

1 PLANNING TRIBUNAL - DAY 309

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3 THE TRIBUNAL THEN RESUMED AS FOLLOWS 18TH OF OCTOBER,

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

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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 MR. HANRATTY: Just by way of explanation, Sir, there

14 is a slight delay, in that you will recall that

15 Mr. Hussey inquired as to whether or not there was any

16 accounts or other records indicating the provenance of

17 the 100,000 and the 22,000, which were added to the

18 borrowings which constitute the total sum of ú672,000

19 that were sent over to Jersey in the context of the

20 Newtownpark Avenue site.

21 .

22 We found a number of accounts and records of various

23 companies which appear to indicate, and it has been

24 explained to Mr. Hussey, that in the case of the

25 ú100,000, it originated in Allied Irish Finance, and

26 appears to have been a borrowing of Kilnamanagh Estates

27 from Allied Irish Finance.

28 .

29 In the case of the 22,000, it appears to have come

30 through Lansdowne Construction Limited from Kilnamanagh

1 Estates Limited, as well.

2 .

3 MR. HUSSEY: Sorry. That's correct, Sir. That is as

4 far as the accounts can bring it, and that is the case.

5 .

6 MR. HANRATTY: Those documents will be put formally to

7 Mr. Thomas Brennan when he is recalled, just to get

8 them on the record. I don't think there is any point

9 in putting them to this witness because he wasn't privy

10 to them.

11 .

12 CHAIRMAN: Not at all.

13 .

14 1 Q. MR. HANRATTY: There were two matters which I inquired

15 into yesterday, and which you asked to leave over to

16 this morning. The first was the question of these

17 references on the Foxtown Investments Limited bank

18 account. Have you found out any information about what

19 they were?

20 A. Well, first of all, could I say thank you, Chairman,

21 Sir, for letting me off yesterday. I appreciate that

22 very, very much.

23 .

24 CHAIRMAN: May I just add this to that, if at any time

25 you are not feeling well, please let me know. There is

26 no desire in any way to cause distress to you in any

27 way in the world.

28 .

29 2 Q. MR. HANRATTY: The references on the bank account.

30 A. The references on the bank account. They don't know,

1 sir.

2 3 Q. Who doesn't know?

3 A. The - the numbers.

4 4 Q. Yes?

5 A. We made an inquiry, sir, and Credit Suisse don't know

6 what they mean, sir.

7 5 Q. They are not Credit Suisse references?

8 A. They don't know.

9 6 Q. Well, then, does that mean, in the case of any

10 instructions in respect of a particular transaction,

11 these references were given to them by the trustees, so

12 that the trustees, presumably, could recognise them

13 when the bank statements issued?

14 A. Sir, I am sorry, I don't know. I asked an inquiry to

15 be made, just to see about them. I don't know any more

16 than that, sir.

17 7 Q. From whom did you obtain the information in Credit

18 Suisse to the effect that they don't know what the

19 references are?

20 A. I can get the name.

21 8 Q. Yes.

22 .

23 MR. HUSSEY: If I can give that, if that is okay.

24 .

25 MR. HANRATTY: Yes.

26 .

27 MR. HUSSEY: I think they were speaking to Mr. Mark

28 Winter.

29 .

30 9 Q. MR. HANRATTY: Mark Winter. Yes. Well, then it would

1 appear to follow, if these references are not bank  
2 references, then they must be trustee references. They  
3 couldn't be anybody else's, I presume?

4 A. Sir, it was just passed to me. I would only be  
5 surmising. I don't know. Seriously, I don't.

6 10 Q. I appreciate that you say that you don't know, Mr.  
7 Finnegan, but they are the bank accounts of Foxtown  
8 Investments Limited. Foxtown Investments Limited is  
9 owned, or was at the time owned by the Trust, isn't  
10 that right?

11 A. Yes, sir.

12 11 Q. At a particular point in time, or up to a particular  
13 point in time, if I can refer you, for example, to page  
14 4838, the stock purchase transactions were described,  
15 descriptively, such as stocks purchase or interest or  
16 dividends or deposit?

17 A. I am just getting the thing, I left it behind me  
18 yesterday. (Document handed to witness) Thank you.

19 12 Q. If I could just refer you to page 4838.

20 A. Yes, sir.

21 13 Q. You can see in the first half of the page there are  
22 descriptive descriptions given to the transactions,  
23 such as stock purchase, dividends, deposit, interest,  
24 management fee, and so on, but from June onwards, in  
25 fact from the 30th of June onwards, they start having  
26 these references which contain one letter of the  
27 alphabet followed by a three digit number and  
28 subsequently in time four digit numbers. Do you see  
29 that?

30 A. Yes, sir.

1 14 Q. It appears that all of the - the letters that are used  
2 are either "B" or "R". "B" appears to be used in the  
3 case of a debit, and "R" appears to be used in the case  
4 of a credit. It also appears, then, that each of the  
5 three digit numbers appearing on this account are  
6 unique, in other words, it is not as if for a  
7 particular share transaction in relation to a  
8 particular share the same reference is used. Each of  
9 the numerical references appears to be unique, in that  
10 they don't occur anywhere else, at least in the  
11 accounts that we have seen?

12 A. All right, sir.

13 15 Q. Which would indicate that it is some kind of a general  
14 ledger or audit trail type of a reference. But if the  
15 bank have now, through Mr. Winter, informed you that  
16 these references are not the bank's references, then I  
17 suggest they could only be the trustees references.  
18 And obviously one presumes that instructions coming to  
19 the bank in relation to a particular transaction would  
20 come either from the trustees or somebody acting on  
21 their behalf or somebody perhaps giving them  
22 directions. And they would, whatever the source of  
23 this information was, would have to give an instruction  
24 in the case of a stock purchase, that they wanted "X"  
25 pounds debited for the purpose of a stock purchase.  
26 And they would, presumably, then give the reference to  
27 the bank to put against that transaction. That appears  
28 to be the manner which it was done. Is that right?

29 A. I don't know, sir.

30 16 Q. Well, what is your understanding, then, of how it was

1 done?

2 A. I will be absolutely clear with you, sir. I have no  
3 understanding. I don't really know, sir, how - I don't  
4 know what they mean.

5 17 Q. Well, Mr. Turvey, who is going to be coming to give  
6 evidence --

7 A. Yes.

8 18 Q. -- was involved in these transactions?

9 A. Yes.

10 19 Q. Isn't that right?

11 A. Yes, sir.

12 20 Q. And perhaps we might ask him, then, what he knows about  
13 these references?

14 A. I just don't know, sir. If I did, I would tell you,  
15 sir. I don't know.

16 21 Q. In fact, these statements were found on a stockbroker's  
17 file, isn't that right? What was the name of the  
18 stockbroker?

19 A. Dudgeons.

20 22 Q. Dudgeons. Mr. Mungo Park was the stockbroker in that  
21 firm, isn't that right?

22 A. That's right.

23 23 Q. It appears that Mr. Turvey appears to have been the  
24 person who had the dealings with that firm in  
25 connection with the stock transactions, isn't that  
26 right?

27 A. I think he would have had dealings about some  
28 transactions, yes, sir.

29 24 Q. Well, the transactions he would have had were stock  
30 sale and purchase transactions, buy notes and sell

1 notes, that sort of thing, isn't that right?

2 A. I don't know, sir.

3 25 Q. Well, I understand that his evidence will be that this  
4 is what the file contained, plus these statements?

5 A. Yeah.

6 26 Q. Which would indicate that whoever was dealing with the  
7 file, we presumed him, would have been the person  
8 giving instructions to the stockbrokers?

9 A. Well, I don't know, sir, what - I think, if that was  
10 the case, because a lot of the - because there could  
11 have been decisions made away as well, sir, about  
12 investment in stock.

13 27 Q. Yes. Well, perhaps we better just ask Mr. Turvey  
14 about that?

15 A. If he knows, because I don't know what the references  
16 are.

17 28 Q. Did you, for example, make any inquiry from Guinness &  
18 Mahon or anybody who may have been involved with  
19 Guinness & Mahon, whether it could have been Guinness &  
20 Mahon references? There is no obvious reason why it  
21 should have been, but just perhaps in case it might  
22 have been.

23 A. Well, I don't - I am just trying to refer --

24 29 Q. There is no great mystery about this, Mr. Finnegan.  
25 This account exists, this account, an account of  
26 Foxtown Investments Limited. The trustees of the Trust  
27 which owns Foxtown Investments Limited have told us  
28 that all of these references, which are very clear and  
29 very specific references for somebody's purposes, are  
30 not theirs?

1 A. Sir - I didn't say there was a mystery, sir. What I am  
2 saying to you, I just don't know - I am down here, as I  
3 told you, to help you in every possible way, and I am.  
4 And we went over this ground yesterday, sir.

5 30 Q. Mr. Finnegan, with respect, this is the Trust of which  
6 you were the principal beneficiary. There has been  
7 fairly substantial evidence that you were, to the  
8 effect or which would suggest, to put it neutrally,  
9 that you were in considerable control of this Trust.  
10 We have now got a situation where entries which are  
11 clearly very specific references, which are unique to  
12 each transaction, which are put on these bank  
13 statements, are not bank references, in other words,  
14 they are not references which were put there by the  
15 bank?

16 A. Sir, what I am saying to you is this: This was in 19,  
17 whatever it was, '77, or whatever. It is a hell of a  
18 long time ago.

19 31 Q. Yes, but there is a very limited category of people who  
20 could have owned those references, to put it that way.

21 A. Well, you know sir, we could go around. I don't know  
22 whose references - perhaps we will know very shortly  
23 whose references they are. If it helps in any way --

24 32 Q. Mr. Finnegan, I suggest it is incomprehensible that  
25 you, who were obviously in receipt of these statements,  
26 for some period of time, do not understand and did not  
27 then understand and don't still understand what they  
28 mean.

29 .

30 CHAIRMAN: Gentlemen, could I just come in here?

1 .  
2 Could we just get this down to - there must be some  
3 people left in Dublin who once upon a time were in  
4 Guinness & Mahon, because this is a Guinness & Mahon -  
5 certainly it looks a mirror image of what is  
6 somewhere else. It certainly was in Guinness & Mahon  
7 at some stage.

8 .  
9 There is no good reason why, with a little bit of  
10 effort, somebody in the Guinness & Mahon staff could be  
11 found to say, "This is a method that we did."

12 .  
13 The other person who may throw light on it, who is very  
14 much alive, is Mr. Mungo Park. There is no problem in  
15 picking up the telephone and ringing Mr. Mungo Park and  
16 asking him, did he - we just want to solve the problem.  
17 We don't just want an argument about it. We want to  
18 solve the problem.

19 A. I will certainly - I will undertake to do that, Sir.

20 .  
21 MR. HANRATTY: We will leave it at that.

22 .  
23 CHAIRMAN: Practical steps. We don't want an argument  
24 about whether we can or not.

25 .  
26 33 Q. MR. HANRATTY: Perhaps we might revisit it then  
27 tomorrow?

28 A. Yes, sir, I will do that.

29 34 Q. It is the kind of thing that a person interested in the  
30 account could find out if they needed to find out?

1 A. If I can find it out, I will be with pleasure, sir.

2 35 Q. The other inquiry that I had for you yesterday, that  
3 you wanted to leave over, was the position about the  
4 proceedings; that I indicated to you yesterday, that  
5 while we had been given to understand last week that  
6 something had been listed before the High Court for the  
7 26th of this month, your solicitor had a conversation  
8 with the Tribunal solicitor, Miss Howard, on Monday, on  
9 which he indicated that proceedings had not yet been  
10 instituted, that he anticipated that they would be  
11 instituted before the end of this week, but that he  
12 understood that we could be looking at a timescale of  
13 two months or thereabouts.

14 A. I checked --

15 36 Q. Yes.

16 A. -- on the situation. The position is this: I don't  
17 know where - let me tell you what we have. I  
18 understand that the papers are drawn up, have been  
19 drawn up, and I am expecting papers this evening from  
20 there to sign, if not tomorrow morning.

21 .  
22 They are dated for 26th. That is the day of whatever  
23 it is over there, the hearing or the lodgement of the  
24 papers or whatever.

25 37 Q. The lodgement of papers?

26 A. Could I refer back, by the way, to get --

27 .  
28 MR. HUSSEY: I think I may be able to explain.

29 .  
30 As I understand it, these papers will be tabled for an

1 application to be made for court on the 26th of  
2 October. I think, depending on whether - the solicitor  
3 is anticipating that they won't be defended, because it  
4 was such a formal application, that there isn't really  
5 a defence to the matter, as far as the trustees are  
6 concerned. If there is a defence, or they wish to  
7 defend it, it may take some time to conclude the matter  
8 beyond that, but he doesn't expect that there will be  
9 any defence. It is just a formal application. He  
10 expects it to be successful because he is applying - it  
11 seems, ironically in Guernsey law there seems to be  
12 some restriction on beneficiaries asking for the  
13 release of papers, but no restriction on settlors  
14 asking for the release of papers. It is the opposite  
15 of what you would have thought. It seems that is the  
16 case.

17 .

18 He is not anticipating that there will be any  
19 difficulty making the application on the 26th.

20 .

21 That is the position, Sir.

22 .

23 If it is defended, obviously he is in the lap of the  
24 Court. He doesn't know what - he loses that control,  
25 of course, with the listing situation.

26 .

27 CHAIRMAN: Very good. Will you keep us advised on the  
28 progress on the 23rd and - sorry, the 26th. The 26th,  
29 I beg your pardon, so we keep up-to-date.

30 .

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

2 .

3 MR. HANRATTY: There is one other point that might be  
4 addressed in that context, Sir. That is to confirm  
5 that the categories of documents being sought are the  
6 categories of contained in the Orders of the Tribunal.

7 .

8 MR. HUSSEY: Absolutely, that is correct.

9 .

10 38 Q. MR. HANRATTY: Now, Mr. Finnegan, we were talking about  
11 the Tritonville Road transaction, and I had shown you a  
12 number of charts indicating the gathering in of this  
13 rather convoluted title. I think, without the  
14 necessity of getting down to the nitty-gritty of the  
15 conveyancing details, the global position is that these  
16 were three houses, and a site of two acres behind them,  
17 which had various types of title, but one thing which  
18 they had in common was that the freehold in all of them  
19 was vested in the Pembroke Estate?

20 A. Yes, sir.

21 39 Q. But that in the case of the houses, they were subject  
22 to long leasehold titles, and in at least one case some  
23 kind of a subleasehold title. I think in other cases,  
24 sitting tenant. Isn't that right?

25 A. So I understand, sir.

26 40 Q. It appears, again to just approach it globally, that  
27 arrangements were entered into between the Pembroke  
28 Estate, if we can discuss it generically, because there  
29 were a number of entities and companies within that,  
30 the Pembroke Estate entered into arrangements with

1 Brennan and McGowan, or some Brennan and McGowan  
2 company, possibly Kilnamanagh Estates Limited, under  
3 which Brennan and McGowan would buy the property on the  
4 basis that the titles were all gathered in, and  
5 assembled, essentially, into a unit?

6 A. Mm-hmm.

7 41 Q. Is that right?

8 A. I think so. I was trying to get my mind around it,  
9 sir, trying to dig into the files. The files that  
10 reminded me of what - in fact, that the site assembly  
11 here had gone back to 1973, actually. And what had  
12 happened, and I had just been reminded, and it came  
13 back to mind, that the site, when it started a site  
14 assembly, but there was a lot of trouble, actually,  
15 locally, then, about this site, with the local  
16 residents and politicians, about it being a vacant  
17 site. And there was talk about - it was actually a  
18 derelict site - and there was talk about the  
19 Corporation, pressure for the Corporation to buy it.  
20 And there were court cases, and there were lots of  
21 things with people surrounding it. There was some name  
22 that I just saw there, Bracken --

23 42 Q. You are talking about the two acres at the back?

24 A. And around it, sir.

25 43 Q. Well, the three houses were occupied up to some point  
26 in time, weren't they?

27 A. Well, yes, sir, but I just want to say to you, sir,  
28 that there was some - there was a court case with a guy  
29 called Bracken or something.

30 44 Q. Did that involve any of the houses?

1 A. I am not quite sure whereabouts on it. I am just

2 talking generally about it. There was a lot of --

3 45 Q. There was litigation at some stage in relation to a

4 claim of adverse possession by somebody, isn't that

5 right?

6 A. Yes, sir.

7 46 Q. That would have been somebody asserting that they had

8 acquired title to part of this property adversely to

9 the owners, and that, therefore, they, in effect, had

10 become the legal owners themselves. That was defeated,

11 I think?

12 A. There was a lot, there was quite of bit of this toing

13 and froing going on, on the site, sir.

14 47 Q. Yes. In any event, when do you say the agreement or

15 arrangements were entered into between the Pembroke

16 Estate and Brennan and McGowan?

17 A. Sorry, sir?

18 48 Q. When were the arrangements entered into between the

19 Pembroke Estate and Brennan and McGowan, under which

20 effectively Brennan and McGowan agreed to buy this

21 property?

22 A. I don't have the thing in front of me, but I think - I

23 am going back from - trying to track back through it,

24 sir. I think it was somewhere in 1977, sir.

25 49 Q. Yes. And obviously this involved a considerable

26 amount of effort and logistical manoeuvring on the

27 title, as it were, by the Pembroke Estate?

28 A. Well, this was something that had been looked after, by

29 the way, and orchestrated within Pembroke by Mr.

30 Cassidy, who had a hands-on --

1 50 Q. Yes. He would have had considerable dealings with  
2 solicitors to get this sorted out?

3 A. Absolutely.

4 51 Q. But ultimately he did, and it was got to a point where  
5 subject to putting together a number of conveyances  
6 from the entities that were relevant to each of the  
7 portions of the property, a result could be achieved  
8 whereby a sale to Brennan and McGowan, and as it turned  
9 out, a sale on to Durkan Brothers Limited could be  
10 effected?

11 A. Yes, sir.

12 52 Q. And obviously at profit, from Brennan and McGowan's  
13 point of view, they being the --

14 A. If you deal with the first instance, yes, sir, that  
15 there was - there were definitely the position now, as  
16 I see it, Pembroke were keen to dispose of the site.  
17 There was a pending acquisition of another property,  
18 and this one had given some problems and was - there  
19 were on-going problems down in Tritonville.

20 53 Q. Yes?

21 A. So there was a decision made to dispose of it.

22 54 Q. You were involved, I think, in your capacity as a  
23 director of the Pembroke Estate?

24 A. Yes, sir.

25 55 Q. Well, as a director of, principally of Pembroke Estates  
26 Management Limited, although you were also a director  
27 of the companies that were involved in the conveyances  
28 that owned parts of the title, should I say?

29 A. Yes, sir.

30 56 Q. But primarily insofar as your directorial functions

1 were concerned, it really would have been in the  
2 context of Pembroke Estate Management Limited, the  
3 company in which Mr. Cassidy operated?

4 A. Yes, sir. And in fact, I think that on this, that I  
5 think that the - because of our business going on at  
6 the time with Brennan and McGowan, I think it was Mr.  
7 Cassidy who may either have mentioned it or took it up  
8 with either McGowan or Brennan at the time. I think  
9 what was - there was - there was an anxiety to get a  
10 clear - a deal that would go through.

11 57 Q. Yes?

12 A. And --

13 58 Q. And did Finnegan Menton act in the sale?

14 A. Sir, I can't tell you which way that went, because I  
15 don't think there was an actual - I think this was a  
16 placing from the estate --

17 59 Q. Yes?

18 A. -- to McGowan.

19 60 Q. How did Brennan and McGowan come to be involved with  
20 this particular property?

21 A. I think, as far as I can recollect, as far as I can  
22 recollect, that Cassidy may have mentioned this in some  
23 other discussions with McGowan. I think that is what  
24 happened.

25 61 Q. Well, do I take it from that, that you had nothing to  
26 do with Brennan and McGowan becoming involved with this  
27 property?

28 A. I think that because the way it would be going around,  
29 sir, I can't say that I had nothing to do with that,  
30 sir, but I think that the - the man who was running the

1 show at the time was Cassidy, and that would come up,  
2 although this could have come up, who was - I think the  
3 way it was, that he may have either took it on himself  
4 or said that he was going to mention or did mention it,  
5 talking about other transactions going on at the time  
6 with McGowan. They did talk quite a bit, by the way.

7 62 Q. We do know that this was contemporaneous with some of  
8 the other deals you were doing with Brennan and McGowan  
9 in broad terms?

10 A. Yes, sir.

11 63 Q. Who negotiated the sale with Brennan and McGowan, and  
12 the price?

13 A. I am not quite sure, sir, whether --

14 64 Q. Did you?

15 A. I think, from recollection, there may have been quite a  
16 bit of toing and froing between Cassidy, I would say  
17 Cassidy and myself or McGowan talking.

18 65 Q. Well, would I be correct in thinking that to the extent  
19 that any arose for negotiations to be done on behalf of  
20 the Pembroke Estate, the person who would do them would  
21 be yourself?

22 A. Not always, sir, because you know we had a - there was  
23 a full-time property man there, Cassidy, who ran the  
24 show. He did a lot of negotiations.

25 66 Q. Yes. But were you not involved in the Pembroke Estate  
26 on the basis of your expertise in property?

27 A. He also held himself out to be an expert in property,  
28 sir, and was a very --

29 67 Q. Yes?

30 A. And was a very resourceful man. He carried out a lot

1 of negotiations with tenants directly and wouldn't  
2 bring in agents at all.

3 68 Q. When did Brennan and McGowan first broach with you the  
4 question of any scheme involving this property with  
5 Jersey companies?

6 A. I was trying to look - I don't know when or whatever  
7 schemes were discussed on this, because it is rather  
8 vague to me about what went on there at all. There may  
9 have been some discussions, but I don't know what  
10 events taken over, taken over here, sir, that - I don't  
11 recollect what exactly happened over the timespan. I  
12 know that - this is coming back to Mr. Brennan,  
13 actually, either signed the contract or whatever.

14 69 Q. But did you have - at some point in time, insofar as  
15 you were involved in the scheme, somebody must have  
16 come to you and proposed it to you?

17 A. I can't actually - I can't actually recollect what  
18 happened here, sir. I don't recollect actually that.  
19 I don't - I am going back trying to track back to see  
20 where, and I can see actually where, what you are  
21 thinking about, sir, but I don't know what actually did  
22 happen, in that I know that the company that bought it  
23 and sold it, did put money in on the acquisition of  
24 Smiths of the Green, the freehold.

25 70 Q. This is Keno Investments Limited?

26 A. Whatever --

27 71 Q. It is?

28 A. Yes, Keno.

29 72 Q. It is a company of which - it is one of these other  
30 companies of which you were one-third beneficial owner?

1 A. Yes.

2 73 Q. And this company was used in the context of this deal

3 - well, in this case what happened was it was used as a

4 recipient of the proceeds of the deal. It was sent

5 over to Orion Bank in Guernsey, I think. We will come

6 to that in a moment. But the Jersey companies that

7 were used for this deal were two companies called

8 Whisper Investments Limited and Glencree Investments

9 (CI) Limited?

10 A. Mm-hmm.

11 74 Q. Which appear to have had different uses over time,

12 since they were both incorporated, but at this

13 particular point in time were used as Brennan and

14 McGowan, and I believe, Finnegan companies for the

15 purpose of this particular transaction. They were also

16 used, subsequently, in the Stephen's Green transaction,

17 as well as owners of small portions of the

18 sub-leasehold interest. They were certainly used for

19 this purpose. They were companies which took various

20 parts of the title, and through which various parts of

21 the title were ultimately transmitted to Durkan

22 Brothers Limited.

23 .

24 Now, presumably at some point in time either Messr.

25 Brennan or Messr. McGowan approached you about a scheme

26 involving this property as well?

27 A. I don't think I had any involvement in Whisper or

28 Glencree, sir.

29 75 Q. You are not a registered beneficial owner of either of

30 these companies?

1 A. I am or --

2 76 Q. No, you were not, as far as we can find, beneficial  
3 owner of these companies nor, as you can recall from  
4 yesterday, of Arippe, the one used in Newtownpark  
5 Avenue, but nonetheless, you appear to have been  
6 treated by Messrs. Brennan and McGowan as an equal  
7 participant, shall we say, in the scheme that they used  
8 involving this property. And Mr. Brennan has given  
9 testimony, you will recall, that you were, in fact, an  
10 equal one-third partner with them in this scheme?

11 A. This is where that - this may be what Mr. Brennan is  
12 saying. I don't have a full recollection, sir, of what  
13 involvement there was in the Tritonville Road property,  
14 sir. I know where you are coming from, that the monies  
15 were put into - I just don't recollect, sir. I know  
16 that the monies were put in to a portion of the  
17 freehold in St. Stephen's Green, Stephen's Green.

18 77 Q. Yes. There was a net figure. We can talk about the  
19 figures in approximate terms. If we just look at some  
20 of the documents which refer to figures.

21 .  
22 At page 4380 there is a letter from Miley & Miley of  
23 the 1st of June, 1978 to TK Smith Foy, solicitors for  
24 the purchasers, Durkan Brothers Limited. And as you  
25 can see there, it is in relation to the property at  
26 Tritonville Road. It is "re Brennan and McGowan with  
27 Durkan Brothers (Dublin) Limited. Property at  
28 Tritonville Road."

29 .  
30 "Dear Kevin, further to your letter of the 31st

1 ultimate. I have now had a look through the draft  
2 conveyances and they have not been drawn as agreed. I  
3 have accordingly done all of them myself and sent these  
4 engrossments to Jersey for sealing. I enclose copies  
5 of them and trust that they meet with your approval."  
6 .  
7 Obviously going to Jersey because the documents were to  
8 be executed by Whisper Investments Limited and Glencree  
9 Investments (CI) Limited.  
10 .  
11 "I propose closing this sale at 12 noon on Friday at  
12 Moore Kiely Lloyd solicitors and will be obliged if you  
13 confirm that this suits you.  
14 .  
15 Our clients have now confirmed to us the purchase price  
16 of ú220,000. Against this an allowance of ú864 should  
17 be made for Stamp Duty at 6 percent and registration  
18 fees on the two Whisper deeds and the Glencree deed.  
19 The balance should be provided by bank draft as  
20 follows:  
21 .  
22 A. Draft payable to Moore Kiely Lloyd Solicitors -  
23 ú103,750.  
24 B. Draft payable to Miley & Miley Solicitors -  
25 ú14,200.  
26 C. Draft payable to Miley & Miley Solicitors -  
27 ú101,186.  
28 .  
29 That gives a total of ú219,136."  
30 .

1 And I infer from that, that the amount received by the  
2 Pembroke Estate for the property that they sold, was  
3 ú103,750. Does that sound right?

4 A. It sounds right, sir.

5 78 Q. But that after costs were paid, the net profit on the  
6 deal, shall we say, was approximately ú79,000. If I  
7 can just refer you to page 4400.

8 .  
9 Perhaps before we deal with that, we will look at page  
10 4396, from which we can see that those three bank  
11 drafts referred to in that Miley & Miley letter were,  
12 in fact, issued for ú14,200 in favour of Smith Foy,  
13 ú101,186 in favour of Smith Foy - in fact, were all in  
14 favour of Smith Foy. Another one for 103,750. All  
15 dated the 2nd of June of 1978, as you can see. One  
16 presumes were negotiated on that basis.

17 .  
18 But in any event, there is a letter then at page 4400,  
19 from Owens Murray to Mr. Wheeler in Bedell & Cristin.  
20 It is "Re Glenree Investments Limited and Whisper  
21 Investments Limited."

22 .  
23 It says:

24 .  
25 "I enclose draft for ú94,000, being the consideration  
26 on the sale of No. 76 and 84 Tritonville Road, and the  
27 freehold of No. 78 and 84 Tritonville Road. Would you  
28 please deal with these monies as follows:

29 .  
30 1. Transfer to Jersey International Bank of Commerce

1 Limited, attention of Mr. JRC Harte, ú15,109, for the  
2 account of Mr. and Mrs. T Brennan.

3 .

4 2. Pay Owens Murray and Co. ú101 for expenses.

5 .

6 3. Transfer ú900 to Glenree deposit account.

7 .

8 4. Place the balance of ú79,890 on one month's deposit  
9 at the best available rate for the credit of Keno  
10 Investments Limited.

11 .

12 I am returning under separate cover the original  
13 memorandum and articles of Glenree and Whisper, as the  
14 two blank sheets of deed paper sealed by Glenree and  
15 Whisper which were not used. Yours sincerely, Hugh  
16 Owens."

17 .

18 If you look at the following letter, then, page 4401,  
19 dated the 22nd of June, 1978, this is Mr. Wheeler  
20 implementing those instructions, and he is sending,  
21 first of all, ú15,109 to the account of Mr. and Mrs.

22 Thomas Brennan, and this is the deposit which I  
23 referred to yesterday, where it appears that

24 Mr. Brennan paid, or at least he has told us he paid a  
25 deposit and this a repayment of his money.

26 .

27 Then on page 4402, a letter dated the 22nd of June from  
28 Mr. Wheeler. It is not from Mr. Wheeler, in fact, but  
29 it is from Bedell & Cristin to Chase Bank (CI) Limited.

30 He says:

1 .  
2 "We write to confirm our telephone instructions of  
3 yesterday. Will you please telegraphically transfer  
4 the sum of ú79,890 from Bedell & Cristin clients  
5 account, account number 8" - something - "03 to  
6 National Westminster Bank Limited, 35 High Street, St.  
7 Peter Port, Guernsey, account number 06094198."

8 .  
9 That is the ú79,890 that went into Keno, sir, isn't  
10 that right? You will see, when we go to the Stephen's  
11 Green property, that went into a bank called Orion  
12 Bank.

13 .  
14 First of all, can I ask you why was this transferred to  
15 an account in Guernsey as opposed to an account in  
16 Jersey?

17 A. I don't know, sir.

18 79 Q. Just for completeness, at page 4403 there is also a  
19 letter to Owens Murray dated the 22nd of June, 1978,  
20 from Bedell & Cristin re Glencree and Whisper. It  
21 says:

22 .  
23 "We thank you for your letter of the 9th June, together  
24 with a cheque in the sum of ú96,000, being the  
25 consideration on the sale of 76 and 84 Tritonville  
26 Road, and the freehold of 78 and 84 Tritonville Road.  
27 We are enclosing a cheque in the sum of ú101 to cover  
28 your expenses, and have carried out all instructions as  
29 requested"

30 .

1 On page 4404, there is a letter from Jersey  
2 International Bank Limited to Bedell & Cristin, dated  
3 the 26th of June, 1978, acknowledging the figure that  
4 they received from Mr. Brennan.

5 .  
6 They say:

7 .  
8 "Thank you for your letter of the 22nd of June,  
9 together with the enclosed cheque in the sum of  
10 ú15,109, which has been credited of the account of Mr.  
11 and Mrs. T. Brennan."

12 .  
13 That letter is signed by Mr. Harte. As you can see  
14 from the bottom there, it is copied to Mr. and Mrs.  
15 Brennan and to Mr. Hugh Owens, of Owens Murray.

16 .  
17 So, the net washout, if I might call it that, was  
18 ú79,000 odd which was put into Keno Investments  
19 Limited, isn't that right?

20 A. Yes, sir.

21 80 Q. What were you then told at the time about Keno  
22 Investments Limited?

23 A. Well, I can't recollect actually what - I can't say at  
24 that time, sir, what - it may have been - was it at  
25 that time set up for the acquisition of the freehold of  
26 Smiths of the Green?

27 81 Q. It was, in fact, set up in 1977.

28 A. All right.

29 82 Q. If we could just look at page 2492. This is Mr. Simon  
30 Howard's document. You can see there,

1 "Date and Place of Incorporation: 3rd of November,  
2 1977, Jersey. And then, "Beneficial Owners", under  
3 which he enters, "Declarations of Trust: T Brennan, J  
4 McGowan, J Finnegan."

5 .  
6 Page 2193, where you can see the extracts, it says:

7 .  
8 "Beneficial owners: Mr. J McGowan, Dollanstown  
9 Kilcock, County Kildare.

10 .  
11 Mr. T Brennan, 22 Park View, Castleknock, Co. Dublin.  
12 .  
13 Mr. J. Finnegan, Sea Point House, Monkstown, County  
14 Dublin."

15 .  
16 So this company was incorporated in 1977, with you as  
17 one of the three registered beneficial owners with the  
18 other two?

19 A. Mm-hmm.

20 83 Q. So, presumably you knew, then, that the proceeds of  
21 this transaction, this Tritonville Road transaction,  
22 was being put into this company, rather than being  
23 distributed, as had previously been the case, in the  
24 land transactions in which you were involved with  
25 Messrs. Brennan and McGowan?

26 A. Well, I - I don't know, sir, what - maybe you can give  
27 me something further on this. At that time - was that  
28 around the time that the - like, the names now are  
29 clear because they have come in all of the discussions,  
30 but the - was this simultaneous to the investment in

1 the freehold?

2 84 Q. Well, the monies actually went over to Keno in June of  
3 1978. That's when the thing was finalised. They  
4 actually had the money in their possession and it was  
5 - this ú79,890 was sent over to Keno at that point in  
6 time. So, presumably, you would have been told in this  
7 case that they were not going to distribute the  
8 proceeds of this particular transaction, that what they  
9 were going to do instead was going to put it into this  
10 Keno company, which all three of you owned?

11 A. Well, I don't - actually it is - this is a very hazy,  
12 because I don't have a recollection of actually being  
13 - of discussions - being involved in the Tritonville  
14 Road. But I see where you are coming from, sir, that  
15 it was Keno who bought - maybe looking back, but I  
16 don't know what, whether that was going towards the  
17 financing of the acquisition of the freehold, because I  
18 put money into Keno as well, sir.

19 85 Q. Well, just to put it into its chronological content,  
20 relative to the other land transactions. The money  
21 went into Keno in June of 1978. So, we know, for  
22 example, that the 100,000 and the additional ú5,000  
23 that you received in respect of the Monkstown property  
24 was in December of 1977. In other words, a month after  
25 Keno was formed?

26 A. Right.

27 86 Q. We know that the monies that you received, the ú101,000  
28 that you received from Brennan and McGowan in  
29 connection with the Donnybrook transaction was in  
30 December of 1978?

1 A. Is that to do with --

2 87 Q. In other words, the following, the December after the  
3 monies went into Keno in the Tritonville Road  
4 transaction.

5 A. Well, it hadn't any connection with any of the other  
6 properties.

7 88 Q. I am not suggesting they did. I am putting them into a  
8 chronological context --

9 A. I understand.

10 89 Q. -- of when you received the other payments?

11 A. That is good of you.

12 90 Q. In the case of Newtownpark Avenue, you received the  
13 ú67,278 in November of 1978. So, the sequence was  
14 December, 1977 you got the money in Monkstown?

15 A. That wasn't a question I mentioned to you sir. I was  
16 asking you just to mention - was that around the time  
17 that the freehold would have been acquired of Stephen's  
18 Green?

19 91 Q. Yes, roughly contemporaneously with Stephen's Green. I  
20 will give you the exact chronological sequence of  
21 Stephen's Green in a moment.

22 A. Thank you.

23 92 Q. Just putting it into the context. Keno was formed in  
24 November of 1978. The following month you were in  
25 receipt of ú105,000 in relation to the Monkstown deal.  
26 In the middle of the following year, that is in June of  
27 1978, this profit was made on this Tritonville Road  
28 property and went into Keno Investments Limited?

29 A. But Keno wasn't involved in the other properties?

30 93 Q. No, no.

1 A. That is what I was just wondering.

2 94 Q. But it existed at the time, and it was there, having  
3 been formed the previous November. A decision was  
4 taken, obviously when this money came in, that instead  
5 of it being distributed, as the monies had previously  
6 been done in Monkstown, and as it was subsequently done  
7 in Newtownpark Avenue and Donnybrook, that in this case  
8 it would not be distributed, that it would be put into  
9 a Jersey company called Keno?

10 A. Well --

11 95 Q. Do you remember that?

12 A. No, sir, I don't actually remember it, but you know  
13 what I mean --

14 96 Q. Do you not remember it being different to the other  
15 ones?

16 A. I don't actually - this is where I don't recollect  
17 actually what the - what actually happened about - I  
18 don't recollect having - I don't recollect having an  
19 involvement in Tritonville Road, whether there was  
20 something mooted or whatever, or whatever that was -  
21 that is what I was just asking you about, the freehold,  
22 whether it was just - whether that was their, Brennan  
23 and McGowan's entry into, that was used as part of the  
24 freehold acquisition in Smiths.

25 97 Q. Well, one presumes it was, because Keno was the company  
26 involved in the freehold acquisition. Do you not  
27 require being consulted by Brennan and McGowan, that  
28 "We are not going to distribute profit on this  
29 property, we are going to put it into another project"?

30 A. No, sir, because - no, I don't actually.

1 98 Q. What do you remember, then, about the funding of  
2 Stephen's Green?

3 A. Well, I remember now, of course - again, it is a hell  
4 of a long time ago, but from what has come out here,  
5 that I did - I know I was called upon for - now I see  
6 it - for money, that I paid in something, that I paid  
7 in something like 100 and - no, I paid in 20 something  
8 thousand towards at that time, sir.

9 99 Q. Well, what Mr. Brennan has said is that you were  
10 primarily involved in getting in the freehold?

11 A. Yes, sir.

12 100 Q. And that each of the three of you contributed equally  
13 to that, is that right?

14 A. Well, I can certainly vouch for the - I can certainly  
15 vouch for the 21,000 going in, sir.

16 101 Q. I think perhaps we will just leave Stephen's Green over  
17 until we have just completed Tritonville Road, albeit  
18 that there may be an element of overlap in it, and we  
19 can deal with that.

20 .

21 Just to finish in relation to Tritonville Road. This  
22 was quite different to the three previous land  
23 transactions, or the three other land transactions in  
24 which you were involved. Isn't that so? For a start,  
25 this was not being bought by Brennan and McGowan with  
26 any intention of developing it, it was bought with the  
27 intention of selling it on to Durkans, isn't that so?

28 A. I don't recollect anything about that.

29 102 Q. What was your recollection of what they were buying it  
30 for?

1 A. I don't know, sir, because I tell you, I don't know.

2 Maybe you have it there, but I don't know when - I know

3 we did the deal with them. I don't know where Durkans

4 came from, when, what. I certainly didn't have

5 anything to do with any negotiations with Durkans, sir.

6 103 Q. But you must, I suggest to you, Mr. Finnegan, have some

7 recollection of it, because if for no better reason

8 than the extraordinary trouble that had to be gone to

9 by the Pembroke Estate to put this site together?

10 A. Yes, putting the site together, yes, sir.

11 104 Q. And it must have been a great relief, therefore, to get

12 a deal with somebody to get rid of it?

13 A. But not - we didn't sell to Durkans, sir.

14 105 Q. You sold to Brennan and McGowan?

15 A. Yes, it was.

16 106 Q. And did the Pembroke Estate know that you were involved

17 in a deal with Brennan and McGowan, involving this

18 property?

19 A. But I don't know actually, sir - I can't say to you

20 that I was involved in the Tritonville Road site.

21 107 Q. Then it would appear to follow, that if you were

22 involved, the Pembroke Estate did not know, or am I

23 wrong about that?

24 A. Well, that's - you know, that is another question, if I

25 was involved.

26 108 Q. Well, if you were involved, would you have told the

27 Pembroke Estate?

28 A. Yes, that is "if". I didn't tell the Pembroke Estate

29 because I don't know what we were - what my involvement

30 was, sir.

1 109 Q. Well, you must have known at the time what your  
2 involvement was, if you had an involvement?

3 A. I don't think I had, sir. But I do see the thing, that  
4 I am not - a bit of a dilemma, because I am not sure on  
5 what way that the money went in to Keno. I am not sure  
6 about that, sir.

7 110 Q. Did I understand you to say you don't think you had an  
8 involvement in this project?

9 A. I don't know if I had, sir. I don't know if I had an  
10 involvement in it.

11 111 Q. But Mr. Brennan has given testimony to the effect that  
12 you did, and he wasn't challenged on it?

13 A. Right. Well, I can't. Maybe, you know what I mean? I  
14 can't say that I was. I am very, very hazy. My first  
15 reaction is that I wasn't, but perhaps maybe I was.  
16 But I am not sure, sir. I can't say I am.

17 112 Q. In the case of Newtownpark Avenue, the land that you  
18 sold for Mr. Maguire, did you tell Mr. Maguire that you  
19 were involved in a Jersey company buying a portion of  
20 this property that he was selling?

21 A. No, sir. I mentioned that to you the other day.

22 113 Q. I didn't ask you. That is why I am asking you now. I  
23 did ask you in relation to Monkstown and Donnybrook. I  
24 didn't think I had asked it in relation to Mr. Maguire.  
25 You didn't tell him that?

26 A. No, sir.

27 114 Q. Going back to Tritonville Road. As I understand your  
28 evidence, you have really no recollection, whatsoever,  
29 of any involvement on your part --

30 A. Unless there was something --

1 115 Q. -- in this particular property with Mr. Brennan and  
2 McGowan?

3 A. No, I don't. There may have been - again, there is a  
4 blur. There is a very definite blur on this, sir. I  
5 don't know. If it is --

6 116 Q. Do you not remember there being a profit into which you  
7 were entitled to share, leaving aside whatever the  
8 amount might have been?

9 A. No. That is where I am not quite sure. I am not quite  
10 sure, sir. Now, maybe there was somebody that - that  
11 is why, when I said to you about the Keno, going into  
12 Keno. I am not - perhaps there was, but I don't  
13 recollect it.

14 117 Q. I'll put it this way to you, Mr. Finnegan. Are you  
15 suggesting to the Tribunal that you don't even recall  
16 whether or not you had an interest in Tritonville Road?

17 A. I don't recall, but perhaps I had.

18 118 Q. When I say "interest", I mean you, John Finnegan, as  
19 opposed to in your representative - of course you had  
20 an interest, in that you were working for the Pembroke  
21 Estate. I am talking about you personally. Do you not  
22 remember having an interest in this transaction, in  
23 that there was a profit to be made in it to be shared  
24 by you, Mr. Brennan and Mr. McGowan?

25 A. No, because I did not know to - just to get it into  
26 context, because you remember, doing a deal on the  
27 land, certainly we did do a deal on the land with  
28 Brennan and McGowan. Now, I don't know if they were  
29 setting up - there is a vague recollection that they  
30 were setting up something, that they were going to

1 perhaps put a scheme into it, but I am not quite sure.  
2 This is where the vagueness comes in here, sir, and  
3 that's - because there was no question of - I wouldn't  
4 have known about Durkans involvement at all. Perhaps  
5 that they were maybe going to say something to me about  
6 it, but certainly at the time, no. When Durkan - I  
7 don't know when exactly Durkan came on the scene, but I  
8 never knew about any negotiations with Durkan.

9 119 Q. Can I ask you this, Mr. Finnegan. Could you tell us,  
10 could I ask you to list for the Tribunal each of the  
11 land transactions in which you had an involvement with  
12 Messrs. Brennan and McGowan?

13 A. The - which ones, sir?

14 120 Q. Each of them.

15 A. The --

16 121 Q. You had an involvement in the form of a partnership  
17 agreement or arrangement or some kind of a commercial  
18 relationship with Brennan and McGowan in a number of  
19 land transactions. I want you now to list the ones,  
20 and I am not asking you by any means to confine  
21 yourself to the ones that we have been speaking of.

22 A. My recollection is, sir, that we had, certainly had the  
23 involvement in the ones we have been talking about, and  
24 in --

25 122 Q. The ones we have mentioned so far are Carrickbrennan,  
26 Monkstown, Mr. Maguire's property in Newtownpark  
27 Avenue, the Pembroke property in Donnybrook, this  
28 property in Tritonville Avenue, and the St. Stephen's  
29 Green property, and, of course, the Sandyford property?

30 A. Yes, sir.

1 123 Q. Those are the monies to which we have already made  
2 reference. Now, in what other ones did you have an  
3 involvement, then, as regards an involvement with  
4 Brennan and McGowan in your capacity as a partner, and  
5 I use the word "partner" in the most general sense?

6 A. We did a - my recollection, I hadn't any involvement in  
7 it, though, sir, in that I did hold the title deeds of  
8 the estate yard, the - the plantation, sir.

9 124 Q. The Herbert Estate Plantation?

10 A. The Herbert Estate Plantation.

11 125 Q. Yes. And anything else?

12 A. And there was - there was another property in Cramer  
13 Lane, sir.

14 126 Q. Yes.

15 A. Which was an investment property.

16 127 Q. Yes.

17 A. There I had an involvement with them, sir.

18 128 Q. Are there any more?

19 A. I think that's it, sir.

20 129 Q. Was there any in Mount Anville?

21 A. Mount Anville, no, sir.

22 130 Q. Yes. Did you not have an involvement with Brennan and

23 McGowan in connection with a land transaction in Mount

24 Anville?

25 A. No, sir.

26 131 Q. In Goatstown?

27 A. Not that I recollect, sir, no.

28 132 Q. Did you have any involvement with them in connection

29 with any land transaction in Tallaght?

30 A. No, sir.

- 1 133 Q. What was the nature of the transaction you had in  
2 Cramer Lane?
- 3 A. There was an industrial building, sir.
- 4 134 Q. Did you sell it to them?
- 5 A. Yes, sir.
- 6 135 Q. Who were you acting for?
- 7 A. That, I think that was Van Leer, sir.
- 8 136 Q. Yes?
- 9 A. I think so.
- 10 137 Q. What was the nature of the transaction?
- 11 A. That was a - it was an industrial building, and I think  
12 that it was producing, it had - it was let on a long  
13 lease.
- 14 138 Q. Yes, Mr. Brennan has told us that it was, I won't say a  
15 quick in and out, but it was a purchase and re-sell  
16 subsequently at a profit, if I am not mistaken?
- 17 A. I tell you, sir, it was held for about five years, sir.
- 18 139 Q. Yes?
- 19 A. And subsequently sold. There wasn't any redevelopment  
20 on it, sir.
- 21 140 Q. And were you a partner with them in that venture?
- 22 A. Yes, I was, sir.
- 23 141 Q. Did it involve any Jersey companies?
- 24 A. Oh, wait now, sir. I think - I think that Canio lent  
25 money to it, sir.
- 26 142 Q. Lent money to it?
- 27 A. I think, or put money into it.
- 28 143 Q. Apart from the lending from Canio, did it involve any  
29 Jersey companies?
- 30 A. I don't think so, sir.

1 144 Q. To the case of the Herbert Street Plantation, what was  
2 the position? Did you sell that property?

3 A. Yes, sir.

4 145 Q. For how much?

5 A. I think it was about 40 something thousand, sir.

6 146 Q. Yes. And what was done with it?

7 A. What was done with the?

8 147 Q. With the property.

9 A. All right. Well, what was done with the property -

10 first of all, it was the - the property was owned by

11 the Pembroke Estate, sir.

12 148 Q. Yes?

13 A. And it was an open space which had been in the estate

14 for a long, long, time, sir.

15 149 Q. Yes?

16 A. And we had sought to try - there were many planning

17 applications which weren't successful on it.

18 150 Q. Why was that?

19 A. Turned down by the Local Authority because it was open,

20 it was an open area, sir, open space.

21 151 Q. Yes. It was a green space? It was a park?

22 A. Yes, a park.

23 152 Q. Yes?

24 A. Part of a park, yes.

25 153 Q. And were there a number of attempts to obtain planning

26 permission for development?

27 A. There were a lot of - there were a lot of applications

28 made, but all of which were refused. And the - so,

29 that is what's happening regarding a development of a

30 commercial or residential, but what --

1 154 Q. Is the reason that they were refused was because, as I  
2 think you have indicated, because it was a park?

3 A. Yes, sir.

4 155 Q. And they wanted to keep it that way?

5 A. Yes. But we went on then, sir, to see if there was any  
6 chance of getting any sort of development on it, even  
7 to get car parking on it. We tried, sir. And we made  
8 an application for surface car parking, which the Local  
9 Authority weren't accepting very well. But I think  
10 that we then had to seek, we sought advices of leading  
11 counsel in Dublin, and we were advised that perhaps the  
12 thing to do was to try and get a purchase order against  
13 the Corporation on it and perhaps maybe then to see  
14 what, and that --

15 156 Q. When you say "we", are you referring to the Pembroke  
16 Estate?

17 A. Yes, the Pembroke Estate.

18 157 Q. Yes. I understand. Presumably, that wasn't proceeded  
19 with?

20 A. It was, actually.

21 158 Q. Oh, I see.

22 A. Well, the action was taken, sir, which resulted in  
23 planning permission being obtained for a surface car  
24 park, that was just for, like a car parking on - now,  
25 in the Estate, sir, it was felt that that - in Herbert  
26 Street, in those days, wasn't as good as it is now,  
27 sir, and that you couldn't leave cars unattended, so it  
28 was felt that, from Pembroke's point of view, to let  
29 car spaces out, it would have to be manned by somebody.

30 159 Q. And they weren't getting into that business?

- 1 A. And they weren't getting into that business. It  
2 wouldn't be economical for the size of it, for the  
3 number of cars that you would get into it, so we  
4 decided it would be sold, sir.
- 5 160 Q. Did you approach Brennan and McGowan and ask them if  
6 they would be interested in it?
- 7 A. I think, sir, I think that that would be, that would  
8 have been the situation.
- 9 161 Q. Yes. And when Messrs. Brennan and McGowan got it,  
10 what did they do with it?
- 11 A. They made various planning applications, and I think  
12 that - I am not quite sure what the net result of it --
- 13 162 Q. I think the net result was that they made a planning  
14 permission to develop it into offices and were refused  
15 by the Local Authority on a wide range of grounds, but  
16 on an appeal to An Bord Pleanala they obtained a  
17 planning permission, I believe in February of 1984, if  
18 I am not mistaken. Is that right?
- 19 A. Now, that - they did get a permission for an office  
20 development.
- 21 163 Q. Office development. I think it was subsequently  
22 developed for offices. Were you a partner with Messrs.  
23 Brennan and McGowan in this particular venture?
- 24 A. Not that I can recollect, sir, no. But I did get the  
25 deeds of it, sir.
- 26 164 Q. You got the deeds?
- 27 A. Well, sir, that is maybe another thing. There was - at  
28 one stage, sir, I did get, I held the deeds of that,  
29 which I got from a solicitor who was acting, who died  
30 --

1 165 Q. Mr. Russell?

2 A. Mr. Russell.

3 166 Q. Yes?

4 A. I can't remember what it was, but at the particular  
5 time I know that there was some settling with Brennan  
6 and McGowan, that they owed me money, and I got -  
7 either for some reason - how it actually came about.  
8 But as far as I can remember, I got the title deeds.  
9 How I got it, I can't remember, but I had the title  
10 deeds which I got from George Russell.

11 167 Q. Do you remember at the time that they were seeking or  
12 they were endeavoring to obtain planning permission on  
13 this property --

14 A. Like --

15 168 Q. -- for office development?

16 A. Yes, I do, sir. Well, when I say, "I do" --

17 169 Q. Did they make any representations to anybody in  
18 connection with that planning permission?

19 A. I don't know, sir.

20 170 Q. Well, did they ever tell you that they had made, or  
21 whether they had made any representations to Mr. Burke?

22 A. No, sir.

23 171 Q. They never mentioned that to you?

24 A. No, sir.

25 172 Q. Did you discuss with them at the time the refusal of  
26 planning permission that they got from the Local  
27 Authority?

28 A. Like --

29 173 Q. Well, the reasons for the refusal?

30 A. I can't remember them actually, Sir.

1 174 Q. Do you recall whether they were similar to the reasons  
2 previously given to the Pembroke Estate in respect of  
3 the same property?

4 A. Also, by the way, there were a number of other people  
5 that made applications on it, it wasn't just Pembroke,  
6 because in those days you didn't have to own a site to  
7 make an application. So, there was a string of  
8 applications made on it, Sir.

9 175 Q. Yes. Did you ever find out how it was that they  
10 ultimately managed to obtain a planning permission, in  
11 circumstances where the Pembroke Estate itself had been  
12 unsuccessful in obtaining any acceptable development  
13 permission?

14 A. Well, the only thing that I would say, is that perhaps  
15 the change from the - that perhaps the obtaining of the  
16 planning permission for the car park might have been a  
17 step, a step towards getting a planning permission. It  
18 was a step, at least it got something on the site, sir.  
19 So I think that that, rather than - up to - not that we  
20 really realised that at the time, sir, but we had a car  
21 parking permission, and that would have been probably  
22 an assistance in going forward, at least if it was  
23 that. All before it was to be was open space, open  
24 space.

25 176 Q. It is still a fairly long step to becoming an office  
26 block?

27 A. No, no, no, sir --

28 177 Q. I see. Well, do you suggest that that is, in fact, the  
29 reason that they got planning permission?

30 A. No, not at all. No. I am saying that it might have

1           been a --

2 178 Q. A help?

3           A. -- a step in that direction.

4 179 Q. Yes. In any event, just to go back to - what was the

5           nature of your relationship with Brennan and McGowan

6           vis-a-vis this particular property?

7           A. On that particular property, my recollection is that I

8           just sold it to them, sir.

9 180 Q. Well, you have indicated that you held the title deeds

10          on the basis that - did you say you lent them money?

11          A. I can't - I know, not know, but that is the wrong - but

12          at that particular time, around that, there was - when

13          things - that was around the time when we were running

14          into trouble. There was concern, to say the least,

15          about the land in Sandyford. There was litigation -

16          there were problems arising around that time. I have

17          to just go back on the dates a little bit. But there

18          was something.

19          .

20          At that stage, I think that was when, the time when it

21          was realised that something - that either the land had

22          been pledged or something, or something or something.

23          It was - it was either at the beginning --

24 181 Q. The litigation in Sandyford, about the conflicting -

25          the mortgage and the undertaking, but just staying with

26          the Herbert Street Plantation, they bought it for, you

27          think, around ú40,000?

28          A. Yes.

29 182 Q. They applied for planning permission to develop it and

30          were refused. They appealed that, and ultimately on an

1 appeal, we believe in February of 1984, they obtained a  
2 planning permission from An Bord Pleanala for their  
3 development of an office block. Now, between the time  
4 that they acquired it from the Pembroke Estate --

5 A. Mm-hmm.

6 183 Q. -- and the obtaining of planning permission, what  
7 happened as between yourself and Messrs. Brennan and  
8 McGowan?

9 A. I don't recollect, sir, what - I think --

10 184 Q. Well, did you lend them money?

11 A. Well, whatever they - I don't remember lending, but I  
12 think there was money, there was money owed to me,  
13 because at the particular time, it was coming back to  
14 when - the particular time, that either I got a  
15 promissory note from - I am just, I can't recollect  
16 when, a promissory note from Joe McGowan to pay me, it  
17 was either 50 or 20 - I am not sure whether it was  
18 ú20,000.

19 185 Q. Yes. Personally?

20 A. Yes, sir, as far as I recollect.

21 186 Q. What company did Brennan and McGowan use in relation to  
22 Herbert Street Plantation?

23 A. I couldn't say --

24 187 Q. Was it Creative Investments Limited? Does that ring a  
25 bell? Sorry, I beg your pardon, Criteria?

26 A. I am not sure, sir.

27 188 Q. Well, were there any Jersey companies involved in this  
28 development, as far as you were aware?

29 A. No, sir, not that I know of. Maybe there was.

30 189 Q. Well, could I ask you - would you wish to take a break

1 at this point, sir?

2 .

3 CHAIRMAN: I was just thinking about that. I didn't

4 want to interrupt your flow of thought.

5 .

6 The usual twenty minutes.

7 .

8 THE TRIBUNAL THEN ADJOURNED FOR A SHORT RECESS AND

9 RESUMED AGAIN AS FOLLOWS:

10 .

11 CHAIRMAN: When you are ready, Mr. Hanratty.

12 .

13 190 Q. MR. HANRATTY: Sorry, Sir.

14 .

15 Mr. Finnegan, it appears that either Mr. McGowan alone,

16 or both Mr. Brennan and Mr. McGowan were indebted to

17 you in the sum of ú50,000 in some way in connection

18 with the Herbert Street Plantation property. Is that

19 right?

20 A. Well, I can't recollect exactly, sir, but I think this

21 was that - I think we had some outlay. I think we had

22 - I am not sure. I can't remember exactly what it was

23 for, sir. I think it may have been to do with some

24 fees as well, sir, that I might have been owed.

25 191 Q. Did you lend them ú50,000, or there company?

26 A. I don't think so.

27 192 Q. You don't think so?

28 A. No, I don't think so, sir.

29 193 Q. But yet they owed you ú50,000.

30 A. Yes, I know.

1 194 Q. And we know that subsequently, by way of securing the  
2 indebtedness, Mr. McGowan personally executed a  
3 promissory note?

4 A. Yes, sir.

5 195 Q. We know that subsequent to that, a settlement was done  
6 in which you agreed to accept ú20,000?

7 A. Yes, sir.

8 196 Q. And that was, I think, in the context of an overall  
9 settlement of a number of issues, is that right? A  
10 number of people were taking a discount, as it were, on  
11 what they were owed. What do you say they owed you,  
12 ú50,000? We know, for example, that this was at one  
13 stage, or appears to have been at one stage secured by  
14 the handing over of the title deeds to the Herbert  
15 Street Plantation to you?

16 A. Now, I think that this was around about the time when  
17 things were going wrong, or weren't going too well with  
18 Brennan and McGowan, and I do recollect now that there  
19 was a bank involved, sir. There was a manager of a  
20 bank got on to me and said they were trying to complete  
21 some sale. I think that was the sale - I think they  
22 were trying to complete the sale, and what about the  
23 Cramer Lane title deeds?

24 .  
25 Now, by the way, I had said, by the way, that George  
26 Russell had said to me that he was getting into either  
27 an awkward position or something like this regarding my  
28 having the titles deeds. Actually, I can't remember  
29 how I actually got them.

30 197 Q. There was a period when he desperately required the

1 title deeds for some purpose, and he couldn't get them.

2 And you had them?

3 A. I had them. But I said to him, I remember this, I

4 said, "If you are under fierce pressure to get them, I

5 will give them to you."

6 198 Q. Yes?

7 A. "If you are in an awkward position about it." That was

8 a sort of a gentleman's agreement I had with him about

9 that.

10 199 Q. What were the circumstances in which you came to be in

11 possession of the title deeds? Somebody obviously gave

12 them to you?

13 A. Somebody gave them to me.

14 200 Q. Who gave them to you?

15 A. I am not quite sure, sir.

16 201 Q. When were they given to you?

17 A. I don't know. I can't recollect, sir. I think I must

18 have got them to George Russell, sir.

19 202 Q. Why were they given to you?

20 A. I just - I don't know. I can't remember how -

21 certainly I had them.

22 203 Q. Well, how do you remember that you didn't lend them

23 50,000?

24 A. Well, I don't think so. I don't --

25 204 Q. Why do you not think so?

26 A. I don't - I don't recollect that, sir.

27 205 Q. Well, is it possible that they owed you ú50,000 in

28 connection with the sale to them of the Herbert Street

29 Plantation property?

30 A. They owed - the sale of the plantation?

1 206 Q. Yes.

2 A. No, sir.

3 207 Q. Were you a partner with them in any context in relation  
4 to this property?

5 A. No, sir.

6 208 Q. Did you invest any money in this project?

7 A. No, sir.

8 209 Q. You were a partner with them in Cramer Lane?

9 A. Yes, sir.

10 210 Q. And of all the properties that we've discussed,  
11 therefore, this is the only one that you were not  
12 actually a partner with them, in which you sold them  
13 the property, isn't that right? But yet they were  
14 indebted to you in some capacity, to the extent of  
15 ú50,000, and in circumstances where that indebtedness  
16 was secured by the handing over of the title deeds to  
17 the property?

18 A. No, no, it didn't - I don't think that was the - I  
19 don't think I got them as security, sir.

20 211 Q. Well, why did you get them?

21 A. That's where I - I can't recollect. I think we either  
22 had them for some - I got them from George - I must  
23 have got them on loan from George Russell for some  
24 reason.

25 212 Q. They acquired the property from the Pembroke Estate?

26 A. Yes, sir.

27 213 Q. And in the normal course of events the title deeds --

28 A. They would --

29 214 Q. -- would be passed over from the Pembroke Estate to  
30 them, or their company, in its capacity as purchaser.

1 But at some point you regained, shall we say,  
2 possession of the title deeds. Why? I mean, it does  
3 appear that you were holding them as security, and that  
4 would explain this gentleman's agreement that you  
5 entered into with Mr. Russell, that you weren't going  
6 to see him short. You were holding the deeds,  
7 nonetheless, against the indebtedness that was there,  
8 isn't that right?

9 A. I was holding them. There was - as I say, this was  
10 around the time when the - there were some difficulties  
11 around the Brennan and McGowan camp, if you like, sir.

12 215 Q. Yes.

13 A. And --

14 216 Q. This is why I inquired, is it possible you lent them  
15 money in those circumstances?

16 A. No, no, sir. I don't think so. I think that what - I  
17 think that the situation, as far as I remember, that  
18 there was something to do with the Cramer Lane  
19 property. I think they may have - there may have been  
20 something. I think there was either a sale going down,  
21 that they wished to complete because - yes, I remember  
22 the bank manager getting on to me.

23 217 Q. Of which bank? Was it Hill Samuel or Allied Irish?

24 A. It wasn't Hill Samuel, anyway. It was a local bank.  
25 It may have been AIB.

26 218 Q. Or AIF?

27 A. I think it was a branch. It was some branch, sir.  
28 Bloody hell. Sorry.

29 219 Q. Would it have been Bank of Ireland, Rotunda?

30 A. I think it may have been. If it is a branch office,

1 sir.

2 220 Q. Yes. In connection with Cramer Lane, was it? Or was  
3 it in connection with Herbert Street Plantation?

4 A. I think now that what - I think that there was a sale  
5 pending on Cramer Lane, sir.

6 221 Q. Yes. Were you an equal one-third partner with them in  
7 Cramer Lane?

8 A. Yes, sir.

9 222 Q. And did you use a company or did the three of you, I  
10 mean, use a company in connection with that property?

11 A. I can't - I can't recollect, sir.

12 223 Q. It doesn't matter. Going back to the Herbert Street  
13 Plantation. What we are really trying to establish is  
14 what was the nature or source of the indebtedness by  
15 them to you? First of all, may I take it that the  
16 indebtedness was not a personal indebtedness of  
17 Mr. McGowan, albeit that he is the person who executed  
18 the promissory note, or was it?

19 A. No, I don't think so, sir.

20 224 Q. Yes. Was it an indebtedness, therefore, of Brennan and  
21 McGowan, or perhaps was it an indebtedness of their  
22 company, Criteria Developments Limited?

23 A. Which was Criteria, sir?

24 225 Q. Criteria Developments Limited is the company that we  
25 used in connection with the Herbert Street Plantation  
26 development?

27 A. No, I think that the - I think it was something to do  
28 with the - I think there was an accumulation of things,  
29 sir, and I am not sure whether - I think that there was  
30 - I don't know if they remortgaged - there was

1 something to do with Cramer, that there was something  
2 there, that either it had been pledged again or  
3 something, or something, or something, but the bank  
4 that --

5 226 Q. Well, it was around some figure of ú50,000. We know  
6 that.

7 A. Yes, sir.

8 227 Q. Because that is the figure that is dealt with in the  
9 promissory note?

10 A. Yes, sir.

11 228 Q. And referred to in other documents as well?

12 A. Mmm.

13 229 Q. It was treated by both sides, shall we say, as an  
14 indebtedness that had to be discharged?

15 A. Mmm.

16 230 Q. To the extent that it ultimately resulted in the  
17 execution of a promissory note by Mr. McGowan  
18 personally, in which he legally bound himself to pay  
19 you this money on a specified date. It was an  
20 indebtedness which appears to have been secured by the  
21 handing to you of the title deeds of this property,  
22 which they had bought from you in your capacity as a  
23 representative of the Pembroke Estate. So these same  
24 title deeds that - to the property, of which they had  
25 acquired title, were given back to you as security for  
26 an indebtedness. Surely, you remember what the  
27 indebtedness was.

28 A. It is - I know it is hard to - no matter what, I  
29 wouldn't remember exactly what it was. But as far as I  
30 remember, it was a few things. I think the more I

1 think about it, sir, because the bank were very

2 involved, and I think it was --

3 231 Q. Can you even say when this indebtedness arose?

4 A. Naturally prior to that time, Sir --

5 232 Q. Is it possible, for example, that they required this

6 money for a particular purpose and that you advanced it

7 to them? Well, that, Mr. Finnegan, appears to be the

8 one thing that you seem to be able to remember - you

9 really don't remember anything about it, as I

10 understand your evidence so far, but any time I suggest

11 to you that it was an advance or a loan, you definitely

12 remember that it wasn't?

13 A. No - well, actually, sir, when I say "no", I don't

14 recollect. There is something in the back of my mind,

15 sir, that I am not absolutely clear about. That is,

16 that I think there was a question of - something

17 lingering there, that they had either double-charged or

18 increased mortgages, or something, on Cramer lane.

19 233 Q. What would that have to do with you?

20 A. They wanted to sell it, sir.

21 234 Q. Yes?

22 A. I think the bank were selling it.

23 235 Q. Yes. But how would that give rise to an indebtedness

24 of Brennan and McGowan to you?

25 A. Because I think that either - again, now, these are

26 recollections, sir, that either the indebtedness to the

27 bank had been increased to such - or it had either been

28 doubly pledged - I shouldn't say that, sir, because I

29 am not sure. There was something to do with the

30 banking on it, sir.

1 236 Q. Something to do with the bank to do with Cramer Lane,

2 is that what you are saying?

3 A. Yes, sir.

4 237 Q. But you don't remember what?

5 A. I can't - the sale couldn't go through. There was

6 something, that the sale couldn't proceed. There was a

7 question --

8 238 Q. Did you put up money to enable the sale to proceed?

9 A. I didn't, sir, but that is where I think it came around

10 that --

11 239 Q. Well, did they borrow money on the land without your

12 authority, on Cramer Lane?

13 A. Well, there was a borrowing. To what extent it was --

14 240 Q. Was it a borrowing of the company, themselves, or was

15 it their own personal borrowing --

16 A. I am certainly a bit hazy about that, sir.

17 241 Q. The point is you were a one-third equal partner with

18 them in Cramer Lane, therefore, Cramer Lane could not

19 have been used for security for any borrowing without

20 your authority and consent?

21 A. Yes.

22 242 Q. Or alternatively, without the authority and consent of

23 a company of which you were a one-third owner, if it

24 was done through a company. Now, was there an issue

25 that they had borrowed without your authority and

26 consent in connection with Cramer Lane, or was there

27 not?

28 A. I think that there may have been - I think somehow or

29 another it may have been because there was an anxiety

30 here that either it had been, either - I am not saying

1 it was a second mortgage or something, but I think  
2 there was either a pledge, an extra pledge or something  
3 there, and I think that it may very well have emanated,  
4 I couldn't - because the bank had it, I don't think I  
5 could get anything out of it.

6 243 Q. I am afraid you are not making terribly good sense,  
7 Mr. Finnegan.

8 A. Sorry. I think because there was so much money owed on  
9 Cramer Lane --

10 244 Q. Well, if it was owed, was it not owed by all of you?

11 A. Well, this is where I think there was something that -  
12 somewhere along the line that maybe the building  
13 company or something - I think that there might have  
14 been a slight overlap somewhere, sir.

15 245 Q. Is it your evidence that the indebtedness of ú50,000  
16 resulted from a balancing as between them and you  
17 arising from the sale of Cramer Lane?

18 A. And I think that they owed me some fees or something as  
19 well, sir. There was some, some outlay or something.

20 246 Q. If that was the case, would it not be some round sum  
21 figure of ú50,000?

22 .

23 MR. HUSSEY: I am sorry, Sir, it is not - the actual  
24 IOU is for ú50,000 together with ú12,000 fees and  
25 expenses.

26 .

27 MR. HANRATTY: I am sure My Friend is talking about the  
28 promissory note.

29 .

30 MR. HUSSEY: Yes. Sorry. Of course.

1

2 247 Q. MR. HANRATTY: There was ú50,000 and ú12,000 in fees?

3 A. Mm-hmm.

4 248 Q. Right. So to the extent that it included fees, that is

5 the ú12,000?

6 A. Mm-hmm.

7 249 Q. But the ú50,000, do I understand you to be saying that

8 what you believe that to be is a balance due to you

9 arising from Cramer Lane?

10 A. I think it is certainly something to do with that, sir,

11 because there was quite a lot of concern with the bank

12 over it.

13 250 Q. Was it after the sale of Cramer Lane that they gave you

14 the title deeds to Herbert Street Plantation?

15 A. Oh, I think it was before that, sir.

16 251 Q. Before the sale of Cramer Lane. You see, when Cramer

17 Lane was sold, it was sold at a profit, and all that

18 remained after the sale of Cramer Lane was to divide

19 out any surplus that was left, if any, between the

20 three persons, isn't that right?

21 A. Mm-hmm.

22 252 Q. Was there a surplus?

23 A. I don't think that there - I don't think that I got

24 any, anyway, sir.

25 253 Q. Well, how much did you put in, or did you put anything

26 in?

27 A. I think that - as far as I recollect, and actually

28 seeing something, I think that Canio put some money

29 into that, sir.

30 254 Q. Pardon?

1 A. I think that Canio either lent money to Cramer --

2 255 Q. Yes. In fact, I believe that Mr. Brennan's evidence

3 was that the purchase of Cramer Lane was funded

4 entirely by borrowing. Is that your recollection?

5 A. Yes, I think it was. But now, I think the - yes. But

6 Canio put something - I think that Canio put some money

7 into it.

8 256 Q. Well, was that a loan?

9 A. Maybe I am mixing something up, but I thought that --

10 257 Q. Did you agree that none of the three actually put your

11 hands in your pockets, as it were?

12 A. I don't recollect doing that, sir.

13 258 Q. Right. But you were three equal partners, nonetheless?

14 A. What may have happened, and there may be an explanation

15 for this, sir, that the initial borrowings may have -

16 that it was funded by borrowings, but they may have

17 increased --

18 259 Q. The borrowing?

19 A. Yes.

20 260 Q. And do you recall there having been an issue arising or

21 a discovery on your part at any point that they had

22 made borrowings that you hadn't known about or hadn't

23 authorised?

24 A. No, I want to be - there was - I can't put my finger on

25 it, but you can take it, sir, that there was some issue

26 about what was due on Cramer Lane.

27 261 Q. Well, did you have any liabilities on Cramer Lane, put

28 it that way?

29 A. Sir --

30 262 Q. There was no - the property was purchased --

1 A. Yes.

2 263 Q. -- by borrowings, part of which may have been a  
3 borrowing of a sum of money from Canio?

4 A. Yes, right.

5 264 Q. The property was retained for a number of years, and it  
6 was then sold?

7 A. Yes.

8 265 Q. Was there any profit that you are aware of distributed  
9 after the sale?

10 A. No, not that I am aware of.

11 266 Q. So if you didn't put any money in at the start, and you  
12 didn't get any money out at the end, did you get any  
13 money in between?

14 A. I think what may have been the situation, sir, that the  
15 - as I said to you, that the initial borrowings were  
16 extended or whatever, or whatever, whatever, and that  
17 they were certainly - no, sorry. The borrowings, at  
18 the end of the day, were in excess of those which they  
19 were initially.

20 267 Q. Did you have any liability for those borrowings? Did  
21 you pay off any borrowings?

22 A. When the - any borrowings that were on, were paid off  
23 on the sale, sir.

24 268 Q. Yes, but not out of your money?

25 A. No, sir.

26 269 Q. Well, then, if you put nothing in, and you got nothing  
27 out, how could an indebtedness of £50,000 by Brennan  
28 and McGowan to you arise?

29 A. Well, the only thing that I can think of, sir, is that  
30 the - there was a rent review in between the initial

1 rent, so it would go that it was worth more --

2 270 Q. Well, were you in receipt of rents on Cramer Lane --

3 A. No, sir. I think it was paid to the bank.

4 271 Q. -- to pay the borrowing? So nobody made any money,

5 nobody put in any money, nobody made any money, the

6 bank had to be repaid when it was sold. You put

7 nothing in, you got nothing out. How did they end up

8 owing you ú50,000 in connection with that property?

9 A. I certainly know it wasn't of it. Either though that

10 the - from the initial borrowings - sorry to keep going

11 back on this. The initial borrowings, whatever they

12 were, because I think that the - I don't know what

13 now - maybe I will look into it to see what was due on

14 the closing of Cramer Lane, but perhaps what it was, it

15 was the amount was substantially more than the

16 initial --

17 272 Q. In fact, Mr. McGowan said that there was no profit on

18 this property. Now, if he is correct about that, if

19 none of you put your hand in your pocket to put any

20 money in to acquire this property, if none of you had

21 to put your hand in your pocket to pay off any

22 borrowings of this property, or if none of you were in

23 receipt of any distribution of any profit on this

24 property, it is very difficult to see how Messrs.

25 Brennan and McGowan would owe you ú50,000 arising from

26 this property?

27 A. Well, unless - when you say nobody made any money out

28 of it - now, I am not sure of this, sir. So it is

29 something that we will just have to look at, that the -

30 as I said to you earlier, that the initial borrowings,

1 as I say, were topped up, and that I didn't get any of

2 that borrowing.

3 273 Q. I am not following you.

4 A. Sorry.

5 274 Q. You seem to have been clear that you didn't put money

6 in, in the sense of putting ú50,000, for example,

7 towards the purchase of the property?

8 A. No, but - no, that is --

9 275 Q. That was done out of borrowings, including probably

10 borrowings from Canio. The rent went towards the

11 repayment of the borrowings to the banks?

12 A. Yes.

13 276 Q. When it was sold there was no profit. And there were

14 borrowings to be - still borrowings to be paid off. Is

15 that right?

16 A. I understand, sir.

17 277 Q. So how, in this scheme, does it arise that you get owed

18 ú50,000 by Brennan and McGowan?

19 A. Well, I can't remember what the sale was, but if there

20 wasn't - as far as - say, there was a profit, though,

21 Sir, over and above the original acquisition figure --

22 278 Q. Certainly, if there was a profit to be distributed, one

23 could understand --

24 A. Yeah.

25 279 Q. -- that if they were all to get ú50,000 each, and if

26 they got 150 and you got nothing, you would be owed 50?

27 A. Yes.

28 280 Q. But we have been told that there was no profit?

29 A. Perhaps - I just say, that the borrowings weren't

30 accruing to, the borrowings weren't accruing to the

1 property, that there was more borrowed on the property  
2 that I didn't get the benefit of, sir. I think that  
3 was something that happened.

4 281 Q. But nobody got any benefit. If the property was  
5 purchased entirely from borrowings, and if all the  
6 income from the property went to pay off those  
7 borrowings, and ultimately if the proceeds of sale went  
8 off to those borrowings, there is no benefit from  
9 borrowing, unless it generates a profit.

10 A. But it may have been - again, sir, it may have been  
11 that the - it was pledged.

12 282 Q. There does appear to have been a company called Capent  
13 Limited involved with this property. Is that right?

14 A. Yes, I think that was the --

15 283 Q. Yes. And we have a document, it hasn't been  
16 circulated - oh, it has been circulated. Do we have a  
17 page number? We do, it is 3050.

18 .

19 It is a Reid and McNabb ledger card. As you can see on  
20 the top left-hand side, it says: "Capent Limited."

21 .

22 "Cramer Lane, including 74 Haddington Road and 28  
23 Northumberland Road - purchased 1979, including  
24 mortgage 1980 to Lombard and Ulster. Redemption of  
25 Lombard and Ulster mortgage, and new mortgage 1982 to  
26 Irish Bank of Commerce."

27 .

28 And if you go down the column, you see an entry under  
29 the 3rd of August, '82, Finnegan Menton & Co. This is  
30 under a heading of "clients account", ú33,450. This

1 appears to be money in. So Finnegan Menton, on the 3rd  
2 of August, 1982, appear to be putting in ú33,450. So,  
3 what is that?

4 A. Perhaps now, sir, that you --

5 284 Q. Sorry?

6 A. Perhaps, sir --

7 .

8 MR. HUSSEY: I beg your pardon. The actual entry is  
9 "disbursements", I think, rather than - "receipt" is  
10 beside it. This is a "disbursements" column. I just  
11 wonder, is that - at the very top you see  
12 "disbursements".

13 .

14 MR. HANRATTY: In fact, both columns are  
15 "disbursements".

16 .

17 MR. HUSSEY: And the one beside, there is one then  
18 "receipts". Sorry to interrupt.

19 .

20 285 Q. MR. HANRATTY: That seems, then, that Capent Limited  
21 paid out, through the Reid and McNabb client account, I  
22 presume, ú33,450 to Finnegan Menton?

23 A. Mm-hmm.

24 286 Q. How much was the property bought for?

25 A. I think it was something like 260, sir, or something  
26 like that.

27 287 Q. Well, is it possible that the 33,450 was fees? It  
28 would be something less than 10 percent. Well, did  
29 Finnegan Menton act in the purchase of this property on  
30 behalf of Capent?

- 1 A. I can't see where, actually - I don't know where that  
2 33,000 - what sort of timing is that.
- 3 288 Q. 3rd of August '82. It is to Finnegan Menton as opposed  
4 to John Finnegan?
- 5 A. Yes.
- 6 289 Q. So, is it possible that that might be fees in  
7 connection with something for Capent Limited?
- 8 A. Well, actually, I can't say at the moment. It is a  
9 surprise to me - whether I can do any checking up on it  
10 to see if I can, but I don't know what that was for.
- 11 290 Q. Well, can do you some checking up on it?
- 12 A. I will certainly see if I can, yes, to see what the  
13 Finnegan Menton - I will try, sir, yes.
- 14 291 Q. Yes. All right. Well then, we might just leave it  
15 for the moment, and we'll come back to it then.  
16 .
- 17 Can I just refer you to some other documents, again  
18 from the same account.  
19 .
- 20 Page 3053. We are on a different part of the same  
21 account, and there is a transaction on that page dated  
22 the 22nd of May of 1980. And in this case it is a  
23 receipt or a credit, and it is for ú46,386.98 from  
24 Canio. That is the Canio money --
- 25 A. Right, sir.
- 26 292 Q. -- coming in. Whether it is a loan or not, it is  
27 coming in from a company called Canio Limited. As you  
28 can see, the annotation there is "per TFB," Tom Brennan  
29 "and JMcG", Joe McGowan.  
30 .

1 Also, at page 3051, there is an entry dated the 28th of  
2 April, 1982, "Canio Limited account", and there is "88"  
3 in brackets, three Roman numerals again written, which  
4 is written on the previous entry, and there is a  
5 receipt of ú3,503.78, "Transfer from Canio DR."  
6 Presumably, debit.

7 .  
8 So, if you wouldn't mind considering those documents,  
9 Mr. Finnegan, and making such inquiries as you may to  
10 try and ascertain what - essentially how this  
11 indebtedness of ú50,000 arose.

12 .  
13 Now, there are just some other documents that we might  
14 put to you before we break, which may be related. The  
15 first one is page 787. And this is one of Mr. - the  
16 late Mr. Russell's attendance docket on his clients,  
17 Brennan and McGowan. You can see it is dated the 17th  
18 of December, 1984. It is an attendance on Brennan and  
19 McGowan. That is in connection with the Herbert Street  
20 Plantation.

21 .  
22 And he says in the middle paragraph:  
23 .  
24 "I produced a letter dated the 10th of December, 1984,  
25 which I had received from John Finnegan, in which he  
26 stated that he had located the deeds of the plantation,  
27 and I asked Mr. McGowan how Mr. Finnegan would have got  
28 these, and he was unable to answer that question, but I  
29 did tell him that I had a note on my file that he,  
30 Mr. McGowan, had taken up the deeds from me, and that

1 it was suggested that I should not mention this matter  
2 to John Finnegan, and that they would speak to him  
3 about the matter. Later at lunch I was again told that  
4 they would see Mr. Finnegan tomorrow and discuss the  
5 matter."

6 .  
7 So it seems to have some degree of secrecy about it,  
8 but clearly what Mr. Russell appears to be recording  
9 there, is that they had at some point in time  
10 unspecified taken up the deeds from him, and obviously  
11 it was at or around that time or certainly subsequent  
12 to it, that those deeds were given to you.

13 .  
14 Do you remember requiring the deeds to be given to you?

15 A. No, sir.

16 293 Q. Do you remember why you required the deeds to be given  
17 to you?

18 A. I don't - that's the thing, I don't actually --

19 294 Q. Do you remember the deeds actually being given to you?

20 A. Strangely enough, I don't, sir.

21 295 Q. Do you remember making arrangements for the safe  
22 custody of the deeds? It is not something that happens  
23 to a person every day, that they be given the title  
24 deeds to somebody else's property. It is a fairly  
25 onerous responsibility to have to undertake?

26 A. I will just have to try to - I don't remember --

27 296 Q. It would have been, I suggest, Mr. Finnegan, a rather  
28 unusual event?

29 A. Yes.

30 297 Q. Even for you?

1 A. Yes.

2 298 Q. Even for anybody involved in business, to get somebody

3 else's title deeds; that is normally done by a bank,

4 but not by individuals?

5 A. Yeah.

6 299 Q. And are you saying that you don't remember anything at

7 all about it?

8 A. Unless - you are saying there that, sir - unless they

9 were left to my office, sir.

10 300 Q. Well, they were given to you, and in this instance you

11 wrote a letter to Mr. Russell informing him about the

12 deeds. On the 10th of December, 1984, you wrote him a

13 letter, in which you said that you had located the

14 deeds, implying, perhaps, that there was some previous

15 difficulty in locating them. Do you not remember that?

16 A. Unless, and I don't want to speculate on it, sir, but I

17 will - just trying to rack the memory back. Unless

18 they left them, Brennan and McGowan left them in my

19 office.

20 301 Q. Why would they do that? Why would Brennan and McGowan

21 leave title deeds, go to the trouble of getting the

22 deeds off their solicitor and putting them into your

23 office? I mean, if they left them in your office, they

24 would have done it for a reason.

25 A. Well, I can't - I seem to have a recollection that I

26 either - that I either got them by chance, Sir. I

27 don't remember them ever having been pledged, "There,

28 you have got the deeds." I don't know, maybe we were

29 carrying out valuations. It is unusual to get the

30 deeds in a normal event.

1 302 Q. I thought you already agreed that you were holding them  
2 as a security for --

3 A. One thing for sure, I do know this, and I would say to  
4 you, when we had them, having them - I was holding  
5 them.

6 303 Q. So, you believe that you got them by chance, but then  
7 held on to them?

8 A. Let me just try and think a little bit more about this,  
9 sir. I don't want to mislead you in any way. I will  
10 just try and think about where --

11 304 Q. Shall we do it this way, Mr. Finnegan. I will put some  
12 further documents to you to try and refresh your  
13 memory, then we will revisit the matter after lunch.

14 .

15 There is a document on page 887, which is the  
16 promissory note that Mr. McGowan executed on the 7th of  
17 May, 1985 in favour of you. It is dated the 7th of  
18 May. It is addressed from his home address.

19 .

20 "One month after the date hereof, I promise to pay to  
21 John Finnegan of 17 Merrion Road, Dublin 2, or to his  
22 order the sum of ú50,000 value received, and failing  
23 such payment, to pay to the said John Finnegan interest  
24 on such sum at the rate of 20 percent per annum from  
25 the said date up to the date of actual payment thereof.

26 .

27 As a director of Criteria Developments Limited I hereby  
28 acknowledge the agreement of that company that  
29 Mr. Finnegan should hold the deeds of that company's  
30 property known as The Plantation, Herbert Street,

1 Dublin, be as security for my payment of the said sum  
2 of ú50,000, and on the understanding that on the  
3 payment of the said sum by me, Mr. Finnegan, will  
4 release the said deeds to the solicitors for the said  
5 Criteria Developments Limited to enable them to  
6 complete the sale of that company's property.

7 .  
8 I further promise and undertake to secure an  
9 undertaking from the solicitors for Criteria  
10 Developments Limited to discharge to Mr. Finnegan his  
11 fees and expenses amounting to ú12,000 arising out of  
12 the sale of the said property known as The Plantation,  
13 Herbert Street."

14 .  
15 So, there are a number of things fairly clear from  
16 that, one of which - if we could just leave that one  
17 aside for the moment - is that there were fees due to  
18 Finnegan Menton by Criteria Developments Limited in  
19 respect of the sale of Herbert Street?

20 A. Yes, sir.

21 305 Q. So that would appear to suggest that you were acting  
22 for the Brennan and McGowan company in this  
23 transaction?

24 A. Well, there was a sale. There was a sale - I think it  
25 was around that time, sir. The property was sold --

26 306 Q. Yes, but it was sold by the Pembroke Estate, of which  
27 you were a director?

28 A. No, no, sir. It was later sold - when was this, sir?

29 307 Q. This is 1985.

30 A. Yes.

1 308 Q. It says that:

2 .

3 "I further promise and undertake to secure an  
4 undertaking from the solicitors for Criteria  
5 Developments Limited to discharge to Mr. Finnegan his  
6 fees and expenses" - "to Criteria Developments  
7 Limited", which is the Brennan and McGowan company  
8 that, as we understand it, bought Herbert Street  
9 Plantation, owed Finnegan Menton, or you, it mentions  
10 you, ú12,000 arising out of the sale of the said  
11 property. Is that a sale on to somebody else? I see -  
12 that would be a sale on to the purchaser from Criteria,  
13 is that right?

14 A. That's right, sir.

15 309 Q. I understand. When was that?

16 A. I haven't got the exact --

17 310 Q. Are you fairly clear that was what that was?

18 A. It is coming back to me. It was sold to Green  
19 Properties I think, sir.

20 311 Q. Right. Well, if you are correct about that being what

21 the ú12,000 is for, that is obviously an indebtedness  
22 which would have arisen at a point in time subsequent  
23 to the indebtedness of the ú50,000, isn't that right?

24 A. Mm-hmm.

25 312 Q. That would seem to follow, would it not?

26 A. Yes, sir.

27 313 Q. So going back, then, to the middle paragraph,

28 effectively, which is the one that contains the  
29 information. Mr. McGowan says that, in his capacity as  
30 a director of Criteria, he, in the first paragraph,

1 makes the promise to pay, plus 20 percent after a  
2 month, and he acknowledges the agreement of Criteria,  
3 that you should hold that company's title deeds to  
4 Herbert Street as security.

5 .  
6 Now, we know that you already held them, and he is  
7 simply here acknowledging your entitlement to do so,  
8 isn't that right?

9 A. Yes, sir.

10 314 Q. Do you still believe that they came into your  
11 possession, by chance?

12 .  
13 MR. HUSSEY: I am sorry, Sir. I don't wish to  
14 interject. This document is dated May '85. The  
15 earlier document, the Russell attendance, is December  
16 '84. I am just wondering, is that --

17 .  
18 315 Q. MR. HANRATTY: I know that. That is the premise on  
19 which I am putting the question.

20 .  
21 We know that you already held the title documents and  
22 that you had written a letter to Russell about them in  
23 December 1984. This is now the middle of the following  
24 year, in which Mr. McGowan explicitly acknowledges, on  
25 behalf of Criteria, in his capacity as a director of  
26 Criteria, that you were entitled to hold the title  
27 deeds as security for the indebtedness. But we know  
28 that you were already in possession of the title deeds,  
29 at least as recently as December of 1984, and you had  
30 written a letter acknowledging that fact, in fact

1 saying that you had managed to locate them.  
2 .  
3 My question was, in view of that, do you still believe  
4 that you obtained the title deeds by chance, and at  
5 some point in time subsequently decided to hold them or  
6 to keep them or retain them, as security for monies  
7 that you were owed?

8 A. Hadn't I got them, then, sir?

9 316 Q. Well, they weren't given to you. If you are correct in  
10 your belief, that you got them by chance, you wouldn't  
11 have been entitled to hold them?

12 A. No, I wouldn't.

13 317 Q. As security by way of deposit, equitable deposit of  
14 title deeds as security for money, because they weren't  
15 given to you for that purpose?

16 A. No. All right.

17 318 Q. But that's not to say that you mightn't have tried to  
18 do it. What I am trying to ascertain is, in view of  
19 that document, is it still your belief or does it  
20 assist you one way or the other in deciding whether you  
21 got them by chance or not?

22 A. I still think I got them - my natural feeling is that I  
23 - that they either were brought in by McGowan - either  
24 McGowan gave them to me, or whether I had them for some  
25 reason, but I see what you say here, that this is  
26 acknowledging that I could hold them, sir.

27 319 Q. I will just finish these two documents, if I may  
28 Mr. Finnegan.

29 A. Yes, please do.

30 320 Q. There is one, 4826. It is a letter, I believe, from

1 Miley & Miley to yourself. It is "re" - it is dated  
2 the 10th of February, 1986. It is "Re Mimeg Limited V  
3 Criteria Developments Limited, High Court 1986, No.  
4 889P. The Plantation, Herbert Street."

5 .  
6 Do you remember there being litigation involving Mimeg  
7 Limited and Criteria Developments Limited in which, as  
8 a result of the settlement you were paid ú20,000. We  
9 will look at the letter.

10 .  
11 "I understand a situation" --

12 A. The Bank of Ireland.

13 321 Q. Yes, the Bank of Ireland. We mentioned Bank of  
14 Ireland, Rotunda earlier.

15 A. Yes, yes.

16 322 Q. "I understand a situation has now been reached with the  
17 Bank of Ireland where they are prepared to agree to a  
18 payment of ú20,000 being made to you out of the  
19 proceeds of sale. On the assumption that this is  
20 acceptable to you, I think the sale can now be  
21 proceeded with and closed."

22 .  
23 I think the Bank of Ireland's involvement here,  
24 presumably, relates to this property.

25 .  
26 "I am not sure whether you are aware or not that a  
27 Plenary Summons has been issued by the purchaser  
28 claiming specific performance.

29 .  
30 The intention is that this firm will take over the

1 carriage of sale and complete it as soon as possible,  
2 paying you a sum of ú20,000 and paying the balance less  
3 the legal costs involved to the Bank of Ireland.

4 .

5 I understand that you are holding the original title  
6 documents and of course the foregoing proposal is  
7 conditional upon your making these available to me so  
8 that the sale can be completed.

9 .

10 I will be obliged if you will confirm that this  
11 proposal is acceptable to you, and when I have received  
12 formal approval from all the other parties involved, I  
13 will let you have my undertaking in relation to the sum  
14 of ú20,000."

15 .

16 It is addressed to you.

17 .

18 And there is another document, then, finally page 1244.

19 This is a sort of an apportionment account from Mr.

20 Russell of Reid and McNabb. He has it entitled

21 "Criteria Developments Limited to Mimeg Limited."

22 Mimeg, obviously, therefore, was a purchaser seeking  
23 specific performance?

24 A. I remember --

25 323 Q. Who is Mimeg?

26 A. I remember now, sir, that was - when I said green

27 Properties, it was Corcoran, Mr. Corcoran.

28 324 Q. Yes. Mr. John Corcoran, is it?

29 A. Yes, Mr. John Corcoran. So that is either a --

30 325 Q. Perhaps a subsidiary?

1 A. Yes. I think so.

2 326 Q. It says:

3 .

4 "Premises, Herbert Street Plantation, Herbert Street,  
5 Dublin 2. Closing statement drawn to Friday, 7th of  
6 March, 1986." The purchase price is ú261,000. Less  
7 deposit of ú26,000.

8 .

9 Just to pause there for a moment. Am I correct in  
10 thinking that there was no development carried out on  
11 this property by Brennan and McGowan?

12 A. None.

13 327 Q. They bought it for ú40,000, approximately, from the  
14 Pembroke Estate, they got planning permission to  
15 develop it, and in 1986 sold it for ú261,000. Isn't  
16 that right?

17 A. Yes, sir.

18 328 Q. Now, there are a number of deductions from the purchase  
19 price, which are essentially irrelevant, but you can  
20 see that they amount to ú722. That leaves a balance of  
21 ú234,177. And then, out of that balance Mr. Russell  
22 has written, agreed to be paid by four bank drafts as  
23 follows:

24 .

25 Messrs. Finnegan Menton Auctioneers - ú20,000.

26 Reid and McNabb Solicitors - ú6,450.

27 Miley & Miley Solicitors - ú2,500.

28 Bank of Ireland - ú205,226.

29 .

30 Obviously, Bank of Ireland were owed this money,

1 presumably, on this property, isn't that so? These are  
2 deductions which obviously had to be agreed with the  
3 bank, because they were obviously the principal  
4 creditor of Criteria, and one presumes had probably got  
5 security, or perhaps a legal mortgage. I don't know.

6 In any event, they were clearly the principal creditor.

7 That explains the reference to them in the previous

8 letter to which I opened to you. Isn't that right?

9 A. Yes, sir.

10 329 Q. And what was being done here was a settlement was being

11 done, obviously between Criteria and Mimeg, but

12 subsidiary to that, arrangements and agreements were

13 being reached between other creditors under which their

14 various debts would be paid, the principal which, of

15 course, was Bank of Ireland. But you compromised your

16 fees from 50 down to 20,000, and accepted that 20,

17 according to this document, it would appear in

18 discharge of the ú50,000 indebtedness. Is that right?

19 A. Yes, sir.

20 330 Q. Well, then, could we leave that until perhaps this

21 afternoon, Sir and we will revisit the matter after

22 lunch, and you can then see if you can assist us in

23 relation to how this indebtedness of ú50,000 arose in

24 the first place.

25 .

26 CHAIRMAN: Half past 2.

27

28 THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

29 .

30 .

1 THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

2 .

3 331 Q. MR. HANRATTY: Mr. Finnegan, are you in a position to

4 tell us the source of the indebtedness of ú60,000?

5 A. Sorry?

6 332 Q. The ú60,000 indebtedness - sorry, the 60,000 - I beg

7 your pardon - that we were discussing before lunch.

8 A. No, sir.

9 333 Q. You have no idea?

10 A. I haven't - sir, I really haven't at the moment.

11 334 Q. You've told us that you were not a partner with Brennan

12 and McGowan in respect of the Herbert Street Plantation

13 property?

14 A. That's what I recollect, sir.

15 335 Q. Yes. Did you have any involvement in it, apart from

16 your involvement, obviously, in the context of the

17 Pembroke Estate selling it to them?

18 A. Well, we would have been working, sir, at the time when

19 the architects would have been liaising with us, sir,

20 on whatever applications were being made, and all of

21 that sort of thing.

22 336 Q. What architects?

23 A. I think it was O'Hanrahan, sir. I think it was.

24 337 Q. And what was your role there?

25 A. Well, agents would - sir, looking at shape, forms and

26 what sort of - if you are trying to put a building on a

27 site, you would look at - an agent, such as ourselves,

28 to see what - on a mix, sir, whatever.

29 338 Q. Sorry? Were you engaged in some capacity by Criteria?

30 A. We were, at the time, yes, sir. That - when the site,

1 when they were going about looking for planning  
2 permission, we would have been, our office would have  
3 been involved with the architects in that, sir.

4 339 Q. In what capacity?

5 A. Well, agents do get involved, like what I said, sir,  
6 that in what - is this the sort of thing we might build  
7 on it. There would be - shape/form configuration, sir.

8 340 Q. In what capacity were you providing auctioneering  
9 services, for example?

10 A. Yes, sir, that would be part of our services, sir.

11 341 Q. What sort of auctioneering services were you providing?

12 A. Well, auctioneering, I suppose - but - agents, like  
13 ourselves, sir, would provide, would liaise with  
14 architects as they are drawing up a scheme for a  
15 development.

16 342 Q. Does that mean that after Criteria bought this property  
17 from Pembroke, you were retained, or your firm was  
18 retained in some capacity by Criteria for some purpose?

19 A. Yes.

20 343 Q. What was the purpose?

21 A. It is normal, sir, that an agent would be involved with  
22 the architects. We do this all the time, sir. I  
23 suppose it's hard - I'll give you a sort of - the very  
24 thing of seeing what you could fit in it. There would  
25 be discussion, like would we get this in? Would we get  
26 the other in? What do you think of these drawings? Or  
27 whatever, whatever. That sort of thing, sir.

28 344 Q. Are you talking about planning?

29 A. Pre-planning, sir.

30 345 Q. Pre-planning?

- 1 A. Pre-planning.
- 2 346 Q. What's that?
- 3 A. When a scheme would be drawn up - being drawn up.
- 4 347 Q. For planning permission?
- 5 A. Yes, sir.
- 6 348 Q. You mean the preparation of an application for
- 7 permission?
- 8 A. Yes, sir.
- 9 349 Q. Were you involved in that?
- 10 A. We would have been involved in the discussions with the
- 11 architects. I think it was O'Hanrahan, sir.
- 12 350 Q. Yes.
- 13 A. And by the way, that's the sort of thing we would do
- 14 quite a bit of, sir.
- 15 351 Q. So you are providing some kind of planning advice?
- 16 A. Well, I suppose that you would be looking at
- 17 redevelopment advice, which would be potentially
- 18 redevelopment.
- 19 352 Q. What was your input?
- 20 A. Well, at the time - the input would be that you would -
- 21 if an architect is - when an architect is instructed on
- 22 a scheme, the first thing they would look at is to see
- 23 what are the probabilities of what you might be able to
- 24 fit in on it.
- 25 353 Q. Presumably, the first thing they would look at is their
- 26 instructions?
- 27 A. Who?
- 28 354 Q. The architects, if they were architects retained by
- 29 some client?
- 30 A. Yes.

1 355 Q. In this case, presumably, Criteria?

2 A. Mm-hmm.

3 356 Q. They would be retained for a purpose?

4 A. Yes, sir.

5 357 Q. And if the purpose was the proposed redevelopment of,

6 essentially a green field site, literally, in this

7 case, they might be asked for their advice as to what

8 kind of development would be possible, or appropriate,

9 having regard to the size and shape, and so on. Or

10 they might already simply be retained on the basis

11 that, "We have decided we are going to build an office

12 block on this site. You design it." What was the

13 position here?

14 A. Can I just talk - the position here would be like on

15 any other site, sir, that an architect would look and

16 say, "Well, now -" you see, in the situation here, he

17 would look at, see what is the possibility of - I'm

18 just thinking about it, sir. That's all a reflection

19 of what it might have been then, would be that they

20 would look at what would the possibility of getting a

21 planning permission for --

22 358 Q. Was Finnegan Menton, or was John Finnegan retained by

23 Criteria to advise it as to what kind of planning

24 permission it should apply for?

25 A. I think it's not just - it's - that's not just the -

26 agents - by the way, this is something that - you would

27 work with the architect.

28 359 Q. Does Finnegan Menton have a file in relation to this?

29 A. No, sir, not that I am aware of. So if we look for --

30 360 Q. You looked for a number of files that you were asked

1 for, but I am not sure that any planning advice file  
2 was ever asked for?

3 A. It's not a planning advice file, sir. Sir, that's not  
4 the case. We would get involved in the - they would  
5 say to us, "Well, if you could keep a building to a  
6 certain span, if you could," like an office building,  
7 either 15 metres, or whether, "it's this, that or the  
8 other." That would be normal input, sir, for an agent.

9 361 Q. Well, on the one extreme, you could have Tom Brennan  
10 wandering in to your office and saying, "Look, what do  
11 you think we should do with this site?" And you might  
12 just give them a few ideas off the top of your head.

13 On the other extreme, you could be intimately involved  
14 with every aspect of the development of the proposal  
15 and the planning application. Which end of that scale  
16 would you say you were on?

17 A. They wouldn't be intimately involved, sir. It would be  
18 - because the architects would do - would be doing it.  
19 It would be instructions as you go along.

20 362 Q. The architects would be designing?

21 A. Yes, sir.

22 363 Q. And preparing drawings?

23 A. Yes.

24 364 Q. They would be doing that on instructions from somebody?

25 A. Yes, sir.

26 365 Q. From whom would they have been receiving their  
27 instructions?

28 A. I would say from Brennan and McGowan, sir.

29 366 Q. Yes. Would they have been receiving their instructions  
30 from you, for example?

1 A. No more than commenting on whatever we would feel about  
2 the scheme. This is something, by the way, we do quite  
3 a bit of.

4 367 Q. I am not concerned about that, Mr. Finnegan. I am  
5 simply trying to ascertain the extent, if any, of your  
6 involvement in relation to this property at the Herbert  
7 Street Plantation. And I gather from the - what you  
8 just said this afternoon, that you had some sort of an  
9 involvement in connection with the development of the  
10 site?

11 A. Yeah.

12 368 Q. And it was of an advisory nature?

13 A. It would be advisory.

14 369 Q. Yes. Well, can you just tell us, what was the nature  
15 of your retainer? What were you retained to do?

16 A. I don't think it would, sir, go as - retainer or  
17 whatever, it would be that - we would sit in on, if  
18 there were discussions regarding, in the initial  
19 stages, of what, as I said, what sort of building.  
20 Now, we wouldn't be designing the building or anything  
21 like that, but an architect would look and say, "What  
22 about that?" And, "What about this?"

23 370 Q. Sit in on discussions between whom?

24 A. With the architect, sir.

25 371 Q. Yes. You would discuss things with the architect?

26 A. That would be the broad thing, sir.

27 372 Q. And what would you discuss with the architect?

28 A. I don't recollect exactly what we discussed there, but  
29 the sort of thing that one would --

30 373 Q. Well, for example, if somebody decided to make a

1 planning application for an office development, who  
2 made that decision?

3 A. I would say that's the - that would be a client  
4 decision, sir.

5 374 Q. And was that on your advice?

6 A. I think that it would - I would say, first of all, that  
7 the advices regarding what one would seek to put on it  
8 in broad principle would come from the architect, sir.

9 375 Q. What was your role, then, and what was your input? Or  
10 did you have any input?

11 A. Well, it would - in looking at - the input would be  
12 that we would look at the sketches that they would -  
13 formulating - initially, sir, what happens, that the  
14 site is surveyed by a surveyor, to make sure they have  
15 got the right boundaries and things on it. Then they  
16 would start working and say, "What would you think of  
17 that?" Sort of thing. "Would that be the sort of  
18 thing," because I can't remember exactly what I did on  
19 this one, because it's a hell of a long time ago, but  
20 it would be general, sir.

21 376 Q. What you did was general?

22 A. Yeah. I would say that --

23 377 Q. Was it an informal sort of a thing?

24 A. Yes, sir.

25 378 Q. Was it on a fee-paying basis or a non-fee paying basis?

26 A. That would be - that would be on a non-feeing paying --

27 379 Q. Yes. But it would, nonetheless, as I understood you,  
28 involve you in going to meetings with the architects,  
29 or was that sort of informal conversations?

30 A. Normally you would be looking at the end of the day -

1       there may have been - I don't know whether - in some  
2       cases it is a fee-paying, or sometimes it's an  
3       accumulation that you would get. If the building were  
4       built, you would be the letting agent, sir, or the  
5       selling agent. Or if it were being sold, you would be  
6       the agent. It's a way of being involved, sir.

7 380 Q.   Yes. And what did your involvement consist of?

8       A.   If I were to reflect on it, probably what we - our job  
9       would be to see that the best product - that if you  
10      were - we would look at the quality of what was being  
11      designed. We would be the guys at the end of the day  
12      that would either have to let it or sell it. And that  
13      we might say that if somebody was doing - the sort of  
14      thing we would do, if somebody had a very wide span or  
15      bad window shapes or something like that, we would say,  
16      "Now, wait a moment. You have to design it to a  
17      particular grid, that it is subdivided, that the  
18      biggest thing in a floor plan is that." And this is  
19      from an agent's point of view, who would come in and  
20      say, "Well, you better - you must have it that it is a  
21      flexible floor." Flexibility is the main thing, and  
22      you could either have it as open plan or it could be  
23      divided into single offices.

24      .  
25      Now, to do that, sir, that it means, then, if you have  
26      to get that, that you have to get - and it would be our  
27      job, we would be putting it to the attention of the  
28      architects, "Look, if you are going to have a room of  
29      150 square feet or something, single offices, that you  
30      go into the grid of the windows." It would be that

1 sort of - not designing it, but we are saying, "Look,  
2 we want to keep this as flexible as possible." That  
3 would be our job.

4 381 Q. Did you have a lot of meetings with people about this?

5 A. Well, I am only just talking about the - this would be  
6 our normal scene, sir, not just here.

7 382 Q. Just confine yourself to one. Did you have a lot of  
8 meetings with people?

9 A. I can't recollect, sir, the number of meetings I had.

10 383 Q. Do you recollect who you had meetings with?

11 A. I am not even sure, actually, sir. I think it was  
12 O'Hanrahans were the architects. I wouldn't remember  
13 how often the meetings were, sir.

14 384 Q. And was there anybody in O'Hanrahans that was dealing  
15 with it?

16 A. I think - I am nearly sure it was O'Hanrahans, sir.

17 385 Q. Was there any particular individual with responsibility  
18 for the project?

19 A. If it were O'Hanrahans, it would have been the senior  
20 partner. It would have been Brian O'Hanrahan.

21 386 Q. Was it him?

22 A. Sir, I am hazy as to actually who the architect is. I  
23 think it was O'Hanrahans.

24 387 Q. Approximately how many meetings do you think you might  
25 have had with whoever it was?

26 A. It's hard to say, sir. Again, it's a long time ago.

27 .

28 CHAIRMAN: Did you get paid for it?

29 A. Sorry?

30 .

1 CHAIRMAN: Did you get paid for it?

2 A. I am not quite sure, sir, but in a lot of the cases we  
3 mightn't get paid, or we might get an interim - in some  
4 cases what we do is get an interim fee.  
5 .

6 CHAIRMAN: On what percentage, what basis?

7 A. Well, if we - in the normal course of events, sir, we  
8 would - I think things changed a bit, actually, since  
9 then as well. You would either say that for the work  
10 just to be done up to planning and receiving planning,  
11 you might look at - and I can't say that I did it here,  
12 sir - a lump sum.  
13 .

14 CHAIRMAN: In this particular case, did you get it, or  
15 did you have to sue for it? Or did you sue for it?

16 A. I don't think we - I don't think we sued for anything,  
17 sir.  
18 .

19 388 Q. MR. HANRATTY: Did you have any meetings with anybody,  
20 except the architect?

21 A. Not that - not that I can recollect. Perhaps I had,  
22 sir, but I don't remember right now.

23 389 Q. Did you have any role in relation to the application  
24 for planning permission?

25 A. In what sort of --

26 390 Q. Any role?

27 A. The only role that one would have in a case like this,  
28 sir, would be to - they might go down the - the  
29 architect might just run down through the plans they  
30 had, sir, prior to a lodgement, and might have - I

1 don't know whether - in some cases, actually, what does  
2 happen, and I can't remember if it happened in this  
3 case, that if there were a meeting with - if there  
4 would have been a meeting with planners, sometimes that  
5 there would be somebody from our office - this is a  
6 normal event that might have gone to a planning  
7 meeting, if there was one. But I can't recollect if  
8 there was here, sir.

9 391 Q. Do you think you might have gone to a meeting with  
10 planners?

11 A. No, I don't recollect. I am just saying, it could -  
12 that's the sort of thing that could happen, sir, but I  
13 don't recollect.

14 392 Q. But then again, it mightn't have happened. Is that  
15 what you are saying?

16 A. Yes, sir.

17 393 Q. But you don't recollect going to any meeting with any  
18 planners about this particular project. Is that right?

19 A. Not that I - not that I can recollect, sir. But our  
20 advice always would be that most architects do - if you  
21 are making a planning application, it would be the  
22 custom of anyone in our place, sir, to advise that the  
23 architects would have a discussion with the planners  
24 prior to making a submission.

25 394 Q. Did you have such discussions with somebody?

26 A. I honestly can't say to you, sir.

27 395 Q. Mr. Finnegan, I think you know very well what I am  
28 asking you.

29 A. What?

30 396 Q. Were you instrumental in preparing the planning

1 application for this development?

2 A. Instrumental in it, sir?

3 397 Q. Yes. You weren't?

4 A. No, I didn't draw it up, sir, or anything like that.

5 398 Q. Do you know what "instrumental" means?

6 A. Yes, that you were in charge of it, sir.

7 399 Q. Yes. Were you?

8 A. No, I wouldn't be in charge of it, sir. The architects

9 would be the --

10 400 Q. I asked you before, on a scale of a completely informal

11 relationship and a completely formal one --

12 A. Right.

13 401 Q. -- informal at zero, the other end of the scale at 10,

14 where would you put yourself?

15 A. I wouldn't say we'd have done an awful lot of - we

16 didn't do any drawing or anything like that, sir. I

17 can't actually remember even how many planning

18 applications were made on this, sir, or whatever. I am

19 a bit hazy on it. Seriously, I am. I can't tell you

20 --

21 402 Q. On a scale of naught to ten, what was the extent of

22 your involvement?

23 A. In - with the architects and --

24 403 Q. In respect of the preparation of the application for

25 planning permission.

26 A. Well, you see, that's a pretty broad question, sir,

27 that - what would we do? We wouldn't have anything to

28 do with the drawing up of the scheme. That would be

29 the architect --

30 404 Q. Mr. Finnegan, we've excluded drawings. We can take it

1 that the architect did the drawings?

2 A. Yes.

3 405 Q. Nobody has ever suggested that you were required to do

4 any drawings. You know what I am talking about.

5 .

6 So leaving out drawings, where would you put yourself,

7 on a scale of naught to ten, as to the extent of your

8 involvement in this planning application?

9 A. Certainly, it would be - from the point of view of

10 making the application it would be the lower end of the

11 scale, sir.

12 406 Q. Yes. Between naught and five?

13 A. It's so hard to work that out, sir. I can't remember

14 exactly what we did. I think - it's hard to relate it

15 to a ratio like that, sir. But we wouldn't have had

16 that much work in it, sir.

17 407 Q. I see. And when the planning application was refused,

18 did you give any advice as to what steps, if any,

19 should be taken?

20 A. Sir, in a case like that, that would be architect or

21 town planner's advice.

22 408 Q. My question was: When the planning permission was

23 refused, did you give any advice as to what steps, if

24 any, should be taken?

25 A. Well, if I were - I don't recollect what we did, but

26 the obvious thing that we would do, if there was a

27 planning application turned down, is to see - while

28 appealing - and on - and if an application --

29 409 Q. Did you advise that an appeal should be taken to An

30 Bord Pleanala?

1 A. I can't remember, sir, but I think that what one would  
2 - what one would look at is this - and I can't  
3 recollect how bad the refusal was in this, sir, but you  
4 would look at --

5 410 Q. Well, it was a refusal.

6 A. Yeah, but I think --

7 411 Q. That's bad. From a developer's point of view that's  
8 bad?

9 A. Yes, but they give, usually, the reasons for it.

10 412 Q. Yes.

11 A. And in giving the reasons, that in general discussion  
12 somebody would look at it and say, "Well, is there  
13 anything that you would deem would be unreasonable  
14 there in this? And would there be a chance of getting  
15 it on appeal?" And that would mainly come from  
16 architects.

17 .

18 Now, if it's said, by the way, sir, that - like, it was  
19 too close to the - the reason it was turned down, that  
20 you were overshadowing, or you were too close to the  
21 boundary of somebody, blah, blah, blah --

22 413 Q. We know that an appeal was taken?

23 A. Yes, sir.

24 414 Q. Were you involved in the preparation of the appeal?

25 A. No, I wouldn't be, sir.

26 415 Q. Were you?

27 A. No, sir.

28 416 Q. Did you give any advice in connection with the appeal?

29 A. There may have been some discussions with the  
30 architects, but I don't recollect - architects, in the

1 normal way, would do that themselves.

2 417 Q. When the appeal was taken, the reasons given for the

3 Local Authority to refuse permission had to be

4 addressed, isn't that so?

5 A. Yes.

6 418 Q. Well, did you address them?

7 A. I don't remember any detail like that, sir.

8 419 Q. Well, you were giving some level of advice, albeit on

9 the lower end of the scale, as I understand your

10 evidence, in connection with the planning application.

11 So I take it, you must have been involved in addressing

12 the reasons given by the Local Authority for their

13 refusal of the planning application?

14 A. Sir, I don't even know now what the refusal grounds

15 were. But it wouldn't be unusual for the architect to

16 have a chat and discuss about the things, or he may

17 have consulted - and I don't recollect at the time. It

18 may have been that it was a town planner. Very often a

19 town planner is brought on board.

20 420 Q. Was there a town planner --

21 A. I can't remember, sir.

22 421 Q. Was there a town planner involved in the planning

23 application to the Local Authority?

24 A. Not that I recollect, but that wouldn't mean that there

25 wasn't, sir. That very often, if there is - prior to

26 making an application, an architect would consult with

27 a town planner.

28 422 Q. What was the essential nature of the development in

29 respect of which permission was sought?

30 A. I really don't remember too much detail about it, sir.

1 423 Q. I am not asking for detail. The broad outline.

2 A. I think it was office and residential, sir.

3 424 Q. Yes. In what mix?

4 A. I can't remember, sir.

5 425 Q. Well, in what approximate mix?

6 A. Well, this is only - it's only - you see, when you

7 start guessing about what --

8 426 Q. You are an expert in this field, Mr. Finnegan. As you

9 know - as I understand the position, the mix, and the

10 proportion of mix of residential and office is

11 important in a planning context. Is that right?

12 A. Yes, sir.

13 427 Q. You were advising in some capacity, to some degree, in

14 connection with this planning application. So what was

15 the mix that was decided upon in respect of which

16 permission was sought?

17 A. Well, now, in this case, sir - in the normal course of

18 events I take what you say, that in the normal way you

19 have - the basis for making any planning application,

20 first of all, would be on the basis of the zoning of

21 the site.

22 428 Q. Yes. So what was the zoning?

23 A. Well, this would be the problem here, sir, that as far

24 as I recollect, that the site here was zoned as open

25 space.

26 429 Q. Does that not mean that you cannot get planning

27 permission at all?

28 A. And this is why I say, sir, that - this is why I think,

29 sir - open space plantation - and that is what the

30 estate had. And there had been an awful lot of

1 applications made previously, and had been turned down.

2 .

3 Now, it is - by the way, this site is on the left-hand  
4 side going into Herbert Street, which was very narrow  
5 in some cases, reasonable frontage, but very narrow.

6 .

7 Now, that was - so, in fact, I think here, in this case  
8 - I don't think the zoning changed in this, sir. I  
9 don't think it did. And I think that it would have  
10 been the - I can't remember the wording of what the  
11 zoning in those days was, sir, but if it was - it might  
12 have been "amenity" or something like that. But you  
13 can take it, sir, that in the first instance, when in  
14 Pembroke we looked at it very, very, very hard and had  
15 a good go at it. And, in fact, when - we made an  
16 application for the car park. It was the only thing we  
17 could think of at the time that - would we get  
18 anything? Because at that time we were getting a lot  
19 of flack about an open site, and that derelict site and  
20 all of that sort of thing coming in.

21 .

22 So we made an application, but that didn't come - by  
23 the way, the permission did not come easily either. It  
24 was, as I mentioned, I think it was this morning, sir,  
25 that it was on foot of a - by the threat of a purchase  
26 notice or something like that, and we had leading  
27 counsel to advise on that. And we eventually got what  
28 I told you, sir, was a surface car park.

29 .

30 And that, I think, might have moved it a little bit,

- 1 sir, out of an open space category. But I don't think  
2 - so back to answer your question, sir, about in the  
3 normal course of events, that in - in an area like  
4 this, which is surrounded by Georgian houses, and  
5 around there, that in those areas it would usually be a  
6 parameter of how much residential and how much office.  
7 But I don't know if the parameters were there in this  
8 one, sir.
- 9 430 Q. You appear to have a very hazy recollection altogether  
10 about this whole application?
- 11 A. I don't know, sir. Well, it's a hell of a long time  
12 ago. I had - you know, we've been through a lot of  
13 applications, sir. And I wouldn't --
- 14 431 Q. But you were familiar with this particular site because  
15 it was owned by the Pembroke Estate?
- 16 A. Yes, sir.
- 17 432 Q. And I presume you had been involved in the previous  
18 applications by the Pembroke Estate for planning  
19 permission?
- 20 A. Yes, sir.
- 21 433 Q. So it's a site in which - with which you are familiar  
22 in two capacities; one, in your capacity as a director  
23 of the Pembroke Estate, and secondly, in your capacity  
24 as an adviser to Brennan and McGowan's company --
- 25 A. Adviser might be - well, the - yes, sir.
- 26 434 Q. Were you not an adviser, do you think?
- 27 A. Well --
- 28 435 Q. Do you think that's putting it too high?
- 29 A. Yeah. I was there - right, okay. We can take it as we  
30 would be part of a team, sir.

1 436 Q. Well, were you an adviser? I mean, if you think

2 "adviser" is too formal, say so?

3 A. It might be a bit, but take it, for the purpose of this

4 discussion, sir, that --

5 437 Q. You'll go along with it?

6 A. Yes, sir.

7 438 Q. You see, the problem with all of this, Mr. Finnegan, is

8 that the information which the Tribunal has from the

9 architect who was involved, and it was Mr. O'Hanrahan,

10 is that you were a central and pivotal figure in this

11 application, that all of his instructions came from

12 you, and that he had little or no dealings at all with

13 the client, Brennan and McGowan.

14 .

15 Does that come as a surprise to you?

16 A. That he had not - that he had no discussions with them

17 at all?

18 439 Q. No, that his instructions came from you. That his

19 discussions were with you. That you played a 100

20 percent active part in this matter. That his dealings

21 were with you. That the decisions were coming from

22 you. And that his meetings were with you. That you

23 attended meetings with planners in connection with it,

24 and so on?

25 A. Well, it seems I played a larger role than I remembered

26 I was playing, sir, because I don't recollect.

27 440 Q. It slipped your mind, did it?

28 A. It's not a question of slipping my mind, sir.

29 441 Q. Mr. Finnegan, you were more familiar with this site

30 than anybody, having been involved in at least a number

1 of applications previously in respect of the same site  
2 which were unsuccessful, ultimately which involved a  
3 threat under a public notice, which was successful, for  
4 a car park. And then after the sale to Brennan and  
5 McGowan, with whom, at the time, as it turns out, you  
6 were involved in other commercial dealings, you were  
7 engaged as an adviser.

8 .  
9 And I've been asking you, since we started after lunch,  
10 to try and ascertain from you the extent of your  
11 involvement. And what I've been getting from you is -  
12 on a scale of one to ten, certainly nearer the lower  
13 end of the scale. The word "adviser" you would think  
14 would be too high, but you would go along with it. And  
15 I am putting to you, that that is completely and  
16 utterly at variance with what we've been told by the  
17 architect who was involved in this application.

18 .  
19 MR. HUSSEY: I'm sorry, sir, just before this  
20 continues. Are we going to see any narrative or any  
21 evidence from this architect? Or is this going to be a  
22 feature of the examination of Mr. Finnegan, that he is  
23 going to be taken by surprise?

24 .  
25 I haven't seen any narrative from Mr. O'Hanrahan, or  
26 any evidence of - or any documents, indeed, that  
27 Mr. O'Hanrahan has given to the Tribunal.

28 .  
29 I am just wondering, where is it coming from? I didn't  
30 think it was a feature of the Tribunal's method, was

1 this - I thought we were all to be informed of what, at  
2 least the nature of the questioning that was going to  
3 be embarked upon. I haven't seen any narrative or any  
4 document from Mr. O'Hanrahan.

5 .  
6 We know that Mr. Finnegan has some recollection of  
7 these events. It's an awful long time ago. He may -  
8 whether he or Mr. O'Hanrahan is hazy about the  
9 recollection, I have no way of testing or no way of  
10 assessing until I have some information about this. I  
11 don't have any information about what Mr. - what  
12 documents Mr. O'Hanrahan has, or indeed what his  
13 statement is.

14 .  
15 As I said, I didn't think that was any part of the  
16 Tribunal's function, to sort of lay in wait without  
17 having some warning of what evidence was going to be  
18 coming through.

19 .  
20 MR. HANRATTY: There is no question of laying in wait,  
21 and I have no recollection of Mr. O'Hanrahan's  
22 recollection being hazy. He is clear about his  
23 recollection.

24 .  
25 Mr. Hussey, if you wouldn't mind, please - Mr. Hussey  
26 is entirely correct in saying that no prior notice has  
27 been given to him about any evidence from  
28 Mr. O'Hanrahan, because we had no intention of calling  
29 Mr. O'Hanrahan. I did not anticipate that, when I  
30 asked Mr. Finnegan about these matters, he would

1       profess not to recall virtually anything about the  
2       matters about which I am asking. Now that he has given  
3       testimony on the matter, it is quite clear that there  
4       is a significant divergence between, on the one hand,  
5       what he is saying as to the extent of his involvement,  
6       and what we've been told. It may now be necessary to  
7       call Mr. O'Hanrahan. And if it is, we will obtain a  
8       Statement of Evidence from him, and we will circulate  
9       it and we will call him.

10       .

11       But, perhaps naively, I assumed that when I asked  
12       Mr. Finnegan about this, that it would - it broadly  
13       coincided with what we'd already been told, but as it  
14       turns out, we haven't --

15       .

16       MR. HUSSEY: Sir, this is - again, I am now being told  
17       that there isn't a statement from Mr. O'Hanrahan, that  
18       you are to get a narrative statement. How can that be,  
19       when Mr. Hanratty says that he knows what  
20       Mr. O'Hanrahan is going to say? And Mr. O'Hanrahan has  
21       - does - there is nothing hazy about Mr. O'Hanrahan's  
22       recollection.

23       .

24       Until I test what Mr. O'Hanrahan has to say, until I  
25       cross-examine Mr. O'Hanrahan, nobody can make that  
26       decision, except you, sir, whether - whose recollection  
27       is hazy and whose recollection is not.

28       .

29       It's not up to Mr. Hanratty to say, in open Tribunal,  
30       that Mr. O'Hanrahan's recollection is not hazy. I

1 haven't seen what Mr. O'Hanrahan has to say about this.

2 Obviously, the Tribunal hasn't even got a narrative  
3 from Mr. O'Hanrahan about this.

4 .

5 MR. HANRATTY: That's correct. We have a transcript of  
6 an interview with Mr. O'Hanrahan. And I can assure  
7 Mr. Hussey that he is not hazy in his recollection.

8 .

9 MR. HUSSEY: I am sorry, that is not something for  
10 Mr. Hanratty to decide, that's a matter for you to  
11 decide, sir, when Mr. O'Hanrahan has been tested.

12 .

13 I can't believe this.

14 .

15 MR. HANRATTY: Sorry. All I can say is I asked the  
16 witness a number of questions. It evolved, in the  
17 course of the questioning, that his recollection of  
18 these events appears to be different to an account  
19 which has been given to us.

20 .

21 We haven't yet circulated a statement. We will.

22 Mr. Hussey will have every opportunity to test

23 Mr. O'Hanrahan's evidence, if we call his evidence.

24 And if he wishes, we will. There is no problem about  
25 that.

26 .

27 All I am doing at this stage, and I think it  
28 appropriate and proper that I should do so, is to draw  
29 his attention to the fact that we have been given a  
30 different account, which is what I have done.

1 .

2 MR. HUSSEY: The objection I am making --

3 .

4 MR. HANRATTY: The witness, apparently, wants to say  
5 something?

6 A. I'll say something for a moment, sir. Sir, when I was  
7 speaking to you, there, I was speaking to you on the  
8 basis that I - because the way the questioning was  
9 coming to me, that you were completely ignorant of what  
10 - excuse my language - of what goes on in a planning  
11 application, sir.

12 .

13 Now - because when you were talking to me, what input  
14 would we have had regarding - and that's where I was  
15 coming to on percentage-wise. So it comes round about  
16 that the building - like, in the whole thing, what  
17 would we have done, like the architect - we would have  
18 discussions, like I talked to you about, Sir, and  
19 that's the sort of thing that - when I said to you that  
20 we would look in detail about specific things with an  
21 architect, that may be the hub of it, as to whether we  
22 felt it was a good type of building, regardless of  
23 whether you are going to get planning permission or  
24 not, but to get the best product that we could.

25 .

26 Now, when I tried to explain to you a little bit there  
27 about - maybe you didn't quite understand it. The sort  
28 of thing that we are looking at is the detail which I  
29 was going into there. There may have been a  
30 misunderstanding between the two of us. That could

1 take some time, all right, looking at that sort of  
2 thing.

3 .

4 We wouldn't, and don't design, but I thought you might  
5 have been thinking that, you know, from that point of  
6 view, what would our input be. And that's - sorry?

7 .

8 CHAIRMAN: No, I just coughed.

9 A. That that's why we - we would look at all of that, sir,  
10 and look and say whether - "Would you get another story  
11 here? Or what would you do? Or" - we would have those  
12 sort of discussions, sir.

13 .

14 But when it comes down to it, architects are  
15 architects, and they are the people who are employed to  
16 do the major job. So when you were trying - when you  
17 were asking me about percentages, sir, certainly  
18 whatever we were doing was only a minor amount compared  
19 to what the input of an architect would be.

20 .

21 So that's what I was talking around, sir, and I am  
22 sorry if I misled you in any way, but it was not  
23 intentional. We would have that sort of thing.

24 .

25 By the way, sometimes architects don't like it, either.

26 So that's the - but that's the sort of thing we would  
27 do.

28 .

29 So we would have had discussions, but we wouldn't have  
30 given any drawings of any kind or - and what you said

1 to me there, sir, about - I mentioned to you that we  
2 always - advice of - that people would go and see the  
3 planners. I didn't recollect going to see the  
4 planners, but I have been involved in quite a few of  
5 these, sir, so, perhaps, if we did - but I didn't  
6 forget it, like. That would be our main - but that  
7 would be our role, sir, what I have explained to you.

8 .

9 CHAIRMAN: We might take a break for about five  
10 minutes.

11 .

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

14 .

15 MR. HUSSEY: I am sorry, just before you resume.

16 .

17 I wonder, might I have, I suppose - a ruling, I  
18 suppose, is what I am asking for, in respect of the  
19 O'Hanrahan statement.

20 .

21 I understand from Mr. Hanratty that I will not get to  
22 see the products of whatever, the transcript of the  
23 interview that was had with Mr. O'Hanrahan. And if the  
24 Tribunal is going to proceed and call Mr. O'Hanrahan, I  
25 would like to see some sort of statement from  
26 Mr. O'Hanrahan, and whatever sort of documents he is  
27 going to produce before --

28 .

29 CHAIRMAN: Just a moment, please. I just want to run  
30 the transcript back. I want to make certain that what

1 I say to you is correct.

2 .

3 MR. HUSSEY: Of course.

4 .

5 MR. HANRATTY: I could tell you, Sir, the factual  
6 situation as I know it.

7 .

8 As I understand it, it's likely that he has not yet  
9 been asked to provide a Statement of Evidence, because  
10 no decision was made to call any evidence from him.

11 It may be that if there is an issue as between him and  
12 Mr. Finnegan on any relevant matter, that you would  
13 decide to call him to give evidence, or, alternatively,  
14 if Mr. Hussey requires that he be called to give  
15 evidence, then he would be asked for a statement, and  
16 that statement would be given to Mr. Hussey.

17 .

18 I don't know, yet, whether there is an issue or not,  
19 because in his last answer the witness said that there  
20 was a misunderstanding. And I was about to explore  
21 that.

22 .

23 CHAIRMAN: That is actually why I turned back the  
24 transcript. That's why I turned it back. I want to  
25 make certain - now, I want to say two things --

26 .

27 MR. HANRATTY: Certainly there is no problem of getting  
28 a statement, as I understand the position, if he is  
29 required to provide one.

30 .

1 CHAIRMAN: There is two things I want to say.

2 .

3 It has been the practice from the outset of this  
4 Tribunal, that where a witness makes - attends for  
5 interview or discussion with the Tribunal, it is on the  
6 basis that what he says to us is confidential, and we  
7 do not publish that content.

8 .

9 If, at a later stage, it becomes manifest that it is  
10 desirable that the witness should give evidence, we ask  
11 him to provide a narrative statement. And it is that  
12 narrative statement that is circulated. Whether that  
13 narrative statement accords with everything in the  
14 interview, is a matter for the witness, because he is  
15 the man who is having to swear to it. That's the  
16 reason why it is done.

17 .

18 My impression at the moment, and I am quite frank about  
19 this, that Mr. Finnegan may have been under a  
20 misunderstanding, misapprehension, as to the import of  
21 the questions that were being put to him, and he has,  
22 apparently, in the last ten sentences before we rose,  
23 given me the impression that he misunderstood and  
24 wishes now to correct what he has said.

25 .

26 If that's his position, I will always facilitate a  
27 witness if he has made a mistake. It's a matter for  
28 him, if he wants to resile from anything he has said,  
29 and the terms upon which he wishes to resile, if he  
30 makes those available to us, on oath, then he must be

1 heard.

2 .

3 MR. HUSSEY: Yes.

4 .

5 CHAIRMAN: That's my situation at the moment. And I am

6 certainly prepared to go on with the hearing as it is

7 at the moment without making any ruling as to whether

8 anybody else should be called.

9 .

10 If, at the end of the day, you wish Mr. O'Hanrahan to

11 be called, that's an application you will make. I will

12 facilitate you in every way. I will obtain - I will

13 ask Mr. O'Hanrahan for a Statement of Evidence. If

14 necessary, serve a subpoena, and I will ensure his

15 attendance, but it will be an attendance on the basis

16 that he is giving evidence in accordance with a

17 prepared statement by him, over which he knows that he

18 will have to stand over on oath.

19 .

20 MR. HUSSEY: Yes. And that's the point I was making,

21 Sir, that I had asked Mr. Hanratty if he is going to

22 refer - continue to refer to Mr. O'Hanrahan's private

23 confidential statement, that he might refrain from

24 using things like, "Well, Mr. O'Hanrahan doesn't have

25 any problem with a hazy recollection."

26 .

27 That's quite prejudicial. And without it being tested,

28 Sir, I don't think it's fair to introduce it in that

29 sort of way --

30 .

1 CHAIRMAN: I understand what you are saying. I have  
2 now given you the option.

3 .

4 The situation now is that your witness has come at  
5 variance, put it that way, no higher or no lower, and I  
6 am making no decisions as to who was - who is correct.

7 But he is presently at variance. If he wishes to sort  
8 out his position, he is welcome to do so in the next  
9 twenty minutes. If not, and if you want to - at that  
10 point in time, if you want Mr. O'Hanrahan called, then  
11 you can make that application.

12 .

13 I also reserve the right to - in the light of  
14 everything, and what you decide, to make my own  
15 decision as to whether it is fair and appropriate in  
16 the public interest that Mr. O'Hanrahan should be  
17 called.

18 .

19 MR. HUSSEY: Of course. Of course.

20 .

21 CHAIRMAN: Very good. Carry on.

22 .

23 442 Q. MR. HANRATTY: Mr. Finnegan, I understood your last  
24 answer to indicate at some point that you felt there  
25 may have been a misunderstanding between us?

26 A. Of input, yes.

27 443 Q. Could I ask you, just to elaborate on that?

28 A. I think, sir - I wasn't quite sure, you know, the way  
29 you were questioning me, sir, were you aware of  
30 anything that goes on --

1 444 Q. Would you like to roll it back, as it were, to the  
2 beginning?

3 .

4 I've put to you the essence of my understanding of  
5 Mr. O'Hanrahan's position. Do you disagree with it in  
6 any fundamental way?

7 A. First of all, I might say that I would have had a lot  
8 of - we are property guys. This is a role I play all  
9 the time. I am looking at - I would say we were quite  
10 skillful in looking at what shape - that's why - we  
11 were just at, perhaps, cross-purposes here, because  
12 what we look at, by the way, is that we would look at  
13 the design of a building, in that whilst - and how  
14 commercial it would be, in that you could have a  
15 flowery looking place, but it wouldn't stand up to the  
16 criteria.

17 .

18 I don't want to bore you, sir, but I tell you that  
19 there are some fundamental facts about designing of,  
20 say, an office building. I am not a designer, but the  
21 things we have to look at, that if - when you are  
22 building, at the end of the day you have to look at, if  
23 you have - there are definitions about what is a  
24 lettable area and what is not a lettable area. And  
25 there is a code for that, sir.

26 .

27 Now, architects wouldn't necessarily always be drawing  
28 - developing to those codes. But what - I would put it  
29 like this, to give you a bit of a handle of what I am  
30 looking at, sir: If you are building a building of

1 10,000 square feet, and you have a circulation area  
2 ranging from, maybe, 10 to 20,000 square feet - I'll  
3 define "circulation area", halls, stairs, foyers, loos  
4 and all that sort of thing, sir. And when you are  
5 letting, you can't charge for those.  
6 .  
7 Now, when we are in - it would be automatic for us to  
8 say, "Look, we think that you should be" - now, not  
9 designing exactly what the colour of the building or  
10 anything like that would be. "You should be adhering  
11 to this", or maybe you wouldn't have a corner off here,  
12 and that wouldn't come in. As far as we are concerned,  
13 we wouldn't be able to utilise that if we were letting.  
14 .  
15 So what we would look at is the product at the end of  
16 the day. And that will be something which we'd be  
17 known for, sir, that we would - it's like a suit  
18 designer, clothes designer. It's the quality. You  
19 could have something - we would be looking to try and  
20 get the best quality from our point of view - from a  
21 commercial point of view. It wouldn't - by the way,  
22 this is something I would like to say: That sort of  
23 building wouldn't cost any more too, sir. It's just  
24 that - it's the way it might be laid out. And that's  
25 where we would have a big input and - and I thought I  
26 was going on a little bit, sir, when I said to you that  
27 - and I thought perhaps you weren't just absorbing that  
28 shape, form and configuration, which I - you see, I do  
29 this every day, and so sometimes you are expecting that  
30 the people who are with you as you talk, understand, so

1 excuse me if I didn't - I don't design buildings,  
2 though. But naturally there is a major task for an  
3 architect. He has to - in fact, he has to do the big  
4 job. And, in fact, it's the architect, engineer and  
5 Qs who are the team.

6 .  
7 Now, our role would be to try and keep realism into  
8 something. I am not saying there wouldn't be in this  
9 one, but just to keep the feet on the ground and see  
10 that the sort of thing that you are going to apply for  
11 would, if you got planning permission for it, would be  
12 as good as you could get on the site.

13 .  
14 Now, that's more our sort of role. And I would do that  
15 in many, many cases, sir. And indeed, with the like of  
16 O'Hanrahan, Brian O'Hanrahan, that we would have played  
17 that role on many - on many developments in town. But  
18 I wasn't quite sure - actually, I wasn't quite sure,  
19 because time passed, whether it was him or not on that  
20 one. But Mr. O'Hanrahan's office, we would have had a  
21 lot of dealings with them.

22 445 Q. Do I understand your answer correctly to mean that you  
23 are describing the nature of your involvement, which  
24 is, essentially, different than the nature of the  
25 architect's involvement?

26 A. Yes, sir --

27 446 Q. Is that the point, essentially, that you were making in  
28 that answer?

29 A. Yeah. The architect - an architect is - he is the boss  
30 on the job.

1 447 Q. Yes. But the question that I had put to you was

2 addressing the extent of your involvement.

3 A. We had nothing to do - you see, it's a major - you

4 know, there is major work to be done on the scheme.

5 You are asking me the percentage of what we went in on.

6 That's what I am saying, on the overall context of

7 preparing a building for planning, we'd have input, but

8 we wouldn't have done any of the actual hard work, slog

9 work in it at all, sir.

10 448 Q. Well, could we just roll it back a little bit?

11 A. Yes.

12 449 Q. In relation to what I put to you about Mr. O'Hanrahan's

13 recollection, about making full allowance for the fact

14 that your input would be of an entirely different

15 nature than his. Is there anything that I've related

16 to you as my understanding of what he would say that

17 you would quibble with?

18 A. I think that - we would be authoritative of what we

19 would say, from the point of view of, we would know

20 what we --

21 450 Q. About giving instructions, for example?

22 A. You see, this is where - giving instructions. We would

23 be reasonably authoritative in what we would say, and

24 that would be deemed that - you know, we would stand

25 our ground on whatever we felt was the right thing to

26 do.

27 451 Q. Yes.

28 A. So we wouldn't be - we'd stand on our right and say,

29 "This is what we feel."

30 452 Q. About the fact that you were the person he was dealing

1 with rather than Brennan and McGowan, most of the time,  
2 certainly?

3 A. Well, this can be a mixture of - we would be thrown in  
4 quite a bit, and interfacing with design teams. It  
5 would be part of what we would do. In fact, we would  
6 be involved in some of the biggest sort of schemes that  
7 would be around, and that would be doing the role that  
8 I am - sorry - explaining to you, that is what we would  
9 do. So, perhaps that with - and I would say that if  
10 the talents - O'Hanrahans would be very much aware of  
11 the sort of input we would give to any building.  
12 But that wouldn't necessarily - to try and describe it  
13 to you in a short - when you asked me, sir, what would  
14 it be, it's a hard - it's hard to give it to you  
15 blow-by-blow, but I think - I tried to give you a kind  
16 of thing that we would approach to it.

17 .

18 But normally, as I say, what we would be looking at is,  
19 that we would look to an underlying zoning on a site.

20 453 Q. Yes.

21 A. Which would give you a bit of an idea of what ratios  
22 you might be going for.

23 454 Q. Does all of that mean, essentially, that you are,  
24 broadly speaking, in agreement with what I related to  
25 you about Mr. O'Hanrahan, but that your involvement is  
26 of a different nature?

27 A. I think so - I think that O'Hanrahan's office would -  
28 by the way, it's the first time we'd been doing quite a  
29 bit. But I am not saying that architects always like  
30 our input, because they are the designers of the

1 building, but we would - we would always be laying down  
2 the sort of criteria that I've talked to you about  
3 there, that if it's not a good shape, form,  
4 configuration of the building, even if you get planning  
5 permission, it might be unlettable.

6 .  
7 So whatever - after spending the money designing, it  
8 must be something that would be good for the market at  
9 the end of the day.

10 455 Q. Well, do I take it from all of that, that you did, in  
11 fact, then, have a substantial input in the planning  
12 application, albeit of the kind which you have been  
13 describing?

14 A. Well, that - yes, but I didn't - I don't know, sir, if  
15 you understood? We don't get involved - we are not in  
16 the architects' --

17 456 Q. I am absolutely clear about that, Mr. Finnegan. Don't  
18 worry about that, I am absolutely clear that you didn't  
19 sit down at your desk and start doing drawings or  
20 anything like that. Mr. O'Hanrahan, in his capacity as  
21 the architect, did the drawings. Apart from that, do I  
22 take it that you are saying that you did have a  
23 substantial input, albeit of the kind that you've been  
24 telling us about over the last half hour or so?

25 A. Sorry for taking too long with you, sir. By the way -  
26 and this is something which we'd be known to do quite a  
27 bit of --

28 457 Q. Of course. But is that the position?

29 A. Yeah, but sometimes when you are doing what you do,  
30 sometimes - I'll put it this way, sir: When you know

1 what you are doing, it comes easily.

2 458 Q. But is that the position?

3 A. Yes, sir.

4 459 Q. That you did have a substantial input, albeit of the

5 kind which you have been describing, which did not

6 include any element of drafting or drawing?

7 A. What I wanted just to say to you, sir, there, was when

8 you are doing the sort of thing that we are doing, it

9 mightn't feel to us - we would be doing what our real

10 job is, but whether - how that would be taken by

11 another person is another day's work. Do you know

12 where I am coming from, sir?

13 .

14 CHAIRMAN: Is what you are saying in reality, that

15 Mr. O'Hanrahan would be lying gracefully in elegance

16 while you were just putting into that the reality of

17 commercial necessity to make money in the building?

18 A. Yes, indeed. And - yes, we would have - indeed. And

19 we would have the sort of sayings, like, "Guys, you

20 want to watch the external floor, what you are

21 building, what it costs." We would be talking to them.

22 "Is this going to be an expensive building to build."

23 That's the sort of thing that would just come out

24 automatically from us, sir.

25 .

26 So I think you summed it up, sir. That's what we would

27 be looking at, the commercial end of it.

28 .

29 460 Q. MR. HANRATTY: Would it be true to say, that to the

30 extent that he required instructions or to consult with

1 anybody about it, by and large the person that he  
2 consulted with was you, as opposed to the clients  
3 themselves?

4 A. I think that in our role we'd be reasonably  
5 authoritative in what we would say, sir. So it  
6 wouldn't mean - if I am advising professionals -

7 461 Q. It's not suggested, for example, that you would be  
8 doing anything contrary to the interests of your mutual  
9 clients, but, essentially, simply on the simple  
10 practical level of when they needed to get  
11 instructions, or needed to discuss an aspect, or to get  
12 a decision, that it was to you that they turned, rather  
13 than Messrs. Brennan and McGowan themselves?

14 A. Well, just to - that could be, sir. But to tell you,  
15 that the timespan from getting involved, getting some  
16 shape, form, getting something on a site, and that's  
17 what they would - they are instructed. They would come  
18 back with preliminary stuff, and we would vet that very  
19 quickly, stuff --

20 462 Q. Sorry?

21 A. Sorry. We would vet that. That would be our --

22 463 Q. If they needed a meeting with the planning staff and  
23 the Local Authority, would it be that you would have  
24 gone with them rather than Brennan and McGowan?

25 A. Well, I think that we would be up and down to - we  
26 would be up and down to Planning Departments --

27 464 Q. I am talking about specific meetings about this  
28 particular project?

29 A. Well, I think you can take it that the - in most - I'd  
30 say that the meetings would be normally called by the

1 architect, in some cases maybe called by us, but mainly  
2 by the architect.

3 465 Q. Insofar as such meetings took place, would it have been  
4 you that attended with the architects and the planners,  
5 as opposed to Brennan and McGowan?

6 A. That would be in the normal function. If we could get  
7 there, sir, we would like to be there.

8 466 Q. Yes. Now, can I just move on to this, or shall I say,  
9 move back to this question of this ú50,000.

10 .

11 There appears to have been an indebtedness. You are  
12 not in a position to assist the Tribunal as to the  
13 origin or source of that indebtedness. But can I just  
14 put to you what Mr. McGowan said about it. He was  
15 being asked about the Herbert Street Plantation by  
16 Ms. Dillon, and at question 261 on Day 301, the  
17 question was:

18 .

19 "Question: Did Mr. Finnegan put up any money for the  
20 purchase of the Herbert Street Plantation?

21 Answer: I don't think so, but I can't be 100 percent  
22 sure.

23 Question: So why is he getting ú50,000?

24 Answer: Because it was the same arrangement as we had  
25 with our other property transactions, that he was to  
26 get a third of the profits, because there would have  
27 been a profit, and there should have been a profit on  
28 the site. That is how, obviously, we calculated it at  
29 ú50,000.

30 Question: If the sale price was ú261,000?

1 Answer: Yes, the purchase price might have been more  
2 than ú40,000. I can't - but that's what I thought it  
3 was.

4 Question: If the sale price was ú260,000?

5 Answer: Correct.

6 Question: And if this is representative of  
7 Mr. Finnegan's one-third profit, then the profit factor  
8 on the transaction was ú150,000?

9 Answer: That's correct.

10 Question: Okay. So is it that there was ú150,000  
11 profit on the Herbert Street Plantation sale?

12 Answer: Well, that is what it would appear."

13 .

14 And then it goes on to deal with an undertaking to the  
15 bank.

16 .

17 I seem to hear answers coming all the time and comments  
18 from behind me, Sir. It's rather disquieting when you  
19 are trying to examine a witness, particularly when the  
20 comments appear to be in the form of an answer to the  
21 questions that are being put, and so on.

22 .

23 But what Mr. McGowan appears to be saying here is that  
24 the reason that you were owed ú50,000 is because you  
25 were entitled to it as part of a distribution of a  
26 profit on the Herbert Street Plantation, or on the sale  
27 of the Herbert Street Plantation.

28 .

29 Now, I put to you a particular exchange, and what - but  
30 I haven't read the transcript in detail in the recent

1 past. I understand that he said that, or things to  
2 that effect, elsewhere, on at least one other occasion,  
3 possibly more. And the gist of what he is saying, in  
4 each occasion, is encapsulated in that passage. That  
5 the reason that you were owed ú50,000 is because you  
6 were entitled to it by way of a distribution. And it  
7 was then that, as you can see from that passage, put to  
8 him, "Well if that is the case, then it would follow  
9 that each of you must be entitled to ú50,000."

10 .

11 Then he goes on and says, "Well, there is a profit of  
12 ú50,000."

13 .

14 But, in any event, I am just putting that to you and I  
15 invite your comment on that.

16 A. Sir, that was not my understanding of the situation, so  
17 that's what I have to say to you, sir.

18 467 Q. Well, were you a partner in any shape or form with  
19 them, and I use "partner" in the most general sense,  
20 again, in the case of this Herbert Street Plantation  
21 property?

22 A. Sir, there was - as far as I was aware, that there was  
23 not any partnership there, sir.

24 468 Q. Well, were you entitled to the payment of any money in  
25 connection with it in any context?

26 A. I didn't think so, sir.

27 469 Q. There is another exchange at question - well, perhaps  
28 I'll start at question 208. It says:

29 .

30 "Question: ú261,000?"

- 1 Answer: Was it 261?
- 2 Question: I am asking.
- 3 Answer: I didn't think it was as much as that, but it  
4 may very well have been.
- 5 Question: And how were the proceeds divided?
- 6 Answer: They were, I think there was quite a borrowing  
7 at that time, and I am not sure that there was that  
8 much left to divide up, because there was quite an  
9 amount of borrowings related to that particular  
10 property.
- 11 Question: With what bank?
- 12 Answer: It could have been the - I think it was the  
13 Chase Bank. And all I can tell you is that the  
14 borrowings - I can't tell you exactly what the  
15 borrowings were, but I do know that they were fairly  
16 substantial.
- 17 Question: But would the borrowings have been with the  
18 Bank of Ireland, Rotunda branch?
- 19 Answer: You are absolutely right. That is exactly  
20 where they were.
- 21 Question: Not with the Chase Bank?
- 22 Answer: Not with the Chase Bank, you are right.
- 23 Question: Was there an undertaking with the Bank of  
24 Ireland at the Rotunda branch, to lodge the net  
25 proceeds of sale?
- 26 Answer: That's correct, there was.
- 27 Question: And was the agreement in connection with the  
28 Herbert Street Plantation, was this again from the  
29 start a property that was owned jointly between  
30 yourself, Mr. Brennan and Mr. Finnegan?

1 Answer: Well, that was the understanding, yes.

2 Question: That it was owned equally between the three

3 of you?"

4 .

5 I don't have the answer to that. That's page 79. If I

6 could just have 80. And the answer to that is?

7 "Answer: Correct."

8 .

9 And the next question is:

10 .

11 "Question: Do you know whether Mr. Finnegan invested

12 any money in that property, in the purchase of it?

13 Answer: I can't be sure about that. I just don't

14 know.

15 Question: Did you and Mr. Brennan invest any money in

16 the purchase of the property?

17 Answer: We did.

18 Question: Can you recollect how much that was?

19 Answer: The purchase price.

20 Question: Which you think was around ú40,000?

21 Answer: That's what I think.

22 Question: Yes. And you think yourself and Mr. Brennan

23 put up that money?

24 Answer: That's what I thought, yes.

25 Question: And why was Mr. Finnegan involved in this

26 transaction, if yourself and Mr. Brennan were putting

27 up all the money? If you were correct and Mr. Finnegan

28 didn't put up any money, what was Mr. Finnegan's

29 contribution to the transaction?

30 Answer: Well, he recognised the opportunity that was

1 there. Well, of course, unfortunately we weren't in  
2 the financial position to hold on to it long enough to  
3 see the same as Cramer Lane, to see the end result.

4 When we had our difficulties at that time, it was part  
5 - it was sold on.

6 Question: The property, when you bought it, was a  
7 green field site with no planning or zoning?

8 Answer: Yes, absolutely.

9 Question: Right. You applied to the Corporation for  
10 planning permission and you were turned down, and you  
11 appealed, and you were granted a type of planning  
12 permission for residential purposes?

13 Answer: Correct."

14 .

15 And then it goes on. I don't think that's relevant.

16 .

17 Then - yes, at question 215. It was put:

18 .

19 "Question: And was the agreement in connection with  
20 the Herbert Street Plantation, was this again from the  
21 start a property that was owned jointly by yourself,  
22 Mr. Brennan and Mr. Finnegan?

23 Answer: Well, that was the understanding, yes."

24 .

25 And at page 87, the question is:

26 .

27 "Question 260: If you go back to the top of the  
28 document, you were agreeing to pay him 50,000, this is  
29 presumably this promissory note. You were agreeing to  
30 pay him ú50,000 for value received. So what value had

1 you got for the ú50,000, Mr. McGowan?

2 Answer: Well, that he introduced the property and that  
3 we were to share a third, a third, a third on the end  
4 result."

5 .

6 And then finally at page 94:

7 .

8 "Question 287: It would appear that Mr. Finnegan was  
9 holding on to the title deeds in order to get his  
10 ú50,000?

11 Answer: Which was his share.

12 Question: You say that was one-third of the profit  
13 that was generated on the Herbert Street Plantation  
14 sale?

15 Answer: That would be - that would have been correct."

16 .

17 So the gist of Mr. McGowan's evidence, and it was  
18 revisited on a number of occasions throughout his  
19 testimony, was that you were, in fact, a partner, an  
20 equal partner with the two of them; that he regarded  
21 you as such; that you didn't put up any money towards  
22 the ú40,000 that was used to purchase the property,  
23 that it was - the fact that you recognised the deal or  
24 brought them into it, that was why you were involved.

25 And that the ú50,000 was in the nature of your share of  
26 the proceeds of the profit of the transaction.

27 .

28 Now, that's what Mr. McGowan has told the Tribunal.

29 You are unable to give us an explanation as to the  
30 origin of the indebtedness of ú50,000, other than to

1 say that you think it may have something to do with the  
2 Cramer Lane deal?

3 A. Yes, sir. What I said to you was this, sir, that I  
4 think that the - on the Cramer Lane deal, that there  
5 was - I think there may have been, and I don't know if  
6 I've explained that - if you understood what I was  
7 saying, that there was - I think there might have been  
8 a refinancing. There was an initial loan on the  
9 acquisition.

10 .

11 Now, I think that possibly what may have happened was  
12 that there could have been another - a top-up on that,  
13 sir. You see, what changed there was - excuse me.

14 Some time around that period there was a rent review,  
15 sir, and I can't tell you the exact figures, but there  
16 would have been an increase in rent in the property.

17 And that might have enabled, I say "might" sir, and I  
18 think that might have enabled them to refinance that.

19 .

20 There would have been equity - there could have been,  
21 put it that way, there could have been equity thrown  
22 up, and maybe the banks grabbed it, a lien, an extra  
23 lien on it in bad times, sir, because I think the thing  
24 was - that was around the time when things were quite  
25 difficult.

26 470 Q. Well, we have, I think, been over this ground, and both  
27 of us have been able to identify how an indebtedness of  
28 \$50,000 comes out of Cramer Lane, if you know what I  
29 mean?

30 A. Well, I think - that's why I just want to answer. Say

1           there was an enhancement in value thrown up, over and  
2           above the original acquisition figure at the end of a  
3           rent review, then there could have been an extra figure  
4           that you could borrow against, sir.

5 471 Q.   Well, was there any borrowing that was distributed, of  
6           which you didn't get your fair share?

7           A.   No --

8 472 Q.   As there was, for example, from Lombard & Ulster in the  
9           Canio deal.

10          A.   Yeah. Well, I think - I think what may have happened,  
11          may have happened, sir, was that I think that the bank  
12          may have - may have put their hands on it, sir, for -  
13          not a second mortgage, but that type of thing.

14 473 Q.   Well, what I am putting to you, essentially, is  
15          Mr. McGowan's testimony, and I am just wondering, can  
16          you think of any reason why Mr. McGowan would say this,  
17          not once, but on several occasions, obviously he could  
18          be confused, but absent confusion, why would he give  
19          testimony to this Tribunal that you were a partner, and  
20          that this ú50,000 indebtedness arose by reason of the  
21          fact that you were owed it as your share in the profit  
22          on the deal?

23          A.   Well, that's where I wondered, sir, was he confusing  
24          something with Cramer Lane.

25 474 Q.   Yes. You think that he may have been confusing it with  
26          Cramer Lane, out of which you would have been entitled,  
27          obviously, because you were a shareholder?

28          A.   Yes, sir.

29          .

30          MR. HANRATTY: Perhaps we might leave it there, then.

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CHAIRMAN: Very good. Tomorrow morning, 10:30.

THE TRIBUNAL ADJOURNED TO FRIDAY, OCTOBER 18, 2001 AT  
10:30 A.M.

