see the date 21st
11:23:15 5 of June '91. Do you see that date?
6 A. Yes.
7 Q. 62 So cheques to that value appear to have been deposited to that account on that
8 date, isn't that right?
9 A. Yes.
11:23:26 10 Q. 63 Would you agree with me that that suggests that two cheques left your office at
11 least and that both of those cheques totalled 136,000 and they were both lodged
12 to that account?
13 A. Yes.
14 Q. 64 At that time. Now, if we go then to 2876.
11:23:47 15
16 We see those cheques -- a draft representing that amount being issued, isn't
17 that right?
18 A. Correct.
19 Q. 65 To Mr. Kennedy?
11:23:56 20 A. Yep.
21 Q. 66 And that amount, that draft in that amount is issued on the same day again,
22 isn't that right, 21st of June '91?
23 A. Yes.
24 Q. 67 There doesn't appear to be any suggestion that there was a third account opened
11:24:15 25 on that date, isn't that right?
26 A. Correct.
27 Q. 68 And such an account would have to have been opened if there were borrowings for
28 the difference between Mr. Smyth -- Mr. Dunne's 110,000 and the 136, isn't that
29 right?
11:24:30 30 A. Well, we haven't seen that account but I'd assume that if I gave a letter of

11:24:36 1 undertaking to the bank based on a bridging finance, what they may well have
2 done is basically and again, we've written to the bank asking them for any
3 further information.

4 Q. 69 Yes?

11:24:47 5 A. But, I mean, the only credible explanation that I can see is that if the bank
6 didn't have the facilities available but they knew they were going to issue
7 them and they had security of an undertaking in relation to the title
8 documents, the bank could easily have advanced the 26,000 to us. Now, you are
9 correct. I don't know where out of what account they would have debited that
11:25:11 10 26,000 to. But that's the only explanation that I could, as I say, come up
11 with.

12 Q. 70 Well another explanation could be that you or your clients provided the
13 difference and that made up a second cheque which was forwarded on that date
14 with Mr. Dunne's cheque to the bank, isn't that right or a third party could
11:25:28 15 have provided that money?

16 A. Well I looked at that position and I checked again with Mr. Dunne. He is
17 basically clear insofar as he has any recollection of this thing, he felt the
18 only thing that he ever advanced was the 110,000. There would have been no
19 reason that I could think of for me to be giving 26,000 to John Barnicle or to
11:25:50 20 Ciaran Haughey at that time. Now, having said that, I don't want to paint
21 myself into a corner here and something comes up next week from the bank that
22 says we gave 26,000. I suppose my relationship with Mr. Dunne was such that if
23 he had asked me to say 'look will you cover that in the meantime' I may well
24 have written a cheque from our office account. But there is no information
11:26:11 25 that I have at the present time to suggest that that actually happened.

26 Q. 71 So the position at the moment is that you don't know where the 15,000 pounds
27 deposit came from?

28 A. No.

29 Q. 72 And you can't be certain of where the 26,000 odd pounds came from that made up
11:26:30 30 the difference between the 110 and the 136.

11:26:30 1 A. That's correct. I'm afraid I can't.

2 Q. 73 You are speculating that I it might be a term loan that you raised with the
3 bank at that time?

4 A. Yes.

11:26:38 5 Q. 74 There is no documentation to support that view?

6 A. I'm afraid not no,.

7 Q. 75 And in fact when we come to it in a moment we will see in July that you sought
8 that money back, isn't that correct?

9 A. Correct.

11:26:45 10 Q. 76 So if it were a term loan you wouldn't be seeking it back?

11 A. Well, you see, I think that there's two things happening here. First of all,
12 in the normal course of events I would have got the money from -- in other
13 words, there is two banks at play here; Bank of Ireland, which is Bank of
14 Ireland Private where I was raising the money. And then there's the Bank of
11:27:06 15 Ireland in Baggot Street where we keep our main client account and if we were
16 stuck in terms of bridging facilities, where we'd have gone and basically said
17 we need facilities in order to make up a difference on a closing. Now, we've
18 written to the bank asking them to identify if any monies came out on that
19 basis. So when I saw the letter which basically asked back for the 26,500
11:27:32 20 shortfall, I assumed that what I had done was that I had gone to Bank of
21 Ireland, my main bank in Baggot Street for a bridging finance and then used
22 that together with the 110,000 to put it into Abervanta to get the bank draft
23 and then when the actual money came back, paid back Bank of Ireland in Baggot
24 Street. As I said, that's an explanation. And that's the only thing I can
11:28:01 25 offer.

26 Q. 77 If we can have 2878, please.

27

28 This is the letter in July I think when the money, the 185,000 comes through,
29 isn't that right?

11:28:09 30 A. Correct.

- 11:28:10 1 Q. 78 Look at very last sentence there. You're dealing with the distribution of the
2 funds. "Please pay the 26,653 pounds from the company's deposit account by way
3 of bank draft in favour of Noel Smyth & Partners?
4 A. Yes.
- 11:28:25 5 Q. 79 So there is no doubt but the difference between the 110 and 136 is specifically
6 sought by you to be returned by way of draft made payable to you in July, a
7 month later when the money comes through, isn't that right?
8 A. Correct.
- 11:28:43 9 Q. 80 You are not asking that an account be debited or be credited with that money in
10 another branch of the Bank of Ireland.
11 A. No. Well, I mean, I wouldn't do that in any event.
- 12 Q. 81 Nor are you asking that the cheque be made payable to the Bank of Ireland so
13 that it could be lodged to another account?
14 A. Well, in the normal course of events if we have effectively taken down the
11:28:58 15 bridging finance we would probably lodge it to our client account, so that we
16 would have a record of it and then pay it back, because it would have been our
17 undertaking.
- 18 Q. 82 Yes. And presumably there would have been interest on it?
19 A. Presumably.
- 11:29:08 20 Q. 83 Did you operate an overdraft facility, I presume you did, within your practice?
21 A. We did. But the overdraft facility was in terms of the actual practice would
22 have been offset against monies that we had in the client account. So we
23 actually wouldn't have been paying interest.
- 24 Q. 84 So therefore you could have, that is to say, Noel Smyth & Partners, could have
11:29:28 25 perhaps made up the balance of the monies?
26 A. It's possible.
- 27 Q. 85 And that wouldn't require Noel Smyth & Partners setting up or establishing?
28 A. A separate account.
- 29 Q. 86 A separate account or a separate loan?
11:29:38 30 A. No.

- 11:29:39 1 Q. 87 As a matter of probability, Mr. Smyth, would you agree that it is more probable
2 than not that in fact your practice wrote a second cheque for that 26,653 which
3 you asked to be returned to you a month later when the 185,000 had been
4 sanctioned?
- 11:29:54 5 A. I considered that before I made the statement and decided that it wasn't a
6 matter of probability for the simple reason.
- 7 Q. 88 Yes?
- 8 A. That I think that I would have done that if I was doing it for, I suppose,
9 established clients of the office. I may have done it if Mr. Dunne had asked
11:30:11 10 me to do it. I had neither a recollection of him asking me to do it. Nor were
11 Mr. Barnicle and Mr. Haughey established clients of the office. So I assumed
12 what I probably did was organised some sort of a term loan.
- 13 Q. 89 But a term loan would require the payment of interest presumably and somebody,
14 the loan would have to be taken out in the name of someone, someone would have
11:30:31 15 to sign for the loan. Now, I know you signed documentation with Private
16 Banking as a director of Abervanta?
- 17 A. Uh-huh.
- 18 Q. 90 Why would you go to such an elaborate expense and trouble to borrow those funds
19 in the name of Abervanta with another bank when you were dealing all of the
11:30:49 20 time with Private Banking and when you could have drawn the account or the
21 funds on your office account?
- 22 A. What I've said in my statement. I'm not denying for a second that your
23 suggestion isn't as reasonable as my one.
- 24 Q. 91 Yes?
- 11:31:04 25 A. I am -- I just can't legitimately here, under oath, say that's what happened.
- 26 Q. 92 Okay. Well can I put it this way. Since you signed all of the documentation
27 in relation to Private Banking, if there were additional documentation to be
28 signed in respect of a term loan with another branch of the Bank of Ireland,
29 can the Tribunal take it that you would have equally signed all of that
11:31:26 30 documentation?

- 11:31:27 1 A. Absolutely.
- 2 Q. 93 Irrespective of whether you took it on your office account or whether you
- 3 opened a separate Abervanta account with another branch of the Bank of Ireland,
- 4 either way it's almost certain that you would have organised the difference
- 11:31:39 5 between the two sums?
- 6 A. Unequivocally, yes.
- 7 Q. 94 And you forwarded both of those cheques to the bank as you say. And the draft
- 8 came through. And I think in July the monies were advanced, isn't that right,
- 9 the 185,000?
- 11:31:54 10 A. Correct.
- 11 Q. 95 And you've seen that documentation from the bank, isn't that right?
- 12 A. Yes.
- 13 Q. 96 And if we look at 2875 then.
- 14
- 11:32:00 15 This is the term loan account.
- 16
- 17 And I think the bank took a negotiating fee of 1,500 pounds
- 18 A. Yes.
- 19 Q. 97 And then we see a draft being made payable to you isn't that right, in the sum
- 11:32:13 20 of 46,847 pounds, which is the difference between?
- 21 A. Yes.
- 22 Q. 98 Between the 136 and the 185, isn't that right?
- 23 A. Yes.
- 24 Q. 99 And that came back to your office, isn't that correct?
- 11:32:25 25 A. Correct.
- 26 Q. 100 And then from that, you would have deducted your expenses.
- 27
- 28 As I say, at 2512, those expenses to include stamp duty amounted to 16,953.49?
- 29 A. Correct.
- 11:32:40 30 Q. 101 And my calculation may be wrong but I reckon that there is about 30,000 pounds

11:32:46 1 available there for planning and other costs, isn't that right?

2 A. Correct.

3 Q. 102 And that sum now is in the client account of Noel Smyth and Partners?

4 A. Correct.

11:32:55 5 Q. 103 And what the Tribunal is anxious to establish, if it can, with your assistance,
6 Mr. Smyth, is what happened that 30,000 odd pounds?

7 A. Well, as I've said, I don't have a record but I know that there were requests,
8 I think that we, in a previous discovery were able to show that there had been
9 requests from Neptune Freight to pay various expenses from time to time which I
10 don't think amounted to more than, off the record -- sorry, off the top of my
11 head -- I think there might have been four or 5,000 pounds.

12 Q. 104 Yes.

13

14 If we have 2519 I think.

11:33:33 15

16 We see one such request. On the 16th of June of the following year

17 A. Yes.

18 Q. 105 Now, first of all, it's agreed, I think, and it's obvious from the
19 correspondence that Abervanta's contract to this overall project was 15
20 percent. They had to come up with 15 percent of the deposit, 15 percent of the
21 balance and presumably 15 percent of the ongoing costs. And Mr. Barnicle has
22 told the Tribunal that he came up with the sum of 185,000 pounds. And if we
23 take it that the ongoing costs or the difference between the figures we've just
24 been looking at and the borrowings are at approximately 30,000 pounds, that
25 would mean that at 15 percent that about 200,000 pounds was the overall budget
11:34:14 26 of the consortium for these costs, isn't that right?

27 A. That seems to be right, yes.

28 Q. 106 Now if we go to 2519.

29

11:34:28 30 As I say, we see a letter to your firm from Neptune Freight Limited seeking

11:34:35 1 the -- a contribution of 781.33 in respect of a number of named individuals
2 there, isn't that right? And we dealt with those before. There were
3 consulting engineering charges, I think, finance and corporate communication
4 charges etc. isn't that right?

11:34:54 5 A. Correct.

6 Q. 107 And when that correspondence was received, including those invoices, the
7 invoices are at 2520 to 2522.
8
9 Then at 2523. I think your office on the 22nd of July wrote to Mr. Barnicle
11:35:17 10 asking for his instructions, isn't that right?

11 A. Yes.

12 Q. 108 Now, presumably there were either funds in your offices which were being
13 administered by your offices for this type of eventuality, isn't that right?

14 A. Correct.

11:35:31 15 Q. 109 In other words, that 30,000 pounds fee or set aside?

16 A. Surplus.

17 Q. 110 Money, surplus, was being paid out from time to time by your firm on the
18 instructions of either Mr. Barnicle or Mr. Haughey, isn't that right?

19 A. Correct.

11:35:45 20 Q. 111 So Mr. McGuinness or Neptune Freight, as expenses arose throughout the project
21 would forward the contribution invoice to your firm. Your firm would then pay
22 out either directly or on the instructions of Mr. Barnicle and Mr. Haughey, the
23 relevant contribution, isn't that correct?

24 A. Correct.

11:36:04 25 Q. 112 And we don't, you haven't been able to discover Mr. Barnicle's instructions in
26 relation to this pay out, isn't that right?

27 A. No.

28 Q. 113 And you haven't been able --

29 A. That wouldn't, with respect ...

11:36:18 30 Q. 114 Yeah?

11:36:18 1 A. I think it's quite possible that somebody picks up the phone and says ...

2 Q. 115 I understand. There wouldn't necessarily be correspondence?

3 A. It would be quite unusual to get instructions in relation to a client.

4 Q. 116 2524, please.

11:36:31 5

6 We know from other correspondence with the Tribunal that Mr. Leonard was able

7 to tell Mr. Hannigan or provide him with a statement of amounts due by

8 Abervanta to Cargobridge

9 A. Uh-huh.

11:36:46 10 Q. 117 For the year ended 31st of December '92, of 2525.

11

12 And we see there the breakdown of the 15 percent charge of the contribution for

13 Mr. McCarthy and others. We see also included there a sum due to Mr. Dunlop at

14 that time, isn't that right?

11:37:07 15 A. Yes.

16 Q. 118 And presumably, it is the case that Mr. Dunlop's charge there was paid or the

17 contribution to Mr. Dunlop was reimbursed by your office on the instructions,

18 presumably, of your clients Mr. Barnicle and Mr. Haughey?

19 A. Of course.

11:37:25 20 Q. 119 Can the Tribunal take it that your office would have made that contribution

21 without reference to either Mr. Barnicle or Mr. Haughey?

22 A. Yes, I mean, if there was an instruction like that we would have said there's a

23 bill in for what is it, 2,194, for various people. We wouldn't have said are

24 you approving these individually?

11:37:46 25 Q. 120 Yes?

26 A. We'd have just paid them out.

27 Q. 121 But in the case of the letter of the 16th of June '92.

28

29 At 2519. Which did not, I admit, include Mr. Dunlop's contribution. Those

11:38:02 30 sums weren't paid until instructions were received.

- 11:38:07 1 A. I'd like to think that's what happened because we didn't ...
- 2 Q. 122 Instructions were sought?
- 3 A. We wouldn't have paid out money to a third party just because they send in an
- 4 invoice we'd have cleared it with the client and said we've got an invoice in.
- 11:38:21 5 And provided that the money was in our client account we would then have paid
- 6 it out.
- 7 Q. 123 Yes. But it's unlikely that you would have paid out money without reference to
- 8 the client?
- 9 A. We would never have done that.
- 11:38:31 10 Q. 124 Yes. And it's almost certain that the client would know who you were paying in
- 11 order to give you the instructions?
- 12 A. Of course.
- 13 Q. 125 And there is no question of you paying somebody like Mr. Dunlop, for example,
- 14 without the client knowing about it?
- 11:38:43 15 A. No.
- 16 Q. 126 And of course, whilst the figure for Mr. Dunlop there, which is I, think, if it
- 17 represents 15 percent, it's for the year ended 31st of December '92, isn't that
- 18 right?
- 19 A. Correct.
- 11:38:56 20 Q. 127 And just to clarify that. As we saw in the case of the document at 2519. You
- 21 were reimbursing Neptune Freight there for the monies that they had expended,
- 22 isn't that right?
- 23 A. Yes.
- 24 Q. 128 And what you were doing here, what's being sought here at 2525 is a request to
- 11:39:25 25 reimburse either Neptune Freight or Cargobridge Limited in respect of the
- 26 monies that they have expended?
- 27 A. Correct.
- 28 Q. 129 They are giving you a breakdown of the expenditure and the persons on whom they
- 29 have been expended?
- 11:39:36 30 A. Yes.

11:39:38 1 Q. 130 Thank you very much, Mr. Smyth?

2 A. Thank you.

3

4 CHAIRMAN: Do you wish to ask Mr. Smyth any questions?

11:39:43 5

6 MR. LYONS: I have no questions arising.

7

8 CHAIRMAN: Thank you very much, Mr. Smyth

9 A. Thank you.

11:39:49 10

11

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13

THE WITNESS THEN WITHDREW.

14

11:39:50 15 MS. DILLON: Mr. Ciaran Haughey, please.

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MR CIARAN HAUGHEY, PREVIOUSLY SWORN, WAS QUESTIONED

AS FOLLOWS BY MS DILLON

- 11:40:10 1
- 2
- 3
- 4 CHAIRMAN: Good morning, Mr. Haughey
- 11:40:12 5 A. Good morning.
- 6
- 7 MS. DILLON: You have previously given evidence to the Tribunal on this Module
- 8 A. That's correct.
- 9 Q. 131 On the last occasion on which you were before the Tribunal, you gave evidence
- 11:40:21 10 in connection with the disbursements or how the purchase monies of 415,000
- 11 pounds were expended, isn't that right? When you sold your share, when you
- 12 sold the Abervanta lands, when the money was received what happened to the
- 13 money, isn't that what you gave evidence about on the last occasion?
- 14 A. Yes, yes.
- 11:40:40 15 Q. 132 What the Tribunal is now going to try and establish from you this morning is
- 16 how you sourced the money that was used to buy the lands. Do you understand?
- 17 A. Yes.
- 18 Q. 133 Right. Now, I'll assist you later on with some of your evidence that you gave
- 19 in relation to the disbursements. But at the very beginning of this exercise.
- 11:40:59 20
- 21 At 2218.
- 22
- 23 And I think you've agreed in evidence that the Abervanta share of the lands at
- 24 Cloghran was 3.58 acres and in a percentage terms 15.182 percent
- 11:41:11 25 A. Correct.
- 26 Q. 134 Now, that would have meant Mr. Haughey, as Mr. Smyth has just told the Tribunal
- 27 and I assume that you'll agree with him. That your responsibility with
- 28 Mr. Barnicle was to come up with 15.182 percent of the purchase price?
- 29 A. Correct.
- 11:41:26 30 Q. 135 You would have to pay 15.182 percent of the expenses, stamp duty and matters

11:41:33 1 such as that sort, isn't that correct?

2 A. Correct.

3 Q. 136 And the contract was signed on the 17th of May 1991.

4

11:41:37 5 At 2460.

6

7 And you will see that the contract price was a million pounds, isn't that right

8 for all of the lands?

9 A. Correct.

11:41:50 10 Q. 137 And the deposit that was being paid there was 100,000 pounds?

11 A. I see that, yes, correct.

12 Q. 138 Now, you had already made your arrangement with Mr. McGuinness at this stage,

13 isn't that correct?

14 A. It appears so, yes.

11:42:05 15 Q. 139 Yes. And therefore, you would have had a responsibility to come up with 15,182

16 pounds being 10 percent of the deposit of 100,000 pounds, isn't that correct?

17 A. Correct.

18 Q. 140 Now, Mr. Smyth has told the Tribunal that he didn't act for you then. And that

19 he had nothing to do with procuring that money, isn't that right, you were here

11:42:25 20 this morning when Mr. Smyth gave evidence of that?

21 A. Yes, I heard that evidence.

22 Q. 141 Is Mr. Smyth correct?

23 A. In respect of the 15,000?

24 Q. 142 That insofar as a deposit was paid on these lands?

11:42:37 25 A. Yes.

26 Q. 143 Mr. Noel Smyth and Noel Smyth & Partners had not been retained by either

27 yourself or Mr. Barnicle at that stage?

28 A. I'm not sure of the exact dates but that's Mr. Smyth's evidence, yes.

29 Q. 144 Do you agree?

11:42:53 30 A. Oh, absolutely.

- 11:42:55 1 Q. 145 Now, if that is the case. And the documentation would suggest that Mr. Smyth
2 was contacted initially in mid June of 1991. And this contract is signed on
3 the 17th of May 1991.
4
- 11:43:10 5 If we can just have the date, please.
6
7 You see there the date is the 17th of May 1991?
8 A. Yes.
9 Q. 146 Now, on the 17th of May 1991, in accordance with normal conveyancing practice,
11:43:25 10 a deposit was paid of 100,000 pounds on these lands. Do you see that
11 Mr. Haughey?
12 A. I see that, yes.
13 Q. 147 And your obligation, together with Mr. Barnicle, was to come up with 15.182
14 percent of that deposit. And that was a sum of 15,182 pounds?
11:43:41 15 A. Correct.
16 Q. 148 Right. Mr. Smyth has told the Tribunal he didn't source that money for you.
17 So the first question really that I have for you today is where did you get the
18 money, your contribution to the deposit?
19 A. I've no recollection of that. But at the time it's highly unlikely we would
11:44:01 20 have had the money.
21 Q. 149 Right. Well, if it's highly -- by highly unlikely do you mean yourself and
22 Mr. Barnicle personally wouldn't have had the money?
23 A. Correct.
24 Q. 150 And what about Celtic Helicopters?
11:44:15 25 A. I can't be sure. It's unlikely Celtic would have would have had that money as
26 well.
27 Q. 151 So is it likely then that you would have had to go to some third party for
28 assistance in coming up with your share of the deposit?
29 A. No, to the best of my recollection, it was Mr. Dunne we went to.
11:44:34 30 Q. 152 You've already agreed?

11:44:36 1 A. Yeah.

2 Q. 153 With me?

3 A. I understand, yeah.

4 Q. 154 In relation to Mr. Smyth's evidence that, Mr. Smyth was not approached by
11:44:42 5 yourself and Mr. Barnicle until June?

6 A. Yeah.

7 Q. 155 Of 1991?

8 A. Yeah.

9 Q. 156 This deposit was paid on the 17th of May?

11:44:48 10 A. I can't tell you at this time as I've said to the Tribunal before, if -- if you
11 would give me advance notice of any questions you wish to answer -- I now have
12 to go away and research this for you. Unless you can ...

13 Q. 157 I think you received the documentation, isn't that right Mr. Haughey? The
14 Tribunal recently sent you documentation?

11:45:15 15 A. Yes, correct.

16 Q. 158 And the Tribunal sent you a letter saying that the Tribunal wanted to discuss
17 financial matters with you and in particular in relation to the documentation
18 received from Bank of Ireland in relation to Abervanta. Isn't that right?

19 A. Correct.

11:45:27 20 Q. 159 And all of this documentation from Bank of Ireland and Abervanta was given to
21 you, isn't that right?

22 A. That's correct.

23 Q. 160 And in that were the bank statements and all of the correspondence, isn't that
24 right?

11:45:38 25 A. All of the correspondence?

26 Q. 161 The documentation?

27 A. Yes, yes.

28 Q. 162 And prior to that you had been circulated with a brief in which this document,
29 that's presently on screen, was included. Isn't that right?

11:45:55 30 A. Yes.

- 11:45:55 1 Q. 163 So none of the documentation is a surprise to you now today as you sit in the
2 witness box, isn't that right?
- 3 A. No.
- 4 Q. 164 No. And you've had an opportunity to consider the documentation and to review
11:46:00 5 the Abervanta Bank of Ireland Private Banking documents, haven't you?
- 6 A. Yes.
- 7 Q. 165 And you've already considered the brief?
- 8 A. Yes, there was nothing in the documentation that was addressed to either myself
9 or Mr. Barnicle.
- 11:46:16 10 Q. 166 The documentation is documentation about Abervanta Limited, isn't that right?
- 11 A. Correct.
- 12 Q. 167 Abervanta was, as you've told the Tribunal, beneficially owned by yourself and
13 Mr. Barnicle?
- 14 A. Correct.
- 11:46:27 15 Q. 168 So documentation in connection with Abervanta, Mr. Haughey, while it clearly
16 does not name you, is documentation that concerns you, isn't that right?
- 17 A. Yes.
- 18 Q. 169 Right. And when you were here previously on the first occasion and indeed on
19 the second occasion, the questions that were put to you to assist the Tribunal
11:46:44 20 was in relation to the financing and purchase of these lands, isn't that right?
- 21 A. That's correct.
- 22 Q. 170 And the sale of the lands. And you were then furnished, after you were here on
23 the last occasion, with documentation from Bank of Ireland, isn't that right,
24 in connection with Abervanta?
- 11:47:01 25 A. In connection with Abervanta?
- 26 Q. 171 Yes?
- 27 A. The documentation was all between -- Noel Smyth & Partners and the Bank of
28 Ireland.
- 29 Q. 172 All right. Now, if we just stop there for a minute. The documentation between
11:47:14 30 Noel Smyth & Partners and Bank of Ireland concerned what, Mr. Haughey?

11:47:19 1 A. They were all the -- the monies concerned with Mr. Dunne and providing us with.

2 Q. 173 With the?

3 A. With the money.

4 Q. 174 Providing Abervanta with money?

11:47:31 5 A. Yeah.

6 Q. 175 Isn't that right?

7 A. Yeah.

8 Q. 176 And Abervanta was your company?

9 A. Yes.

11:47:34 10 Q. 177 Even though you don't appear on the face of the documentation, as I think

11 you've agreed?

12 A. No, I said previously, as far as we were concerned, it was Mr. Dunne's personal

13 money. We did not know until this Tribunal that there was banks involved. We

14 thought it was just Mr. Dunne's personal money.

11:47:53 15 Q. 178 Well I suggest to you as I suggested to you previously, Mr. Haughey, that

16 you're wrong in relation to that. At the moment if we just stick to the

17 question. That you appear to be suggesting to the Tribunal that because the

18 documentation concerns Abervanta and doesn't name you, it doesn't concern you.

19 Are you suggesting to the Tribunal?

11:48:07 20 A. Oh, no, no, I'm not suggesting, that no.

21 Q. 179 If you just go back to the question that I'm asking you. Which is if Mr. Smyth

22 is correct and you had not approached Mr. Smyth and Mr. Dunne had not

23 approached Mr. Smyth until June of 1991. Can you just tell the Tribunal where

24 and from what source you obtained your share of the deposit?

11:48:28 25 A. I can't tell you at this stage.

26 Q. 180 Do you think or do you accept that it is likely if you didn't have the money

27 from your own sources or resources as you've said and you didn't have them from

28 Celtic Helicopters that you'd have had to go to a third party?

29 A. Seriously, I cannot tell you at this stage.

11:48:45 30 Q. 181 But is it likely if you didn't have the money yourself that you borrowed it or

11:48:50 1 obtained it from somebody else?

2 A. It's a possibility.

3

4 CHAIRMAN: Mr. Haughey

11:48:55 5 A. Sorry.

6

7 CHAIRMAN: Where do you think, if you had to speculate, where do you think you

8 might have got the money?

9 A. I have no idea, Sir.

11:49:03 10

11 CHAIRMAN: Would you have gone to Mr. Dunne -- you said

12 A. Possibly.

13

14 CHAIRMAN: You'd have gone -- you said to Ms. Dillon earlier that you thought

11:49:13 15 you might have gone to Mr. Dunne. Would you have gone to him directly without

16 going through Mr. Smyth ?

17 A. As previously stated, I want to help this Tribunal in any way I can. If I had

18 advance notice of this questioning, I might have been able to assist you. But

19 at this stage I cannot tell you.

11:49:35 20

21 MS. DILLON: What would you look for if you'd have advance notice of the

22 actual questions, Mr. Haughey?

23 A. To the answers to your questions.

24 Q. 182 Okay. Well where would you look for the answers to those questions?

11:49:57 25 A. I would just have to do my best to research.

26 Q. 183 Well, let's think about that for a moment. You've sworn an affidavit of

27 discovery to the Tribunal and you've given disclosure, you say, of all

28 documents you have, which amount to none, isn't that right?

29 A. In relation to Abervanta yes.

11:50:14 30 Q. 184 Yes. Isn't that right?

11:50:14 1 A. Yes.

2 Q. 185 So you have no documents in connection with the purchase of the acquisition of

3 these lands, isn't that your position?

4 A. Yes.

11:50:22 5 Q. 186 Right. Now, if you had advance notice of the actual questions that were going

6 to be put to you this morning. You say you'd have been able to conduct some

7 research?

8 A. Yes.

9 Q. 187 Now, where would you have conducted that research?

11:50:35 10 A. I've no idea. But I would possibly ask maybe some of the other partners

11 involved in the consortium.

12 Q. 188 So you would have consulted?

13 A. Consulted my partner.

14 Q. 189 Mr. Barnicle?

11:50:48 15 A. Yes.

16 Q. 190 All right. And after Mr. Barnicle who would you have consulted?

17 A. I would have to reflect on that. I've -- I cannot answer the Tribunal at this

18 stage.

19 Q. 191 You have, you accept, been provided with all of the documentation that the

11:51:07 20 Tribunal has been provided, either by Mr. Smyth or by Bank of Ireland Private

21 Banking, isn't that right?

22 A. Yes.

23 Q. 192 You have that documentation. And in addition to, that you also have the brief

24 of documentation in relation to the Cargobridge Module, isn't that right?

11:51:22 25 A. Correct.

26 Q. 193 Now, and therefore, you have, in your possession, as much information as

27 anybody else. Paper information, isn't that right?

28 A. Correct.

29 Q. 194 Now, outside of that information, where are you going to go, Mr. Haughey, for

11:51:35 30 assistance as to where you obtained the money to pay the deposit?

11:51:39 1 A. I'd have to reflect on that. I can't tell you at this stage.

2 Q. 195 If we could turn to look at the originating letter from Mr. Noel Smyth to Bank
3 of Ireland private on June 19th '91.
4

11:51:51 5 At 2940.
6
7 Now, this is an application to Michael Moriarty of Bank of Ireland Private from
8 Mr. Noel Smyth, in which he is seeking to borrow money. And this is the money
9 that he's borrowing for Abervanta, isn't that right?

11:52:10 10 A. Correct.
11 Q. 196 Right. And I want to draw to your attention the second paragraph.
12
13 "The proposal is that the area shown coloured green on the map comprising 3.5
14 acres and represents 15.17 percent of the entire site is being acquired by the
11:52:25 15 borrower for the consideration of 151,823.62".
16
17 Do you see that
18 A. Yes.
19 Q. 197 And would you agree that the total price you had to pay including the deposit
11:52:37 20 was 151,823.62?
21 A. Correct.
22 Q. 198 Right. In the next line the letter says "its proportion of stamp duty,
23 planning and other costs will bring the entire project up to 185,000 pounds?"
24 A. Correct.
11:52:52 25 Q. 199 Right. So in fact, what you were borrowing was more than the purchase price,
26 isn't that right?
27 A. Correct.
28 Q. 200 Right. And therefore, you had a desire or a need for other funds to include
29 stamp duty, isn't that right?
11:53:05 30 A. Stamp duty, architectural fees, various costs.

- 11:53:08 1 Q. 201 Okay. The difference between 151,823.62 and 185,000 pounds, in other words,
2 the difference between what you had to pay for the purchase price and the
3 185,000 is 33,176 pounds?
4 A. It appears so, yeah.
- 11:53:26 5 Q. 202 So that's what you would have been left over. And out of that you'd have to
6 pay stamp duty and the solicitors, isn't that right?
7 A. That's correct.
- 8 Q. 203 Okay. And we know what the figure is for stamp duty and the solicitors because
9 Mr. Smyth has outlined it in his bill to you at 2511.
11:53:44 10
11 And he includes in that bill 9,000 stamp duty, bank arrangement fees.
12
13 At 2512 the total amount is 16,953 pounds. Isn't that right?
14 A. Correct.
- 11:53:57 15 Q. 204 Right. So if we go back now to the letter at 2940.
16
17 And out of the surplus that's left over, in other words, the difference between
18 the 151 and the 185, which is 33,000. A sum of approximately 17,000 pounds is
19 going on stamp duty and solicitors fees
- 11:54:17 20 A. Correct.
- 21 Q. 205 And the balance of that money then is it to be for planning and other costs
22 according to the letter, isn't that right?
23 A. Correct.
- 24 Q. 206 So can you just tell to the Tribunal now what you anticipated as being the
11:54:31 25 planning and other costs in June of 1991 when you were borrowing this money?
26 A. There would have been ongoing architectural fees, there was some talk of an
27 upgrade to the site entrance, various surveyors fees, I don't know. They were
28 ongoing.
- 29 Q. 207 Yes. Would Mr. Smyth have written this letter on your instructions or on
11:54:57 30 Mr. Barnicle's instructions?

- 11:54:59 1 A. Possibly either myself or John Barnicle.
- 2 Q. 208 Yes. In other words, he couldn't have got these instructions from anybody
- 3 else, isn't that right?
- 4 A. Oh, no, no, no, no.
- 11:55:06 5 Q. 209 It is clear according to what Mr. Smyth is telling the bank. The money is
- 6 required for stamp duty which we've seen?
- 7 A. Yeah.
- 8 Q. 210 Planning, and other costs?
- 9 A. And other costs, yes. Ongoing.
- 11:55:21 10 Q. 211 And included in those costs would you have included the cost of retaining Mr.
- 11 Dunlop?
- 12 A. No.
- 13 Q. 212 Did you know of the retention of Mr. Dunlop?
- 14 A. No.
- 11:55:24 15 Q. 213 I think you've previously told the Tribunal that you didn't know of the
- 16 retention of Mr. Dunlop, isn't that right?
- 17 A. That's correct.
- 18 Q. 214 Right. So that would not have been something you had in your mind in June of
- 19 1991 when you were borrowing this money, is that right?
- 11:55:38 20 A. That's correct.
- 21 Q. 215 But you have nonetheless allocating a sum of approximately 16,000 pounds to
- 22 planning and other costs, isn't that right?
- 23 A. That's correct.
- 24 Q. 216 Now, from whom did you get advices that a sum of that amount would be needed
- 11:55:51 25 for planning and other costs?
- 26 A. Possibly Mr. McGuinness of Neptune Freight.
- 27 Q. 217 Did Mr. McGuinness tell you that there would be a necessity for a fund between
- 28 the partners to fund planning and other costs?
- 29 A. We would have had, yes, for ongoing costs.
- 11:56:15 30 Q. 218 Right. And in this letter, they are described as "planning and other costs",

11:56:21 1 isn't that right?

2 A. Correct.

3 Q. 219 Right. Now, you're borrowing 185,000 pounds against a purchase price of

4 151,000, isn't that right?

11:56:28 5 A. Correct.

6 Q. 220 We've seen that?

7 A. Yeah.

8 Q. 221 And part of the difference is made up of putting together a fund, if I

9 understand you correctly, between the promoters of this project for planning

11:56:38 10 and other costs?

11 A. That's correct.

12 Q. 222 Right. Did you have a discussion with Mr. McGuinness about putting together

13 such a fund?

14 A. I don't recall.

11:56:48 15 Q. 223 Well how can you suggest to the Tribunal that there must have been such a fund

16 if you can't recall discussing it with somebody?

17 A. It's a natural course of it that you would put in a sum for again,

18 architectural fees, I'm not sure what the percentage of architects work on the

19 basis of construction costs or ...

11:57:15 20 Q. 224 Yes. Well before you came to construct anything on these lands?

21 A. Yeah.

22 Q. 225 What was the first step that had to take place?

23 A. They had to be rezoned. It had to be rezoned.

24 Q. 226 So the immediate cost that was facing the consortium, including yourself

11:57:35 25 Mr. Haughey, in June of 1991, was getting the lands rezoned, isn't that right.

26 A. Which would involve drawing up plans and.

27 Q. 227 Yes?

28 A. And a proposal.

29 Q. 228 And may the Tribunal take it then, that when you were putting together your

11:57:48 30 kitty or your fund, that the first objective of that fund would have to have

- 11:57:52 1 been the zoning costs?
- 2 A. Planning and other costs, yes.
- 3 Q. 229 The planning costs?
- 4 A. Architectural fees, plans ...
- 11:58:02 5 Q. 230 I must suggest to you, Mr. Haughey, that it could not have been within your
6 contemplation in June of 1991 that this fund was directed towards planning
7 costs because you could not obtain planning on those lands until you got the
8 zoning changed and that is a fact. Isn't that right?
- 9 A. Well the zoning required plans to be drawn up.
- 11:58:19 10 Q. 231 Yes. Do you agree with me that in June of 1991, before you could make an
11 application for planning permission on these lands, you had to get the zoning
12 changed?
- 13 A. That's correct.
- 14 Q. 232 Right. And therefore, the immediate necessity for a fund and the drawing of
15 any plans associated with it, would have to be directed towards changing the
16 zoning. Isn't that right?
- 17 A. Well, any of that costs were invoiced to Neptune, I think.
- 18 Q. 233 Yes?
- 19 A. Or by Neptune.
- 11:58:51 20 Q. 234 But it was directed towards changing the zoning, isn't that right, Mr. Haughey?
- 21 A. The event was to get planning permission.
- 22 Q. 235 Yes?
- 23 A. On the lands.
- 24 Q. 236 And before you could get planning permission what had you to do, Mr. Haughey?
- 11:59:06 25 A. To get the lands rezoned.
- 26 Q. 237 Yes. Because in June of 1991 they were zoned agriculture?
- 27 A. That's correct.
- 28 Q. 238 And according to the letter that was sent to Mr. Kennedy, you at that stage
29 proposed building four industrial warehouses on the lands, isn't that right?
- 11:59:21 30 A. That was our part of the whole scheme, yeah.

- 11:59:24 1 Q. 239 Yes. And to put four industrial warehouses on those lands you had to change
2 the zoning, isn't that right?
3 A. The consortium had to, yes.
- 4 Q. 240 The consortium had to change the zoning?
11:59:34 5 A. Yes, correct.
- 6 Q. 241 And therefore, I suggest to you that the likely purpose of putting together a
7 fighting fund or a kitty in June of 1991 was for the purpose of securing a
8 change in the zoning and not planning, isn't that right?
9 A. No.
- 11:59:47 10 Q. 242 Because the first thing you had to do, Mr. Haughey, together with your partners
11 on these lands, was to achieve a change in the zoning before you could apply
12 for planning for the industrial warehouses, isn't that the position?
13 A. No, I think you're trying to imply that we were using the funds for something
14 sinister.
- 12:00:08 15 Q. 243 I'm not suggesting anything other than that the purpose of putting together a
16 fund in June of 1991, whether it was for retaining architects or otherwise, had
17 to have, as its first object, the changing of the zoning. Because until you
18 changed the zoning you couldn't apply for planning. Isn't that the position?
19 A. That's correct, yeah.
- 12:00:23 20 Q. 244 And therefore, when you applied to the bank, through Mr. Noel Smyth, for
21 185,000 pounds. The difference between the cost and expenses associated with
22 the purchase of the land and the 185,000 pounds was to put together a kitty or
23 a fund which had as its object the changing of the zoning on the Cargobridge
24 lands, which would then in time lead to an application for planning permission,
12:00:50 25 isn't that the position?
26 A. No, the funds were for the ongoing expenses of drawing up a proposal, plans,
27 various things that were acquired. As you say, the zoning and the planning.
- 28 Q. 245 Right. But the planning comes after the zoning, isn't that right?
29 A. That's correct.
- 12:01:05 30 Q. 246 Right. So that the first thing that the consortium had to do was to change the

12:01:09 1 zoning?

2 A. Correct.

3 Q. 247 Right. And in order to assist in achieving the changing of the zoning, the

4 consortium retained Mr. Dunlop, isn't that right?

12:01:18 5 A. No, not at that stage I don't think.

6 Q. 248 You weren't aware of this you've told the Tribunal, isn't that right?

7 A. Yes, okay.

8 Q. 249 But the consortium retained Mr. Dunlop?

9 A. Well, what was the date on that?

12:01:30 10 Q. 250 In March of '93?

11 A. '93?

12 Q. 251 Yes.

13 A. We're talking about '91 now.

14 Q. 252 Yes, we're talking about '91?

12:01:41 15 A. All right. So.

16 Q. 253 But you weren't aware of Mr. Dunlop being retained?

17 A. No.

18 Q. 254 But in June of 1991 you were retaining engineers or architects, is that right?

19 A. Well.

12:01:50 20 Q. 255 To draw up plans to change the zoning?

21 A. To draw up a proposal.

22 Q. 256 Yes. Who prepared the proposal?

23 A. I can't recall.

24 Q. 257 Who prepared the plans?

12:02:01 25 A. I can't recall.

26 Q. 258 How much money did you pay any architect or engineer out of this fund for any

27 proposals or plans?

28 A. I'm not sure of the exact figures but from time to time Mr. McGuinness would

29 advise us as to our percentage of any bills that were presented to us.

12:02:20 30 Q. 259 Right. And would Mr. McGuinness do that by sending a letter?

12:02:24 1 A. No, I would imagine because of the -- as previously stated, we wanted to be
2 anonymous. We wanted to keep our names out of the Abervanta.

3 Q. 260 Would he send it --

4 A. Because of the political sensitivity of the Haughey name we would have -- with
12:02:50 5 a view to securing a Council vote.

6 Q. 261 Would he send the letter to your solicitors?

7 A. Yeah.

8 Q. 262 2519, please.

9 A. Probably on the basis of a phone call he would say to either John Barnicle or
12:03:08 10 myself there's bills in from various architects or whoever and more than likely
11 we're sending it in to Noel Smyth who were controlling the money.

12 Q. 263 And your liability for those bills was 15 percent, approximately?

13 A. 15 percent, yeah.

14 Q. 264 And you will see there that in June of '92.

12:03:35 15

16 At 2519, such a letter was sent to Mr. Noel Smyth, isn't that right, looking
17 for 15.18 percent of 5,146, isn't that right

18 A. Okay, yeah.

19 Q. 265 And that is then I think sent to Mr. Barnicle, isn't that right? And
12:03:51 20 instructions are sought from Mr. Barnicle in connection with that.

21

22 2523.

23

24 Isn't that right? He encloses a letter received from Neptune Freight Limited
12:04:05 25 obliged to revert to the instructions. The letter that was enclosed was the
26 letter from Neptune Freight seeking a share of the funds, isn't that right

27 A. That's addressed to Mr. Barnicle. But, yeah, it appears so, yeah.

28 Q. 266 Yes. It would appear also at 2524.

29

12:04:24 30 That on the 14th of May 1993 Mr. Hannigan of Noel Smyth & Partners was

12:04:37 1 contacted. Headed Abervanta and Cargobridge Limited. "Please find enclosed, I
2 think, statement of amount due by Abervanta Limited to Cargobridge as
3 requested".

4 A. Okay. A statement of account due by Abervanta to Cargobridge, yes.

12:04:56 5 Q. 267 Right. And that is looking for a statement of account of the monies that are
6 due between your company, Abervanta Limited, and Cargobridge Limited. And that
7 request is being made in 1993, isn't that right?

8 A. It appears so, yes.

9 Q. 268 And it would appear that the amount due to Cargobridge is set out on the
12:05:20 10 document that accompanied that fax at 2525.
11

12 Now, it's headed Abervanta Limited. 31 December '92. So these are expenses
13 incurred to the 31st of December 1992. And what's being set out there is the
14 amount due to Cargobridge by Abervanta, isn't that right?

12:05:37 15 A. Correct, yeah.

16 Q. 269 And there are four items. Isn't that right? The first is the share of
17 additional cost as a result of VAT disallowed. 1,040 pounds, isn't that right?

18 A. Correct.

19 Q. 270 And No. 2 is the allocation of the following fees paid by Neptune Freight
12:05:53 20 Limited, D McCarthy & Company and KT Cullen and your share of that was 638
21 pounds?

22 A. Correct.

23 Q. 271 And No. 3, P Leonard and Associates, allocation 137 pounds?

24 A. Correct.

12:06:04 25 Q. 272 So that Mr. Leonard was acting for the consortium, is that right?

26 A. Yes.

27 Q. 273 Yes. Was he an accountant?

28 A. Mr. Leonard is an accountant, yes.

29 Q. 274 And No. 4, f Dunlop 379.

12:06:17 30 A. I see that, yes.

12:06:19 1 Q. 275 Isn't that right?

2 A. Yes.

3 Q. 276 Now, that's a document, Mr. Haughey, that was sent to your solicitor by

4 Mr. Leonard following a request from Mr. Hannigan of your solicitors for

12:06:30 5 statement of account between your company, Abervanta, and Cargobridge, isn't

6 that right?

7 A. That's correct.

8 Q. 277 Right. Now, are you telling the Tribunal, Mr. Haughey, that you did not know

9 until this Tribunal started that Mr. Dunlop had any involvement in the

12:06:44 10 Cargobridge lands?

11 A. Yes, I am.

12 Q. 278 Right. Notwithstanding the existence of that document?

13 A. Okay.

14 Q. 279 Which was clearly furnished to your solicitor by Mr. Leonard?

12:06:55 15 A. Yes.

16 Q. 280 Are you saying that when your contribution to this fund came to be sought at --

17 in the total amount of 2,794. That you would have paid that amount without

18 considering what each item was?

19 A. I gathered as the bills came in, that's what I said, it would be on the basis

12:07:20 20 of a phone call rather than correspondence from Mr. McGuinness.

21 Q. 281 Yes?

22 A. I accept the documentation.

23 Q. 282 Yes?

24 A. Does show Mr. Dunlop's name.

12:07:30 25 Q. 283 And I'm going to suggest to you now, that because in July of 1992, when Mr.

26 Smyth's office received the first statement of account between Abervanta and

27 Cargobridge and sent it out to Mr. Barnicle. That when this statement of

28 account in 1993 was received by Mr. Smyth's office, it similarly would have

29 been sent to Mr. Barnicle and yourself. And would you accept that that's

12:07:52 30 likely to have happened?

12:07:53 1 A. Could you repeat the question.

2 Q. 284 Start at the beginning, Sorry it is an important point.

3 A. Yeah.

4 Q. 285 Yes. If we look at page 2519, please.

12:08:05 5

6 This letter is dated the 16th of June '92. And is a letter to your solicitor,

7 Noel Smyth & Partners, enclosing a statement of account and invoices between

8 Abervanta and Cargobridge. Do you see that?

9 A. Yes.

12:08:23 10 Q. 286 Right. And that is Mr. Smyth being told what is your share of the expenses

11 that have been incurred by Abervanta. Do you see that?

12 A. Yes, yes.

13 Q. 287 Following receipt of that,

14

12:08:35 15 At 2523.

16

17 Mr. Hannigan, of Mr. Smyth's office, writes to Mr. Barnicle and says "further

18 to previous correspondence, I now enclose Neptune Freight Limited and I would

19 be obliged if you would revert with your instructions".

12:08:51 20

21 Do you see that letter?

22 A. Yes.

23 Q. 288 And I suggest to you Mr. Haughey, that the letter from Neptune Freight that is

24 being sent to Mr. Barnicle on the 22nd of July 1992 is the letter outlining the

12:09:04 25 expenses that are due by Abervanta to Cargobridge. Do you agree with that?

26 A. I agree with, that yes.

27 Q. 289 And therefore, it was the practice in Noel Smyth's office that when they

28 received letters such as this, enclosing statements or invoices, they were sent

29 out to Mr. Barnicle or to you, is that right?

12:09:22 30 A. Not to me, no.

12:09:23 1 Q. 290 No?

2 A. No.

3 Q. 291 But would Mr. Barnicle have mentioned it to you?

4 A. Possibly so, yes.

12:09:28 5 Q. 292 Yes. Well it's likely?

6 A. Yes.

7 Q. 293 It's likely?

8 A. Yes.

9 Q. 294 There wouldn't be much point in Mr. Barnicle getting this and agreeing to pay

12:09:37 10 it unless you agreed?

11 A. It's likely.

12 Q. 295 I am suggesting to you that if, as you have agreed, the likely practice in Noel

13 Smyth's office that when they received in these invoices they would have sent

14 them out to you. That in 1993.

12:09:48 15

16 At 2524 and 2525

17

18 When that apportionment account was received in connection with Abervanta they

19 would also have sent that out to Mr. Barnicle or yourself?

12:10:03 20 A. I don't ..

21 Q. 296 Isn't that likely?

22 A. Not likely, no.

23 Q. 297 All right. I see. Do you suggest to the Tribunal then that because a letter

24 exists in relation to one set of invoices where it's sent to Mr. Barnicle, you

12:10:17 25 accept that was sent but not the other, is that your position?

26 A. No, I'm not saying that.

27 Q. 298 Right?

28 A. Basically, it was more or less done on a phone call and possibly we would have

29 rang Mr. Smyth's office saying there's an invoice coming in from Neptune.

12:10:37 30 Q. 299 But you could only have said that with respect to you, Mr. Haughey, if you'd

12:10:44 1 seen the invoice.

2 A. No, not necessarily.

3 Q. 300 Well, you were going to have to give instructions as to whether it was paid or

4 not, wouldn't you?

12:10:51 5 A. Mightn't have seen the invoice.

6 Q. 301 Were you going to give instructions?

7 A. Possibly on a phone call. It's likely that Mr. McGuinness would have rang and

8 said listen, there's some bills due, we would likely have contacted Noel

9 Smyth's office saying there's an invoice coming in from Neptune.

12:11:17 10 Q. 302 Right. But if you just go back to the request in relation to Mr. Haughey.

11

12 2524.

13

14 You will see there that Mr. Leonard says to Mr. Hannigan "please find enclosed

12:11:30 15 statements of amounts due by Abervanta to Cargobridge Limited as requested"

16 A. Yes.

17 Q. 303 So Mr. Hannigan requested the information, isn't that right?

18 A. Yes.

19 Q. 304 According to this document?

12:11:40 20 A. Yeah.

21 Q. 305 Why would Mr. Hannigan have done that himself?

22 A. Like, that's ten years ago or more. If you're trying to suggest that I saw

23 that invoice and knew of Mr. Dunlop's involvement, that is not the case.

24 Q. 306 I'm suggesting to you Mr. Haughey, that the documentation suggests the

12:12:06 25 contemporaneous documentation suggests that certainly by 1993 you were aware of

26 Mr. Dunlop's involvement.

27 A. No.

28 Q. 307 No. All right.

29

12:12:13 30 CHAIRMAN: There is just --

12:12:17 1 A. The word you just used there contemporaneous.
2 Q. 308 Documents that were created at the time?
3 A. All right. Sorry.
4
12:12:25 5 CHAIRMAN: Mr. Haughey, there is handwritten note there "Connor herewith". Do
6 you see it there?
7 A. Yeah.
8
9 CHAIRMAN: Would you agree that's probably yourself?
12:12:38 10 A. No.
11
12 CHAIRMAN: Who do you think that might be?
13 A. I have no idea.
14
12:12:44 15 CHAIRMAN: Sorry, I am mixing up your christian name.
16 A. I have a brother called Connor.
17
18 CHAIRMAN: I was mixing up, sorry about that.
19
12:12:56 20 MS. DILLON: If I can just take you back to the fund, Mr. Haughey, and if I
21 just take you through the bank statements and we try and work out, if we can,
22 what happened.
23
24 If we look at 2874.
12:13:14 25
26 On the 21st of June 1991. Do you agree that there was a credit or a deposit of
27 136,635.57?
28 A. It appears so, yes.
29 Q. 309 Right. And that it would appear that that arose at 2889.
12:13:29 30

12:13:29 1 As a result of Mr. Smyth sending cheques, plural, to that value payable to the
2 Bank of Ireland for that amount, isn't that right?

3 A. Yes, it would appear so.

4 Q. 310 And it would appear that following on that, that at 2876. A debit or loan
12:13:50 5 account was created which drew a draft in favour of Mr. Kennedy of 136,653.57?

6 A. Yes.

7 Q. 311 And do you agree first of all that Mr. Kennedy was the solicitor acting in the
8 purchase of the lands for Mr. Morgan?

9 A. Yes.

12:14:06 10 Q. 312 And that 136,653.57 represented the balance of the purchase price for which
11 Abervanta had a liability, had to pay?

12 A. Yes.

13 Q. 313 Yes. And that what is happening there is that Mr. Smyth is sending cheques to
14 the value of 136,653.57, which are being placed on deposit by Bank of Ireland,
12:14:28 15 who in turn issue a bank draft to the same amount in favour of Mr. Kennedy?

16 A. Yes.

17 Q. 314 Right.

18 A. It would appear so.

19 Q. 315 And that subsequently a month later when the bank and Mr. Smyth had sorted out
12:14:41 20 the details, the bank advanced the loan of 185,000, isn't that right?

21 A. Correct.

22 Q. 316 You, because you've seen from the very first letter that what was required was
23 185,000?

24 A. Yeah.

12:14:53 25 Q. 317 And what appears to have happened is the following.
26
27 At 2874.
28
29 On the 22nd of July you will see there a sum of 26,653 drawn as a draft in
12:15:10 30 favour of Noel Smyth & Partners, isn't that right?

12:15:14 1 A. Yes, it appears so, yeah.

2 Q. 318 And that left a balance of 110,057, isn't that right?

3 A. Yes.

4 Q. 319 And that's Mr. Dunne's money, isn't that the position, the money Mr. Dunne had

12:15:35 5 put up as cash?

6 A. It appears so. As previously stated, as far as we were concerned Mr. Dunne was

7 giving us his own personal money. We had no idea of how the -- all of this

8 banking arrangement.

9 Q. 320 Yes. If we just consider the banking arrangements for a moment, Mr. Haughey.

12:15:44 10 A. Okay.

11 Q. 321 What's there is 110,000 pounds, if we call d that, isn't that right?

12 A. I see that there, yes.

13 Q. 322 And then if you look at 2875.

14

12:15:54 15 This is a loan account, a term loan account in the name of Abervanta. And you

16 will see that the amount that's borrowed is 75,000 pounds, isn't that right

17 A. Oh, yeah.

18 Q. 323 You see 75,000 pounds under the heading. That's made up of three payments

19 which I'll come to in a moment.

12:16:16 20

21 Do you agree with me, first of all. In simple mathematics that if you add

22 110,000 and 75,000 you get 185,000

23 A. Okay, yes.

24 Q. 324 All right?

12:16:26 25 A. I accept that.

26 Q. 325 And in fact, what's happening here is that Mr. Dunne's money is left on deposit

27 with the bank, isn't that right? And then at 2876.

28

29 This is the 136,000 being paid to Mr. Kennedy. And there's a reduction on that

12:16:45 30 leaving 110,000 overdraft, do you see that?

12:16:48 1 A. Yes, I see that, yeah.

2 Q. 326 So, now, effectively what Abervanta had were two loan accounts with the bank;

3 75,000 and 110,000. The 110,000 of which was backed by Mr. Ben Dunne's money,

4 do you understand?

12:17:02 5 A. Yes.

6 Q. 327 So if we go back to the 75,000 and we see what happened to that.

7

8 2875.

9

12:17:09 10 The first thing is a negotiation to the bank of 1500 pounds which was retained

11 by the bank. Do you see that?

12 A. Yes.

13 Q. 328 The third item is a transfer to your debit current account of 26,653. Do you

14 see that?

12:17:23 15 A. Yes.

16 Q. 329 And that is, you will see that being lodged to your loan account at 2876.

17 A. To my account.

18 Q. 330 This Abervanta's account.

19 A. Well, I had no knowledge of that at the time.

12:17:36 20 Q. 331 Yes?

21 A. I see what ...

22 Q. 332 And what is happening there, Mr. Haughey, I suggest to you. Is that money is

23 being taken out of one of Abervanta's loan accounts to reduce its borrowings in

24 a second loan account so it matches the money on deposit from Mr. Dunne. If

12:17:52 25 you just look at the screen?

26 A. I follow that, yeah.

27 Q. 333 Yes. So that's what's happening there is that 26,653 is reducing the bank

28 draft that had been sent to Mr. Kennedy, the funds for which had been borrowed,

29 to match the money that Mr. Dunne had put on deposit for you. Do you

12:18:10 30 understand?

- 12:18:10 1 A. Yes.
- 2 Q. 334 In simple terms what's happening is Mr. Dunne has 110,000 pounds on deposit
3 with Bank of Ireland. You have borrowed 110,000 pounds through Abervanta?
4 A. No, we borrowed money off Mr. Dunne.
- 12:18:23 5 Q. 335 According to the --
6 A. No knowledge of all of this complicated transfer of banks.
7 Q. 336 All right.
8 A. Because we weren't directors. I gather Mr. Smyth was a director of the company
9 at the time.
- 12:18:39 10 Q. 337 It was your company. You've told the Tribunal. You were the beneficial
11 owners?
12 A. Beneficial owners but not the directors. So we had no responsibility for
13 signing on behalf. Mr. Smyth's -- Mr. Smyth was signing on behalf of the
14 bank -- or on behalf of Abervanta as a director.
- 12:18:56 15 Q. 338 Right?
16 A. We had absolutely no knowledge. As far as we were concerned, the money was
17 Mr. Dunne's personal money. All of this complicated arrangement of bank
18 accounts, we had absolutely no knowledge of. Until we came to this Tribunal.
19 Q. 339 And if you look at 2875, Mr. Haughey.
- 12:19:14 20
21 On the 75,000 pounds that was borrowed by your company. Right. You see on the
22 22nd of July. There is a withdrawal of 1500 pounds. And then the third
23 transaction is the 26,000
24 A. I wasn't a director of the company at the time. As I said. All of the banking
12:19:32 25 arrangements were done by the director of the company at the time.
26 Q. 340 Do you accept this simple principle, Mr. Haughey; that this money was borrowed
27 by Abervanta Limited?
28 A. It was basically -- it was a loan from Mr. Dunne to myself and John Barnicle.
29 And how they set it up, as far as we were concerned, we were very grateful to
12:19:59 30 Mr. Dunne to give us the loan. We gathered it was his own personal money. But

12:20:04 1 naturally, because Mr. Smyth was his solicitor, it was left to him and we were
2 happy and grateful to Mr. Smyth as well for arranging the whole thing. We had
3 no idea until we came to this Tribunal of all of this complicated business of
4 bank accounts going back and forth and offsets and whatever you call it.

12:20:26 5 Q. 341 You know when the invoices came in, Mr. Haughey, and you would telephone Mr.
6 Smyth's office to pay them. Remember you've told the Tribunal that this
7 morning?
8 A. Yeah, possibly. Possibly myself or John Barnicle, I can't remember.

9 Q. 342 Would ring Mr. Smyth and tell him to pay the invoices. There's an invoice I
10 think you said on its way in to you?
11 A. That's possibly. That's what I said. It's possibly what happened, yes.

12 Q. 343 Where do you think Mr. Smyth got the money to pay your bills?
13 A. From Mr. Dunne.

14 Q. 344 So what --
15 A. He was controlling, as far as we were concerned, Mr. Dunne's money.
16
17 CHAIRMAN: But did you know, Mr. Haughey, how much you believe you had
18 borrowed from Mr. Dunne that was being used? You say that you weren't aware
19 that it went around this circuitous route. You believed it was just money
12:21:03 20 advanced from Mr. Dunne
21 A. Yes.
22
23 CHAIRMAN: Into Abervanta
24 A. Yeah.
12:21:30 25
26 CHAIRMAN: And that's used then to pay the bills
27 A. Well the Abervanta thing was a vehicle created by ...
28
29 CHAIRMAN: Yes. How much -- you, presumably were aware that X pounds had been
12:21:44 30 borrowed from Mr. Dunne

12:21:46 1 A. Yes, 185.
2
3 CHAIRMAN: You believed that 185 was borrowed?
4 A. Yes.
12:21:51 5
6 CHAIRMAN: From Mr. Dunne?
7 A. Yeah. And we were grateful to him for it.
8
9 CHAIRMAN: All right.
12:21:58 10 A. But because Mr. Smyth was his solicitor, we were happy that he would take
11 control of it.
12
13 CHAIRMAN: All right.
14 A. The finances.
12:22:14 15
16 MS. DILLON: May the Tribunal take it from your evidence, Mr. Haughey, that
17 you were aware of a need in June of 1991 to borrow 185,000 pounds
18 A. Yes.
19 Q. 345 Right. And included in that borrowing was to pay for the purchase price of the
12:22:31 20 lands, is that right?
21 A. Yeah.
22 Q. 346 The deposit had already been paid, isn't that right? In May of '91?
23 A. Well I'll have to come back to you on that.
24 Q. 347 And part of the purpose of obtaining those funds was to put together a fund to
12:22:44 25 deal with, as you say, planning. But I think you now accept must have included
26 zoning expenses also?
27 A. The ongoing.
28 Q. 348 Yeah?
29 A. Fees in relation to.
12:22:56 30 Q. 349 Zoning?

12:22:56 1 A. Architects.

2 Q. 350 Relating to zoning and then the planning?

3 A. No, well there's McCarthy & Partners.

4 Q. 351 Yes?

12:23:03 5 A. And all the various people that you have there.

6 Q. 352 Yes.

7

8 CHAIRMAN: But Mr. Haughey, Ms. Dillon is asking you, do you accept, because

9 this is an important point. Do you accept that the planning expenses, as you

10 call them, which were what 16,000 or thereabouts.

11

12 MS. DILLON: Yes. At least.

13

14 CHAIRMAN: That the planning expenses that were paid out over a period of time

12:23:25 15 through Mr. Smyth's office. Do you accept that they included expenses relating

16 to the need to rezone?

17 A. The ongoing expenses. We were borrowing the 185 obviously there was the

18 purchase price and like any, if you were borrowing money for a house even you

19 always go for the extra bit for ongoing expenses like the stamp duty.

12:23:54 20

21 CHAIRMAN: Do you accept that those expenses were needed for not planning

22 permission but for expenses, such as possibly architects and so on, which would

23 be used for the zoning?

24 A. No.

12:24:12 25

26 CHAIRMAN: Planning was going to be a long way

27 A. I suppose.

28

29 CHAIRMAN: The planning was going to be a long way down the road.

12:24:20 30 A. Well, that only became apparent after we had borrowed the money. Because we

12:24:28 1 had a site adjacent, Celtic Helicopters that is, had a site adjacent which we
2 got planning permission to build on agriculture land. We didn't have to
3 rezone. So we went into the project on the basis that we were just applying
4 for planning permission. We didn't borrow the money to go for the zoning
12:24:49 5 because of our experience in the site next door.

6
7 CHAIRMAN: But were you aware that the consortium of which you, through
8 Abervanta, was a member

9 A. Yeah.

12:24:58 10
11 CHAIRMAN: Was going to involve itself in expenditure relating to rezoning?
12 A. After that became apparent. We gathered that it would be a similar zoning,
13 airport related activities. That we would get planning permission straight
14 away without rezoning.

12:25:18 15
16 CHAIRMAN: But did you know that insofar as the consortium were going to be
17 involved in rezoning, that you were going to have to pay 15 odd percent of
18 those costs?

19 A. That only became apparent after, insofar as we were concerned, we were
12:25:34 20 borrowing the money to go straight for planning permission.

21
22 CHAIRMAN: But when did you become, was it soon after the money was borrowed
23 that you realised that?

24 A. I'm not sure, Sir. When we came, when it became apparent that we'd have to go
12:25:55 25 for rezoning.

26
27 CHAIRMAN: But are you then saying that you are unaware of any of this 16,000
28 odd pounds being used for rezoning expenditure?

29 A. Yeah. I'm unaware. As far as I'm concerned there was ...

12:26:12 30

12:26:12 1 CHAIRMAN: So you were completely unaware that any of that money was either to
2 be used or was in fact used for rezoning?
3 A. I don't understand. Surely, with rezoning you have to employ ...
4

12:26:25 5 CHAIRMAN: That's fine.
6 A. Yeah, I understand.
7

8 CHAIRMAN: I'm not suggesting to you that it was used for any illegitimate
9 purpose
10 A. Right.
11

12 CHAIRMAN: But in order to
13 A. Oh, yeah. Obviously, for --
14

12:26:37 15 CHAIRMAN: In order to organise rezoning?
16 A. Yes, you would have had to --
17

18 CHAIRMAN: Which is different in the context that we're using these terms.
19 It's different to planning. Planning permission was going to be further down
12:26:50 20 the road. Now, when you borrowed the money, raised the money,
21 A. We thought we would be going --
22

23 CHAIRMAN: 16,000 pounds was to be used for?
24 A. For planning.
12:26:59 25

26 CHAIRMAN: Now, do you include in the term "planning" also whatever proper and
27 legitimate expenses were to be expended on rezoning?
28 A. I accept that now, yes.
29

12:27:14 30 CHAIRMAN: Such as. And what were those expenses in relation to rezoning that

12:27:22 1 you think you had to pay your share of?

2 A. No, Sir. When we borrowed the money, the 16,000 pounds to which you referred

3 to.

4

12:27:30 5 CHAIRMAN: Yes.

6 A. Was with a view to going straight for planning permission. We would have cost

7 in the region of ...

8

9 CHAIRMAN: Well are you therefore saying that you were unaware and didn't

12:27:41 10 understand that any of this money, 16,000, was to be used for expenditure

11 relating to rezoning

12 A. Not at the time of the borrowing, no.

13

14 CHAIRMAN: All right. When did you become aware of that?

12:27:56 15 A. I can't recall.

16

17 CHAIRMAN: Well was it soon after or

18 A. Most likely after employing architects, I'm not sure.

19

12:28:06 20 CHAIRMAN: And when you talk about architects and so on. Do you understand

21 that that expenditure was used for rezoning issues?

22 A. In relation to Mr. Dunlop is it?

23

24 CHAIRMAN: No, no, no, no. If you forget about Mr. Dunlop for the moment.

12:28:28 25 There were architects employed?

26 A. Yes.

27

28 CHAIRMAN: There was an accountant employed?

29 A. Yes.

12:28:32 30

12:28:32 1 CHAIRMAN: And you paid your share of those expenses?

2 A. Yes.

3

4 CHAIRMAN: Now, did you believe those expenses were associated with rezoning

12:28:41 5 or planning permission? I'm not suggesting there was anything improper about

6 A. Right, I accept that.

7

8 CHAIRMAN: Either. But did you understand those to have been expended by the

9 consortium in relation to rezoning, employing architects and so on

12:29:00 10 A. Yes. In drawing up a proposal and.

11

12 CHAIRMAN: Is that a proposal for the Council

13 A. Yes.

14

12:29:06 15 CHAIRMAN: So that's rezoning?

16 A. Yeah. But initially we would have expected it to go straight for planning

17 permission having a view to our experience next door.

18

19 CHAIRMAN: But you then found yourself sharing the cost of the rezoning

12:29:19 20 A. Yes.

21

22 CHAIRMAN: And included in the detail we've seen is an item for Mr. Dunlop

23 A. I see that now, yes, Sir.

24

12:29:28 25 CHAIRMAN: Together with the architect and the accountant. Now, is it still

26 your evidence to the Tribunal that you were unaware that Mr. Dunlop had an

27 involvement?

28 A. Yes, it is. Until this day -- until well I saw that document the first day I

29 was here.

12:29:46 30

12:29:46 1 CHAIRMAN: And you're saying you don't recall being asked to pay a share of
2 any fee to Mr. Dunlop that
3 A. That is correct.
4

12:29:55 5 CHAIRMAN: All right. That seems to ...
6
7 MS. DILLON: Just following on from that Mr. Haughey and to conclude. The
8 fund of 16,000 pounds was your contribution to the planning/rezoning fund, is
9 that right?

12:30:09 10 A. Yes.
11 Q. 353 Right. And that amounts to 15 percent. Because that was your contribution,
12 isn't that right? 15.178 was the percentage you had to put up, isn't that
13 right?
14 A. Of any expenses, yeah.

12:30:22 15 Q. 354 So that 16,000 pounds represented 15.18 percent, isn't that right?
16 A. No, I wouldn't accept that.
17 Q. 355 It follows?
18 A. When we were borrowing the money we put in a buffer, if you like, just to --
19 'cos we knew we were going straight for planning permission and that's why we
12:30:46 20 put that figure in. Because we would probably have to come up with it straight
21 away for planning.
22 Q. 356 Right. But the purpose of borrowing the money was to make your contribution to
23 the planning exercise, as you understood it at the time, isn't that right?
24 A. Yes.

12:31:05 25 Q. 357 And your contribution was approximately of the order of 16,000 pounds. Or you
26 put yourself in funds for that purpose to the tune of 16,000, isn't that right?
27 A. Yeah.
28 Q. 358 That represented and must have represented 15 percent. Because that was the
29 share you had to come up with, isn't that right?
12:31:19 30 A. I'm not sure how the figure came up. Yeah, it most likely, yeah.

- 12:31:24 1 Q. 359 It must follow from 2218, isn't that right? You will see there your share is
2 15.18?
- 3 A. Yeah.
- 4 Q. 360 And you've seen, Mr. Haughey, the documents coming in to your solicitor's
12:31:37 5 office looking for 15.18 of expenses, isn't that right? So when you are
6 putting your fund in place of 16,000 pounds or you're putting yourself in funds
7 to the tune of 16,000 pounds, it is to meet an obligation that amounts to 15.18
8 percent of the total, isn't that right?
- 9 A. Correct, yeah.
- 12:31:55 10 Q. 361 Therefore, the total fund between Abervanta and the other partners in this
11 endeavour had to be over 100,000 pounds, isn't that right?
- 12 A. I'm not sure how we came up with the figure of the 16,000 but it was with a
13 view to going straight for planning permission.
- 14 Q. 362 Yes. And if you look at 2218, Mr. Haughey, on screen there and you will see
12:32:17 15 your share is 15.18 percent?
- 16 A. Yes.
- 17 Q. 363 And you will see that Neptune Freight's share, Mr. Cousins and Mr. Fitzgerald's
18 are substantially greater shares, isn't that right?
- 19 A. Yes.
- 12:32:26 20 Q. 364 And if 16,000 pounds represents 15 percent of the fund. Then the entire of the
21 fund is in excess of 100,000 pounds, simple mathematics, isn't that right,
22 Mr. Haughey?
- 23 A. If, as you say, if that represents the 16,000 pounds represents.
- 24 Q. 365 15 percent?
- 12:32:46 25 A. That's, I'd ...
- 26 Q. 366 Then the planning fund that was contemplated in June of 1919 was over 100,000
27 pounds, isn't that right?
- 28 A. I'm not sure where we came up with the figure of 16,000. But that was our
29 expectation I suppose.
- 12:33:03 30 Q. 367 Thank you, Mr. Haughey. If you would answer any questions anybody else may

12:33:06 1 have for you.

2

3 JUDGE FAHERTY: I just want to ask you, Mr. Haughey going back. We've seen
4 that when Mr. Smyth writes to Mr. Kennedy, who is the solicitor for the

12:33:18 5 vendors, the Morgans?

6 A. Yeah.

7

8 JUDGE FAHERTY: And he sends your share I think. And I think -- he sends your
9 share, Abervanta's share of the purchase?

12:33:29 10 A. Yes.

11

12 JUDGE FAHERTY: And I think it's something like 131,136,000. That's in June
13 '91. When the deal is closed. That's what Abervanta owes

14 A. Yeah. I can't remember the exact figures but it's in or around that.

12:33:44 15

16 JUDGE FAHERTY: Because I think your total out in terms of the purchase price
17 was 151,000 odd, isn't that right, that was 15.1 percent of a million, isn't
18 that correct

19 A. Yes, correct.

12:33:55 20

21 JUDGE FAHERTY: And I just want to ask you. Sometime Mr.-- you were in
22 discussions with Mr. McGuinness with a view to coming on board, isn't that
23 correct and you've given that evidence

24 A. At the early stage, yeah.

12:34:07 25

26 JUDGE FAHERTY: And we know that by June of '91 Mr. Smyth becomes involved and
27 he's writing to the bank. I know you say that you are not privy to that. But
28 we know that he is writing at least to Mr. Kennedy sending off the balance of
29 what you owe, isn't that correct

12:34:22 30 A. Yes. Because after contacting Mr. Dunne we were -- it was only natural it's

12:34:28 1 because it was Mr. Dunne's money that Mr. Smyth would handle all of his
2 affairs.

3
4 JUDGE FAHERTY: Yes. Before we come to Mr. Dunne. What I want to know is
12:34:36 5 this. And I know Ms. Dillon has asked you. If you've any independent
6 recollection that when you were discussing getting involved with Mr. McGuinness
7 and the others, you've given evidence previously about how you would be
8 involved, that it was your company, that you didn't want your name, that's your
9 evidence. That's fair enough.

12:34:55 10 A. Yeah.

11
12 JUDGE FAHERTY: But we know this contract is signed in May of 1991 to buy the
13 lands from Mr. Morgan

14 A. Okay.

12:35:02 15
16 JUDGE FAHERTY: We know because 100,000 pounds is paid over

17 A. Yeah.

18
19 JUDGE FAHERTY: At the signing of the contract, which is normal, that Neptune
12:35:10 20 Freight and others are in funds to the tune of 100,000 pounds?

21 A. Okay, yes.

22
23 JUDGE FAHERTY: Because they have to pay it over

24 A. I understand.

12:35:19 25
26 JUDGE FAHERTY: I just want to ask do you not have any recollection of
27 discussing with Mr. McGuinness or indeed anybody else as to how you and indeed
28 Mr. Barnicle would put them in funds for the deposit that would have to be paid

29 A. No, I've no recollection at this time.

12:35:37 30

12:35:37 1 JUDGE FAHERTY: Well do you recall, as I understand it, there's a letter goes
2 out I think. This is June 1991, where your percentage is broken down. You
3 were getting 15.1 percent. Now, obviously that's advised by Mr. McGuinness to
4 somebody or other. So we have that in writing

12:35:56 5 A. Yes.

6

7 JUDGE FAHERTY: I take it before it ever was reduced to writing it would have
8 been a matter of discussion. You were getting 3 point odd acres and that
9 equated to 15.1 percent

12:36:08 10 A. I would imagine so, yes.

11

12 JUDGE FAHERTY: But I understood your evidence on the very first day you were
13 here that you recalled that, that you recalled that you were going to be
14 getting three point odd acres and it was going to translate into 15 off the
12:36:24 15 total land take. And I'm just asking you. If you could recall that, do you
16 not recall any discussion about you or Mr. Barnicle putting Mr. McGuinness in
17 funds for the deposit

18 A. No.

19

12:36:37 20 JUDGE FAHERTY: Because that was something, presumably

21 A. I understand.

22

23 JUDGE FAHERTY: Yes

24 A. No, I don't recall. And I have to possibly go back to Mr. McGuinness on this.

12:36:49 25

26 JUDGE FAHERTY: You see why we're asking this

27 A. Yeah.

28

29 JUDGE FAHERTY: Ms. Dillon will correct me if I'm wrong. The documentary
12:36:57 30 trail that we've seen today. Certainly when Mr. Smyth is sending your cheque

12:37:00 1 for the completion of the sale to Mr. Kennedy there's no suggestion that you
2 have to send any more vis-a-vis, as I understand it, the actual purchase price
3 of the lands

4 A. Uh-huh.

12:37:16 5
6 JUDGE FAHERTY: You're only sending, as I understand it, what you owed on the
7 purchase price less 10 percent. Is that correct, Ms. Dillon?

8
9 MS. DILLON: Yes.

12:37:27 10
11 JUDGE FAHERTY: That is as I understand it. There is no suggestion from
12 that documentation, as I understand it. That Mr. Kennedy or Neptune Freight
13 and others would have been in receipt of you and Mr. Barnicle or Abervanta 10
14 percent.

12:37:41 15 A. Yeah.

16
17 JUDGE FAHERTY: And I'm just asking. That's why I got back to my question.
18 Would you not have any independent recollection of discussing this with the
19 gentleman

12:37:50 20 A. Unfortunately, I don't. But I can certainly make inquiries. Hopefully, from
21 Mr. McGuinness who will, if I could contact him.

22
23 JUDGE FAHERTY: I see. Thanks very much, Mr. Haughey.

24 A. All right.

12:38:04 25
26 CHAIRMAN: Thank you, Mr. Haughey.

27
28 **THE WITNESS THEN WITHDREW.**

29
12:38:08 30 MR. QUINN: Mr. John Barnicle.

12:38:11 1

2

MR. BARNICLE, PREVIOUSLY SWORN, WAS QUESTIONED

3

BY MR. QUINN AS FOLLOWS:

4

12:38:21 5

6

CHAIRMAN: Good afternoon, Mr. Barnicle.

7

8

MR. QUINN: Good afternoon Mr. Barnicle. You are already sworn

9

A. That's okay, yeah.

12:38:30 10

11

Q. 368 Mr. Barnicle, can you assist the Tribunal in their inquiries in relation to identifying the source of the deposit?

12

A. Hopefully, I can. Can I just correct one thing. There was no slush fund or anything that we added into. When we borrowed the 185,000 we knew it was going to cost us 151. And the rest was to cover us for any ongoing expenses. We didn't give him monies for slush fund. We only paid that out as invoiced.

12:38:57 15

16

Q. 369 Yes. Nobody referred to a slush fund?

17

A. Oh, well I thought it was called a fund of the Cargobridge.

18

19

CHAIRMAN: It was called a buffer.

12:39:11 20

21

A. Not a slush fund but a fund for the consortium. We didn't put money in without invoice.

22

23

Q. 370 And you approved every invoice that was raised?

24

A. Either by phone, as Ciaran said, or we actually passed the invoices on or had them directly sent to Mr. Smyth.

12:39:26 25

26

Q. 371 And Mr. Haughey has said --

27

A. We would have accepted any invoice from Cargobridge or Neptune Freight as being correct and honest, whatever it was for and we'd authorise Mr. Smyth to pay it out of our remaining fund.

28

29

12:39:42 30

Q. 372 Noel Smyth & Partners were controlling the money?

- 12:39:44 1 A. All of the monies. As Mr. Haughey said, it's true. We only knew we borrowed
2 185,000. We thought that all came from Mr. Dunne. We didn't have any idea of
3 all like the ongoings of the arrangements of how that 185 ended into
4 Abervanta's account. Like, I believe Ms. Dillon said 75 came here, 110 there
12:40:06 5 or whatever. We borrowed 185. We actually thought it was Mr. Dunne's own
6 money until the Tribunal came up and we didn't know anything about any of the
7 banking situations.
- 8 Q. 373 Just you've agreed in the past that the figure 185,000 was your figure not
9 Mr. Dunne's figure, isn't that right?
- 12:40:24 10 A. No. Our figure. We figured that we would need monies. You don't just buy the
11 property. There would be stamp duty, legal fees, property fees. I knew that
12 they had to research sewage. All of that cost money. So we just, to cover
13 ourselves, borrowed 185. 30 grand roughly over the purchase price, just so
14 that -- because we had no personal monies anyhow so we covered ourselves for
12:40:52 15 the ongoing costings so we could stay in the consortium as long as possible.
- 16 Q. 374 Would this be a fair representation of what you're saying, Mr. Barnicle. That
17 somebody came to you with an idea in relation to these lands. You went to
18 Mr. Dunne. And without putting your hand in your pocket or signing one
19 document you were able to acquire those lands and have 30,000 pounds available
12:41:16 20 in addition for any expenses that might arise in relation to the lands?
- 21 A. Yes.
- 22 Q. 375 And that that 30,000 pounds was a deposit account operated by Mr. Smyth?
- 23 A. Yes.
- 24 Q. 376 And funds were released from it after Mr. Smyth contacting you?
- 12:41:32 25 A. Invoices.
- 26 Q. 377 Invoices as they arose?
- 27 A. Correct.
- 28 Q. 378 And your giving your permission to the payment of those invoices?
- 29 A. Correct.
- 12:41:39 30 Q. 379 And I think you then went on and the lands were sold. What had cost you

12:41:43 1 150,000, I think, was sold for over 450,000?

2 A. Whatever.

3 Q. 380 A couple of years later. 415, isn't that right, 415,000?

4 A. Yes, correct.

12:41:54 5 Q. 381 Now, if we could just then get back to the very beginning?

6 A. The deposit.

7 Q. 382 The 15,000 pounds deposit. Did you come up with that deposit?

8 A. No, not personally. I am bemused myself about where it came from.

9 Q. 383 Do you know where it came from?

12:42:10 10 A. No.

11 Q. 384 You don't know where the deposit came from?

12 A. No. Can I ask you, like, if you work backwards. We somehow paid that money

13 back to somebody. Correct?

14 Q. 385 Well we see monies going back to Mr. Smyth. But we don't see the deposit?

12:42:25 15 A. The 15,000.

16 Q. 386 Yes. We were just wondering if you can help us Mr. Barnicle?

17 A. Well, out of our 185,000 that we got borrowed.

18 Q. 387 Yes?

19 A. 151 went somewhere.

12:42:35 20 Q. 388 Yes. But Mr. Smyth got involved in the process?

21 A. He gave 136.

22 Q. 389 After the deposit had been paid Mr. Barnicle?

23 A. Where did the 15 go back to. Whoever it went back to had paid that original

24 15.

12:42:47 25 Q. 390 But you can't help us, you have no recollection of asking anybody for the

26 money?

27 A. I haven't. The 100 grand must have went down as a deposit. Who gave that 100

28 grand, whether it was Mr. McGuinness or the consortium of Cargobridge without

29 Abervanta putting the 100 down or who actually put the 100,000 to Mr. Kennedy

12:43:05 30 as a down payment should tell you where the -- how the deposit was made up.

- 12:43:13 1 Q. 391 So -- -
- 2 A. I do know that out of our loan we paid it back. So it must have come from
- 3 somewhere. But I know that Ciaran and myself, out of our own pocket, we didn't
- 4 put 15 out of our own pocket or borrow it elsewhere. Unless possibly the
- 12:43:29 5 actual -- no, I would be surmising. I just don't know where that down payment
- 6 came. I do know we paid it back so it came from somewhere. And I would
- 7 suggest possibly the consortium just covered it for us until we got our loan
- 8 through and then it went back.
- 9 Q. 392 And you accept, Mr. Barnicle, do you, that you were written to from time to
- 12:43:51 10 time in relation to the ongoing expenses that were?
- 11 A. Possibly I got an invoice and I'd turn it right over to Mr. Smyth to be paid.
- 12 Q. 393 No?
- 13 A. I didn't question any of it.
- 14 Q. 394 It was Mr. Smyth who wrote to you. If you look at 2519 on the 16th of June
- 12:44:08 15 '99. Mr. Smyth's office wrote to you. And he enclosed a series of or he
- 16 referred to a series of invoices?
- 17 A. Okay. This is to the attention of Mark Hanley. Who is Mr. Mark Hanley?
- 18 Q. 395 I think he may have been a solicitor in Mr. Smyth's office who was handling
- 19 this affair?
- 12:44:28 20 A. Okay.
- 21 Q. 396 And he receives a series of invoices from Neptune Freight Limited in relation
- 22 to the site, the Cargobridge site. And he refers to the remittance due in
- 23 respect of monies expended by Neptune Freight on behalf of Cargobridge?
- 24 A. Fair enough, yes.
- 12:44:47 25 Q. 397 On behalf of - and on your behalf?
- 26 A. Fair enough, yes.
- 27 Q. 398 And I think that if we look at 2523.
- 28
- 29 Mr. Hannigan and Mr. Smyth's office writes to you
- 12:44:57 30 A. Yes.

- 12:44:58 1 Q. 399 And he advises you of that correspondence. And he encloses a letter received
2 from Neptune Freight Limited and he asks you for instructions?
3 A. I would have probably rang and said go ahead and pay it.
4 Q. 400 Was that a standard practice between you.
12:45:19 5 A. Either the invoice if it didn't come to me. I can't remember. I think we told
6 Cargobridge to send all of the invoices to Noel Smyth's offices.
7 Q. 401 Because they were operating the account?
8 A. Yeah. And that we'd get a phone call and authorise payment because we fully
9 trusted our partners in this.
12:45:27 10 Q. 402 Can I ask you, Mr. Barnicle, was there any invoice that you refused to pay?
11 A. No, not that I know of.
12 Q. 403 You paid every invoice presented?
13 A. Yeah.
14 Q. 404 And we know that at 2524, Mr. Barnicle.
12:45:39 15
16 That for the year ended -- sorry. For the period ended 31st of December '92.
17 That Mr. Hannigan was presented by Mr. Leonard with a statement of amounts due
18 by your company to Cargobridge. And that fax may have gone through on the 14th
19 of May '93
12:46:02 20 A. Okay.
21 Q. 405 And if you look at 2525.
22
23 A. Was this sent to me as well?
24 Q. 406 Well?
12:46:09 25 A. I don't think so.
26 Q. 407 The Tribunal, Mr. Barnicle, having regard to the general lack of recollection
27 of yourself and Mr. Haughey and others is totally relying on the discovered
28 documents to it from various parties. Do you understand?
29 A. Yeah.
12:46:23 30 Q. 408 And you would have been dealing with this. And it's to that extent that the

12:46:28 1 Tribunal is anxious to get your evidence on the matter. Do you understand?

2 A. Fair enough.

3 Q. 409 Do you understand?

4 A. Yes, I do.

12:46:35 5 Q. 410 If we look at 2525.

6

7 We see there for the period ended 31st of December '92. It would appear that

8 there was an amount due from Abervanta to Cargobridge, do you see that

9 A. Fair enough, yes.

12:46:46 10 Q. 411 That included an amount due to Mr. Dunlop?

11 A. Fine. Mr. Dunlop could have been an architect or anybody.

12 Q. 412 He could have been an architect, is that what you said?

13 A. He could have been anybody. I didn't know who he was.

14 Q. 413 You would have been asked to sanction a payment?

12:47:02 15 A. Yes.

16 Q. 414 So you say that if you were asked to sanction a payment to Mr Dunlop you would

17 have thought you were sanctioning a payment to an architect?

18 A. I didn't sanction any particular person. I got the total invoice and I would

19 have sanctioned Mr. Smyth to pay that invoice that's all.

12:47:14 20 Q. 415 You have no recollection of getting anything in relation to this document. You

21 certainly have not discovered to the Tribunal nor have you advised the Tribunal

22 that you received anything in relation to this document?

23 A. That's correct. That I can find anyhow.

24 Q. 416 Yes.

12:47:27 25 A. But I can honestly say that I wouldn't have gone through each invoice, even if

26 I did receive 'em. I would have just authorised Mr. Smyth to pay out our

27 portion of the share. Because we trusted our partners. And they were doing

28 the operation, running it, as were the bank. Mr. Smyth was running the

29 account. We had no real input into the actual goings on that were Cargobridge

12:47:48 30 or Neptune Freight originally before Cargobridge were doing in relation to it.

- 12:47:53 1 All we did is take it in good faith that they were doing it for the benefit of
2 the whole property.
- 3 Q. 417 And do you think Mr. Barnicle, that there might have been a Mr. Dunlop
4 architect retained by Cargobridge up to the 31st of December '92?
- 12:48:06 5 A. At that time P F Leonard and Association Co. could have been an architect
6 company, I don't know.
- 7 Q. 418 So if you were sanctioning the payment to an F Dunlop in that period you would
8 have thought you were sanctioning the payment to an F Dunlop architect, is that
9 right?
- 12:48:19 10 A. I didn't say that. I said I didn't know who he was.
11
12 CHAIRMAN: I think Mr. Barnicle
- 13 A. Sorry, I didn't know.
14
- 12:48:25 15 CHAIRMAN: He didn't pay any attention
- 16 A. No.
17
- 18 CHAIRMAN: To who was being paid. He just assumed ...
- 19 A. It was correct. And I trusted my partners and how that's how we got the
12:48:37 20 invoice in and I paid 'em. I authorised the payment.
- 21 Q. 419 You would have assumed that the people referred to there would have made some
22 contribution?
- 23 A. To the property, yes.
- 24 Q. 420 And worked for the company in the relevant period, isn't that right?
- 12:48:50 25 A. I'm not paying him for nothing. He must have done something.
- 26 Q. 421 You would agree with me, if that document is correct, that the F Dunlop is
27 somebody who would have provided some services to the company?
- 28 A. Yes.
- 29 Q. 422 For the year ended 31st of December '92?
- 12:49:05 30 A. It had to be if he was receiving money from the consortium.

12:49:08 1 Q. 423 Would have had to have been retained from the consortium in the period 31st of
2 December '92?
3 A. Correct, absolutely.
4 Q. 424 Thank you very much, Mr. Barnicle.
12:49:19 5
6 CHAIRMAN: Thank you very much, Mr. Barnicle
7 A. Okay. Thank you.
8
9
12:49:24 10
11 **THE WITNESS THEN WITHDREW.**
12
13
14 CHAIRMAN: All right. That concludes ...
12:49:25 15
16 MR. QUINN: Before we conclude, Sir.
17
18 On the 19th of December I read a number of statements into the record by way of
19 correspondence by Mr. McGuinness to the Tribunal.
12:49:42 20
21 There were two that we had received which I had neglected to read into the
22 record.
23
24 And I propose, with your permission, very quickly, to deal with them.
12:49:46 25
26 The first is a correspondence which is, refers to Mr. Dunlop's statement dated
27 the 26th of February 2004.
28
29 It's at 2399.
12:49:57 30

12:49:57 1 It reads as follows:
2
3 "Mr. Dunlop could not remember my partner's name in his interview in 2000 and
4 believes them to be "not material". Now he knows their names, companies and
12:50:08 5 titles.
6
7 I first met Mr. Dunlop in the Council offices in O'Connell Street.
8
9 3. Mr. Dunlop was employed by us to help with the right-of-way issue only as
12:50:18 10 all the records will show.
11
12 4. I cannot remember meeting Mr. Dunlop that many times.
13
14 5. The right-of-way issue arose in 1991 and remained the greatest problem
12:50:27 15 until it was resolved in 1994/95.
16
17 6. I cannot remember asking Mr. Dunlop to arrange a meeting with Mr. Smyth nor
18 can I think of any reason to do so. Mr. Smyth had no part to play in the right
19 of way issue in 1995.
12:50:39 20
21 7. I met Mr. Dunlop with Mr. Cousins and Mr. Fitzgerald in his office in
22 February / March '94. I have no knowledge of Mr. Fitzgerald's private dealings
23 with Mr. Dunlop.
24
12:50:49 25 8. I do not remember telephoning Mr. Dunlop on all of these occasions.
26 However, if I asked my secretary to call Mr Dunlop, she would continue calling
27 him until she succeeded. It is interesting to note that the calls continued
28 until December '94 when we got permission for the right-of-way which Mr.
29 Dunlop does not remember.
12:51:04 30

- 12:51:04 1 9. Mr. Dunlop was not retained to assist with the rezoning.
2
3
4 10. Both Mr. Cousins and Mr Fitzgerald were present when we agreed fees. I
5 12:51:15 6 have no knowledge of the invoice to Williams Air Freight or the payments except
7 it was not on behalf of Cargobridge. I did not state that some councillors
8 would require payment. This is at an outrageous lie.
9
10 11. It is curious that Mr. Dunlop cannot remember details of the right of way
11 issue or how it was finally settled. I presume this means that he has not
12 12:51:30 13 supplied the Tribunal with the correspondence on this issue. Mr. Dunlop can
14 apparently recall all sorts of information from 1993 but he cannot recall
15 writing to me and enclosing the Minister's letter granting an upgrade of
16 right-of-way in 1994/95.
17
18 12. Mr. Dunlop did not speak to any councillors on our behalf. All of this
19 information is readily available from the Council offers.
20
21 13. Mr. Gallagher's enthusiasm did not wane. He phoned me before the March
22 12:52:00 23 vote to say that he could not be there but that the motion would pass and had
24 the support of all of the parties. If Mr. Dunlop is building a story around
25 the fact that Mr Gallagher was not there for the first vote then he has got it
26 wrong. All of the councillors will confirm Mr. Gallagher's continued support.
27
28 14. Mr. Dunlop now states that he bribed three councillors. In his statement
29 12:52:16 30 sworn? dated 18th of May 2000, he states that he bribed five councillors.
31
32 15. In his statement dated 18th of May 2000, Mr. Dunlop states that he gave
33 Mr. Gallagher two grand. He now states that he gave him 1,000 punts.
34
35 16. On the 18th of May 2000 Mr. Dunlop states my response to his request for

12:52:33 1 success fee was "well you got ten". He now states that my response was that he
2 got 1,000 punts and 2,500 punts for his company. I could not have said that as
3 I did not know of Williams payments until I saw the Tribunal paper work. Mr
4 Dunlop simply changes his statement as new evidence is presented.

12:52:54 5
6 17. Mr. Dunlop does not mention a payment of 2,500 punts in his statement
7 dated 18th of May 2000.

8
9 M McGuinness.

12:53:03 10
11 And then there is one further statement from Mr. McGuinness in relation to Mr.
12 Dunlop's interview of the 18th of May 2000.

13
14 It's to be found at pages 2401 and 2402 of the brief.

12:53:17 15
16 At pages 349, question 97, he says the land was not in my ownership. Eight
17 acres of circa 23.5 acres were owned by Neptune Freight Limited. I was the
18 majority shareholder in Neptune Freight.

19
12:53:30 20 Question 98. My name is spelt McGuinness. Both Mr. Cousins and Mr. Fitzgerald
21 attended the first meeting in Mr. Dunlop's office when we agreed to employ him
22 as together owned more than 50 percent of the land. They were very material.

23
24 Page 350.

12:53:47 25
26 I met Joan Maher maybe four times. She was very reluctant to support any
27 rezoning. She asked many questions as did the other councillors but I
28 eventually succeeded in winning her support. The only Councillor I ever
29 discussed with Mr Dunlop was Joe Maher. He asked me how I had obtained her
12:54:02 30 support. I told him by answering of all of her questions and showing her our

12:54:06 1 plans. Sometime after March 1993 Mr. Dunlop called and asked me to ask Joan
2 Maher how she felt about a development at Baldoyle. I asked and she said she
3 was totally opposed. I did not mention Mr. Dunlop. I agreed with Joan Maher
4 regarding the development. I did not feel the infrastructure in the area could
12:54:22 5 take the increase in traffic. Sometime later Mr. Dunlop called and asked me to
6 attend a meeting he was having with residents in Baldoyle. As Neptune Freight
7 was at that time in Baldoyle I did. When I arrived with my wife Mr. Dunlop,
8 Joan Maher and some others were at the top table. Joan Maher queried my
9 presence but the residents allowed us to stay. Mr. Dunlop's representation was
12:54:43 10 very short on detail.
11
12 I left without speaking to Mr. Dunlop. He called me a number of times about
13 this but it never got off the ground. I had a good relationship with Anne
14 Devitt who supported us from the beginning. I certainly did not understand how
12:54:55 15 the system as Mr. Dunlop outlines it worked. I knew nothing of bribing
16 councillors. I did not give Mr. Dunlop 10,000 punts. I gave him 3,000 punts.
17 In his office. I met him in a bar in central Dublin. I cannot remember which
18 one in September or October. It was a cold wet night. He arrived late. I was
19 sitting at the bar. We exchanged the usual pleasantries. I gave him the money
12:55:16 20 in a white envelope. I asked him if he was going to buy me a drink now that he
21 had all of that cash. He replied that he had to leave immediately and did.
22
23 350 (10). This is untrue. I had no idea Mr. Dunlop was bribing councillors if
24 he was.
12:55:31 25
26 50 (21). This is an absolute and utter lie I did not ever discuss bribing
27 councillors with Mr. Dunlop. He had significant widespread support and no
28 doubt crept in. I was in regular contact with all of the parties and was not
29 even aware of opposition until four councillors voted against our motion in
12:55:45 30 September following a speech by Mr. Higgins. I think on behalf of Aer Rianta.

12:55:50 1
2 351 (7) No doubt ever entered our minds regarding Mr Gallagher, nor did we ever
3 believe that Aer Rianta "got to him". I never discussed Mr. Gallagher with Mr.
4 Dunlop. How could anybody from Fianna Fail or Fine Gael use Mr. Gallagher's
12:56:03 5 support for our project against him when they were all supporting it? I do not
6 believe that Mr. Gallagher asked Mr. Dunlop for a bribe to support our project.
7
8 352 (5) Anne Devitt did support our project after she had examined all of the
9 details and visited the Neptune Warehouse in Baldoyle.
12:56:21 10
11 360 (24) This is a lie. Mr Dunlop never asked me for a success fee. How
12 could he, he was not involved in the rezoning.
13
14 361 (5) This is another lie. A, I would never say "well you got ten". I do
12:56:36 15 not speak like that. They are Mr. Dunlop's words. Also I would have had to
16 consult my partners, Mr. Cousins and Mr. Fitzgerald.
17
18 B, If Mr. Dunlop had ever asked for a success fee for the work he did, which
19 he did not, I would not have replied in such a blunt manner.
12:56:54 20
21 C, If Mr. Dunlop felt I was a bit "parsimonious"and that he was due a success
22 fee and he had the remedy in his own hands. He could have stopped work on the
23 right-of-way issue. In fact he worked for a further 15 months on that problem
24 without a success fee. The reason he did not stop work was because A, He
12:57:13 25 never worked on the rezoning in the first place and B, he never asked for a
26 success fee.
27
28 Signed Eamonn McGuinness. Thank you, Sir.
29
12:57:21 30 CHAIRMAN: All right. That concludes today's sittings.

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MR. QUINN: That's correct.

MS. DILLON: Yes.

CHAIRMAN: And we are not sitting next week, I think?

MS. DILLON: I understand that we are sitting the week after that.

CHAIRMAN: All right. The details will be posted on the website.

MS. DILLON: May it please you, Sir.

CHAIRMAN: Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY.