

1 PLANNING TRIBUNAL - DAY 307

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3 THE TRIBUNAL THEN RESUMED AS FOLLOWS ON THE 16TH OF

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

5 .

6 CHAIRMAN: Good morning everyone.

7 .

8 MR. HANRATTY: Good morning, Sir.

9 .

10 MR. JOHN FINNEGAN RETURNS TO THE WITNESS-BOX AND

11 CONTINUES TO BE EXAMINED BY MR. HANRATTY AS FOLLOWS:

12 .

13 1 Q. MR. HANRATTY: Good morning, Mr. Finnegan.

14 A. Good morning.

15 2 Q. Excuse me. On Friday I was asking you about what the

16 trustees were told in relation to these investments,

17 when you were seeking to withdraw these monies to make

18 the investments. Can I just ask you to tell us what

19 they were, in fact, told? For example, we were dealing

20 on Friday with the ú50,000 that was taken out, which

21 you say was put into the - as part of your investment

22 in Donnybrook, isn't that right?

23 A. Yes, Sir.

24 3 Q. Sorry, it was your investment in Donnybrook, as I

25 understand your evidence.

26 .

27 Now, you decided you were going to put ú50,000 into

28 this transaction, after, presumably, being approached

29 by Brennan and McGowan in relation to it, I think you

30 told us at some point in time after the contract was

1 signed, for one of their companies to buy it, but  
2 before it was closed to Victa, isn't that right?

3 A. Yes, sir.

4 4 Q. What did you tell the trustees that you were doing with  
5 this ú50,000?

6 A. I think - I can't tell you exactly what I said to them,  
7 sir, because it is a long, long time ago, but it would  
8 - I would have informed them of what I was doing, but I  
9 don't know what exactly I would have told them. I  
10 don't suppose there was such an importance in it, than  
11 I suppose trying to recollect now, sir.

12 5 Q. You see, if it was a Foxtown Investment, in other  
13 words, a trust investment, presumably the trustees  
14 would have had to get some sort of a receipt from  
15 somebody for their investment, and some sort of a  
16 document to show, and if necessary, to prove that they  
17 had made such an investment, wouldn't they?

18 A. Well, I suppose, sir, that there must be some - I am  
19 sure in the normal course of events, yes, sir.

20 6 Q. I mean, we do know that - you have told us that you  
21 were getting involved in a scheme with Messrs. Brennan  
22 and McGowan, but the point fundamentally is that it was  
23 you that was getting involved in the scheme, when, for  
24 example, Rapallo was put in place, and its name  
25 subsequently changed to Victa, this was the Jersey  
26 company dealing with this Donnybrook transaction, it  
27 wasn't Foxtown that was registered as a one-third  
28 beneficial owner, it was John Finnegan. Do you follow  
29 me? Which gives the trustees a bit of a problem,  
30 because they are effectively handing out ú50,000, which

1 they are told is going to be a trust investment, but  
2 which goes into your name or is, I presume, credited  
3 against your name in someway. There is nothing to  
4 indicate, in other words, that Foxtown Investments  
5 Limited as such was, in fact, involved either in the  
6 scheme, or in the purchase of the property, albeit that  
7 we do know that when the time came to divide up the  
8 money that was sent over to Jersey, on your direction,  
9 the proceeds were directed to be sent over to Foxtown,  
10 but in the meantime, there was nothing that the  
11 trustees could hang their hat on, there is nothing that  
12 they could identify as theirs. Do you see what I mean?

13 A. I understand where you are coming from, sir, but - yes,  
14 I hear what you are saying.

15 7 Q. It is another of these incongruities about this trust.  
16 It would tend to suggest, in reality, that you were, in  
17 fact, controlling the Trust, and that they were  
18 absolutely sanguine and secure about you saying to  
19 them, "Give me €50,000. I am going to invest it for  
20 the Trust," and were effectively prepared to act on  
21 your word for it?

22 A. No, sir. Whatever one might think, it is not the case.  
23 Whilst the - we are talking about various transactions  
24 that you are inquiring into now, sir, but other things  
25 would have happened within the Trust. And when -  
26 anything like a sum of money like this, whether it was  
27 drawn down, that the, through Foxtown, whilst the  
28 technicality of a registration in my name, but that was  
29 for the benefit of, anything that was coming out would  
30 go back in as to the benefit of the Trust.

1 8 Q. But the Trust it no guarantee that that would happen?

2 A. No. Well, that is another matter. I don't know  
3 exactly what they had there at the time, but guarantee  
4 - well --

5 9 Q. Once they handed out the ú50,000, which they did, they  
6 - there is no document that we've seen to show any  
7 involvement of any kind whatsoever as between the  
8 trustees, for example, and Brennan and McGowan, or the  
9 trustees and Mr. Owens, or anything of that nature. It  
10 was all you?

11 A. Well, wait just for a moment, sir. We must go back to  
12 what - first of all, that Owens, Hugh Owens was the man  
13 who was doing all - and I mean, all to do with the  
14 scheme. So he didn't - in fact, that wasn't  
15 circulating or whatever he had, his scheme, or schemes.  
16 .  
17 So, regarding the Trust, I don't know what exactly I  
18 would have told the Trust at the time, but I would have  
19 informed them, and indeed, when the late Mr. Des  
20 Traynor was around, I would have had a chat with him.

21 10 Q. But he had nothing to do with this Trust?

22 A. Well, it was - he had, actually. He didn't - as I said  
23 to you the other day, that whilst I know that you were  
24 trying to explain to me various layers and things, but  
25 when it came down to it, he still had a connection and  
26 people would operate on what he said. He kept  
27 connection, sir, with various people until very much up  
28 until last, the last months.

29 11 Q. Yes. And he undoubtedly had a strong connection with  
30 Guinness & Mahon, which at some, at a previous stage

1 had been the parent company of the trustee company?

2 A. Yes, sir.

3 12 Q. But the trustee company had its own independent duties,

4 according to the terms of the Trust, vis-a-vis all of

5 the categories of persons entitled under the Trust,

6 including yourself. You were the first named

7 beneficiary, as we have seen from the document --

8 A. What did you say?

9 13 Q. You were the first named beneficiary in the schedule of

10 the document. There were several categories. The

11 first one was you. The second one was your children.

12 And I think the third one was your spouse, I think, or

13 your children. It went down in that way.

14 .

15 Would the trustees not want to know what was going to

16 be done with the \$50,000?

17 A. I am quite sure at the time they got an explanation,

18 but I just wish to say to you, sir, again, that you

19 know sometimes when people ask me about what happened

20 three or four years ago, I find it hard to recollect,

21 and what did you say or what did you do. And you know,

22 one can do one's best, to try, but like - this wouldn't

23 have been just a transaction that would have stood out

24 in my mind as a particular one. Because I am in the

25 business of doing business, I would have had a lot of

26 transactions. If it is just one of - sir, if it is one

27 deal in your lifetime, you remember it.

28 14 Q. Yes.

29 A. But if it is part of a number of things, like, it is an

30 everyday occurrence for me.

1 15 Q. Well, do I take it from that, that you don't, in fact,  
2 know what was in fact done with the 50,000, or do you?

3 A. No, I wasn't saying that, sir. What I was saying was  
4 you asked me what my - my response to you was about  
5 what would I have said to the trustees.

6 16 Q. As to what was being done with the 50? Yeah?

7 A. Yeah. Well, I think what --

8 17 Q. I understood your answer to be that you think you would  
9 have told them at the time, but you can't remember what  
10 it was now?

11 A. Yeah. Yes, sir.

12 18 Q. But is that the case that you don't remember now what  
13 was, in fact, done with the 50?

14 A. No - when I - it was invested in the scheme, sir.

15 19 Q. But you know, to tell the trustees that it was invested  
16 in the scheme, do you think they would want to be told  
17 a little bit more than that; would you agree?

18 A. I suppose it was borne out that it did, it did come  
19 back. I don't think there was any concern. I think at  
20 the time - it is very hard to know exactly what I would  
21 have said.

22 20 Q. We have been over this ground to some extent on Friday?

23 A. Yes.

24 21 Q. We know that ú300,000 was borrowed or, at least  
25 according to the draft documents that we have seen,  
26 that it was sent over from Ireland from the Irish  
27 company, Oakpark, to the Jersey company, Victa, that it  
28 was sent under the cover of a license agreement, which  
29 included provision for an interest-free loan and so on.  
30 We know that, in fact, the sum that was sent over was,

1 in fact, 304,000.

2 .

3 Now, it is not easy to see where the ú50,000 fits into  
4 that, and, in fact, on the face of it, it doesn't  
5 appear to fit into that. If it doesn't fit into that,  
6 then the question was, "What was done with it? What  
7 did Mr. Owens do with it, if he got it?" Or "What did  
8 Messrs. Brennan and McGowan do with it, if they got  
9 it?" We do know, for certain, that there was a  
10 requirement for outlay, in the sense that the Pembroke  
11 Estate had to be paid the price that was agreed with  
12 them, which was ú141,000, isn't that right?

13 A. Mm-hmm. Yes, sir.

14 22 Q. We do know that a deposit of ú14,000 had been paid to  
15 the Herbert Estate, and we do know, and we will come to  
16 this in a moment, to the documents, that while it  
17 appears on the face of the documents that the sale was  
18 closed in August, there are indications that it wasn't,  
19 in fact, closed until December, which would have been  
20 after this debit of ú50,000 on your account, which  
21 clearly gives rise to the possibility, at least, I am  
22 not advancing this as a theory one way or another, but  
23 it is clearly a possibility, that what your money was  
24 used for, if you did put in ú50,000, was to pay a  
25 proportion of the balance of the purchase price which  
26 had to be paid to buy the land off the Pembroke Estate?

27 A. I don't know, sir. I don't know where - I don't know  
28 what part of the cog it was, but it was.

29 23 Q. There was two major treads to this whole transaction:  
30 One was to buy it off the Pembroke Estate, on block,

1 with planning permission for €141,000, which was done.  
2 Originally it was a Brennan and McGowan, then it was  
3 changed to Kilnamanagh Estates, and ultimately it was  
4 actually closed to Victa, this Jersey company. That  
5 was the first section.

6 .  
7 Once it was purchased by Victa, there was what  
8 Mr. Owens tends to refer to as the inflation of the  
9 balance sheet, where an agreement is entered into by an  
10 Irish company, involving the property, and involving a  
11 substantially higher sum, in this case €672,000, of  
12 which 404,000 was sent back to Ireland, presumably, to  
13 pay borrowings of 400,000.

14 .  
15 So the two sections of the transactions are one buying  
16 --

17 .  
18 MR. HUSSEY: I am sorry. Just before - just - I think  
19 Mr. Hanratty is fixing up the Newtownpark Avenue deal.

20 .  
21 MR. HANRATTY: I am sorry, My Friend is correct about  
22 that.

23 .  
24 24 Q. MR. HANRATTY: Sorry. What we know happened in the  
25 Donnybrook case was that there was €304,000, and that  
26 out of which you or Foxtown was sent €101,000.  
27 .  
28 So that was the second part of the transaction, as it  
29 were. And if - and I stress the word "if", if it is  
30 correct that the monies that were sent over to Jersey



1        were, in effect, the same ú300,000 that was borrowed by  
2        Oakpark in Dublin, that would explain substantially  
3        where the money came from that was sent over to Jersey,  
4        albeit that there was ú304,000 sent over to Jersey, and  
5        would tend to suggest that your 50 didn't form any part  
6        of the monies that went over to Jersey. And if that is  
7        correct, then the only other place that we can identify  
8        that it could have gone, would be as a contribution  
9        towards the purchase price to the Pembroke Estate.

10       .

11       Do you follow my logic?

12       A. I hear what you are saying.

13 25   Q. Can you identify any other place that it could have  
14       gone or might have gone?

15       A. No, I think that - I want to say to you, sir, that - I  
16       mentioned this before. I never understood that whole  
17       sweep around of the scheme, because it was - these  
18       professionals are paid to do, to draft these. I  
19       wouldn't have the faintest idea where to look, start,  
20       or otherwise with any of these. These are - so --

21 26   Q. All we are trying to do at this stage, Mr. Finnegan, is  
22       have a much more limited understanding of this scheme,  
23       that is simply to identify anywhere where the money  
24       could have gone in connection with this transaction.

25       .

26       Now, the two possible places that we have identified  
27       are to pay the purchase price of the land to the  
28       Pembroke Estate, that is one possibility, and the other  
29       possibility is that it was part of the monies that went  
30       over to Jersey.

1 .  
2 Now, that latter possibility seems to be excluded, by  
3 the loan of ú300,000 to Oakpark, which was guaranteed  
4 by Victa, and by the process of exclusion, then, that  
5 brings us back then to the only other possibility that  
6 we have so far identified, namely, to pay part of the  
7 purchase price.

8 .  
9 And what I am asking you is: Can you identify anywhere  
10 else that the money could have gone?

11 A. The only thing is this: When people talk about schemes  
12 like this, there is a lot of manoeuvring around of  
13 either paperwork, money going here, there and  
14 everywhere, and the documentation that comes out at the  
15 end, sir, is very much that which is just implementing  
16 the scheme.

17 .  
18 Now, what would go on in the manoeuvring of it, there  
19 is no point in saying I would know, because I don't  
20 know, and I wouldn't have been, I wouldn't have been  
21 told. I probably wouldn't have been interested at the  
22 time, anyway, because it is in the hands of a pro, and  
23 - so --

24 27 Q. Then, may I take it from that answer, Mr. Finnegan,  
25 that your position on this is you don't know whether  
26 your ú50,000 was sent over, was part of the money sent  
27 over to Jersey, you don't know whether it was used as  
28 part of the closing monies for the purchase of the  
29 lands, and you are not aware of any other possibility  
30 that you can identify to the Tribunal, where it might

- 1           have been put?
- 2    A.   No, that is not correct, sir.
- 3 28   Q.   All right. Please correct it.
- 4    A.   No, because I - you have asked me, did I go to, for one
- 5           or other of those - I am saying I don't know where it
- 6           went, and perhaps when - when one is looking into this
- 7           further, it may come up. I know that I would be
- 8           bringing it the wrong way to say that it went either of
- 9           those --
- 10 29   Q.   I understand. Really, all I am saying to you, as far
- 11           as you are concerned, it could have gone in either
- 12           direction?
- 13    A.   It could have gone in any direction.
- 14 30   Q.   They could have applied it to either of those purposes,
- 15           as far as you are aware, because you just don't know.
- 16           Is that right?
- 17    A.   I don't know.
- 18 31   Q.   Yes. All right. Well, that's fine.
- 19    A.   Sure.
- 20 32   Q.   The same thing, I think, in a sense applies in relation
- 21           to the lands at Monkstown. What was done with your
- 22           money? You said the only specific thing you could tell
- 23           us about it, again I am saying this subject to
- 24           correction, was that you think you gave it to
- 25           Mr. Owens?
- 26    A.   Hum.
- 27 33   Q.   This is the ú33,333.33. And again, undoubtedly you
- 28           gave it to him at a time which would have been possible
- 29           for him, if he wished to use it as part of the monies
- 30           to close the sale from the nuns. They were owed at

1 that stage, I presume, 189,000, having been given a  
2 deposit the previous year of 21,000. He could have put  
3 it into that, or as far as you are concerned, he could  
4 have put it into the scheme, is that right, in the  
5 sense that it could have been part of the monies that  
6 went over --

7 A. A question like that, I don't know how to answer it.  
8 You asked, could have done it, could have done many  
9 things --

10 34 Q. Mr. Finnegan, that is precisely my point here. All I  
11 am trying to establish at this point is the extent, if  
12 any, of your knowledge. If you don't have any  
13 knowledge, I want to establish that one way or another.  
14 I am not concerned what the answer is. I am simply  
15 concerned to get the answer.

16 A. I appreciate that, sir.

17 35 Q. We do know that your evidence is, and we know that  
18 there is a gentleman going to come, and as we  
19 understand it, he is going to tell us that these bank  
20 accounts, which were recently produced, were documents  
21 which he recently found which contains entries which he  
22 made, but which he made contemporaneously with the  
23 transactions. That is as I understand it. Is that  
24 the evidence that Mr. Turvey is going to give us?

25 A. I think what - I think that the - that it is, whenever  
26 he made his notes, was around about the timescale that  
27 is on the, on the document.

28 36 Q. On the document?

29 A. Yes.

30 37 Q. That's right. Now, if that is an authentic document,

1 that would seem to establish that in the case of  
2 Monkstown, a figure of ú33,000 was paid out of this  
3 account in some way in connection with Monkstown, with  
4 the lands at Monkstown. And if that is the case, then,  
5 it is a question of trying to identify what are the  
6 possibilities. Was it used towards the payment of the  
7 balance of the purchase price to the nuns? Was it used  
8 as part of the monies that were sent over to Jersey?

9 .  
10 As I understand your evidence, at this point in time,  
11 you don't know?

12 A. No, the only thing is - I suppose if you look at it,  
13 that - it was for the future - the reason for it was  
14 that it was, it was taking out the future profits.  
15 This was the scheme. So, if you want to imagine where  
16 it went, that it went for that purpose, that it was for  
17 the future, that there was, the new figures were being  
18 taken.

19 .  
20 I think that what we want to look at is this, sir,  
21 because we had some chats about this during last week,  
22 that the thing I wanted to just say to you was: That  
23 the value of the transaction which took place with the  
24 nuns, which I just want to actually say was market  
25 value, sir.

26 38 Q. You have made that point so many times, Mr. Finnegan.  
27 There is no need for you to make it again. It has been  
28 noted and it is quite clear that is your testimony.  
29 That is fine.

30 A. Thank you.

1 39 Q. But all I am trying to establish at this point in time,  
2 is the state, if any, of your knowledge as to what  
3 Messrs. Brennan and McGowan or Mr. Owens, whoever  
4 received this money from you, did with it, whether they  
5 put it towards the completion of the sale, whether they  
6 sent it over to Jersey with the other monies that were  
7 sent over to Jersey, or what they did. As I understand  
8 your evidence, subject to being corrected, you don't  
9 know what they did with it?

10 A. No --

11 40 Q. You believe you gave it to Mr. Owens, but beyond that,  
12 you don't know what he or they did with it?

13 A. I believe - I believe that that - whatever it was  
14 required for the scheme, but what actually played going  
15 around the houses, I don't know. I think that was --

16 41 Q. Yes. Just to jump ahead a little bit. We do know  
17 that according to this document, another ú33,333.33 was  
18 put towards Newtownpark Avenue?

19 A. Yes, sir.

20 42 Q. And is it your belief, on the basis of that document  
21 and that entry in that document made by Mr. Turvey,  
22 that you did, in fact, invest 33,000-odd into  
23 Newtownpark Avenue?

24 A. Yes, sir.

25 43 Q. And again, will it be your testimony that you don't  
26 specifically remember what was done with the money when  
27 you handed it over, other than the fact that you put it  
28 in as, by way of an investment into this transaction?

29 A. No, I think that would be the position, sir. I think  
30 that it was the scheme, again. And I think this is

1 again where, if I was an accountant, I might know a  
2 little bit more about it. I think dividing is the  
3 thing that they were doing. This scheme was made up -  
4 taking different pieces of property and doing - putting  
5 figures on it and coming up with whatever at the end of  
6 the day.

7 44 Q. I mean, there is an inference, there is an obvious  
8 inference in relation to a figure like  $\text{€}33,333.33$ ; that  
9 it is a third of something?

10 A. Yes.

11 45 Q. And it is your testimony that, in each case, both in  
12 Newtownpark Avenue and in Monkstown, that in each case  
13 it was a third of something?

14 A. Mm-hmm.

15 46 Q. It was a third of a  $\text{€}100,000$  contribution that the  
16 three of you together were collectively making?

17 A. Yes.

18 47 Q. We know, for example, that in the case of Newtownpark  
19 Avenue, a figure of  $\text{€}672,000$  was sent over, we know  
20 that  $\text{€}400,000$  of that was borrowed. We know that there  
21 was another borrowing of  $\text{€}150,000$ , or at least so we  
22 have been told. But we also know that there was a  
23 current account containing  $\text{€}100,000$ , and it is entirely  
24 possible, for example, that the  $33,333$  could have been  
25 put in as your contribution to the current account of  
26  $\text{€}100,000$ . We don't know. Do you know?

27 A. No, sir. You see, I think that is where - there is so  
28 many - it is like an octopus, sir, you wouldn't know.  
29 Once these people start looking at doing their,  
30 whatever way working out the scheme, there is a lot of

1 - they have a lot of movement in it.

2 48 Q. Undoubtedly so. One possibility, taking those first  
3 three transactions, which undoubtedly presents itself,  
4 and I would suggest to you, strongly presents itself,  
5 is the possibility that, in fact, in each of these  
6 three occasions what your money was, in fact, used for  
7 was it was put towards the purchase money. In other  
8 words, in the case of Monkstown, it was used to pay  
9 part of the balance of the monies that was paid to the  
10 nuns. In the case of Donnybrook it was used to pay the  
11 balance that had to be paid to the Pembroke Estate, and  
12 that in the case of Newtownpark Avenue it was used to  
13 pay the balance that had to be paid to, I presume, Mr.  
14 Maguire or whoever the actual vendor was. Because when  
15 you look at the chronological sequence, I think in each  
16 case it appears that the debit on the account occurred  
17 within a relatively short period prior to the point in  
18 time where the balance of the purchase monies were  
19 paid.

20 .

21 And when you take that, together with what I have been  
22 putting to you, for example, most specifically in  
23 relation to Donnybrook, that it doesn't appear to fit  
24 into the Donnybrook scheme, in the sense that it  
25 doesn't appear to have been used for that purpose - the  
26 Jersey scheme, shall I say. Well, then, that drives  
27 you back to considering the possibility - well, then,  
28 probably that it was used for - was that it was put,  
29 that what they did with it was they assembled it  
30 somewhere and put it towards the balance of the



1 purchase monies, as a possibility?

2 A. Well, the only thing is this: That I would say, if  
3 money goes into a pot, how it would be spread out or  
4 what it would be used for around the table, I don't  
5 know, but - I think there were a number of - in all of  
6 these, I think there were a number of - sir.

7 .  
8 I think there are more transactions or manoeuvring  
9 around than you have probably seen, sir, on the latest,  
10 on the final documentation, because they would take -  
11 these are things that had been worked out. I don't  
12 think they were worked out in five minutes, sir. There  
13 was a lot of things --

14 49 Q. The appearances are that they were worked out in  
15 advance by Mr. Owens. Once he was told that there was  
16 a transaction coming down the tracks, shall we put it  
17 that way, he then got to work with his magic wand and  
18 put together a scheme involving the lands which were  
19 the subject of that transaction. That is quite clear,  
20 in each case this is what he did. In fact, in the other  
21 case that is we are going to talk about as well. In  
22 each of these cases, with the exception of one,  
23 perhaps, they all involved Jersey companies, and they  
24 all involved Jersey companies in which you had an  
25 interest, of an equal nature with Messrs. Brennan and  
26 McGowan, although in each case again, certainly in the  
27 case of Donnybrook, Newtownpark Avenue, and Monkstown,  
28 you were not a full one-third partner in the  
29 development with them. Your partnership or your  
30 arrangement or your agreement with them was of a much

1 more limited nature?

2 A. Yes, it was just the invitation to get involved was in  
3 the scheme, sir. I think once that passed, that was  
4 the end of that.

5 50 Q. Yes.

6 .

7 Just if we could look briefly again at these accounts  
8 which contains this information.

9 .

10 Do you have a hard copy in front of you there?

11 A. Yes, sir.

12 51 Q. If you look at page 4838. This is the one which  
13 contains the Monkstown transaction

14 .

15 We have seen already that a lot of the transactions on  
16 this account, certainly after a certain point, contain  
17 these reference numbers which you say you don't  
18 understand?

19 A. No, sir.

20 52 Q. And on this page, in fact, up to about halfway down we  
21 have "stock purchase and interest". And undoubtedly  
22 there appear to be a lot of transactions which seem to  
23 be consistent with stock purchases, and a lot which are  
24 debits, as it were, and there appear to be a lot of  
25 credits which appear to be consistent of receipt of  
26 interest in various small odd figures. You see that.

27 .

28 For example, on page 4848, the first few transactions  
29 - well, the first one is a deposit?

30 A. Yes.

1 53 Q. But then the next two are, I presume, dividends that -  
2 where the word "Div" is written. Do you see that?

3 A. Mm-hmm.

4 54 Q. Then if you take the next six or so transactions, it  
5 says specifically "stock purchase." These are all  
6 debits. Do you see that?

7 A. Yes.

8 55 Q. Then below that there is "interest." So there is  
9 obviously interest, of course, being earned on the  
10 account as well to the extent that it is in credit.

11 Then there are management fees.

12 .

13 But then that all changes and we get into these,  
14 certainly on the long form statements which appear to  
15 have been generated in Guernsey, we start dealing in  
16 reference numbers, isn't that right?

17 A. Are we still on the same page, sir?

18 56 Q. Yes. As you can see, the bottom half of the page is  
19 effectively reference numbers. They stop using the  
20 terminology "dividends," "stock purchase," and they  
21 start using the references - "R" references and "B"  
22 references. The only thing that one can obviously  
23 adduce from it is that the "B" references seem to be  
24 debits and the "R" references appear to be credits?

25 A. Right.

26 57 Q. Do you see that?

27 A. Mm-hmm I just really don't know what they are.

28 58 Q. What it appears from such information, as is contained  
29 in the documents, that substantially what this account  
30 was about, was about investments in shares.

1 .  
2 The first few pages concern themselves with what appear  
3 to be inter-account transfers and these of that nature.  
4 Do you see that? If you look at page - if you look at  
5 page 4827.  
6 .  
7 There is interest transactions on it. There is a  
8 lodgement. And shortly after that, a credit for a  
9 particular figure, there is a debit for the same  
10 figure. Then there is another debit. So there is  
11 nothing, there is nothing about that page that would  
12 give you an indication of the nature of the account or  
13 the purpose of the account, and the kind of  
14 transactions that were normally transacted on it. Do  
15 you know what I mean? And similarly, I would suggest to  
16 you, with the next page 4828. 4829. 4830.  
17 .  
18 There is some inter-account transfers, but there is  
19 interest entries, but again, nothing that would  
20 indicate, certainly, what the account was later used  
21 for. And that starts to appear, and please correct me  
22 if I am wrong, I am only interpreting it off the top of  
23 my head as I look at the documents, Mr. Finnegan, that  
24 it is really only when you get to 4838 that you start  
25 to get an understanding of the use to which the account  
26 was then put. We are now talking, of course, at 1977.  
27 .  
28 And doesn't it appear from that, that the purpose of  
29 the account is something to do with stock purchases and  
30 receipt of dividends from stock purchases?

1 A. Yes, sir.

2 59 Q. And would it be reasonable to infer that whilst the  
3 terminology changed, as you can see on the second half  
4 of that page, from, in fact, from June of 1977, the  
5 purpose remained the same, and that these references,  
6 the "B" and the "R" references, the credit and the  
7 debit were referring to the same kind of thing, stock  
8 purposes for the bigger sums, interest payments or  
9 interest receipts for the smaller sums?

10 A. Well, whatever you say, sir. I just don't know what --

11 60 Q. Wouldn't it appear to be so?

12 A. Well, if you say so, yeah.

13 61 Q. Well, do you not know that the Foxtown account was  
14 substantially an account from which --

15 A. Oh, yes.

16 62 Q. -- stock was purchased? You have told us before,  
17 Mr. Finnegan, that the investments were primarily stock  
18 purchases of this trust?

19 A. Sorry, the - just to say that the "Rs" and the "Bs", I  
20 didn't - I said to you, I didn't know exactly what they  
21 were.

22 63 Q. It doesn't appear to be the position that the "Bs" are  
23 credits and that the "Rs" are debits?

24 A. Yes, sir.

25 64 Q. And is it possible, Mr. Finnegan, that what these  
26 references are, in fact, are references to particular  
27 shares?

28 A. I would imagine so, sir.

29 65 Q. Yes. In other words, that the system has been refined  
30 somewhat to show, in the case of a share purchase, what

1 share it is, or in the case of the receipt of a  
2 dividend, from what share that dividend was received?

3 A. I really - by the way, just to say to you, this is not  
4 my forte, going down through this sort of thing. So I  
5 am not good at it, so I am --

6 66 Q. I understand that. Given that we know in general terms  
7 how the account would have been run, this was the  
8 investment account of the Trust, isn't that right?

9 A. Yes.

10 67 Q. You have told us, as far as you are aware, the only  
11 investment account of the Trust, isn't that so?

12 A. Yes, sir.

13 68 Q. And you have also told us that the investments of the  
14 Trust were effectively in shares?

15 A. Yes, sir.

16 69 Q. Stocks and shares?

17 A. Yes, sir.

18 70 Q. Consequentially, what you would expect to find in such  
19 an account is what you, in fact, find here is large  
20 sums of debit, where clearly shares are being  
21 purchased. And in fact, the first half of this page we  
22 see for certain it was purchase of shares, because it  
23 actually uses the terminology "stock purchase," but we  
24 also see monies coming in on the credit side which are  
25 described as dividends or an abbreviation for  
26 dividends. In the continuation of this the terminology  
27 changes. It changes into two categories of "R"  
28 transactions, if I might call them that, and "B"  
29 transactions, the "R" transactions being credits to the  
30 account and relatively small sums which one could, I

1 suggest, reasonably infer were interest payments, the  
2 same - or dividend receipts, the same as the previous  
3 small transactions, and the "B" ones were payments out  
4 for the purchase of stock?

5 A. Yes, sir.

6 71 Q. And given that somebody took the trouble of refining  
7 the system in this way, it would appear reasonable to  
8 infer that the nature of the refinement was, perhaps  
9 more readily to identify shares or stocks in respect of  
10 which these credits and debits were entered?

11 A. If that was it.

12 72 Q. Can you think of any other --

13 A. As I say to you, I am not - I just want to say to you,  
14 if that is what it is, that is what it is, but I - I  
15 wouldn't, I wouldn't know by looking at this.

16 73 Q. Do you have any reason to think it was anything else?

17 A. No, no, I am not saying, sir, that it is anything else,  
18 but --

19 74 Q. We do know that some of the "B" transactions are those  
20 transactions in respect of which Mr. Turvey has written  
21 in an annotation referring to Monkstown, Newtownpark  
22 Avenue and Donnybrook and so on?

23 A. Mm-hmm.

24 75 Q. And they are clearly not share transactions?

25 A. Mm-hmm. Sorry --

26 76 Q. For example, if you look at the Monkstown one, which is  
27 still on that page, it does have a reference, a "B"  
28 reference called "B377."

29 A. Yes, sir.

30 77 Q. You see that?

1 A. Yes, I have.

2 78 Q. Now, that means that when that money went out for  
3 whatever reason it went out, the information which the  
4 bank had, is that the reference for it was B377, and  
5 either the bank itself made up that reference or they  
6 were told in some docket or whatever, debit credit  
7 slip, whatever it was, that this was the reference for  
8 this particular transaction. Isn't that so?

9 A. It looks like that, sir, yes.

10 79 Q. And obviously, when the ú33,333 was paid out, it would  
11 have been done on somebody's instructions to the bank,  
12 presumably the trustees?

13 A. Yes, sir.

14 80 Q. And it is entirely possible that the instructions that  
15 they gave to the bank, included the reference B377, to  
16 enable them, when they received the statement, to be  
17 able to identify which transaction had which reference?

18 A. Well, I am going along answering these questions, sir.  
19 I just want to say, if I am nodding my head and saying  
20 this, it is just an interpretation, I don't really  
21 know, but I take it this could be an explanation.

22 81 Q. Yes. Well, what I am really trying to get at,  
23 Mr. Finnegan, is given that this appears to be a share  
24 account, and that the great bulk of the transactions,  
25 apart from inter-account transactions, and interest  
26 credits, that the great bulk of the transactions appear  
27 to relate to dealings in stocks and shares?

28 A. Mm-hmm.

29 82 Q. That we appear to be agreed on?

30 A. Yes, sir.



1 83 Q. Yeah. And that that falls into two categories: One,  
2 debits on the account, where substantial sums are paid  
3 out to purchase shares; and two, credits on the account  
4 which appear to be receipts from share investments, in  
5 the form usually of, we presume, dividends. That's the  
6 great bulk of the transactions on the account?

7 A. Yes, sir.

8 84 Q. And we know that at a point in time, which we can  
9 identify as June of 1977, that the annotation on the  
10 account, as it were, was changed from descriptive, like  
11 stock purchases, to a reference number with a letter,  
12 falling into two categories, "B" references and "R"  
13 references, one referring to credits and one referring  
14 to debits. So far all is clear. And what we now need  
15 to, therefore, establish is what is the numerical part  
16 of the reference.

17 .

18 And what I was suggesting to you, and seeking your  
19 assistance on is: Is it possible that these numbers  
20 were, in fact, the trustees references for the various  
21 stock investments that they had made? In other words,  
22 let's take "B" - well, take the last one on the page  
23 there. That is an "R" reference, R767, 20th of  
24 December, ú1,684.34?

25 A. Mm-hmm.

26 85 Q. It seems reasonable to infer that 767 or R767 is a  
27 reference to the stock from which that sum was received  
28 by way of a dividend payment?

29 A. Yes, sir.

30 86 Q. Doesn't that seem logical to you?

1 A. Yes, it does, yeah.

2 87 Q. Because if those "R" references are not that, it is  
3 difficult to figure out what else they are, because we  
4 do know that most of the credits on this account, apart  
5 from interest payments, are in fact dividend receipts,  
6 isn't that so?

7 A. It would appear so, yes, sir.

8 88 Q. Another possibility, of course, is that R767 doesn't  
9 refer to a particular share, but it refers to a  
10 particular ledger entry that the trustees had for  
11 receipt of one sum, in other words, that each sum or  
12 each receipt has its own unique reference. That is  
13 clearly another possibility?

14 A. I would like to say again, sir, I wouldn't have the  
15 faintest idea how they run it, but if we were trying to  
16 analyse - I don't know.

17 89 Q. Could you find out?

18 A. What?

19 90 Q. What are they, just in terms of what they refer to?

20 A. Well, hopefully - if we get - when - we have applied to  
21 get our documents, sir, from the bank, so hopefully  
22 when they come through --

23 .

24 MR. HUSSEY: Just on that point. Quite apart from if  
25 we get these documents, we could ask the trustees about  
26 these entries. Quite apart from anything else, we  
27 could make that inquiry.

28 .

29 MR. HANRATTY: Certainly it would be useful if we could  
30 try it anyway.

1 .  
2 CHAIRMAN: It would be illuminating anyway, wouldn't  
3 it?

4 .  
5 MR. HANRATTY: Yes.

6 .  
7 91 Q. MR. HANRATTY: It may be that, therefore, the  
8 explanation for the reference of B377, against the  
9 ú33,333, against which Mr. Turvey has written  
10 "Monkstown" or "M Town" is that that is either a  
11 reference which the trustees allocated to that  
12 particular investment, or a ledger reference which is  
13 unique to that particular figure?

14 A. Yes, sir.

15 92 Q. Or perhaps some other explanation that we haven't  
16 thought of yet. Is it your position that you haven't  
17 any idea what these references are? When you would  
18 have received these accounts, as it appears you did,  
19 would you have not known what these references were?

20 A. I wouldn't have the faintest idea, sir.

21 93 Q. But they are all fairly large sums of money, including  
22 sums that you, yourself, had paid out? When I say "you  
23 yourself", you yourself had drawn out for these  
24 investments. In the case of Monkstown, you would have  
25 got on to the trustees, or perhaps Mr. Taylor, and  
26 said, "I want ú33,000," then you would have got this  
27 statement showing the debit on the account with that  
28 figure but also with this reference on it. Would you  
29 not know what the reference was then?

30 A. I wouldn't, sir. And - I don't go - my mind doesn't go

1 around that way, sir. In fact, I got a - just to tell  
2 you by-the-by - I just got a letter from a bank the  
3 other day to say, "I am sorry, we wish to apologise  
4 that we debited your account by -" instead of, say,  
5 ú1,100, by a sum 50 times higher than that, "and we  
6 apologise for the mistake," and blah, blah, blah, "and  
7 we are putting it right." I never knew. So I wouldn't  
8 - I haven't that sort of mind, sir. I don't do this  
9 sort of thing. I wouldn't. Some people are like that,  
10 others aren't. I am sorry but --

11 94 Q. Could we just look again at page 4838. Mr. Turvey has,  
12 apart from the Monkstown entry, written in a lot of  
13 other entries as well. Perhaps if we take it from the  
14 top in the debit column, what he has written there,  
15 "PS" something "power cable"?

16 A. Your guess is as good as mine, sir.

17 95 Q. The next one looks like "Hammond"?

18 A. Yes, sir.

19 96 Q. Would that be a share transaction?

20 A. I presume it could, sir.

21 97 Q. The next one?

22 A. A purchase, a share purchase, yes.

23 98 Q. The next one is "cement"?

24 A. Yes, sir.

25 99 Q. The next one is "FHFC" or something.

26 .

27 MR. HUSSEY: I am sorry, I wonder, can I interrupt at  
28 this point. I have tried to keep my interruptions, as  
29 you can see, to an absolute minimum. I am wondering,  
30 is this just skirting over the privacy matter that you

1 ruled on last week, sir? I don't know that there is  
2 any relevance at all to anything that you are inquiring  
3 into. I don't know, I will leave it to yourself, sir.

4 .

5 CHAIRMAN: I don't think you can avoid it,  
6 unfortunately. Here is the mystery. And if the  
7 trustees or somebody else would produce the appropriate  
8 accounts, we might get somewhere.

9 .

10 MR. HUSSEY: Except that I think, as I understood it,  
11 we had given a small explanation of these matters, and  
12 we hadn't been indicated that they were going to be  
13 subject to any further inquiry. I know the general  
14 nature of Mr. Hanratty's inquiry, I am not objecting in  
15 general to a general inquiry, but just, the particular  
16 details, I am not sure that they are --

17 .

18 MR. HANRATTY: I take it Mr. Hussey's point to the  
19 extent that - what I am really trying to establish is  
20 not the identity of these, but simply that they are, in  
21 fact, share transactions.

22 .

23 MR. HUSSEY: Yes, I think that is a given, sir.

24 .

25 100 Q. MR. HANRATTY: I can deal with it generically. Would I  
26 be correct in saying that with the exception on that  
27 page of, on the Monkstown entry, that everything else  
28 is a purchase of shares, on the debit side, and receipt  
29 of dividends on the credit side?

30 A. I think, from what I see - I take it that that is it,

1 sir.

2 101 Q. Is there any doubt in your mind about that?

3 A. There is no doubt, and there is no whatever - I don't  
4 know, sir. So whatever is down there, if it looks like  
5 that, let's accept that it is.

6 102 Q. Could I take it, then, that in respect of the entire  
7 account, that any of these entries that Mr. Turvey has  
8 made, with the exception of the ones that we have  
9 specifically identified that the Tribunal is  
10 particularly interested in, such as Monkstown,  
11 Newtownpark Avenue and Donnybrook, that all the rest of  
12 them relate to share transactions, debits and credits?

13 A. I would imagine so.

14 103 Q. Apart from interest and inter-account transactions, and  
15 the other paraphernalia that you get in a bank  
16 statement, everything else relates to share  
17 transactions.

18 .  
19 My Friend, Ms. Dillon, does point out to me that there  
20 is the occasional withdrawal as well. But the great  
21 majority of them do appear to be attributed in a  
22 schedule which we have been given by your lawyers to  
23 share transactions, stock purchases and dividend  
24 receipts and that sort of thing?

25 A. Yes, sir.

26 104 Q. That would appear to suggest that the, the ones that  
27 have been identified by your lawyers as referring to  
28 the actual Monkstown land transaction, the Donnybrook  
29 land transaction and so on are the only land  
30 transactions that appear on this account. Is that

1 correct?

2 A. I think that would be correct, sir.

3 105 Q. Which would suggest that those, therefore, were the  
4 only land investments that were made from this account,  
5 or at least so it appears from this incomplete extract  
6 of the statements of account that we have.

7 .

8 Is it your recollection that that is, in fact, the  
9 case, that the only land investments that the trustees  
10 of this trust made, were the ones that we have been  
11 speaking about, Monkstown, Donnybrook, and Newtownpark  
12 Avenue?

13 A. I think so, sir.

14 106 Q. I think, perhaps, Mr. Finnegan, we will clarify that  
15 and perhaps revisit it. I don't want to pin you down  
16 to things, but there are indications that there were -  
17 that there were some other land transactions. If you  
18 just bear with me for a moment.

19 .

20 I think there were some explanations given for  
21 particular lodgements --

22 A. Mm-hmm.

23 107 Q. -- in the account. But am I correct in thinking that,  
24 in terms of debits on the account, these were the only  
25 investments that the trustees made in land  
26 transactions?

27 A. Well, this is what - this is what is portrayed in this,  
28 sir.

29 108 Q. This is unfortunately, as you know, incomplete,  
30 Mr. Finnegan?

1 A. Yes.

2 109 Q. But, we just have to do the best we can?

3 A. Yes.

4 110 Q. Just let's deal with your recollection for the moment.

5 .

6 With the exception of these, would you be surprised to

7 hear that the trustees had actually made other land

8 investments?

9 A. I don't know that there is anything else, sir. I

10 suppose they should be on --

11 111 Q. Sorry?

12 A. I suppose so, they should be on this, sir.

13 112 Q. Yes. Let's put it this way: We do know that you were

14 involved in this series of transactions with Messrs.

15 Brennan and McGowan from, say, 1977, to the early

16 1980s, and in the case of three of them, they almost

17 overlapped, in the cluster, in 1978, at one stage of

18 their development. But - and these were essentially,

19 if I might put it this way, driven by you, in the sense

20 that you would ring up the trustees and say, "I have

21 this proposition from Brennan and McGowan, and I want

22 approximately 33,000, and I want ú50,000."

23 There was no sense in which the trustees of this trust

24 were getting on to Brennan and McGowan looking for

25 investments, isn't that right?

26 A. No, sir.

27 113 Q. So the land transactions that we have identified on

28 this account, in which the trustees made an investment,

29 the only ones are those that you brought to the Trust,

30 as it were, rather than the Trust bringing to you?



1 A. Yes, sir.

2 114 Q. They are Brennan and McGowan transactions?

3 A. Yes, sir.

4 115 Q. And as far as you were aware, just from your general

5 knowledge of the manner in which this trust was

6 supposed to operate; as far as you were aware was it

7 the position that the trustees would not have made any

8 other property investment, and that all the other

9 investments of the Trust were stocks and shares?

10 A. I would imagine, sir.

11 116 Q. Well, is that your belief?

12 A. I think so, sir, yes.

13 117 Q. Yes. Well, then, perhaps we might just leave that,

14 then, at the moment, and you can make whatever

15 inquiries you wish, through your solicitor, to see,

16 then, if somebody can provide an explanation as to this

17 annotation on this account?

18 A. I will do that, sir.

19 118 Q. And obviously, in general, an explanation of what it

20 means, in particular the ones in reference to the four

21 transactions which have been identified to be applying

22 to the transactions of which the Tribunal is inquiring.

23 .

24 It is the same explanation?

25 A. Yes, right.

26 119 Q. Now, going back to the Donnybrook deal.

27 .

28 We know that, on the 16th of August, 1978, there is a

29 Deed of Conveyance from Herbert Properties Limited to

30 Victa Investments Limited.

1 .  
2 If we could just have that - page - if we could start,  
3 perhaps, with page 4428.  
4 .  
5 And this is the Memorial of the Indenture which we have  
6 had already. As you can see, it is dated the 16th of  
7 August. It is the conveyance from Herbert Properties  
8 to Victa. It is signed by you and Mr. Forwood, as  
9 officers of Herbert Properties Limited. Isn't that  
10 right?

11 A. Yes, sir.

12 120 Q. Now, if we could have a look at page 4882. Is that  
13 4882? It appears to be the same document. Oh, yes,  
14 this is the actual deed itself.

15 .  
16 Could we look at 4886, please.

17 .  
18 This is some kind of an apportionment account. And as  
19 you can see, it indicates the - yes, we have had this  
20 document before. It indicates the purchase money -  
21 141,000. The deposit of 14,000. The balance of  
22 127,000. And then the deposit receipt in respect of  
23 the Capital Gains Tax. And the costs and outlay.

24 .  
25 This, we presume, therefore, is the bill from Moore  
26 Kiely Lloyd to the Herbert Estate in respect of their  
27 work on this transaction on behalf of the Pembroke  
28 Estate. Isn't that right?

29 A. Yes, sir.

30 121 Q. Now, it is dated the 21st of December, of 1978. And

1 that, of itself, doesn't tell us anything about when  
2 the sale or the transaction closed, but could we have  
3 the next page, then.

4 .

5 This is a letter - could we just scroll to the top  
6 again.

7 .

8 Yes. It is from Fitzpatrick's to Moore Kiely Lloyd.

9 It is dated the 29th of January, 1979.

10 .

11 Fitzpatrick's appear to have been involved in the  
12 Capital Gains Tax issue, isn't that right? And it is  
13 "re Herbert Estates Limited.

14 Our clients - Oakpark Developments Limited."

15 .

16 "We have your letter of the 25th instant, and would  
17 wish to make clear that there is absolutely no  
18 agreement or understanding that our clients could not  
19 take any steps in applying for a certificate or  
20 assessment in this case. And we would refer you to the  
21 copy undertaking furnished to you."

22 .

23 Yes, I think an issue had arisen between Moore Kiely  
24 Lloyd on behalf of the Pembroke Estate, and  
25 Fitzpatrick's, as they then were, now Binchys, as to in  
26 whose name the joint deposit receipt should be;  
27 Binchys, or Fitzpatrick's insisting it should be them,  
28 in their capacity as solicitors for Oakpark. Moore  
29 Kiely Lloyd was taking the point, since the land was  
30 sold to Victa, it should be Victa that had it. But if

1 I am not mistaken, I don't think that letter assists us  
2 with the date.

3 .

4 Can you think of any reason as to why the deed might  
5 have been backdated? Why the deed, the conveyance  
6 might have been backdated? Because there are, if I am  
7 not mistaken, and we will find it, I am sure,  
8 indications that the sale might not, in fact, have  
9 closed until December. Nothing in particular turns on  
10 it, I should tell you, Mr. Finnegan, except that if it  
11 happened in April it would have been before your money  
12 came out. If it happened in December it would have  
13 been after your money came out.

14 .

15 Do you know what I mean? From the account in Foxtown?

16 A. Right, sir.

17 122 Q. That is the significance of it, and that is why we are  
18 trying to tie down, as far as we can, the precise date  
19 on which it would close, which we would normally take  
20 as the date in the deed and the Memorial of the deed?

21 A. Yes, sir.

22 123 Q. Perhaps, if we could look at 4898.

23 .

24 4898 is a letter from Moore Kiely Lloyd & Stapleton, as  
25 they then were, to Mr. Cassidy who, as we know, was the  
26 Manager in Pembroke Estates Management Limited. He was  
27 the one dealing with the day-to-day affairs of the  
28 Pembroke Estate, isn't that so?

29 A. That's right.

30 124 Q. Including you and the other director, Mr. Forwood.

1 .  
2 This is dated the 21st of November, 1983. It is  
3 "re Herbert Properties Limited.  
4 Land at Bellevue Avenue and Bellevue Park."  
5 .  
6 It says: "Proposed sale to Brennan and McGowan  
7 Limited. Contract dated 8th of March, 1978, with  
8 Kilnamanagh Estates Limited. Conveyance dated 16th of  
9 August, 1978, to Victa Investments Limited."

10 .  
11 So, it is still talking about a proposed sale, although  
12 it actually makes reference to the deed which I have  
13 just referred you to, dated the 16th of August. You  
14 see that in the heading there?

15 A. Yes.

16 125 Q. It says: "This matter started off by your instructions  
17 on the 13th of April, 1977. And I prepared a contract  
18 and dually submitted to Miley & Miley Solicitors.  
19 .  
20 The name of the purchase was changed from Brennan and  
21 McGowan to Kilnamanagh Estates Limited, and the account  
22 was signed accordingly and dated the 8th of March,  
23 1978.

24 .  
25 The sale proceeded slowly, and eventually on the 16th  
26 of August, 1978, Herbert Properties Limited conveyed  
27 the property to Victa Investments Limited. I enclose a  
28 photostat copy of this conveyance, and of a statement  
29 which, although dated the 21st of December, 1978, I  
30 have just prepared, and I trust all is now in order."

1 .  
2 So, he is enclosing a photostat copy of the conveyance  
3 from Herbert to Victa, and then also of a statement,  
4 which although dated the 21st of December, 1978, he has  
5 just prepared, that is the statement of account, I take  
6 it, to be the one that we have seen a few minutes ago,  
7 which he obviously only prepared in 1983.

8 .  
9 Do you first of all have any recollection of when this  
10 sale closed, or can you assist us in any way on this?

11 A. I couldn't --

12 126 Q. Is it possible that some delay may have taken place, or  
13 is it possible that it did, in fact, close on the date  
14 in August which is on the deed?

15 A. I don't - I just couldn't say, sir. Is there anything  
16 anywhere else that might give us a --

17 127 Q. Well --

18 A. -- a lead on it?

19 128 Q. Well, if you look at page 217. This is from Owens  
20 Murray to Mr. Wheeler. And it is dated the 23rd of  
21 October, 1978. It is "re Victa Investments Limited."

22 He says:

23 .  
24 "Dear Mr. Wheeler, please have the enclosed documents  
25 sealed and returned as soon as possible (by express  
26 post) to Steven Miley, Miley & Miley Solicitors, 12  
27 South Frederick Street, Dublin 2.

28 .  
29 Enclosures: Indenture Herbert Properties Limited to  
30 Victa Investments Limited. Agreement for sale in

1 duplicate - ditto. License agreement Victa to Oakpark  
2 Developments Limited."

3 .

4 So we know that as of the 23rd of October, 1978, the  
5 conveyance had not been sealed by Victa, the  
6 application of the seal being the equivalent of the  
7 signature of a company.

8 .

9 But anyway, you are not in a position to put the matter  
10 any further than the document itself, I take it?

11 A. No, sir.

12 129 Q. Do you wish to take a break at this point, sir, or  
13 would you like me to continue?

14 .

15 CHAIRMAN: Yes. I was just about to say that. Say ten  
16 past 12.

17 .

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

20 .

21 130 Q. MR. HANRATTY: Mr. Finnegan, as you are aware, there

22 are a number of documents here which, by their tenor,

23 imply that the sale wasn't, in fact, closed on the date

24 of the deed, and it was closed in December. I think

25 you are, in general, aware of the correspondence. I am

26 just going to ask you about it very briefly.

27 .

28 I gather that you are probably not in a position to add

29 to our knowledge of it, one way or the other, is that

30 right?

1 A. Let's see. What it is, sir, because I think in general

2 --

3 131 Q. We have dealt with two of them already. Let's just

4 finish it. There is a letter, for example, dated the

5 5th of December, page 4903. This is from Moore Kiely

6 Lloyd, solicitors for the Pembroke Estate, to Mr.

7 Forwood, the sort of manager of the Pembroke Estate.

8 What was his title? Was it manager?

9 A. I think it would be more chairman, sir, sort of.

10 132 Q. Yes?

11 A. Yes.

12 133 Q. Was he chairman of the company of Pembroke Estates

13 Management Limited?

14 A. I think, if you like, sir, in terms he would have been

15 the - when we were talking about - he would have been

16 the most senior person.

17 134 Q. He could well have been chairman because he was a

18 director, actually, so it may --

19 A. When we were talking, he would be counted the most

20 senior person.

21 135 Q. In any event, Mr. Richardson, I presume wrote to him on

22 the 5th of December, 1978. It is "re Herbert

23 Properties Limited, land at Bellevue Avenue and

24 Bellevue Park. Sale to Victa Investments Limited."

25 .

26 "As you know, I was instructed by Philip to close this

27 sale on the purchasers deducting Capital Gains Tax

28 subject to a suitable arrangement being made as to

29 placing the money on deposit receipt and payment of the

30 tax when assessed. The tax on the purchase money of



1        ú141,000 is ú21,150, so we are dealing with quite a  
2        large sum of money.

3        .

4        The solicitors for the purchasers are Miley & Miley and  
5        their client is borrowing at least some of the purchase  
6        money from a financial house represented by Fitzpatrick  
7        Solicitors."

8        .

9        I think at that stage Miley & Miley were, in fact,  
10       acting for Victa Investments Limited, who were in fact  
11       the purchasers, isn't that right?

12     A.   Yes, sir.

13 136   Q.   It then goes on:

14        .

15        "I would prefer to have the deposit receipt in the  
16        names of Miley & Miley and ourselves, as we are in  
17        privity, but Fitzpatrick's insist on having it in the  
18        names of themselves and ourselves, and as this seems to  
19        be the only way of closing the sale, I can not see any  
20        real objection, although my preference is as above. I  
21        enclose copies of the following:"

22        .

23        Then he lists out a bunch of documents that he  
24        encloses.

25        .

26        "It seems to me that the expression "the transaction",  
27        provided the heading is on the undertaking is quite  
28        sufficient to identify the property we are discussing,  
29        and it also seems to me that the Revenue would raise an  
30        assessment on the vendors, the purchasers or either of

1 the solicitors involved.

2 .

3 Would you please consider the matter and let me have  
4 your instructions.

5 .

6 I am sorry for troubling you with this, and am only  
7 doing so because Philip is not available."

8 .

9 So the most important paragraph in this letter, so far  
10 as this particular query is concerned, is the third  
11 paragraph on the first page.

12 .

13 "I prefer to have the deposit receipt in the names of  
14 Miley & Miley and ourselves, because we are in privity,  
15 but Fitzpatrick's insist on having it in the names of  
16 themselves and ourselves, and as this seems to be the  
17 only way of closing the sale, I cannot see any real  
18 objection, although my preference is as above."

19 .

20 So that clearly implies that the sale has not, in fact,  
21 yet closed, isn't that so?

22 A. Yes, sir.

23 137 Q. And would imply that it didn't close as of the 5th of  
24 December. And if that is correct, then, it seems from  
25 the other documents we have seen that it must have  
26 closed some time before the end of December, because we  
27 know that subsequently, or perhaps even in December,  
28 the £304,000 was sent over, isn't that right?

29 A. Yes, sir.

30 138 Q. There is another letter, which is from Mr. Forwood to

1 Mr. Richardson. It is dated the 5th of December. It  
2 is "re Herbert" - this is page 4905 - "re Herbert  
3 Properties Limited. Land at Bellevue Avenue, Bellevue  
4 Park. Sale to Victa Investments Limited."

5 .

6 In the second paragraph he says:

7 .

8 "The principal point which Philip makes in his note to  
9 you of the 1st of December, is that your application  
10 for a certificate relates to the contract for the sale  
11 of the property to Kilnamanagh. In the normal course  
12 of events, when it was agreed that the property should  
13 be conveyed, not to Kilnamanagh, but to Victa, we  
14 should presumably have withdrawn our application and  
15 submitted a fresh application. We have, however, been  
16 asked not to do this and have evidently been assured  
17 that a certificate issued in response to the  
18 application already made will satisfy the purchasers.  
19 It is, however, clearly not sufficient to refer to the  
20 "the transactions" by reference to the heading of the  
21 letter. What I suggest is required is to identify the  
22 application. I suggest, therefore, that the words "in  
23 respect of this transaction" in the third line of  
24 paragraph A of the draft be replaced by "supplied in  
25 response to the application of which a copy is  
26 attached". The words "in respect of this transaction"  
27 should then be reinserted at the end of paragraph A.

28 .

29 If you have no copy of the application to attach to the  
30 undertaking, I suggest that you should obtain it from

1 Messrs. Stokes Kennedy Crowley. I believe Mr. Lavelle  
2 of that firm is dealing with the matter to telephone  
3 him, no doubt he could supply a copy to you  
4 immediately.

5 .  
6 I do not think I am unduly concerned that the joint  
7 deposit shall be made in the names of your firm and  
8 Fitzpatricks so long, of course, as the undertaking is  
9 given by Fitzpatricks."

10 .  
11 So, again, the tenor of that letter is it is dealing  
12 with a transaction about to happen, rather than one  
13 that has already taken place, if you know what I mean?

14 A. Yes, sir.

15 139 Q. Then, there is another letter, page 4907, from Mr.  
16 Richardson to Mr. Cassidy, in fact, dated the 12th of  
17 December, '78. He says:

18 .  
19 "Herbert Properties Limited land at Bellevue Park and  
20 Bellevue Avenue.

21 .  
22 In your absence I had some correspondence with Mr.  
23 Forwood with regard to this matter, and I now enclose a  
24 copy his letter to me dated the 5th of December.

25 .  
26 I spoke to Stokes Kennedy Crowley who told me that they  
27 had not got a copy of the application, and in view of  
28 this I discussed the matter again with Mr. Forwood who  
29 suggested that the transaction be identified by  
30 attaching to the undertaking a copy of the contract in

1 respect of which the application for Capital Gains Tax  
2 has been made.

3 .

4 I also enclose a copy of the proposed undertaking which  
5 I believe is acceptable to Mr. Forwood and would be  
6 glad to have instructions thereon as soon as possible."

7 .

8 So all of that correspondence appears to strongly imply  
9 that while the date on the deed was in August, the sale  
10 wasn't, in fact, completed, for some reason, until  
11 December, possibly related to this Capital Gains Tax  
12 argument, as to who should be the joint deposittee. If  
13 it is correct that it closed in December, of course it  
14 would mean that it closed at a point in time after the  
15 debit on your account - sorry, on the Foxtown account,  
16 isn't that so?

17 A. Yes, sir.

18 140 Q. Now, certainly it appears that the sale closed in  
19 December albeit that there is, as you know, this  
20 license agreement which was entered into between  
21 Oakpark Developments Limited and Victa Investments  
22 Limited. If we could just have page 2254.

23 .

24 This is a resolution in November of 1978, in which  
25 Victa, I think, agreed to a number of - or passed a  
26 number of resolutions relating to the borrowing by  
27 Oakpark Developments Limited and the securing of the  
28 borrowing on the Donnybrook property. Isn't that  
29 right?

30 A. Yes, sir. Yes, sir.

1 141 Q. If we could just look at page 223.

2 .

3 If we can just get it up to the top of the page. Maybe

4 a page before that. Maybe the page before that.

5 .

6 I am just trying to see if we can get a legible date,

7 but not on this document we can't. This is in any

8 event a draft document.

9 .

10 4117. Yes. The 29th of November. This is, in fact,

11 the license agreement that was entered into between

12 Oakpark and Victa. And if we are correct in our

13 inference that the actual sale to Victa didn't occur

14 until December, it would appear that this license

15 agreement was entered into prior to the completion of

16 the sale to Victa. Do you see that?

17 A. Mm-hmm. Yes, sir.

18 142 Q. But in any event, you were not privy to the actual

19 license agreement yourself?

20 A. No, I wasn't, Sir.

21 143 Q. And that was done pursuant to arrangements that

22 Mr. Owens made, isn't that so?

23 A. Yes, sir.

24 144 Q. I take it you were aware in general that there was

25 going to be a license agreement between Oakpark, or at

26 least some sort of an agreement between Oakpark and

27 Victa?

28 A. Mmm.

29 145 Q. Under which Oakpark would pay Victa money?

30 A. I recollect that there was something to do with, but I

1 don't know what - there was something to do with

2 licenses or license --

3 146 Q. Yes?

4 A. But I couldn't - I can't recollect exactly.

5 147 Q. Again, if you just look at the page on the screen

6 there. It says:

7 .

8 "In consideration of the sum of ú48,450 now paid by the

9 grantee to the grantor, the receipt of which the

10 grantor hereby acknowledges."

11 .

12 Then it goes on to deal with the interest-free loan.

13 We do, in fact, know that the monies were not, in fact,

14 paid in November, but appear to have been paid in

15 December. So, it is entirely possible that that

16 document may have been backdated, for some reason, as

17 well, because I think the monies were actually paid in

18 - they were certainly distributed in January 1989,

19 sorry '79.

20 .

21 We know that there was a mortgage between Oakpark and

22 Lombard and Ulster and Victa on the 21st of December of

23 '78, yes?

24 A. Mm-hmm.

25 148 Q. In fact, if we look at page 225. This is a docket from

26 Chase Bank dated the 27th of December, 1978. It says -

27 it is "Re Victa." It says:

28 .

29 "We have pleasure in confirming acceptance of deposit

30 value, 27th of December, '78, in the sum of ú304,000."

1 .  
2 That appears to be the date in which the monies, the  
3 monies, as it were, arrived in Jersey, isn't that  
4 right?

5 A. Yes, sir.

6 149 Q. And that would, in broad terms, coincide with the fact  
7 that the monies were borrowed the previous week, and  
8 that a mortgage had been executed by Victa to secure  
9 the monies that were borrowed which were subsequently  
10 sent over to Jersey?

11 A. Mm-hmm.

12 150 Q. And it also appears from a sequence of Chase documents,  
13 which I think we need not go through, which are  
14 essentially deposit documents from week to week,  
15 really, that the monies were kept on deposit by Chase  
16 until they were paid out on the 15th of January, 1979.  
17 Isn't that so?

18 .  
19 If we could look at page 230. This is a docket  
20 addressed from Bedell & Cristin, from Chase Bank to  
21 Bedell & Cristin. It is dated the 15th of January,  
22 1979.

23 .  
24 Then if we can scroll down a bit, we can see the  
25 payment out of ú101,334.34, plus a ú3 telex charge to  
26 Guinness & Mahon, "balance transferred to savings  
27 account".

28 .  
29 So, after the payment of ú101,333.34 to Guinness &  
30 Mahon, presumably to the account of Foxtown Investments



1 Limited, the balance was transferred to a savings  
2 account which Bedell & Cristin had control over, isn't  
3 that so? That establishes that, of course, that the  
4 monies that were paid out to Foxtown were paid out on  
5 the 15th of January, 1975, isn't that so?

6 A. Yes, sir.

7 151 Q. Now, again, what was your understanding as to why you  
8 were receiving ú101,334.34, from Brennan and McGowan?

9 A. My understanding was that I was receiving - this is - I  
10 would go back to when there was this scheme being put  
11 in place, again for what we described as a -  
12 around-the-house scheme to extract future profits, and  
13 I was invited to get involved in that, in that scheme.  
14 The exact workings of it, as I said before, I wasn't  
15 quite sure of. I did get, though, the flavour of it,  
16 that it did involve the possible sales of part of the  
17 land or licenses or something like that, to be put in  
18 place, and when I - and following that, then, the  
19 request for my investment in the scheme.

20 152 Q. Well, on the basis that it appears that the monies that  
21 went over to Jersey from which this sum was paid, was  
22 borrowed, it clearly would suggest that it wasn't, in  
23 fact, a return on an investment, in the conventional  
24 sense. You put in ú50,000, you say, in November?

25 A. Yes.

26 153 Q. And in January you are getting more than twice what you  
27 put in?

28 A. Yes. Well, I think it was - I think that the situation  
29 that - I think that this - I would probably have been  
30 becoming an integral part of it. I think I was

1 required within the scheme, and I don't know what way  
2 the scheme actually worked out, as we said before,  
3 there was a lot of around the houses done on it, but it  
4 was a transfer, again, of - put it this way, a  
5 different figure than that which was paid for the land,  
6 substantially higher figure, which was formulated  
7 either by way of license or whatever it was supposed to  
8 be.

9 154 Q. But doesn't it strike you, Mr. Finnegan, and I am sure  
10 it does, that by any standards this was a most  
11 extraordinary return on an investment, if that was  
12 simply what it was? I mean, we are talking about one  
13 hundred percent inside the space of two months, which  
14 would be the equivalent of in excess of 600 percent per  
15 annum. Do you know of any investment that gives 600  
16 percent per annum?

17 A. It may be - the question is, sir, that to get - as I  
18 understand it, for this to work, it was important to  
19 have another investor in it, sir. I don't - I can't  
20 give you the whole workings of it. That was what it  
21 was.

22 155 Q. Knowing now what you do know, namely, that the monies  
23 out of which you got this payment were borrowed by  
24 another Brennan and McGowan related company called  
25 Oakpark, we therefore know that it wasn't, in fact, a  
26 return on the investment in the conventional sense,  
27 that the money was put into something or something was  
28 bought with it which was then subsequently sold at an  
29 enormous profit?

30 A. No, it was a figure that was calculated, sir, in

1           someway or another.

2 156 Q.   Yes, clearly. And would it not occur to you,  
3           therefore, that if it is not a return on an investment  
4           of the equivalent of 600 percent, that it must be  
5           something else?

6 A.   No, I - what I said was - the situation here is that  
7           these were calculations, they were bringing forward  
8           profit, anticipated profit. It went a - it was what  
9           they might have made out of this. They had had the  
10          negotiations with whoever it was, Oakpark and one thing  
11          and another, and had this in place. So, they were  
12          putting this scheme, and they were borrowing - you were  
13          right, sir, there were borrowings in it, I am reminded  
14          of it, there were borrowings and there were also cash  
15          investments in it, sir.

16 157 Q.   But, Mr. Finnegan, everybody has a basic knowledge of  
17          investments. Everybody, for example, knows if you put  
18          money in a bank, you get interest, that is an  
19          investment. You get maybe 1 or 2 percent interest at  
20          the current rates, but if you take a somewhat more  
21          risky investment such as shares --

22 A.   You could lose it, sir.

23 158 Q.   -- you would expect a higher return and so on and so  
24          on, but you don't get rushes of 600 percent, or in the  
25          case of Monkstown, you put in ú33,333 and approximately  
26          a month later you got hundred thousand, which  
27          effectively is a return of 200 percent in one month,  
28          which is the equivalent of 1,200 percent per annum?

29 A.   I would put it this way, sir. I think that if you are  
30          in a position to -

1 159 Q. Sorry. It is the equivalent of 2,400 percent per  
2 annum?

3 A. I don't know whether the way - the way that one would  
4 work it out, you can be there and get - be required at  
5 the right time to do something, and somebody - it is  
6 not up to me, sir, to start talking about what other  
7 things yield, but you know what I mean, it is --

8 160 Q. You see the point I am making? That if, for example,  
9 you were asked to put up, for example, in the case of  
10 Monkstown, ú33,333 on the basis that the other two were  
11 going to do the same, in the hope that they would sell  
12 the land at a spectacular profit, then you could say it  
13 was return on an investment, but the land was not sold  
14 at a spectacular profit. What happened was that Green  
15 Isle Holdings Trust company, a Brennan and McGowan  
16 related company, sent money over to Jersey and you were  
17 given a third of it?

18 A. But this was part of it. It was part of a scheme.

19 161 Q. Could I put this to you, Mr. Finnegan?

20 A. Yes.

21 162 Q. To stop beating around the bush on it. That it is  
22 quite obvious, when you look at what actually happened  
23 and with the full benefit of the knowledge that we now  
24 have about these, is that whatever else, these payments  
25 that you were receiving were - they were not returns on  
26 investment in any conventional sense of the word, and  
27 that, in fact, they contained a substantial element of  
28 bonus or gift?

29 A. No, sir.

30 163 Q. Why not?

1 A. Well, as I said to you, sir, that this - I was asked to  
2 participate in this scheme for - and they were bringing  
3 out, bringing forward the eventual profits, and this is  
4 what I was asked to participate in. And I did. And  
5 there was no question of it being a bonus. I don't  
6 know what the return might have been, if it might have  
7 been that, it might have been more, it might have been  
8 less, but this - I think that - and to get this  
9 through - I understand now, sir - these schemes, by the  
10 way, are, in this way or another way, are still being  
11 done, this thing of extracting future profits.

12 164 Q. But you didn't have anything to do, though, with future  
13 profits, because your only participation in these  
14 schemes, including this Donnybrook one, was to the  
15 limited extent of sharing in the payout that came from  
16 Jersey?

17 A. Yes, but I think that the, that having an investment  
18 outside of the parties might have helped them, sir.

19 165 Q. Your partnership did not in any sense involve  
20 participation in the entire venture?

21 A. No, sir.

22 166 Q. Which might have entitled you to future profits. Your  
23 partnership was limited, and I am using "partnership"  
24 in the very loose sense of the word, was limited to  
25 sharing in a payout in Jersey, of monies which in this  
26 case we know were borrowed by Oakpark on the security  
27 of the Victa lands in Donnybrook?

28 A. Well, I think, first of all, that - to look at it - I  
29 will put it this way. I would not have known what was  
30 happening afterwards, sir, but it was on the basis of

1 these, of - Oakpark or whatever, it was anticipated  
2 that they would develop. You can see that they were  
3 the ones that were issuing licenses.

4 167 Q. Certainly the license agreement anticipated that?

5 A. It anticipates --

6 168 Q. That they would develop. We also know that while the  
7 €304,000 was sent over, that is the only thing that  
8 actually happened under the license agreement, and in  
9 fact, ultimately after a number of draft schemes or  
10 proposed schemes which do not appear to have been  
11 proceeded with, the whole thing was sold to Farrell  
12 homes for 1.1 million. We know that from the documents  
13 we have seen. He bought the land with two FICOIL  
14 policies put together by Mr. Caldwell, and there was a  
15 share out of the 1.1 million?

16 A. I don't know what that was for, sir.

17 169 Q. Well, it was the proceeds.

18 A. Sorry.

19 170 Q. It was the proceeds of sale. It was the proceeds of  
20 the sale of the land to Farrell Homes Limited, and it  
21 appears that they sold this property to Farrell Homes  
22 Limited for €1.1 million, a number of years later?

23 A. A number of years later. I don't know --

24 171 Q. There was a division up of the proceeds. They were  
25 sent over to Mr. Wheeler in the form of bank drafts,  
26 which he endorsed and sent to the Royal Bank of  
27 Scotland in the Isle of Man. It also appears that this  
28 money, or the company at least that owned this money,  
29 Worland Limited, had become the owner of Victa Limited,  
30 and that Worland Limited become owned by a company

1 called Echinus Limited, E-C-H-I-N-U-S, Limited. Do you  
2 know anything about Echinus Limited?

3 A. No, sir.

4 172 Q. It has an address apparently at Road Town, Tortola in  
5 the British Virgin Islands. Did you ever hear of Road  
6 Town, Tortola?

7 A. No, sir.

8 173 Q. Do you have any connection with Road Town, Tortola?

9 A. None whatsoever, sir.

10 174 Q. Or anything in the Virgin Islands?

11 A. Nothing in the Virgin Islands, sir.

12 175 Q. We know that the registered director of College  
13 Trustees Limited was a company called Dolton Management  
14 Limited, which has an address in Road Town Tortola.  
15 Now, that obviously may be a coincidence. We don't  
16 have the exact address. But did you know, for example,  
17 that the registered director, the only registered  
18 director on the register in Guernsey of College  
19 Trustees Limited was a company called Dolton Management  
20 Limited?

21 A. No, sir.

22 176 Q. And that was a company that was registered in the  
23 British Virgin Islands?

24 A. No, sir, I didn't.

25 177 Q. Do you have any idea why a company which was the  
26 trustee of your Trust would have a director in the form  
27 of a limited liability company based in the British  
28 Virgin Islands?

29 A. No idea, sir. They - I haven't any idea. They were  
30 the - of College Trustees?

1 178 Q. Yes. Normally directors are individuals.

2 A. Yes, sir.

3 179 Q. You know, human persons. But in this case it appears

4 to be permissible of Guernsey that a director of a

5 company itself can be a company?

6 A. All right.

7 180 Q. In this case, it was Dolton Management Limited. And

8 that company has its seat in an address in Row Town,

9 Tortola in the British Virgin Islands, which again may

10 be one of these coincidences that one coming up

11 against?

12 A. I think so, sir.

13 181 Q. Yes. Anyway, you have no idea about that?

14 A. No idea at all, sir.

15 182 Q. Do you have any perspective at all as to why a company

16 which was the trustee of your trust would have a

17 directorship in the form of a company in the British

18 Virgin Islands?

19 A. None whatsoever, sir.

20 183 Q. Right. Just to go back to the distribution of the ú1.1

21 million. First of all, is it your position, as it was

22 Mr. Brennan's, that you did not, in fact, share in any

23 part of this?

24 A. No, I wasn't aware of anything, sir. I didn't

25 participate in any way.

26 184 Q. You did not receive any portion of that ú1.1 million?

27 A. Not at all, sir.

28 185 Q. Is it, in fact, the position that, as was originally

29 intended, your involvement was confined purely and

30 exclusively to share in the proceeds of the sum of



1 money, whatever it was, that was going to be sent over

2 to Jersey in December of 1978?

3 A. Whatever - the result of the scheme, sir.

4 186 Q. January 1979, in fact?

5 A. Whenever.

6 187 Q. Yes. Were you told in advance how much was going to be

7 sent over?

8 A. No, sir.

9 188 Q. Were you told that the monies were going to be borrowed

10 by Oakpark Developments Limited?

11 A. Really, how much I was actually told and not told

12 around then, it is still a hell of a long time ago,

13 sir. I wouldn't have been involved, you see, in who

14 was borrowing and who wasn't. That would have been

15 Hugh Owens' --

16 189 Q. Were you aware that the source of the money, a portion

17 of which was given to you, to Foxtown on your

18 direction, was in fact a Brennan and McGowan related

19 company?

20 A. Well, I now know, sir, that it was, that - Oakpark

21 wasn't it, sir.

22 190 Q. Yes. Oakpark Developments Limited. I know you now

23 know it, but did you know it at the time?

24 A. Oakpark - actually, knowing that they were the ones who

25 were taking it. Oakpark - Oakpark was known to me. I

26 didn't do any business with them, but I was aware that

27 there was some connection with Brennan and McGowan in

28 Oakpark.

29 191 Q. Yes. Did you know that that was the company that

30 actually sent the money over to Jersey, a portion of

1 which was given to you?

2 A. All of that would be a little bit hazy, but you know  
3 what I mean, if this is what happened --

4 192 Q. Did you know it at the time? This is really what I am  
5 trying to find out. I mean, what we do know is, that  
6 in November, your evidence to this Tribunal is that you  
7 invested 33,333, in this case you invested ú50,000,  
8 that is your evidence. And you are pointing to a debit  
9 on the Foxtown Investments account, and in particular  
10 to an entry which Mr. Turvey has made beside it, as  
11 indicating that this is, in fact, an investment which  
12 you did, in fact, make in connection with this  
13 particular project?

14 A. Yes, sir.

15 193 Q. And we do know, that ú300,000 appears to have been  
16 borrowed by Oakpark, appears to have been secured by  
17 Victa, and sent over, in fact 304,000 was sent over in  
18 - that on the 27th or thereabouts of December, and  
19 distributed on the 15th of January. Those are, kind  
20 of, objectively ascertained probable facts.

21 .  
22 Now, 101,333 went to your company, you having put  
23 50,000 in not two months before that. And as I have  
24 already pointed out to you, that is the equivalent of  
25 an annual return of 1,200 percent. Knowing now what we  
26 do know, I suggest to you that that is an implausible  
27 return on any investment, and wasn't in fact a return  
28 on this investment, and that the sum that was in fact  
29 paid out to you at the time was in the nature of a gift  
30 or a bonus, and that a much more likely, plausible

1 explanation of the payment of that sort of a figure to  
2 you at that particular point in time?

3 A. No, sir.

4 194 Q. And the same, I would suggest to you, applies in  
5 connection with the nuns, where the return on your  
6 investment was even more implausible, where it would  
7 amount to the equivalent of 2,400 percent per annum?

8 A. Well, no, sir. It was part of the scheme, and this is  
9 where - which I told you before. And that is what I  
10 invested in. This is - and the thing about it, to  
11 understand that when calculations are done for the  
12 future profits, it could be calculated in many, many  
13 ways. Like they were there in, in the three acre site  
14 that they were looking at a license, at license  
15 agreements that varied in prices, and which I just see  
16 now that they were - it could be calculated in  
17 different ways, sir.

18 195 Q. But all the documents surrounding this transaction, as  
19 indeed all the documents surrounding the Carrickbrennan  
20 transaction, tell us that these were nothing to do with  
21 future profits. There is no reference to future  
22 profits in any document?

23 A. This is why, sir, I think that - because these are the  
24 end product. These are the documents that - for  
25 putting the scheme in place.

26 196 Q. Yes?

27 A. Now, perhaps if you were to see the working documents  
28 of that, with the parties, you would see what they were  
29 talking about, but this is the end --

30 197 Q. We see the license agreement in connection --

1 A. But that is the end of it, sir.

2 198 Q. It makes provision for an interest-free loan of  
3 whatever it is, 244, or something thousand pounds, and  
4 interest-free loan by Oakpark to Victa?

5 A. Yes.

6 199 Q. Which, of course, in the normal course of events,  
7 therefore, includes a liability on Victa to pay it back  
8 in due course?

9 A. Mm-hmm.

10 200 Q. And, in fact, the license agreement did, in fact,  
11 contain elaborate arrangements as to how that, how the  
12 borrowing made by Oakpark was to be paid back, namely,  
13 in the form of the progressive sale of each of the  
14 sites for a particular specified sum, and the lodgement  
15 of that against the liability on the loan, as it were.

16 .

17 MR. HUSSEY: I am sorry, sir, can I just interrupt  
18 briefly, just for the sake of clarity.

19 .

20 The license agreement between Oakpark and Victa does  
21 certainly contain elaborate arrangements for the  
22 repayment of the loan, but it is not the loan to Victa,  
23 it is a loan to Lombard and Ulster.

24 .

25 MR. HANRATTY: The loan by Lombard to Victa, guaranteed  
26 by Victa.

27 .

28 MR. HUSSEY: It is not the loan by Oakpark and Victa,  
29 it is a separate loan entirely between, I think Oakpark  
30 and Lombard and Ulster.

1 .  
2 MR. HANRATTY: Yes. That is absolutely clear. What  
3 happened was - what appears to have happened was  
4 Oakpark borrows €300,000. Victa guarantees the bank  
5 repayment of that loan, and puts up the land in  
6 Donnybrook, which it, Victa, owns as security for that  
7 loan. Oakpark then enters into a license agreement  
8 with Victa, and under the license agreement it has two  
9 major things to do. It has to pay a €48,000-odd  
10 license fee, and it has to pay - make an interest-free  
11 loan to Victa of €266,000. That, in effect, gobbles up  
12 all of the money which Oakpark has borrowed from the  
13 bank. Do you see what I mean?

14 .  
15 We do know that all of the money was sent over,  
16 €304,000, in fact, was sent over. We know  
17 what happened to the €304,000. We also know that in  
18 terms of the license agreement which was, appears to  
19 have been entered into, there was, it was envisaged  
20 that as Oakpark progressively developed this property,  
21 as they progressively sold each site, the proceeds of  
22 sale of the site and ultimately of the houses would  
23 have been put against its borrowing, that is Oakpark  
24 borrowing to the bank. But we still have the  
25 outstanding question of Victa's borrowing, the  
26 interest-free loan of €266,000 under the license  
27 agreement which Oakpark made to it. Do you see what I  
28 am saying? And it appears, or at least we have no  
29 evidence at all suggesting that that borrowing was ever  
30 repaid.

1 .  
2 MR. HUSSEY: I am sorry, sir. Again, I am reluctant to  
3 interject, but we've seen already the management  
4 agreement in the first instance between Rapallo and  
5 Bouganville. That was bogus. So to suggest that we  
6 know from those documents that that was the nature of  
7 the, the nature of the relationship, we know that that  
8 is bogus.  
9 .  
10 In this instance we are talking about a license, a  
11 license agreement. Now, within its own terms we know  
12 that the license agreement provides for the - sorry,  
13 the purchase, the sale of sites on and the repayment of  
14 certain monies, I think 13,500, and then 19,000 to  
15 Lombard and Ulster, in respect of each site.  
16 .  
17 Now, if that is not a mechanism to take down future  
18 profit on the sale of sites, I don't know what is. I  
19 don't know what Mr. Hanratty is saying, that there is  
20 no evidence to support that this scheme was to draw  
21 down future profits. That is exactly what both these  
22 schemes was about, was to draw down, take an immediate  
23 payment out on the strength of future sales, future  
24 sales of sites.  
25 .  
26 Certainly the license agreement is completely on all  
27 fours with what Mr. Finnegan says, and we do know that,  
28 in the earlier case that a management, that the  
29 management agreement was not reflective of the  
30 agreement between the parties because it never ever

1       took place. It was a paper agreement between two, as  
2       Mr. Hanratty rightly points out, two pieces of paper in  
3       a cabinet in Jersey.

4       .

5       So we know that that is bogus. So you have to see, if  
6       that was bogus, what was it. It was a way to take out  
7       an early payment out of the scheme, an early payment -  
8       I mean money doesn't - just because you make an  
9       agreement between two paper companies, doesn't mean  
10      that the money magics out of thin air. It doesn't.

11      The money has to come out of somewhere, somewhere,  
12      sometime. The money in both these cases was to come  
13      out of the future sales of the sites, and did  
14      eventually come out, and all these payments were, all  
15      these borrowings were repaid.

16      .

17      But for Mr. Hanratty to suggest that these schemes  
18      don't relate to future sales or future profits, is, I  
19      think, inaccurate and unfair to the witness. To  
20      suggest that what he, what his understanding of the  
21      situation was, that these were the draw down of future  
22      profits, an early draw down of future profits. That is  
23      entirely supported by both the management agreement  
24      being bogus, but yet the payment coming out, and this  
25      license agreement, which exactly talks about the very  
26      payment, the early payment for site fines, the draw  
27      down of monies for site fines which were yet to come  
28      out.

29      .

30      So, just to suggest that this witness isn't accurate or

1 that there is nothing to support what he says, is  
2 wrong. And I think maybe it requires an accountant to  
3 explain exactly what was going on here, but it is  
4 entirely - these particular documents are entirely  
5 consistent with Mr. Finnegan's understanding of the  
6 scheme.

7 .

8 MR. DUNNE: Just one point in relation to Mr. Hussey's  
9 submissions. I think it is for you to decide in  
10 relation to all the schemes. I don't think it is fair  
11 for Mr. Hussey to be giving what appears to be somewhat  
12 evidence in relation to the bona fides of different  
13 schemes.

14 .

15 MR. HANRATTY: I was about to say the same thing, sir.  
16 Mr. Hussey has now just spent, I don't know how many  
17 minutes, making a submission on the evidence in the  
18 middle of my examination of this witness. With  
19 respect, how am I going to finish the examination of  
20 this witness with these constant interruptions in the  
21 nature of submissions, where Mr. Hussey has given you  
22 the benefit of his interpretation of the evidence, and  
23 his interpretation of this agreement? It has  
24 absolutely nothing to do with the questions I was  
25 putting, which is essentially the elements of the  
26 license agreement under which the €304,000 was paid.

27 .

28 I was simply putting the factual situation as to what  
29 was contained in the agreement. The witness is free to  
30 give any answer he wishes in relation to it. If he



1 says it was a bogus agreement, he can say it was a  
2 bogus agreement. If he says it was a genuine  
3 agreement, that is fine as well. But with respect,  
4 Sir, these submissions from Mr. Hussey, which are in  
5 the form of or nature of submissions in the middle of  
6 my examination, are simply adding to the amount of time  
7 it takes us to get through this.

8 .

9 CHAIRMAN: I totally agree with you, but Mr. Hussey  
10 feels he has to, well, care for his client. That is  
11 really what he is doing.

12 .

13 MR. HUSSEY: I am sorry, Sir. I merely interrupted  
14 because the question was, "There is no evidence to  
15 support what you said". I don't think that is a fair  
16 question --

17 .

18 CHAIRMAN: I am going to raise now for lunch, and we  
19 will sort this out immediately after lunch, because it  
20 just must stop.

21 .

22 MR. HANRATTY: Do you wish me to continue, Sir?

23 .

24 CHAIRMAN: It is just one minute to one actually.

25 .

26 MR. HANRATTY: Yes.

27 .

28 CHAIRMAN: We will, if you want to carry on --

29 .

30 MR. HANRATTY: My watch is obviously different to

1       yours, I have it at five minutes to one.

2       .

3       CHAIRMAN: I have it at one minute to one. Perhaps

4       mine is fast. Carry on for five minutes.

5       .

6 201 Q. MR. HANRATTY: All right, let's just be clear about

7       this, Mr. Finnegan. Is it your position that this

8       license agreement was a bogus agreement or a genuine

9       agreement?

10      A. Well, as we know now, sir, this - that it didn't go

11      through.

12 202 Q. Well, one important bit of it did, which was the

13      payment over of the ú300,000, or as it turned out, 304.

14      The rest of it didn't go through.

15      A. Well, I don't know - it wasn't - I don't know what it

16      operated on, sir.

17 203 Q. Would it be your present view, given all that you now

18      know about it, that it was never intended to go

19      through, or that it was intended to go through?

20      A. I think that it probably was - to give everyone the

21      benefit of the doubt, it probably was intended to go

22      through.

23 204 Q. Yes. But your position on it is, that so far as your

24      involvement in this bit of it was concerned, was by way

25      of a distribution of future profit. Is that right?

26      A. Yes, sir.

27 205 Q. Now, how do you reconcile that with the fact that you

28      do appear to agree that your involvement in this whole

29      scheme was to finish in December 1978, January 1979?

30      A. You see, this is what --

1 206 Q. You see, my point, Mr. Finnegan, is this: If you were  
2 entitled to participate in future profits, the best you  
3 can do, in 1979, before a sod is turned, before a brick  
4 is laid, is to estimate future profits. And if this is  
5 a payment against future profits, it could only be on  
6 the basis of somebody estimating a figure. Isn't that  
7 right?

8 A. Yes, sir.

9 207 Q. Right. And assuming, for the sake of the argument,  
10 that Mr. Owens did estimate that the future profits  
11 were going to be  $\text{ú}303,000$ , in other words you get 101  
12 each, supposing it turned out that the future profit  
13 wasn't 303,000, but was a million, you are then  
14 entitled to more, are you not? Or alternatively, if it  
15 turned out that the future profits were not 303,000,  
16 but were only 100,000, or worse still, that there was a  
17 substantial loss, where does that leave you vis-a-vis  
18 Messrs. Brennan and McGowan?

19 A. Well, I think that I was, as I said to you, asked to  
20 participate in this scheme. Now - and it needed a cash  
21 injection into it. Now, I suppose to answer your  
22 question, to know which way, the amount - the - that  
23 would be Hugh Owens doing his calculations. There must  
24 have been a change of heart here, somewhere here, sir,  
25 if they didn't go on with that scheme.

26 208 Q. Well, what were you to get for your, in this case,  
27  $\text{ú}50,000$ ? Were you going to get one-third of future  
28 profit or were you not?

29 A. That was the, that was the intention, sir.

30 209 Q. Well, you didn't, because we know that the future

1 profits were 1.1 million?

2 A. By the way, on that, sir, one thing I am not quite  
3 clear, whether there was one --

4 210 Q. 1.1 million less what was paid for it, obviously?

5 A. I don't know what happened with that scheme.

6 211 Q. But, you see, your evidence, as I understand it, both  
7 in this case and also in Monkstown, is that your  
8 participation was to end on the distribution of the  
9 monies that went over to Jersey?

10 A. Well, that was the, that was the buy-out, sir, in the  
11 scheme. The scheme was to extract future profits.

12 212 Q. But what I am really putting to you, Mr. Finnegan, is  
13 that your assertion to that effect is not consistent  
14 with what, in fact, happened, because if a person is  
15 entitled, by reason of their investment, or whatever,  
16 to participate in future profits --

17 A. Mm-hmm.

18 213 Q. -- then it has to be by reference to what those profits  
19 ultimately were. And all you got, we know, in this  
20 case, for your 50, was ú101,000, but we do know that  
21 the proceeds of sale of this property sometime later,  
22 was 1.1 million. And you have always agreed that you  
23 were never entitled to participate in that?

24 A. I think - I didn't know anything about that, sir. That  
25 may - I am not sure about this - that may have been a  
26 larger site. I am not sure, sir.

27 214 Q. You see, you have to agree, I think, that to the extent  
28 that it was anything to do with future profits, at the  
29 point in time that you got paid it could only have been  
30 on the basis of an estimate or a guess on what the

1 future profits were going to be?

2 A. An estimate or a guess.

3 .

4 CHAIRMAN: I think at that point we will leave it until  
5 after lunch.

6 .

7 MR. HANRATTY: Yes.

8 .

9 THE TRIBUNAL THEN ADJOURNED FOR LUNCH

10 .

11 .

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30 .

1 THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

2 .

3 215 Q. MR. HANRATTY: Mr. Finnegan, what I am trying to

4 ascertain from you is that at the time you made your

5 agreement in relation to the Donnybrook property with

6 Messrs. Brennan and McGowan through, possibly, Mr.

7 McGowan, what share of the future profits of this

8 venture were you going to get for your ú50,000?

9 A. As I understood it at the time, Sir, whatever that was

10 calculated at, it was to be a third, Sir.

11 216 Q. A third of the future profits?

12 A. Yes.

13 217 Q. And where did the figure of 50 come from? Did he ask

14 you, would you like to put in some money? And did you

15 suggest 50 to him? Or did he say, "Can you come in for

16 50"?

17 A. No. As I said to you before, Sir, that the figures

18 were arranged by Hugh Owens.

19 218 Q. So he would have preordained, as it were, if you were

20 to come in, it was on the basis of putting in 50?

21 A. Whatever it was at the time. Again, I would have to

22 say to you, Sir, this is a hell of a long time ago, to

23 remember exactly what --

24 219 Q. I know that, but you didn't, for example, put in 100.

25 You didn't put in 75. You didn't put in 25. You put

26 in 50. Somebody decided on a figure, as the figure

27 which you, you say, was going to be your investment in

28 this project?

29 A. Yes, sir.

30 220 Q. Now, who was it that decided that?

1 A. I would imagine it's Hugh Owens, Sir.

2 221 Q. Right. So that means that Mr. McGowan would have said

3 to you, "If you want to come in on this deal it will

4 cost you 50"?

5 A. I was invited to participate in the scheme, Sir, and

6 this was, then, the - it was eventually, whatever - it

7 would have been Hugh Owens who would have directed the

8 sum of money.

9 222 Q. Well, does the "50" that you put in bear any

10 relationship to what you got out?

11 A. I don't think so, Sir. I think it was a question of -

12 I was wanted at the time, and this was the scheme, and

13 this is what my investment was and what I got out, Sir.

14 But I don't think there was any --

15 223 Q. When you were being invited into the scheme, were you

16 told that you'd be receiving money the following month,

17 or as it turned out, two months?

18 A. I can't recollect exactly, Sir, when I was told I was

19 getting it.

20 224 Q. Well, when you got the ú103,000, or the ú101,000, what

21 did you understand that was, one-third of what?

22 A. What I said, Sir - it was a scheme that was being

23 devised to look at the anticipated future profits, Sir.

24 And I understood, when I got it, that I had had -

25 whatever that arrangement was, that I had had, I had

26 got a third of that, Sir.

27 225 Q. Mr. Owens did not have a crystal ball, right? The

28 only, as I pointed out to you before lunch, the only

29 thing that could be said about future profits in, say,

30 January of 1979, was an estimate, or a guess. He

1 didn't know at that point in time what the future  
2 profits were going to be. Isn't that so?

3 A. Yes, Sir. I would say that he would have - he would  
4 have had a liaison with his people.

5 226 Q. No, Mr. Finnegan. If you just direct your attention to  
6 my point.

7 .  
8 Mr. Owens, in January 1979, had no means of knowing  
9 what the future profits on this development was going  
10 to be. All he could do was estimate it, because it's  
11 something that is going to happen in the future?

12 A. Yes, sir.

13 227 Q. So what you got, at best, was one-third of an estimated  
14 figure?

15 A. Mm-hmm.

16 228 Q. Isn't that right?

17 A. Yes, sir.

18 229 Q. But if what you were entitled to was one-third of the  
19 future profits, then it would have had to have been on  
20 the basis that there would be an adjustment in the  
21 future by reference to the actual future profits that  
22 were made?

23 A. No, I think that - as I understood it, Sir, or  
24 understand it, that this situation is that the  
25 companies - the people who are taking it out, like  
26 Oakpark, was being secured - they were being propped up  
27 by certain loans. There was a question of loans and  
28 guarantees floating around, Sir. And when - and that  
29 was a company in which both Brennan and McGowan had  
30 some - had an interest. But they had supported, I



1 understand - there was support going around for

2 Oakpark.

3 230 Q. But do you see what I am trying to direct your

4 attention to, Mr. Finnegan, is that this explanation of

5 what your agreement was, by reference to future

6 profits, doesn't seem to stand up. That's really what

7 I am putting to you. Because it doesn't appear to be -

8 bear any relationship to future profits, what you were

9 actually paid.

10 .

11 In fact, looking at the documents, nobody appears to

12 have subsequently tried to relate what you got paid, or

13 relate such profits as were made, back to what you got

14 paid to see, for example, did you get paid enough, or

15 did you get paid too much. Like, nobody has told us,

16 neither Mr. Brennan, Mr. McGowan, nor indeed yourself,

17 that there was any provision for any future adjustment

18 when they found out what the profits actually were,

19 which you would expect, if the agreement was that you

20 were entitled to one-third of future profits?

21 A. I think what I said to you, Sir, was that I was

22 entitled to - the scheme, to which I was invited into,

23 was this scheme which Owens had.

24 .

25 Now, after that, and that was the anticipated, rightly

26 or wrongly, the anticipated profits which were

27 calculated by them, by Hugh Owens. I don't think he

28 would have taken it, Sir, necessarily with a drop out

29 of the air, but he - that scheme went on, Sir. I mean,

30 this is what it worked out as, and this is --

1 231 Q. You see, it may have been, for example, that so far as  
2 Brennan and McGowan were concerned, it was that they  
3 were taking monies out in advance in anticipation that  
4 they would make a profit, and ultimately, since the  
5 monies came from a Brennan and McGowan related company,  
6 which presumably could claim tax relief on the monies  
7 that were borrowed, or the purchase prices that were  
8 paid, or whatever way they did it, you could see that  
9 they could say, "Well let's take an advance on the  
10 profits." But you had no participation in - the basis  
11 of your arrangements with them were such that there was  
12 to be no participation by you in any of these land  
13 developments after the initial payment out in Jersey.  
14 It's the one thing that everybody appears to be agreed  
15 on.

16 A. Hum.

17 232 Q. Including yourself, I thought?

18 A. Yes. Well, this - it was my - the invitation was for  
19 the initial clawdown of participation - of anticipated  
20 profits. And this is the sort of thing - Sir, I don't  
21 think it was unusual at the time, that that sort of  
22 scheme was. It was a scheme that was being operated at  
23 the time, Sir.

24 233 Q. If I perhaps put it to you another way, Mr. Finnegan.

25 The fact that you were to have no participation of any  
26 kind, in the case of Monkstown, after the payout in  
27 Jersey of the Rapallo money, or in the case of  
28 Donnybrook, after the payout in Jersey of the Victa  
29 money, is inconsistent with an assertion that you had  
30 any entitlement to future profits, or to a percentage

1 of the future profits?

2 A. Well, I think that the situation was that - that's what  
3 was on the table at the time, Sir.

4 234 Q. But it is consistent with an arrangement under which,  
5 for example, "If you put up "X" pounds, we will give  
6 you, a month later or two months later, twice your  
7 money back."

8 .

9 MR. HUSSEY: Sorry. I'm sorry, Sir. I must interrupt  
10 here.

11 .

12 There has been no evidence to suggest, from either Mr.  
13 Brennan or Mr. McGowan, to support this question. And  
14 I object to the question.

15 .

16 CHAIRMAN: I think the question is admissible, for the  
17 simple reason that nobody knows any basis - at this  
18 moment in time, nobody knows any basis for the actual  
19 measurement of either 33, depending which figure, 33 or  
20 whatever, I think 50, for the contribution. Likewise,  
21 there is no measuring rod for the return, which in this  
22 instance was 101. There is no measuring rod. What we  
23 are looking for is a potential measuring rod that gives  
24 an indication as to why this happened.

25 .

26 Now, whether or not that is the reality of the  
27 situation.

28 .

29 235 Q. MR. HANRATTY: Do you know the answer to that, Mr.  
30 Finnegan? By reference to what, was your share

1           calculated?

2    A.   I don't know of the exact calculations that took place,  
3           Sir, because this was a rather involved scheme, but it  
4           was - it was described to me on the basis that this  
5           was, what I have said, many, many times, that - a  
6           calculation that they had done, which I accepted at the  
7           time, that for anticipated profits.

8 236 Q.   But in 1979 there were no profits. The only thing that  
9           could have existed at the time was an expectation of  
10          profits?

11   A.   Well, anticipated - expectation - anticipated  
12          expectation of profits.

13 237 Q.   But both Mr. Brennan and Mr. McGowan, and as I  
14          understand your evidence, is to the effect that you  
15          were never going to be entitled to participate as a  
16          full equal one-third partner in the entire development,  
17          such as would entitle you, for example, to one-third of  
18          the profits?

19   A.   Well, I think that to look at - that would depend on  
20          how the scheme was carried out, Sir.

21 238 Q.   Just deal with that question first.

22   A.   Say it again?

23 239 Q.   Sir, as I understand Mr. Brennan's evidence, and Mr.  
24          McGowan's evidence, and your evidence, whatever the  
25          arrangements were that you had with them, they never  
26          envisaged that you would be a full equal one-third  
27          partner in each of these land ventures. I am talking  
28          about the first three now. Such as to entitle you to a  
29          full one-third of the entire profits made on the  
30          transaction?

1 A. I would say - I would say that on the entire profits,  
2 because somebody would have to make a profit  
3 afterwards, Sir, who was taking out the intermediate -  
4 I mean, the development had to take place --

5 240 Q. But the development envisaged in the first place the  
6 purchase of land and getting planning permission, if it  
7 didn't have it. It did in this instance in Donnybrook.  
8 A purchase of the land and then, as was originally  
9 envisaged, though it didn't happen, the development of  
10 the land. Isn't that right?

11 A. Mm-hmm.

12 241 Q. Had Messrs. Brennan and McGowan developed that land, as  
13 it appears they originally envisaged, they would -  
14 through Oakpark Developments Limited - profits would  
15 have been made. Is that correct?

16 A. That's right.

17 242 Q. It was never the case that you were going to be  
18 entitled to a full one-third of all of those profits,  
19 if they had been made. Isn't that right?

20 A. Yes, because what I said earlier, that the scheme -  
21 this scheme was that this - I suppose - I don't know  
22 whether they had - it's where it stopped - the  
23 calculation was carried out between Owens and - Hugh  
24 Owens and Brennan and McGowan, who in turn --

25 243 Q. It was never envisaged that you were going to get  
26 one-third of the profits of the development?

27 A. It was anticipated, not of the development --

28 244 Q. Of the development I am talking about?

29 A. The anticipated profit at the time - now, the profits  
30 could have changed --

1 245 Q. Mr. Finnegan, let's stop beating around the bush. It  
2 was never anticipated - I don't think you've ever  
3 suggested it - it was never anticipated that you were a  
4 full equal one-third partner with Brennan and McGowan  
5 in the acquisition and development of these lands?

6 A. No, it was that I was to get - that the deal was that I  
7 was to get a third of the structure. This was a part  
8 of what the structure produced.

9 246 Q. We know, in the case of Donnybrook, that this is  
10 certain, because, in fact there was a change of heart  
11 somewhere along the line and they didn't develop the  
12 lands. They sold to Farrell Homes for 1.1 million.

13 A. Some years later, Sir. And I am not quite sure, Sir,  
14 because I wasn't involved in that, whether there was  
15 some other land involved in that as well. So I don't  
16 know.

17 247 Q. Well, as we understand it, it's the same three acres --

18 A. I'm not sure. I don't have any definite --

19 248 Q. Yes. So it was sold for 1.1 million. And we know you  
20 got no share of that?

21 A. No, sir.

22 249 Q. And you never were entitled to a claim of a share of  
23 that?

24 A. Yes, sir.

25 250 Q. They say that, and you seem to agree with that?

26 A. Yes, sir.

27 251 Q. We know that in the case of Monkstown you were not  
28 entitled to a full one-third share of the development  
29 either?

30 A. Right.

1 252 Q. And also in the case of Newtownpark Avenue?

2 A. Mm-hmm.

3 253 Q. Isn't that so?

4 A. Yes, sir.

5 254 Q. So to the extent that you were invited to put in 50 in

6 the case of Donnybrook, 33 in the case of Newtownpark

7 Avenue and Monkstown, you were entitled to one-third of

8 what?

9 A. This was a scheme, Sir - this was a tax scheme

10 structure set up. And I said to you this morning that

11 I am not the author of it. It was Hugh Owens who was

12 the author of this.

13 255 Q. But your evidence was to the effect that it was to do

14 with future profits?

15 A. Yes, sir.

16 256 Q. And what I am putting to you is that it's quite clear

17 it couldn't have been future profits, because you had

18 no entitlement to the future profits?

19 A. I'll tell you, Sir - I can't, unfortunately, tell you

20 any more than what the situation is. This was what I

21 was invited into. The scheme was derived - well,

22 designed by Hugh Owens. This is what - this is what it

23 was. And that's when I got out of it.

24 257 Q. And what I am putting to you, Mr. Finnegan, is that

25 your assertion that the payments that were made to you

26 were in some way related to future profits is not

27 consistent with the facts as we know them, because we

28 know, even from your own evidence, that you were never

29 going to be entitled to be an equal one-third partner

30 in the profits with these two gentlemen. Your

1 arrangement with them was a much more limited sort of  
2 an arrangement, where you got a payment at a very early  
3 stage before any development was carried out, or  
4 indeed, any sale of the lands was carried out?

5 A. The transactions were being put in place, Sir. This is  
6 the scheme - the scheme was to generate an upfront  
7 profit. I wouldn't say it was all of the profit, Sir.  
8 It was anticipated, anticipated profits.

9 258 Q. Yes. But you were not entitled to one-third of the  
10 anticipated profits.

11 A. Well, that's what the scheme was, Sir.

12 259 Q. Aren't I right about that? You weren't entitled to  
13 one-third of the anticipated profits?

14 A. Why not, Sir?

15 260 Q. Because the anticipated profits, in the case of  
16 Donnybrook, were in excess of 1.1 million, less  
17 whatever it cost to buy it?

18 A. Yes --

19 .

20 MR. HUSSEY: I'm sorry, that's not actually correct.

21 The actual profits were 1. - the actual money made was

22 1. so many million, but not the anticipated. I think

23 --

24 .

25 261 Q. MR. HANRATTY: Mr. Finnegan, you know very well what I  
26 mean. Everybody knows you weren't entitled to  
27 participate as a one-third equal partner in these  
28 developments?

29 A. Well --

30 262 Q. What I was putting to you about the 1.1, is that



1 everybody appears to be agreed, including yourself,  
2 that you were not to share in that, because that wasn't  
3 part of your deal?

4 A. That's right.

5 263 Q. You are still saying, nonetheless, at the same time,  
6 that you were entitled to one-third of the profits. I  
7 am putting to you, you were not entitled to one-third  
8 of the profits?

9 A. We can go round and round. I don't know what you are  
10 trying to get me to say --

11 264 Q. Mr. Finnegan, we are going to go around and around  
12 until we get some sense out of this. You were either  
13 entitled to one-third of the profits on these  
14 developments or you were not. And I am putting to you  
15 that it is quite clear from both Mr. Brennan and Mr.  
16 McGowan's evidence, and your own evidence, that you  
17 were not entitled to one-third of the future profits on  
18 these developments?

19 A. Anticipated, not the future profits, the anticipated  
20 profits at the time. The future profits would have  
21 been the actual, later on down the road. But that's  
22 not what I was to get involved in, Sir.

23 265 Q. What happens if the future profits turn out to be  
24 different than the anticipated profits?

25 A. Well, I think --

26 .

27 CHAIRMAN: I wonder, in some way, are we getting tied  
28 up in language? And I don't want to add confusion.  
29 But it appears to me that the transaction was the  
30 purchase of a site, enhancing the value of the site by

1 raising a mortgage on it and giving - and giving you -  
2 a site that originally cost 141,000, was enhanced by  
3 the cost of the mortgage, and that was taken to be the  
4 enhanced value. The expenses were taken out, and the -  
5 was distributed on the basis that the plot now, if  
6 anybody was going to build on it, would have to pay the  
7 enhanced value, not the original cost value. And it's  
8 an enhanced value that the 101,000 appears. It doesn't  
9 seem to quite work out mathematically, but it's an  
10 enhanced value of the site at one stage.

11 A. At one stage.

12 .

13 CHAIRMAN: It's not the ultimate value which would,  
14 presumably, be a market value, because the builder,  
15 whoever he was, or the actual man who built whatever  
16 number of houses, he had to ultimately charge out to  
17 the end customer, i.e. the guy who bought the house,  
18 the site fine based upon the enhanced value. It was  
19 the enhanced value that was parcelled out, as I  
20 understand it.

21 .

22 Now, perhaps I've got it wrong.

23 .

24 MR. HUSSEY: I think you have it exactly right. I  
25 think that is correct, Sir.

26 A. Yes, sir.

27 .

28 CHAIRMAN: I am sorry for intervening. If I added to  
29 the confusion --

30 .

1 MR. HANRATTY: You certainly - that's not my  
2 understanding from the evidence, although Mr. Hussey  
3 agrees - it is completely inconsistent with everything  
4 the witness has said so far.

5 .  
6 MR. HUSSEY: Sorry, that's absolutely not fair.

7 .  
8 CHAIRMAN: Please, gentlemen. Please, gentlemen. I  
9 knew that intervention was going to - I am going to  
10 have to listen and try and understand what it was. If  
11 I've got it wrong, I've got it wrong, and I will  
12 rethink it out. That's all can I do.

13 .  
14 266 Q. MR. HANRATTY: Mr. Finnegan, Brennan and McGowan were  
15 house builders. They bought - just stick with "done"  
16 at the moment. They bought land with the view to  
17 developing it, which in this case was building houses,  
18 and perhaps some - principally building some houses on  
19 it. They bought it with planning permission.

20 A. Yes, sir.

21 267 Q. They intended to develop it, but they didn't ultimately  
22 develop it. You were acting in a capacity for the  
23 vendor, both in your capacity as a director of Herbert  
24 Properties Limited, and in your capacity as a principal  
25 in the firm of Finnegan Menton, the auctioneers for the  
26 vendor. They originally agreed to buy the property in  
27 their own name, subsequently Kilnamanagh Estates, and  
28 ultimately Victa Investments Limited, a company of  
29 which you owned one-third equally with the two of them.

30 .

1 Some arrangement was entered into between you and them,  
2 under which you say you were asked to put in equally  
3 with the two of them the ú50,000 contribution. Isn't  
4 that right?

5 A. Yes, sir.

6 268 Q. You say you did put that ú50,000 in, as indicated by  
7 the debit on this account to which you direct our  
8 attention. Isn't that right?

9 A. Yes, sir.

10 269 Q. You say that the nature of the arrangement that you had  
11 with them, and they agree, was not that you were  
12 entitled to be a full equal one-third partner with them  
13 in this entire venture. Isn't that right?

14 A. Yes, sir.

15 270 Q. You say that the arrangement that you had with them was  
16 of a much more limited nature, under which you were  
17 entitled to get one-third of something?

18 A. I think that what it was, Sir, and I think that Your  
19 Lordship - this was exactly - it was the enhanced value  
20 of the site.

21 271 Q. Well, on the basis of that understanding, how do you  
22 say ú101,000 was calculated as your entitlement?

23 A. I don't know how it was calculated, Sir. That was the  
24 scheme. I don't know how it was calculated.

25 272 Q. What did it relate to?

26 A. Well, this is what I said to you, Sir. It was the  
27 enhanced value which was calculated within the scheme  
28 for the basis on which they were going to build on  
29 after that, Sir.

30 273 Q. But the scheme that we have is a scheme under which

1 Oakpark enters into an agreement with Victa for the  
2 payment of a ú48,000, what they call it, licence fee.  
3 And the making of a ú266,000 interest-free loan.

4 A. Mm-hmm.

5 274 Q. It makes no reference of any kind, and nor does any  
6 document that we have seen, or any witnesses as far as  
7 I can recall, to future profits.

8 A. Well, I think that the situation, Sir, which I have  
9 said on a few occasions, that the end result was that  
10 which was produced on the paper, the documentation came  
11 out of. That was having sorted out the scheme,  
12 calculating what the anticipated profit --

13 275 Q. But the fundamental question remains, Mr. Finnegan:

14 If you were not entitled to one-third of the future  
15 profits, what were you entitled to one-third of?

16 A. The anticipated - I was invited into a scheme which was  
17 going to take into account the anticipated profit.

18 276 Q. What's the anticipated profit?

19 A. The profit - that there would have to be somebody left  
20 in it for another party if it was going to be taken - I  
21 think it was what would be a fair calculation or  
22 portion of the anticipated profit.

23 277 Q. Who anticipated it?

24 A. Well, that would have been worked out within the  
25 scheme, and with the parties. And that would have been  
26 worked out between Owens, Hugh Owens, Brennan and  
27 McGowan, and I'm sure, then, they were either  
28 interfacing with the taker - excuse my grammar --

29 278 Q. Mr. Finnegan, that makes absolutely no sense  
30 whatsoever.

1 .  
2 MR. HUSSEY: I am sorry, Sir. I really must object to  
3 that comment from Mr. Hanratty. If you look at  
4 Document 147, which we had up on the board on Friday.

5 .  
6 MR. HANRATTY: With respect, I would ask to be  
7 permitted to continue my examination of the witness?

8 .  
9 CHAIRMAN: We must not have interruptions of this kind.  
10 It only adds to the confusion. Please.

11 .  
12 MR. HUSSEY: I am sorry, Sir, I am trying to add to the  
13 clarity of the matter.

14 .  
15 CHAIRMAN: Well, with due respect, I think we'll - let  
16 one premises be advanced and let the alternative  
17 premise then be advanced.

18 .  
19 MR. HUSSEY: Of course. I quite appreciate that, Sir.  
20 However, on Day 294, you made a very major ruling here,  
21 having heard me and Ms. Dillon over two days, and in  
22 that ruling you said, "1. There is an evidential  
23 basis sufficient to allow for such matters being raised  
24 as a possibility." This is subject - you said, "I am  
25 satisfied that the questions put to Mr. McGowan were  
26 put in that context. Counsel canvassed a suggestion  
27 with the witness as to whether the transactions may  
28 have involved a conflict of interest, or a secret  
29 payment, or a bribe by him to Mr. Finnegan. There is  
30 an evidential basis sufficient to allow for such

1 matters be raised as a possibility, and I am satisfied  
2 that the witness and all those present, viewed the  
3 questions in that light. I believe this is evidenced  
4 by the fact that no objection was raised by Mr.  
5 Finnegan's counsel to these objections at the time that  
6 they were posed, or at the conclusion of the days'  
7 sessions."  
8 .  
9 Now, I seem to be damned if I do and damned if I don't.  
10 If I don't raise an objection, it's viewed as in some  
11 way as supporting the line of questioning. If I don't  
12 object, I am condoning the questions, and saying there  
13 must be some basis for it. If I do object, I am  
14 hammered again, as delaying the proceedings.  
15 .  
16 I seem to be caught in the Bart Simpson dilemma, where  
17 I am damned if I do and I am damned if I don't. I'm  
18 sorry, but because this has been used against me  
19 before, my not objecting, when I see Mr. Hanratty  
20 making concrete statements which aren't supported by  
21 the evidence, I feel I must interject, otherwise when I  
22 do support, or when I kind of get to re-examine, it may  
23 be too late to undo the impression that has been given  
24 already.  
25 .  
26 I am just saying, that what Mr. Hanratty says is that  
27 there was nothing to support the contention that the  
28 profit was yet to be decided. I can point to a  
29 document which he had, himself, put up on the screen,  
30 either Thursday or Friday, when it was quite clear that

1 Mr. Owens, in communication with Mr. Wheeler, said,

2 "And the profit is yet to be decided."

3 .

4 So these things were to be decided between Mr. Owens  
5 and Wheeler, and probably Brennan and McGowan. For  
6 Mr. Hanratty to suggest there is no evidence to support  
7 it, is absolutely wrong. And I feel it's my duty to  
8 point that out at the earliest time, rather than to be  
9 saying, "Oh, you didn't object at the time, so  
10 therefore, we took it that there was some basis for  
11 it."

12 .

13 So I don't know where I stand with - there is two very  
14 contrasting rulings. One, I am not to be objecting,  
15 and if I don't object, I am damned.

16 .

17 So where - you know, you can see my dilemma. How am I  
18 supposed to know when I can object and when not?

19 .

20 CHAIRMAN: Yes, Mr. Hanratty?

21 .

22 MR. HANRATTY: There are no contrasting rulings. With  
23 respect, what Mr. Hussey said is just utter gibberish.

24 The fact of the matter is the witness --

25 .

26 CHAIRMAN: Let's be diplomatic.

27 .

28 MR. HANRATTY: Mr. Hussey is making these ridiculous  
29 interjections. He is cobbling together arguments.

30 .



1 We are now on the basis of an argument where there are  
2 two conflicting rulings. He is trying to bamboozle  
3 somebody.

4 .  
5 The fact of the matter is, I was putting a proposition  
6 to a witness in relation to an answer to a question I  
7 put.

8 .  
9 We have now established that what Mr. Finnegan was  
10 entitled to was not one-third of future profits. And  
11 now Mr. Finnegan is saying that what he was entitled to  
12 was one-third of anticipated profits. And the  
13 questions I was putting to him were to test that  
14 proposition. How was the anticipated profits arrived  
15 at? By whom was the anticipated profits arrived at?  
16 He gave an answer which I suggested to him, I can't  
17 remember the phrase he used, incomprehensible or makes  
18 no sense. I am perfectly entitled to test the answer  
19 that a witness gave, to challenge the answer that a  
20 witness gave and to, as it were, put to him  
21 inconsistencies between that, or the fact that that is  
22 a less likely explanation, in view of the facts that we  
23 do know, than some other explanation.

24 .  
25 That's all I was doing. And there was no basis for  
26 that objection, Sir. It's another ten minutes wasted.  
27 It's another delay in the conclusion of the examination  
28 of this witness.

29 .  
30 CHAIRMAN: Well, now, that's the end of submissions. I

1 am going to rule that Mr. Hanratty is entitled to  
2 inquire from the witness as to whether or not he can  
3 logically justify the statement he is making, namely,  
4 that he was entitled to one-third of the anticipated  
5 profits. But he's got to define "anticipated profits"  
6 if that is to have validity.

7 .

8 It's certainly not one-third of the total profits,  
9 there is no doubt about that. And I don't have any  
10 problems with that.

11 .

12 The question that has to be determined is how, in the  
13 activities that - and the immediate aftermath of the  
14 actual purchase, what was the profit that was envisaged  
15 at that stage which should be distributed, or appears  
16 should be distributed, as they conceived it at the  
17 time? Because they went ahead to actually distribute  
18 the profit very shortly after acquisition, and before  
19 any development or future sales or anything like that  
20 went on.

21 .

22 So it's a question as to - at what point in time was  
23 the sum available for distribution calculated?

24 .

25 Can we find that --

26 .

27 279 Q. MR. HANRATTY: Just to take it to the point, Mr.

28 Finnegan, where you were actually making your agreement  
29 and your arrangements with Mr. McGowan.

30 .

1 You were being asked to put in ú50,000. It was agreed,  
2 as I understand your evidence, that you were not going  
3 to get, in return for ú50,000, one-third of the future  
4 profits of these developments. Isn't that right?

5 A. Yes.

6 280 Q. Sorry, let's confine it to Donnybrook, one-third of the  
7 future profits of this development. Isn't that so?

8 A. Of the last --

9 281 Q. Yes. So you were going to get one-third of what?

10 A. This was - I think probably, Sir, where you may have  
11 got the wrong angle on it - is they are talking about  
12 the future - you are talking about the future  
13 developments of the entire development, the profits of  
14 the entire development. The problem we are relating  
15 to, and Your Lordship got the point, that it is the  
16 land element of the development rather than the  
17 anticipated profits of the building development. It  
18 was the land element that was going to be enhanced.  
19 That's where it comes out.

20 .

21 So what happened, and give you an example, that say the  
22 - somebody bought land for whatever, "X" pounds an  
23 acre, and you got, say, ten houses to the acre, and it  
24 was reflected - that broke back at ú1,000 an acre.  
25 Sorry, ú1,000 a site, whatever. Well, the fact that  
26 they - that they had the ability to buy it and got it -  
27 they very often - it was a custom, even around that  
28 time, that they would then get another builder, a  
29 smaller builder, and give a licence for the site. It's  
30 not the building for the site for, say, 4,000 or 5,000.

1 That was where - but that's where the land development  
2 profit stops, Sir. After that, that would be - either  
3 licence or a lease, it would be let off.

4 .

5 Now, that is where the profit we are talking about is,  
6 not what they made over the years in the building of  
7 the houses, but --

8 282 Q. What's that got to do with anticipated profit?

9 A. Well, that's what I am talking about, anticipated  
10 profit on the land, Sir.

11 283 Q. Well, now, in all of the questions I asked you about  
12 Monkstown, and in all of the original explanations that  
13 you gave in relation to what you were getting; as far  
14 as I am aware, this is - today is the first time you  
15 actually started talking about enhancement of land  
16 value --

17 .

18 MR. HUSSEY: I'm sorry, that again --

19 .

20 CHAIRMAN: Please, please. We must not have  
21 interruptions. I am doing my best to be courteous and  
22 let everybody have their say. You'll have your  
23 opportunity of saying that "This is nonsense. This is  
24 not appropriate". That's a matter for yourself, but  
25 please don't interrupt the proceedings. Its just  
26 becoming impossible to function.

27 .

28 284 Q. MR. HANRATTY: Is it now your position that, in fact,  
29 what was agreed between yourself and Mr. McGowan was  
30 that what you were going to get in return for your

1 investment was one-third of somebody's estimate of the  
2 enhancement of the value of the land?

3 A. That's the anticipated - you see, this is where it was  
4 coming out, that how much a site was worth, for  
5 example. That's why it came out when they were looking  
6 at the licence agreements, and I think you even heard  
7 the thing - that's where it would be, Sir. It wasn't  
8 out of the actual building. The builders were going to  
9 get - the developers --

10 285 Q. I understand that, just let's take it in stages now.

11 .

12 Is it now your position, and if it isn't, please feel  
13 free to say so, that what you were to get for your  
14 investment in the Donnybrook site was one-third of  
15 somebody's estimate of the enhancement in the value of  
16 the land?

17 A. Yes, which would be geared - which would be geared up -  
18 somebody saying the way they may have come around it, I  
19 am not saying it was, they were saying, we could build  
20 a house for "X" --

21 286 Q. We are not talking about development. We are  
22 distinguishing it from the development.

23 A. Sir, for a moment, please. This is what you would call  
24 "residual value". They come back to see if land is  
25 there, to produce, one, if building land is there, and  
26 that is to produce something. What is it to - to  
27 produce buildings. Buildings. Right. Then they start  
28 working how many square feet you will be able to build  
29 on this. So then they look at what is a square foot of  
30 that building worth at the end of the day, whatever it

1        may be? ú100 a square foot. How much is it going to  
2        cost you to get there, Sir? This is sort of residual.

3        .

4        So somebody would take into consideration the - say  
5        "It's going to cost me "X" pounds or "X" pounds to  
6        build it." He has now got his planning --

7 287 Q.    Could we wind it back again, Mr. Finnegan, because I  
8        certainly, personally, have lost you. I do not  
9        understand what you are saying.

10       .

11       We know that the land in this case was bought for  
12       ú141,000?

13    A.    Mm-hmm.

14 288 Q.    And we know that that happened, we believe, in December  
15        of 1978, was it, for ú141,000. And we know that the  
16        following month, approximately, you got ú101,000,  
17        having put in, you say, an investment of ú50,000.

18       .

19       Now - and we know that came out of the figure of 304,  
20        and went over to Jersey from Oakpark.

21       .

22       Now, what do you say the figure you got is one-third  
23        of?

24    A.    What - this is a tax structure deal. What was agreed  
25        between the parties, Sir - what was the figure that  
26        they would - because Brennan and McGowan too were going  
27        back into this company. What they - what uploading,  
28        front-loading of the land value, would it stand and  
29        still be capable of being built out? It would probably  
30        be, if you like, reducing the eventual profit of the

1 builder at the end of the day, because he wouldn't get  
2 as much out of it. They were extracting so much of the  
3 money up front, out of the land.

4 .

5 So, in other words, that they were putting on a higher  
6 site value to the guy who was going to build the house.

7 289 Q. Well, they were saying that the land, if it's to do  
8 with the value of the land, and if I understand your  
9 answer correctly, you were saying that after buying it  
10 for 141, they turned around and said it had been  
11 enhanced by 304. Is that right?

12 A. With the anticipated - now, it's not value, Sir.

13 290 Q. It's not value?

14 A. No. It is a scheme, Sir. It's a scheme to work  
15 around. Now, I don't know if you are following this at  
16 all, Sir, but I think - I was trying to explain to you  
17 that this was a scheme. They bought the land, and Your  
18 Lordship explained very, very briefly there what the  
19 situation is, and that is the basic understanding, that  
20 there was an enhancement - they said, "Instead" - say  
21 the sites were worth - they say they were worth 10,000  
22 a site. They inflated the value, and they bought it at  
23 - say they start at ten, they say, "Look, we can put  
24 this up. And this builder would like to have the  
25 opportunity of getting in here, and he would pay more  
26 for this than anybody else here. And we are in there,  
27 in that company", like Oakpark.

28 .

29 So you had Brennan and McGowan going back --

30 291 Q. Sorry, Mr. Finnegan, you say it's not value now. In

1 other words, what the ú304,000 was, was not a value of  
2 the land, or revaluation of the lands, is that right?

3 A. It was taking an anticipated figure of what addition  
4 into what the eventual profit might have been out of  
5 the development, and putting a site value on it. And  
6 they were interconnected parties, Sir.

7 292 Q. But the site value is the value that was actually paid,  
8 we presume, by Farrell Homes, which is 1.1 million.  
9 Why didn't you get a third of that, if that's the case?

10 A. Well, I think, Sir, there is no point going down that  
11 road.

12 293 Q. Mr. Finnegan, historically this is what happened. They  
13 didn't develop the land. So it was nothing to do with  
14 profits. It was nothing to do with land, enhancement  
15 value. The land was actually sold for an actual figure  
16 of ú1.1 million, in which you did not participate,  
17 because all three of you agreed --

18 A. Three or four years --

19 294 Q. -- yes, but what difference does that make?

20 A. I think what I was saying is that this was for the  
21 initial stage. Now, I didn't know what was going to  
22 happen down the road. I accepted the situation, as the  
23 proposition that was put to me was that I would - I  
24 could participate in, what I told you, the tax scheme,  
25 a structure --

26 295 Q. Leaving aside Mr. Owens' figures and whether we agree  
27 with them or disagree with them. Would you just  
28 explain to me the exercise that he did to calculate the  
29 figure, one-third of which you were giving?

30 A. I can't do that for you, Sir.



1 296 Q. Well, you see, I suggest to you, you have to be able to  
2 do that, if you are suggesting, as I understand you now  
3 to be suggesting: (A) That it was not one-third of  
4 future profits. (B) That it was not one-third of  
5 enhanced land values, but that it was one-third of an  
6 increased value in anticipation that the land would be  
7 developed. Is that right?

8 A. What I was trying to explain to you, Sir, is this:  
9 That the like of Owens, Hugh Owens had this scheme, and  
10 he would have run these figures with Brennan and  
11 McGowan. I wasn't involved with those. And with  
12 Oakpark. And they looked at what - the scheme, the way  
13 - the criteria would be, and what anyone would get out  
14 of a scheme like this. The big element is the building  
15 costs. And I think that what they were looking at here  
16 is that there were people who were very anxious to get  
17 in and felt - these were builders, rather than  
18 developers. And they could build at "X". And that's  
19 what - they were working around what the building costs  
20 were, and coming back down, then, to anticipated land  
21 value.

22 297 Q. Let's look at it another way, Mr. Finnegan. We know  
23 that at a point in time, at the end of 1978, the land  
24 had been bought for ú141,000 with planning permission.  
25 That's a fact?

26 A. Mm-hmm.

27 298 Q. Let's just assume, for the sake of the argument, there  
28 was 141 sites, in other words, there was 141 sites by  
29 ú1,000 each. Mr. Owens could have sat down and said,  
30 "Okay, I now have an asset worth, or for which my

1 clients have paid €141,000. I am not calculating  
2 future profits on the development", or alternatively he  
3 might say, "I am calculating future profits on the  
4 development. And to build a house on each site is  
5 going to cost, say, €15,000. And we'll make another  
6 €10,000 on each site." So he can do a calculation, and  
7 he can estimate, and it can only be an estimate at this  
8 stage --

9 A. Mm-hmm.

10 299 Q. -- what the future profits are going to be. But we  
11 know that that is not what he did, and it - there  
12 wouldn't have been any point because you weren't  
13 entitled to future profits on the development anyway.  
14 So what other exercise could he have done?

15 A. I think --

16 300 Q. He could, for example, have perhaps, and I'm only  
17 suggesting this as another alternative, he could have  
18 said, "Well, if we decide not to develop the sites but  
19 to sell them off at a profit. We'll sell 141 sites,  
20 which we bought at €1,000, and we'll sell them for  
21 €1,500 each, and therefore make €500 per site." In  
22 other words make half again as much as 141. He could  
23 have done that. But, as I understand your evidence,  
24 that's not what he did either.  
25 .

26 So what did he do? Leaving aside the methodology.  
27 What do you think was the process by which he arrived  
28 at a figure that was divided in three?

29 A. Well, I can't say any more to you, Sir, that - than  
30 what - it was the anticipated, taking into account the

1 anticipated profit. And I think what we are talking  
2 about there, it's the land we are talking about all the  
3 time.

4 301 Q. Not the profit on a development -

5 A. No, development we always - Sir, if you are going into  
6 anything, the global thing is development.

7 302 Q. When Brennan and McGowan bought it, sorry, when Victa  
8 bought it for ú141,000, they bought it with planning  
9 permission with a view to development. So nothing had  
10 changed after the sale had closed, isn't that right?

11 A. That's right.

12 303 Q. So it was land which had cost ú141,000.

13 .

14 Now, an accountant does an exercise under which he  
15 sends ú300,000 to Jersey. How did he arrive at the  
16 ú300,000?

17 A. Sir, I think what this - I think, when you have - when  
18 you are talking next to Mr. Owens you could clarify  
19 that.

20 .

21 But the situation is, this was a scheme, a scheme. And  
22 as I said before, I am not an accountant. It was a  
23 scheme that was set up. Now, they could have put  
24 figures in various ways, Sir, but it was - rather than  
25 doing it at the figure at which the land was - at the  
26 cost figure, I was trying to explain it to you, Sir -  
27 there was anticipated profit of the land, and that -  
28 because the guy would say, "I will build - a deed  
29 attached to a house, build whatever I like on it", but  
30 it was anticipated what - what they might get out later

1 --

2 304 Q. You were saying "anticipated profit of the land". What  
3 does that mean?

4 A. Well, you see, when - in the structure, at how much  
5 would the land stand. And he did a scheme, the details  
6 of which I don't have, Sir.

7 305 Q. The only way there could be any profit on the land is  
8 if the land itself as a whole, or individual sites on  
9 the land could be sold for more than they were bought  
10 for. Isn't that right?

11 A. Well, what --

12 306 Q. Isn't that right?

13 A. Sir, I would say to you that it is - this was with a  
14 group who were together. It wasn't being sold outside  
15 to unrelated companies. This was to a related company.

16 307 Q. What's that got to do with you?

17 A. I happened to be invited into the scheme, Sir.

18 308 Q. Mr. Finnegan, the question was: What is anticipated  
19 profit on the land? What does that mean?

20 A. Well, it was a way of reflecting - the accountant  
21 worked out what way, what could be made out of this, in  
22 his own mind, whatever way he did it. And he reflected  
23 back, as Your Lordship mentioned there - it was  
24 bringing up the value of - well, maybe - not  
25 artificial, but taking into account what might have  
26 been made out of the - of it over a few years. They  
27 brought it forward.

28 309 Q. But can I put it to you this way: When you say  
29 "anticipated profit of the land", are you talking about  
30 profit which refers only to the land but not to the

1 development of the land?

2 A. I think --

3 310 Q. In other words, enhancement of the value of the land?

4 A. What they were going to build on it. They had a scheme

5 -

6 311 Q. Well, if you are building on it, you are talking about

7 development profit?

8 A. But it has to be built to - it was the entry into the

9 new company. I think, Sir, it's the entry in that was

10 going to cost more.

11 312 Q. The land cost ú141,000 --

12 A. We worked it out some way that, then the entry into the

13 development company - the base cost was enhanced, and

14 then that's where the - the builder going on now had a

15 higher level from which to work than he would have had

16 initially with the original cost of the land.

17 313 Q. The land, we know, was worth ú141,000 when it was

18 bought?

19 A. Yes.

20 314 Q. A month later, as I understand your evidence, it was

21 still worth ú141,000?

22 A. Yes, sir.

23 315 Q. Because it's nothing to do with the value of the land,

24 is what you said, isn't that right?

25 A. Mm-hmm.

26 316 Q. Right. So the land is worth ú141,000. You own

27 one-third of the company that owns the land. And you

28 get ú101,000?

29 A. I was invited to come into the scheme on the basis of,

30 that it was going to be - that first cut-off, Sir --

1 317 Q. But you can't tell us in any way how Mr. Owens reached

2 this calculation of ú304,000?

3 A. I don't, Sir, no.

4 318 Q. Can you even guess at it?

5 A. No, Sir. I think that - I think that that - because I

6 don't know what reality there was in all of those

7 calculations.

8 319 Q. Do you not even know the underlying logic of his

9 reasoning, or the nature of the exercise that he was

10 doing?

11 A. What the nature or the exercise was, that it was taking

12 a profit out, whatever way - however way it was being

13 manufactured, to take it out, in the first instance,

14 rather than waiting for it later down the road.

15 320 Q. See, all of this is very, if I may say so, Mr.

16 Finnegan, very esoteric and very, as you explained it,

17 complex, because I certainly can't understand it. And

18 one has to put that alongside a rather more obvious

19 scenario, namely, that you were paid ú101,000 because

20 you brought this property to Brennan and McGowan?

21 A. Absolutely no, Sir.

22 321 Q. Or perhaps you were paid ú101,000 because you brought

23 in ú50,000, and brought the property to Brennan and

24 McGowan?

25 A. No, sir.

26 322 Q. Why not?

27 A. I have been telling you, Sir --

28 323 Q. It makes obvious sense?

29 A. Does it?

30 324 Q. It's the kind of thing that you can understand. It

1 would provide an explanation as to why €50,000 one  
2 month turns into 101,000 the following month. Because  
3 there is an element, as I put it to you this morning,  
4 of gift or bonus in a figure --

5 A. There is no question of that, Sir. I must say, Sir, I  
6 am in here, as a witness, to assist you for the payment  
7 to a politician - to find out who brought a payment to  
8 Mr. Burke. I have been doing my best to give you as  
9 much assistance as I can. And we seem to be going  
10 back, back, back and around and around and around.

11 .  
12 I have said to you, and I was saying now, Sir, I am  
13 saying to you, I was invited in to a scheme designed by  
14 Hugh Owens for the anticipated profit, and I think we  
15 are getting - trying to cut in here and there of  
16 development of this, and that. Anticipated property,  
17 which ordinarily would be reflected on the land. And  
18 that's what I was invited on, Sir, and not that what  
19 you have suggested.

20 325 Q. I am simply dealing with each transaction in turn, Mr.  
21 Finnegan. At the moment I am dealing with the  
22 Donnybrook transaction. I have been told things about  
23 anticipated profits, as a part of your explanation as  
24 to why you were paid €101,000, and also in the context  
25 that you are saying, contrary to the testimony of  
26 Messrs. Brennan and McGowan, that you did put in money  
27 into these schemes by way of investment, in this case  
28 €50,000?

29 A. Yes, sir.

30 326 Q. Now, you say you put in €50,000 on the basis that you

1 would be paid one-third of anticipated profits. I am  
2 still trying to understand, what does "anticipated  
3 profits" mean?

4 A. I think, Sir, I have just to say - I was invited into a  
5 scheme, and the scheme was that I was invited in, and I  
6 think that the reason - that it was an integral part  
7 that I would put in money, which I did do. And I got  
8 paid for doing that.

9 .  
10 And I think it was - at the time it was important that  
11 I would be there to do that.

12 327 Q. Mr. Finnegan, I still don't understand what you mean by  
13 "anticipated profit"?

14 A. Well - there we are, Sir, that I have explained to you  
15 what I was invited into. And it wasn't - it was a  
16 scheme designed by Mr. Owens.

17 328 Q. Right. And is it your case that the anticipated profit  
18 was not something that was going to be revisited or  
19 readjusted in the future, regardless of the actual  
20 profit, whether the profit on the land or the scheme or  
21 otherwise?

22 A. Yes, sir.

23 329 Q. It was a one-off?

24 A. Yes, sir.

25 330 Q. And if what was anticipated didn't, in fact, occur, you  
26 were still going to get the one-third anyway?

27 A. That's right, Sir. The figure was --

28 331 Q. Well, nobody knew in advance whether it would  
29 ultimately be realised. If it's anticipated, it means  
30 that somebody believes it's going to happen?



- 1 A. And if they put too much on it, Sir, if there was too  
2 much taken up front, then the builder/developer would  
3 not be able to make any money out of it down the road.
- 4 332 Q. No. Of course. But as I understand it, you were going  
5 to get one-third of what you say is a thing called  
6 "anticipated profit"?
- 7 A. Yes, sir.
- 8 333 Q. Anticipated at the point in time virtually after the  
9 sale that the purchase was made. Isn't that right?
- 10 A. Yes, sir.
- 11 334 Q. Well, it was distributed in January, on the 15th of  
12 January of 1979. You were going to get one-third of a  
13 thing called "anticipated profit", isn't that right --
- 14 A. Yes, sir.
- 15 335 Q. -- on this property. You got a figure of £101,000,  
16 which you say is, in fact, one-third of the thing  
17 called "anticipated profit". Isn't that so?
- 18 A. Mm-hmm.
- 19 336 Q. That's what you got. Am I right about that?
- 20 A. Yes, sir.
- 21 337 Q. And, as I now understand your evidence, this was on the  
22 basis that if the profit that was anticipated, on  
23 whatever it was anticipated, was not, in fact,  
24 realised, there was no coming back and no readjustment  
25 in the future?
- 26 A. Correct, Sir.
- 27 338 Q. Is that so? And if, in fact, they made a loss, there  
28 was nobody going to come back to you and say, "Look,  
29 terribly sorry, we didn't make those profits we  
30 anticipated. Can we have our money back?"

1 A. Because it was anticipated that it wasn't to take the  
2 last out of it, Sir, that it was going to be that there  
3 was sufficient left for the builder to make profit with  
4 that higher entry fee --

5 339 Q. The difference, if it turned out in the future, as  
6 indeed it appears to have done in this case, that the  
7 profit was greater than anticipated, there was no  
8 coming back on that either?

9 A. No coming back on that either.

10 340 Q. There was no question of, for example, being entitled  
11 to come back a year or three years later when they sold  
12 it, or whenever it was, saying, "Look, the anticipated  
13 profit is greater than was anticipated. I am entitled  
14 to more"?

15 A. No.

16 341 Q. Why not?

17 A. That was the deal, Sir.

18 342 Q. And is it your evidence that when you made this deal,  
19 you had no idea what the anticipated profit was going  
20 to be?

21 A. Sir, I was invited into it on the basis that - on the  
22 basis - to participate, as I said, in the scheme. And  
23 that's what the structure of the scheme through the  
24 figures I eventually got --

25 343 Q. Supposing Mr. Owens turned around to you, the month  
26 after you put in your 50 and said, "There is your  
27 £10,000. That's the anticipated profit." What happens  
28 then?

29 A. I think I would, at that stage, Sir, on that, if that's  
30 what came out of it, I would have to accept that.

1 344 Q. Que sera sera. And what was the element of risk that  
2 you saw yourself taking when you paid up your ú50,000?

3 A. Well, the element of risk, that I didn't know exactly  
4 what it was. And indeed, Sir, on looking at it, in the  
5 case of exactly - because there were mortgages taken  
6 out on how, in fact, my investment was secured - with  
7 mortgages floating around the place, you could be in a  
8 position where you could be - you mightn't have a  
9 direct holding. There was a fair amount of trust in  
10 it, Sir.

11 345 Q. Well, I have to put it to you, Mr. Finnegan, there was  
12 no element of risk, because nothing happened between  
13 the time the sale was closed and the time Mr. Owens did  
14 his anticipated profit calculation. At the time that  
15 you reached your agreement with Mr. McGowan, you knew  
16 that the sale price was ú141,000, so there was nothing  
17 to stop Mr. Owens there and then sitting down with his  
18 calculator and doing his anticipated profit  
19 calculation, before you put up your money?

20 A. You see, I don't suppose that it's as simple as just  
21 what you are saying --

22 346 Q. We know that, in fact, the monies were distributed on  
23 the 15th of January, 1979?

24 A. Mm-hmm.

25 347 Q. Within a month, approximately, of the time that you -  
26 that you put up your money. Isn't that right? Sorry,  
27 you put up your money in November.

28 .

29 And we know that in November everybody knew that this  
30 sale was about to close for ú141,000, 14,000 having

1 already been paid by way of deposit. So everybody knew  
2 what the figures were in November, everybody knew what  
3 the figures were in December, and everybody knew what  
4 the figures were in January. And nothing changed  
5 during that period.

6 .

7 So what was the risk you were taking?

8 A. The situation, Sir, that what I would get out --

9 348 Q. Did Mr. Owens not tell you in advance?

10 A. No, Sir. I think these were calculations that were  
11 done between the parties.

12 349 Q. Well, you were one of the parties?

13 A. Yes, sir.

14 350 Q. Did you participate --

15 A. I think - I was invited in, and the parties were  
16 Brennan and McGowan, Brennan and McGowan and Oakpark or  
17 others, or their other builders.

18 351 Q. Mr. Finnegan, Mr. Owens, as I understand your evidence,  
19 did a calculation under which he came up with a figure  
20 for anticipated profit, which was sent over to Jersey  
21 and divided up. The figure was 304,000 that was sent  
22 over.

23 .

24 Now, there was nothing to stop him doing that  
25 calculation in November, before you put up your  
26 ú50,000. Nothing had changed between November and  
27 January. All of the essential ingredients on which he  
28 would have to do his sums were in place. But the most  
29 important one, in fact the only one that I can  
30 identify, was the fact that this property, with

1 planning permission, was bought for €141,000. So when  
2 Mr. Brennan came to you in November, or perhaps even  
3 before November, he knew that this property was being  
4 bought, with planning permission, for €141,000. And if  
5 he was asking you to put up €50,000, on the basis of an  
6 anticipated profit on some scheme by Mr. Owens, I  
7 suggest to you he knew there and then, and Mr. Owens  
8 knew there and then what Mr. Owens' calculations were,  
9 whatever they were?

10 A. Well, I can't say, Sir, that that was exactly the  
11 situation. They could have been working around  
12 figures.

13 352 Q. But there was no other variable in the equation between  
14 November and January?

15 A. Well, I suppose it would be that - how much the scheme  
16 would stand, Sir. What the parties who were - the  
17 people who were parties to the deal, how much would it  
18 stand, and that the deals would still go on for the  
19 development to take place. And I suppose - that's what  
20 it is.

21 353 Q. Mr. Finnegan, do you hear what I am saying? Mr. Owens  
22 did a calculation, the upshot of which is you got  
23 €101,000. Are you seriously asking the Tribunal to  
24 believe that you didn't know that at the time that you  
25 paid your 50?

26 A. I didn't know it.

27 354 Q. Why didn't you?

28 A. I didn't, Sir. I was invited in, and - with these  
29 parties. There were negotiations taking place between  
30 the parties to see what - how much they could, if you

1 like, look at the anticipated profit, how much more on  
2 top of the base value of the land would it stand.

3 .

4 CHAIRMAN: Excuse me, I just want to clarify something.

5 .

6 The land was bought for 141,000. Am I correct in  
7 thinking that in the period of time from the time the  
8 contract was signed and completed, that Mr. Owens  
9 propounded this scheme, and in that period it was  
10 propounded by him through Brennan and McGowan and  
11 addressed to you and addressed to Brennan and McGowan?

12 A. Yes, sir.

13 .

14 CHAIRMAN: Now, you are a businessman, and you were,  
15 you say you were asked to put up ú50,000. It's a  
16 substantial sum of money, by anybody's standard. Were  
17 you appraised by Mr. Owens of the principles upon which  
18 he was calculating that he could enhance the value and  
19 have a return, immediate return by way of mortgage by  
20 getting money in by way of mortgage which you could  
21 distribute before you actually handed over your  
22 ú50,000? In other words, did you know what the whole  
23 thing was about before you parted company with your  
24 50,000?

25 A. To answer, Sir, to know if I knew what the whole thing  
26 was about. No.

27 .

28 CHAIRMAN: Did you have a good idea of what you were  
29 likely to come out with?

30 A. I think that one would have had a reasonable idea that

1 one would have done - I think the thing was that the  
2 people whom they were talking about taking it out,  
3 going on, that there would have been - that there would  
4 have been a substantial increase.

5 .

6 CHAIRMAN: But you say you didn't know actually how  
7 much. That's what you are saying?

8 A. Yes, sir.

9 .

10 CHAIRMAN: That nobody propounded a proposition of 20  
11 percent, ten percent, 50 percent, or whatever it may  
12 be?

13 A. No, Sir.

14 .

15 CHAIRMAN: Sorry for interrupting. I just want to try  
16 and clarify it in my own mind.

17 A. Yes, sir.

18 .

19 355 Q. MR. HANRATTY: Well - but if that is the case, what was  
20 your understanding of what was the figure of ú304,000

21 --

22 A. This is, Sir, what I was saying to you, that this was a  
23 figure which resulted in a lot of internal, I think,  
24 negotiation between the parties as to what - (A), what  
25 pay - what mortgages they could get, and what way this  
26 package could be got together, put together.

27 .

28 Now, it involved a lot of different elements, as you  
29 say it did. There were mortgages, there was cash input  
30 into it, and at the end of the day it had to stand up

1 at the time, that the builder/developer could still go

2 on to develop.

3 356 Q. The mortgage related to the raising of the ú300,000?

4 A. Yes, sir.

5 357 Q. And the mortgage was a mortgage by Victa to support the

6 loan or the borrowing of Oakpark which it sent over to

7 Victa, isn't that right? That's what the mortgage was

8 about?

9 A. Yes, sir.

10 358 Q. As far as we are aware, there was no mortgage, or is

11 there, in relation to the closing of the sale - of the

12 purchase of the land from the Pembroke Estate?

13 A. I don't know what - this is what I am saying to you,

14 Sir. You see, that would have formed part of the -

15 naturally, the base cost of land would form part of the

16 general pot. It would have to treat it with - either

17 by way of mortgage or otherwise --

18 359 Q. Somebody had to pay it to the Pembroke Estate?

19 A. Yes, sir.

20 360 Q. And it's quite possible, on the basis of what we appear

21 to have established this morning, that your money may

22 have been, and you don't know whether it was or not,

23 used as part of the monies used to close the sale?

24 A. Yes, sir.

25 361 Q. Or the purchase, I should say, from the Pembroke

26 Estate. But once that was done, the land was bought in

27 by Victa Investments Limited for ú141,000. That was

28 the figure, the key figure on which Mr. Owens,

29 presumably, did his calculations?

30 A. Yes, sir.



1 362 Q. And that figure was known from the time the deposit was  
2 paid, whenever it was, and if I can just find date of  
3 it.

4 .  
5 The planning permission was obtained on the 22nd of  
6 April, and the contract was signed on the 8th of March.  
7 So the actual price was probably known sometime prior  
8 to the actual signing of the contract on the 8th of  
9 March, possibly sometime in February. Mid-to-late  
10 February of 1978 everybody knew the figure was going to  
11 be ú141,000 to buy the land, three acres in Donnybrook,  
12 with full planning permission. Isn't that so?

13 A. Yes, sir.

14 363 Q. Mr. Owens could have sat down on the 8th of March,  
15 1977, and did his calculation of anticipated profit,  
16 whatever that is, on the 8th of March, 1977. There was  
17 nothing to stop him from doing that, isn't that right,  
18 whether, in fact, you were involved in the deal or not?

19 A. Well, if he had the scheme worked out, Sir, yes.

20 364 Q. I mean, there could have been any amount of people  
21 queuing up to get into this deal if they were told that  
22 they - if they put in 50,000 they would get 101,000  
23 after a month or two months. It didn't have to be John  
24 Finnegan, in other words, that put up the 50. It  
25 didn't have to be John Finnegan that was invited in.  
26 Do you see my point?

27 A. Mm-hmm.

28 365 Q. And Mr. Owens had, from - certainly from March of 1978,  
29 everything he needed to do his calculation of this  
30 anticipated profit.

- 1 .
- 2 We know that the money that you put in, was put in,  
3 according to your own evidence, in November, because  
4 that's - but the debit is on the account. Isn't that  
5 so?
- 6 A. Mm-hmm.
- 7 366 Q. So I suggest to you it's inconceivable that whatever  
8 the calculations were, they weren't done by the time  
9 you put your money in?
- 10 A. Well, as far as I am concerned, Sir, and what I was  
11 saying, one, remember - remembering every stroke of  
12 what happened along the line, I can't. You see, at  
13 that particular time, I don't think it was until - it  
14 was the last minute that they did their actual swings,  
15 arounds about which way it would go, because it had to  
16 stand up for the future development. It may be --
- 17 367 Q. Why would it have to wait till the last minute? He  
18 already knew it was 141 --
- 19 A. Sir, I tell you, the best thing I can say to you is  
20 this: Whether it was the last minute - well, the last  
21 minute. These negotiations were taking place between  
22 the parties involved, and it was a scheme, actually.  
23 So they would juggle their figures.
- 24 368 Q. You see, the foundation stone of your evidence is that,  
25 (A), you did, in fact, put money into this scheme and,  
26 (B), that that money was put in by way of an  
27 investment. And (C), that the monies that you were  
28 paid out were by way of a return on your investment?
- 29 A. Yes, sir.
- 30 369 Q. Is that correct or not?

1 A. Yes, sir.

2 370 Q. And if that is correct, it means that in the case of

3 this particular investment, you made a return

4 equivalent to 600 percent per annum?

5 A. Well, I think when you talk about percentage returns

6 like that, Sir, there are certain transactions that one

7 can - that one can get very well paid for, and it could

8 be an integral part --

9 371 Q. You could buy land very cheap and sell it a month later

10 to somebody who was to buy it at a huge profit. But

11 that's not what happened here --

12 A. No, it's not what happened. We have all - we all have

13 seen, by the way, contracts being turned over within

14 the period. Somebody would have another idea as to

15 what they could do with land.

16 372 Q. In fact, there was no other party involved here, other

17 than there was, in fact, Oakpark Developments Limited,

18 but that's a Brennan and McGowan related company?

19 A. Yes, sir.

20 373 Q. There was no outside party coming in and saying, "Look,

21 I am very interested in this land. I would really like

22 to have it, and I am prepared to pay whatever the odds

23 are." There was no feature of that nature in this

24 thing here. All that happened was that the land had

25 been bought for ú141,000, and Mr. Owens sat down with

26 his calculator, whether before or after you put up your

27 ú50,000, and came up with an idea which involved

28 Oakpark borrowing ú300,000, Victa securing it, and

29 Victa paying it out to the three shareholders. And

30 your case is that that was an investment, and that what

1 you received on the 15th of January, 1979, was a return  
2 on your investment?

3 A. Yes, sir.

4 374 Q. And in the same way you say that in the Monkstown deal,  
5 that you put in, in November, ú33,333, and that the  
6 ú100,000 which you got the following month, was a  
7 return on an investment?

8 A. Yes, Sir.

9 375 Q. Which, as I pointed out to you this morning, amounted  
10 to the equivalent of 2,400 percent per annum return.

11 .

12 Now, have you ever heard of an investment with that  
13 kind of return?

14 A. Yes, sir. There are - this was a scheme that, at the  
15 right time, if one is required - and to come into this  
16 scheme - and yes, the payoff was good, Sir, but I did -  
17 I participated in a scheme which I was invited into,  
18 and that was the net result of it, Sir.

19 376 Q. I just finally want to ask you, Mr. Finnegan, in  
20 relation to this. Do you confirm that in point of  
21 fact, after the receipt by you of the ú101,000, you had  
22 no further involvement of any kind whatsoever in  
23 relation to this property, or did you have any kind of  
24 involvement, either in a consultancy capacity or  
25 otherwise?

26 A. Which one --

27 377 Q. Donnybrook?

28 A. No, sir, not that I am - no, Sir.

29 378 Q. We know that Mr. Caldwell, solicitor, appears to have  
30 come up with various proposals and various draft

1 documents, which appear among the Bedell & Cristin  
2 files, which do not appear to have been proceeded with,  
3 because the one transaction that does appear to have  
4 been proceeded with is a sale to Farrell Homes Limited,  
5 ultimately for ú1.1 million.

6 .

7 Were you aware of these intermediate transactions that  
8 were considered at various stages about this property?

9 A. No, sir.

10 379 Q. And were you ever consulted about them?

11 A. No, sir.

12 380 Q. And did you have any kind of involvement in them of any  
13 kind?

14 A. No, sir.

15 381 Q. At any time?

16 A. No, sir.

17 382 Q. So the payment of the ú101,000, really, was the end of  
18 your involvement?

19 A. It was, Sir.

20 383 Q. And there was no question of any subsequent

21 readjustment or recalculation of actual profits,

22 whether by reference to the development, or the sale,

23 or the land, or anything else?

24 A. No, sir.

25 384 Q. And there never was intended to be such a readjustment.

26 Is that right?

27 A. No, sir.

28 385 Q. Right. Now, also in 1978, you were involved in a deal

29 with Brennan and McGowan involving property at

30 Newtownpark Avenue, isn't that right?

1 A. Yes, sir.

2 386 Q. And that property was originally owned by a

3 Mr. Maguire?

4 A. Yes, sir.

5 387 Q. And it appears that you acted for Mr. Maguire in the

6 sale of his property?

7 A. Yes, sir.

8 388 Q. Could I ask you to just tell the Tribunal, in your own

9 words, what you recall about Mr. Maguire's property and

10 how it came to pass that you sold it to Messrs. Brennan

11 and McGowan? And also, then, how you came to become

12 involved in a deal with Brennan and McGowan involving

13 this property?

14 A. Yes, Sir. Well, could I take a break for a minute,

15 Sir?

16 .

17 CHAIRMAN: Certainly.

18 .

19 MR. HANRATTY: Please do, yes.

20 .

21 CHAIRMAN: A five-minute break.

22 .

23 THE TRIBUNAL THEN ADJOURNED FOR A SHORT RECESS AND

24 RESUMED AGAIN AS FOLLOWS:

25 .

26 389 Q. MR. HANRATTY: I was just asking you, Mr. Finnegan,

27 could you just tell us in your own words about this

28 Newtownpark Avenue transaction?

29 A. Yes. This property was owned by Maguire, John Maguire.

30 390 Q. What did it consist of?

1 A. A large period house and large grounds. And it was  
2 initially --

3 391 Q. Approximately what area?

4 A. Approximately, ballpark, I am not sure exactly,  
5 somewhere around - in about six acres, Sir.

6 392 Q. Yes.

7 A. I think the overall was more - but anyway, let me just  
8 tell you. The situation, anyway, was the house and the  
9 large grounds, and John Maguire was anxious to look if  
10 we could get - to hold on to the house, and to get  
11 planning permission for the development to maximise the  
12 value of the lands, and to have a layout that would be  
13 acceptable to him. And so - because the house was of  
14 considerable value. So what happened, then, was that  
15 John Maguire had instructed, with our help, instructed  
16 a firm of architects, I think it was Collins, to  
17 liaise, and we liaised with him, for the proposed  
18 development of the lands. And that was retaining -  
19 which had to retain - they had a fair area of open  
20 space.

21 .

22 There was a problem, Sir, about this, that because  
23 there was a small private - putting course or golf  
24 course, but sort of putting greens and things, that the  
25 local authority were looking at it that - to keep it -  
26 they liked the way it had been used as an open space,  
27 and it was a green area in this quite builtup area.

28 .

29 So it wouldn't have been automatic to get a development  
30 through. So it took some time, actually, to work this

1 out in consultation with the local authority, and which  
2 would have been Dun Laoghaire. And that, over a  
3 considerable amount of type, there was a scheme worked  
4 up by his architect, which was submitted and - in that  
5 Sir, because you might see it, that he had a company  
6 which - in fact the application was made on behalf of  
7 Bailey Homes, which was a John Maguire company. In  
8 fact, he had asked me to become nominal director of  
9 that company, Sir.

10 393 Q. Did you?

11 A. Yes, sir.

12 394 Q. Yes. And did that company make the application for  
13 planning permission?

14 A. It did.

15 395 Q. And that was for planning permission for what?

16 A. For housing, Sir.

17 396 Q. How many houses?

18 A. I can't - I haven't got the file on it, Sir, but I  
19 think it was something like 60, 70 odd houses, Sir.

20 397 Q. Yes. So, then, did he get his planning permission?

21 A. After quite a while, Sir, yes, there was a planning  
22 permission - there was a basis of looking at it for  
23 some apartments, a mixture of apartments and housing.  
24 Eventually, the planning was obtained.

25 398 Q. And in the context of this planning permission, was he  
26 in discussions or were you on his behalf in discussions  
27 with any builders to ensure that the nature of the  
28 planning permission would be acceptable or attractive  
29 to them? Or was it purely on spec?

30 A. On spec, Sir.



1 399 Q. Would that mean, then, that you wouldn't have had any  
2 conversations with Brennan and McGowan, for example, in  
3 relation to this proposed development?

4 A. It would have been the architect, Sir, and it was  
5 setting out - no, Sir.

6 400 Q. Right. When, approximately, did he get his planning  
7 permission?

8 A. I just - I haven't got my things on this, Sir.

9 401 Q. If we could just look at Document 3707. It's a letter  
10 from you - sorry, from Hugh Cumisky of your office to  
11 Mr. Joe McGowan dated the 30th of January 1978. It's  
12 private and confidential. It's:

13 .

14 "Dear Joe, Lands at Newtownpark Avenue. I enclose copy  
15 of notification of decision to grant permission dated  
16 27th of January 1978.

17 A. Yes, sir.

18 402 Q. So Mr. Cumisky is informing Joe McGowan that  
19 Mr. Maguire has got his planning permission?

20 A. Yeah.

21 403 Q. So Mr. McGowan must have been interested in the matter  
22 prior to Mr. Maguire getting his planning permission?

23 A. I actually can't just recollect what the - on the  
24 timing there. And that was on behalf of Bailey Homes,  
25 Sir.

26 404 Q. Bailey Holdings. You can see that, on page 3079, is  
27 the name of the applicant for planning permission. It  
28 says on that, while we have it on screen, if we can  
29 scroll it up a little bit, we have Bailey Holdings as  
30 the applicant, and to the right of that you can see,

1 application received, 21st of November 1977.

2 .

3 So at some stage, in November '77, the actual planning  
4 permission was applied for - well, on the 21st of  
5 November, obviously. And it seems, from this letter,  
6 at page 30 - 3707, that Mr. McGowan was interested in  
7 this property at some point in time prior to the grant  
8 of the permission.

9 A. Yeah, that could be, Sir.

10 405 Q. Well, it seems that it was, because your Mr. Cumisky  
11 was writing to tell him about it when it came in.

12 .

13 Does that assist you in remembering when Brennan and  
14 McGowan appeared on the scene in connection with this  
15 property?

16 A. Not exactly, Sir, but I would say, first of all,  
17 anyway, that I am sure that Collins is John Maguire's  
18 architect. It could be any property, - a property  
19 which had a planning application made on it, would be a  
20 public sort of thing --

21 406 Q. Would be a what --

22 A. Public.

23 407 Q. Yes. Well, there would have to be a notice published?

24 A. Yeah. Yes, it would be known, if you like, in the  
25 trade.

26 408 Q. Weren't you, in fact, in discussions with Messrs.  
27 Brennan and McGowan before Mr. Maguire even applied for  
28 his planning permission?

29 A. You'll have to just remind me here, Sir.

30 409 Q. Do your best to remember what the sequence of events

1       was about this particular property. You had a client  
2       here, he wanted to sell his land, he wanted to maximise  
3       value, he had a large period house on it, he wanted to  
4       keep that. And he wanted some control over how that  
5       would be treated in any house building operation that  
6       was going to go on?

7       A. Yes, sir.

8 410 Q. So how did Brennan and McGowan come into the scene?

9       First of all, in 1977, did you advertise it or put it  
10      up for auction or up for tender or anything of that  
11      nature?

12     A. We had, as far as I recollect, we had - yes, we had  
13      particulars of the property. I am not quite sure - the  
14      only thing I am not sure of - was there an earlier  
15      application obtained on it.

16 411 Q. Is it possible that you just went to Brennan and  
17      McGowan and asked them, would they be interested in it?

18     A. Well, at any stage, Sir, that anyone who was a major  
19      buyer of land, we could have - we could have put it to  
20      them, yes, sir.

21 412 Q. Well, do you think you did in this case?

22     A. Well, one would have to assume - by the way, we had the  
23      sale of it.

24 413 Q. Yes.

25     A. We had the sale of it. So I am just trying to go back  
26      on my memory, to remember exactly what had happened.  
27      But we had the sale of the land, and I think we had -  
28      we had it for quite some time, because we were involved  
29      in the planning for quite - it just didn't happen. I  
30      think there was earlier planning on it, Sir, than that

1 which came out.

2 414 Q. We know that the Brennan and McGowan company that  
3 became involved with this property, the Irish company  
4 that is, was Landsdowne Construction Limited?

5 A. Yes, sir.

6 415 Q. We know that Landsdowne Construction Limited was  
7 incorporated in Ireland in February of 1977. We  
8 obviously don't know whether it was incorporated solely  
9 for the purpose of this development or whether it was  
10 incorporated for some other reason entirely. But when  
11 you were talking to Brennan and McGowan, whenever it  
12 may have been, did they tell you what Irish company  
13 they were going to use?

14 A. I don't recollect, Sir.

15 416 Q. When did you first agree with Messrs. Brennan and  
16 McGowan that you would become involved in a scheme with  
17 them relating to this property?

18 A. It was after contracts had been exchanged, Sir, when  
19 the deal was done. I haven't got the exact dates here  
20 in front of me, Sir.

21 417 Q. We know that the Jersey company that was used in this  
22 case was Arippe Investments Limited, and that while, in  
23 this case, you were not a registered beneficial owner  
24 of it, Mr. Brennan has told us that you were, in fact,  
25 a one-third beneficial owner of Arippe. Do you  
26 remember him giving that evidence?

27 A. Yes, sir.

28 418 Q. He said that that company was registered with him alone  
29 as the registered beneficial owner, but that he held it  
30 on behalf of the three of you, and he didn't know why

1 the other two were not. But he was fairly clear in his  
2 evidence that it was a company which was beneficially  
3 owned by the three of you, and was, in fact, used in  
4 connection with this property. And that appears - and  
5 it certainly appears that it was used in connection  
6 with this property, and that it was - that monies were  
7 transferred from the Irish company, Landsdowne  
8 Construction Limited, over to the Jersey company,  
9 Arippe Investments Limited. In fact, in a very similar  
10 way to Donnybrook under a licence agreement under which  
11 a licence fee, and I think a loan was made. We'll come  
12 to those in a moment.

13 .

14 But just getting back to the sort of early stages of  
15 the transaction. Can you recall precisely how and in  
16 what circumstances Messrs. Brennan and McGowan became  
17 involved in this particular property?

18 A. I can't recollect exactly the exact time, dates, or  
19 whatever. But it would have been known that the  
20 property had - either the private planning permission  
21 or we are getting it. And Maguire, John Maguire,  
22 wouldn't have been unknown, like would have known Joe  
23 McGowan.

24 419 Q. Mr. McGowan has said that?

25 A. Socially. But as far as I recollect, but I can't tell  
26 you who, but at the time there had been, actually, an  
27 approach to Mr. Maguire regarding the land. I can't  
28 give you the full detail of this, but it's a little bit  
29 - I haven't any files on the thing. It's a little bit  
30 hazy just how - but I know that there were discussions

1 - "know" is a bit strong, but recollecting there was  
2 some discussions. And I think at that time - I am  
3 trying to remember the exact figures. I think that the  
4 most important thing was that - in getting a builder to  
5 build under the plans in spec, and I think the contract  
6 may have been conditional on that, I am not quite sure,  
7 for the planning permission which had been obtained.  
8 I think that was one of them.

9 420 Q. If I could just refer you to Document 3972. It is a  
10 letter from Joe McGowan to you dated the 16th of  
11 September 1977. It's in relation to this property. It  
12 says:  
13 .  
14 "I refer to our meeting in your office on the 15th  
15 September 1977 concerning the question of my getting an  
16 extension of time to complete this contract.  
17 .  
18 I am writing formally to confirm our agreement that  
19 John Maguire is prepared to extend the completion date  
20 of my contract from mid-August to the 6th of January  
21 1978."

22 .  
23 So it would appear from that, that A, there was some  
24 kind of a contract in existence at the time that this  
25 letter was written, and that there had been a meeting  
26 between Mr. McGowan and yourself in relation to an  
27 extension of this contract.

28 A. Mm-hmm.

29 421 Q. And he appears to be recording this letter - his  
30 understanding of his agreement with you that

1 Mr. Maguire would agree to an extension of the  
2 completion date until the 6th of January of 1978.

3 A. Yes, sir.

4 422 Q. So obviously Messrs. Brennan and McGowan had an  
5 agreement to buy this property from Mr. Maguire at some  
6 point in time prior to the 16th of September of 1977.

7 A. Yes. I can't recollect the exact date. I should - I  
8 should get a little bit more up-to-date on the dates on  
9 this, Sir, for you.

10 423 Q. You think you might be able to do that?

11 A. I'll try. I am not quite sure when the contract was --

12 424 Q. We don't have, unfortunately, a copy of the contract.  
13 But this letter appears to establish that there was  
14 some kind of a contract, or at least something which is  
15 referred to by Mr. McGowan as a contract in existence  
16 on and prior to the 16th of September of 1977. And one  
17 might reasonably infer, I suggest, that it was some  
18 kind of a formal document, because it was something  
19 that required agreement to an extension.

20 A. Yes, I agree with you, Sir. If you wouldn't - would  
21 you - I am hazy myself on dates, Sir, on this. I'll  
22 see if I can get any more -- I should be better armed,  
23 first.

24 425 Q. Where do you think you might be able to get it?

25 A. I'll inquire in the - with my assistant and just see,  
26 do we have any.

27 426 Q. Well, would you have any documents that the Tribunal  
28 doesn't already have about it?

29 A. Whatever you have - whatever we have, you have, Sir.

30 427 Q. Yes. Well, what is it? Do you wish to refresh your

1 memory before you answer any more questions?

2 A. Just to refresh my memory, yes, sir. Please.

3 .

4 MR. HANRATTY: Well --

5 .

6 CHAIRMAN: It's matter of five minutes.

7 .

8 428 Q. MR. HANRATTY: Well, it's nearly five to four. The

9 witness indicates that he would prefer to refresh his

10 memory before I proceed, as I understand it.

11 .

12 Is that right, Mr. Finnegan?

13 A. Yes, Sir. If you wouldn't mind, Sir.

14 .

15 CHAIRMAN: Tomorrow morning, half past 10.

16 A. Thank you.

17 .

18 THE TRIBUNAL THEN ADJOURNED TO THE FOLLOWING DAY,

19 OCTOBER 17TH, 2001, AT 10:30 A.M..

20

21

22

23

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