

1 PLANNING TRIBUNAL - DAY 310

2 .

3 THE TRIBUNAL RESUMED AS FOLLOWS ON THE 19TH OF OCTOBER,

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

5 .

6 CHAIRMAN: Good morning everyone.

7 .

8 MR. HANRATTY: Before I start, Sir. Yesterday's

9 transcript refers to Mr. Brian O'Halloran, to whom

10 reference was made a number of times in the course of

11 the afternoon as Brian O'Hanrahan, and I just wonder

12 whether we might make that correction in the

13 transcript. The correct name is Brian O'Halloran.

14 .

15 CHAIRMAN: As we are on procedure and matters.

16 .

17 This Tribunal will sit on Tuesday next from half past 9

18 until half past 11, and from a quarter to twelve to a

19 quarter to two, and will rise for the day. In other

20 words, the working day will be exactly the same length,

21 but we are going to be rising at two o'clock, or

22 rather, rising at a quarter to two.

23 .

24 I hope that will not inconvenience anybody. It's an

25 experiment to see how it will work as an operational

26 period.

27 .

28 Thank you.

29 .

30 .

1 MR. JOHN FINNEGAN RETURNS TO THE WITNESS-BOX AND  
2 CONTINUES TO BE EXAMINED BY MR. HANRATTY AS FOLLOWS:

3 .

4 1 Q. MR. HANRATTY: Good morning, Mr. Finnegan.

5 .

6 I want to ask you, Mr. Finnegan, about the  
7 St. Stephen's Green property, and the deal in which you  
8 were involved with Messrs. Brennan and McGowan  
9 concerning that property, and also the relationship  
10 between this particular transaction and the Sandyford  
11 transaction.

12 .

13 Can I ask you, firstly, to tell the Tribunal how this  
14 deal, first of all, came about?

15 A. Yes, sir. First of all, the property in St. Stephen's  
16 Green, sir, we were handling the sale of the leasehold  
17 interest in the main ground floor - a leasehold  
18 interest of the ground floor, and some small portions  
19 of the upper floors - ground floor, basement and part  
20 of little other bits and pieces, sir. And that was a  
21 lease for - that was held by Smiths of the Green. And  
22 I think it had an unexpired term or something like 12  
23 or 14 years, sir. It was - that was held from - a  
24 leasehold interest was held from MEPC.

25 .

26 The property that Smiths had, had been let - the  
27 business of Smiths had ceased, and it had been let on  
28 short-term lettings. We were instructed to buy - by  
29 Mr. Michael O'Neill to sell the leasehold interest,  
30 which we put into the marketplace.

1 .  
2 Now, it was - so it was in the market for a reasonable  
3 length of time, sir. And you know where - I think it  
4 would be a good idea where it is, sir, it's on St.  
5 Stephen's Green.

6 2 Q. Yes.

7 A. And as time went on - and we had it for sale. And then  
8 there were various people interested in it, both from -  
9 mainly from thinking of running another business out of  
10 it, sir, and some looking at maybe some development  
11 potential.

12 .  
13 Now, at that time we - we spoke to one another first.  
14 We had a sign up on the property, but Joe McGowan, I  
15 spoke with Joe McGowan about it, sir, and he, I think,  
16 had known the people who had a short-term lease on it,  
17 who did spend a considerable amount of money on the  
18 property, but it was a three-year lease, and the lease  
19 expired, and they did very little business in it, sir.  
20 It was a restaurant which closed down.

21 .  
22 At first, sir, he thought that it was a different - he  
23 wondered was the whole property for sale. And I  
24 explained to him what it was, the leasehold interest.  
25 He went through all of that, sir, and he expressed  
26 interest in it. He also knew Mr. O'Neill - well, I  
27 suppose, for quite some time, sir. And he showed an  
28 interest in it, along with others, and at that  
29 particular time, then, my recollection is that - I  
30 think we were looking for something - well, my mind

- 1           went a bit there. I think we were looking for  
2           somewhere around a half million pounds for it, sir,  
3           somewhere in that sort of order.
- 4 3 Q. For the leasehold interest?
- 5 A. For the leasehold interest.
- 6 4 Q. Yes.
- 7 A. Now, that would be an occupational lease, sir. So  
8           that's - Smiths had used it for their own business, and  
9           now it is selling that with the vacant possession of  
10          the ground floor - the ground floor and basement, and I  
11          think maybe a very little bit of an upper floor, but  
12          there were a few other sub-tenancies. I haven't got  
13          the details.
- 14 5 Q. From the Smith's tenancy?
- 15 A. Yes. The remainder of the building, then, was occupied  
16          by various parties.
- 17 6 Q. Well, I think there were a couple of sitting tenants --
- 18 A. There were.
- 19 7 Q. -- in the top of the building?
- 20 A. Right - there were a number of tenant - business  
21          tenancies who had rights there, and indeed there were  
22          some residential as well, sir.
- 23 8 Q. Well, it consisted of two buildings, 6 and 7 St.  
24          Stephen's Green?
- 25 A. Yes.
- 26 9 Q. Smiths of the Green was the shop in the ground floor?
- 27 A. Okay.
- 28 10 Q. They also had the basement and part of the upper floor?
- 29 A. Yes, sir.
- 30 11 Q. And they had made sub-lettings from their leasehold to

1 other entities, including, I think, Usit Travel in part  
2 of the building. Is that right?

3 A. I think - I'm not sure if Usit Travel, sir, was part of  
4 the MEPC letting or theirs.

5 12 Q. Well, it doesn't really matter, but Usit Travel was  
6 another of the occupiers?

7 A. They were there, yes, sir.

8 13 Q. And Mr. McGowan, you say, expressed an interest in what  
9 you were selling, which was the Smiths of the Green  
10 interest. Is that right?

11 A. Yes, sir.

12 14 Q. So how did it move on from there, then?

13 A. I mentioned to you, sir, my recollection is that he  
14 knew the people who had opened the restaurant in it  
15 before, and I don't think he knew what sort of title  
16 was held on it.

17 .

18 After that, sir, I am a little bit hazy which way it  
19 went, but he was very keen on it, sir. And there was  
20 some toing and froing, and I do remember saying to him  
21 that, you know, there was other interest in the  
22 property, and was he interested. And he was to come  
23 back to me on it. And I think what did happen, either  
24 he met with Mr. O'Neill - he either went to see him,  
25 sir, or he met him. Anyway, he met him. This went -  
26 this would be quite a reasonable amount of time that  
27 passed, so, from the initial inspections of it. And he  
28 did a deal with him. They concluded a deal.

29 15 Q. Who is the other person?

30 A. Sorry, McGowan and Mr. O'Neill.

1 16 Q. Of MEPC?

2 A. No, sorry. Sorry. No, Mr. O'Neill of Smiths.

3 17 Q. Of Smiths, yes?

4 A. Smiths is only a trade name, sir.

5 18 Q. So Mr. McGowan actually made the agreement directly  
6 himself with the vendor?

7 A. He did, sir.

8 19 Q. Yes.

9 A. Well, there again, they knew one another, sir.

10 20 Q. Yes.

11 A. And I got a call from Mr. O'Neill to say that there  
12 was, a deal had been agreed with --

13 21 Q. Yes. What was Mr. McGowan's plan at that stage?

14 A. Well, when they were - when the discussions took place,  
15 he was looking at it, I think, sir, from an investment  
16 point of view. And I do remember saying, like, "You do  
17 understand that from an investment point of view, a  
18 leasehold interest - like, if you let, that it's only a  
19 leasehold interest you've got, you know, it's not - so  
20 there would have to be - you'd have to go further than  
21 that, if it was going to be an investment point of  
22 view, an investment."

23 .

24 Now, it transpired, then, that Mr. O'Neill had had  
25 negotiations with MEPC agents, a long time before that,  
26 and had, actually, got an option to acquire the  
27 freehold. He was, and did tell people that there might  
28 be a chance - there would be a chance of getting this,  
29 because he had done a deal, and I think on it before,  
30 and had an option. By the way, the option expired, so

1           there was nothing there. So there was no question of  
2           any guarantee of that, sir.

3           .

4           So what happened was that Mr. O'Neill, I think, did, in  
5           their conversations, because they were talking to one  
6           another quite a bit, did apparently say to him, because  
7           this came afterwards, sir, that he was going to try and  
8           get in the freehold and see - but he didn't - that  
9           didn't happen, sir. He didn't succeed in getting it.

10          There was no - he couldn't do anything with MEPC.

11 22 Q.   How much was his option for?

12    A.   I am not quite sure, sir, but --

13 23 Q.   Well, had the option expired at the time that it was  
14          placed in your hands for sale?

15    A.   Yes, it had, sir. By quite a reasonable while, sir.

16 24 Q.   Yes. But the fact that an option had been granted  
17          would indicate that MEPC would be willing, in the right  
18          circumstances, to sell their interest?

19    A.   Yes, sir. I think they had granted the option - by  
20          recollection, some considerable time beforehand, sir.

21 25 Q.   Yes. Well, I take it, that Mr. McGowan was not going  
22          to be interested in this property unless he was sure he  
23          would be able to get in the freehold?

24    A.   Well, there was no - I would like to say to you, sir,  
25          that I know that Mr. O'Neill - there wasn't any surety  
26          of getting it in, because Mr. O'Neill had tried to open  
27          up negotiations again.

28 26 Q.   Yes.

29    A.   And hadn't succeeded. I think, you see, MEPC - you may  
30          remember them, sir?

1 27 Q. Yes.

2 A. They are a large investment house company. You see,  
3 they had the leasehold of - they had the entire, so  
4 they owned, and they were - so --

5 28 Q. They had the freehold of the entire property?

6 A. The entire property.

7 29 Q. Yes. And they also were the lessors in a number of  
8 other leases within the property?

9 A. They had made direct - yes, so it's one of those --

10 30 Q. And, of course, they were the lessors to Smiths of the  
11 Green. So any investment in relation to this property,  
12 the sine qua non was that you get in the MEPC interest.  
13 Would that not be right?

14 A. Yes, sir, but I --

15 31 Q. Well, was the deal done between Mr. McGowan and  
16 Mr. O'Neill subject to, or conditional upon Mr. McGowan  
17 getting the freehold?

18 A. No, sir.

19 32 Q. So was Mr. McGowan, then, taking his chances, as it  
20 were? Because if he didn't get the freehold, he would  
21 be in the grocery business, basically?

22 A. That's right, sir. I think that - by the way, it would  
23 have been always a reasonable pitch, sir, the fact that  
24 it had got --

25 33 Q. Yes?

26 A. -- where it was, and with a reasonable unexpired term.  
27 And I can't remember the passing - but I think it was  
28 quite low.

29 34 Q. Can we just talk about the order in which things then  
30 happened. The first thing that appears to have



1           happened is that Mr. McGowan entered into an agreement,  
2           or reached an agreement with Mr. O'Neill for the sale  
3           of the Smiths of the Green interest for, you believe,  
4           approximately half a million pounds. Is that right?

5       A.   Yes, sir. I think it might be something less.

6 35   Q.   What then happened?

7       A.   After that - so the deal was done, but O'Neill --

8 36   Q.   -- was there a contract signed?

9       A.   Yes, sir.

10 37   Q.   And who was acting for Smiths of the Green?

11      A.   Mr. O'Reilly, sir, solicitors in George's Street.

12 38   Q.   Yes. And approximately when was that contract signed?

13      A.   Oh, dear. I haven't got any note to this, sir. I  
14           can't remember - can you just give me the --

15 39   Q.   Well, we know that the freehold was actually  
16           transferred in July of 1978.

17      A.   I think it was - well, it was certainly a good time  
18           before that, sir. Is there a date floating around? I  
19           just haven't got it.

20 40   Q.   We do have an assignment --

21      A.   It would be an assignment, sir.

22 41   Q.   Yes. No, first of all the freehold, MEPC Limited deed,

23           or we have a Memorial of the deed, and the date isn't

24           terribly clear. There isn't actually a date on the

25           first page of the Memorial, but on the second page

26           there is a date, I think the 27th of July, 1978, is

27           actually written in it, and then crossed out. And

28           somebody wrote in instead the 28th of August, 1978.

29           .

30           So that would be either July or August of 1978, that

1 MEPC conveyed the freehold in the property to Keno

2 Investments Limited. That's this Jersey company?

3 A. Yes.

4 42 Q. Of which you were a one-third owner with Mr. Brennan  
5 and Mr. McGowan?

6 A. Sorry, the date again, sir?

7 43 Q. July or August.

8 A. Okay.

9 44 Q. Depending on which one is correct, of 1978.

10 A. I think, sir, that - just a bit of a flashback there.

11 I think that Mr. O'Neill did take up the running,

12 because - with MEPC, because I think he may have told

13 Mr. McGowan that he might be able to get it.

14 45 Q. Yes. In fact, Mr. Brennan, as I recall, gave evidence

15 that it was you that got in the freehold?

16 A. No, the freehold, actually, was negotiated with -

17 through some acquaintance of - Mr. McGowan took up the

18 running and the negotiations with the MEPC.

19 46 Q. So it was Mr. McGowan?

20 A. And/or friends of. He said he had somebody he knew.

21 .

22 Now, when it came down to --

23 47 Q. Just before we leave that, how much did he buy it for?

24 A. As far as I recollect, somewhere around about 90,000,

25 give or take.

26 48 Q. Yes. Yes. Mr. Brennan said he thought it might have

27 been 150. Do you think it was 90?

28 A. I thought now that --

29 49 Q. He wasn't sure. You think it was 90?

30 A. I think somewhere around that.

1 50 Q. Yes.

2 A. As long as I am not mixing up something, sir, whether  
3 that was the option, the original options, that was the  
4 sale - I think it was around that number.

5 51 Q. I appreciate you are working from memory, and you are  
6 not going to be held to it. It's just what you believe  
7 it was, was 90? Right?

8 A. Yeah.

9 52 Q. Well, then, somebody decided that the freehold title  
10 would be taken by a company called Keno Investments  
11 Limited?

12 A. Mm-hmm.

13 53 Q. What was the point of that?

14 A. Well, after the acquisition and some time had passed,  
15 Mr. McGowan came to see me and said that, "We are  
16 interested. We want to go further on this. And we  
17 would like to see if we could get in the freehold and  
18 see what about carrying out a development here." So  
19 that was all said fairly quickly, sir. And then he  
20 went on to say that if - at that stage, would I - as  
21 this was something that was outside of their scope,  
22 they hadn't done this before, and would I be interested  
23 in coming in on the freehold with them. And I said -  
24 at that time, I said, "Well, you better look into this.  
25 This is not just going to be - first of all, let's look  
26 into what the situation is, because this is not going  
27 to be necessarily an easy thing to do, because there  
28 are lots of hurdles that you would have to get over  
29 here before you could get into any sort of  
30 redevelopment."

1 .  
2 One, that there were these various tenancies, in any  
3 event, in the freehold lot. And I did say to him that,  
4 "Look, in these circumstances, you have no right to buy  
5 them, because they are sitting tenants and there is no  
6 --"

7 54 Q. Their leases were unexpired, and they could only be  
8 acquired by agreement?

9 A. Only by agreement. And as I said to him, I said,  
10 "Look, in cases like this, but -" - so this is - on an  
11 assembly such as this, one has to look at what the  
12 risks are. And we talked about it before, and he said,  
13 "Well, look, if you are - you know this end of the  
14 thing. We don't know it. Would you come on board with  
15 us, and this is something which you could run." And I  
16 said, "It is going to take quite a lot. There would be  
17 a lot of work in this." He said, "How about coming  
18 into it?" And after some time it was agreed in  
19 principle I would.

20 55 Q. Yes. If we just look at page 4649.

21 .  
22 This is the Memorial of the deed under which MEPC  
23 (Ireland) Limited conveyed its entire freehold interest  
24 in the property, subject to all its leasehold  
25 interests, to Keno Investments Limited, as you can see  
26 there.

27 .  
28 And, as you can see, there probably was a date, but  
29 it's not clear on that particular page, but it is clear  
30 that it was 1978, because that's typed on the second

1 line.

2 A. Yes, sir.

3 56 Q. And the property conveyed is that: In the first and  
4 second schedule to hold the same, I think in fee  
5 simple, but subject, obviously, to the leasehold  
6 interests. And the first schedule is, "All that and  
7 those, the premises known as 6/7 St. Stephen's Green,"  
8 which is referred to in a map.

9 .

10 And the second schedule is, "All that and those, the  
11 plot of ground in the rear of 5 St. Stephen's Green in  
12 the City of Dublin", referred to on a map.

13 .

14 So there was a portion of some property at the rear of  
15 No. 5, and an adjoining property as well. Is that  
16 right?

17 A. Yes.

18 57 Q. If we just turn to the next page, you will see on that  
19 Memorial that the original date, which appears to have  
20 been the 27th of June, subsequently July 1978, both of  
21 which are then crossed out and substituted with the  
22 28th of August of 1978. So it seems that the  
23 conveyance from MEPC of its title to Keno Investments  
24 Limited took place in July or August of 1978, as far as  
25 we can gather from that particular document, anyway?

26 A. Yes, sir.

27 .

28 MR. HUSSEY: I am sorry. Just before you leave that  
29 document. I notice there is other dates above the  
30 swearing clause. I don't know the provenance of those,

1 but there is the 27th of April and the 25th of  
2 September. I don't know if they have - they are sworn  
3 - there is a little initial beside them.

4 .  
5 Sorry, just before you left the document, I just want  
6 to draw your attention to that.

7 .  
8 58 Q. MR. HANRATTY: There are, indeed, and I don't  
9 understand them, I am afraid.

10 .  
11 One of them is September '78. In other words, the 27th  
12 of April with a "12" written after it.

13 .  
14 But what I wanted to ask you is, just in terms of the  
15 sequence, leaving aside the dates; is it your  
16 recollection that the sale of the Smiths of the Green  
17 interest had already been completed? In other words,  
18 that Smiths of the Green had been paid for their  
19 interest and had transferred it before the freehold was  
20 got in, or after the freehold was got in?

21 A. I understood, sir, that the sale of the leasehold had  
22 been completed.

23 59 Q. Yes. And you think it was for approximately half a  
24 million pounds?

25 A. I think it may be a sum less than that, sir.

26 60 Q. You think it might have been a bit less?

27 A. Yes.

28 61 Q. Well, let's approach it from a different angle.

29 .  
30 Where did the money come from that was used to pay

1 Smiths of the Green?

2 A. For the --

3 62 Q. For their interest. ú90,000, we know, had to be paid

4 to MEPC for the freehold interest, and it appears to

5 have been in or around the autumn of 1978.

6 A. Yes, sir.

7 63 Q. If, as you believe, the leasehold interest had already

8 been got in, then monies would have had to have been

9 produced from somewhere to pay Smiths of the Green to

10 get the leasehold?

11 A. Yes, sir.

12 64 Q. Where did the monies come from to get the leasehold, to

13 pay for the leasehold, or to put it another way, who

14 paid for the leasehold?

15 A. As far as I recollect, that the - I think that there

16 was a borrowing, sir, to do that.

17 65 Q. Was it all borrowed?

18 A. I can't --

19 66 Q. Right. From whom was the borrowing made? Would it

20 have been ABN AMRO?

21 A. I don't know, but - Chase seems to come to mind.

22 67 Q. All right. Well, could we just park that, then, and

23 we'll look at some documents and this might refresh

24 your memory?

25 A. Okay.

26 68 Q. Where did the money come from to pay for the freehold?

27 A. Well, the - as far as I recollect, that the - I was

28 asked to put in - I put in approximately 20 something

29 odd thousand, sir.

30 69 Q. ú20,000?

1 A. Yes.

2 70 Q. Was it 20 or was it more than 20?

3 A. I think something over 20, sir.

4 71 Q. If it was an odd figure over 20, was it a division into  
5 three-thirds of some figure?

6 A. I can't recollect, sir, what way --

7 72 Q. Was the nature of your participation in this particular  
8 project as a full 100 percent equity partner, as it  
9 were, in which you were an equal investor with the  
10 other two to the full extent of the scheme?

11 A. Sorry, just say that again?

12 73 Q. Were you going to be a full partner with Brennan and  
13 McGowan in this particular project?

14 A. Yes. Yes, sir. The - you said if we go ahead on this,  
15 that the two - and any future thing that would be done,  
16 when we are sorted out, in the event of a development  
17 taking place on it, sir - it was my understanding that  
18 the freehold and the leasehold would be then - a deal  
19 would be done on those together.

20 74 Q. Yes. The idea was to gather in the title, and to make  
21 it into a usable unit, either for sale on for  
22 development or for development?

23 A. Yes, sir.

24 75 Q. And the idea, presumably, being that if you could get  
25 in all the titles and get a surrender of the  
26 leaseholds, that would enhance the value - the value of  
27 the total would be greater than the sum of the parts,  
28 if you know what I mean?

29 A. There was no doubt that this was the situation. And  
30 what was discussed, sir, at the time, that one should



1 try and seek to get as many tenants in as fast as  
2 possible. As far as I remember, that's the way it  
3 went.

4 76 Q. When you made your agreement with Messrs. Brennan and  
5 McGowan, when you - the point came for you to commit  
6 yourself, saying, "I am in." What were you "in"?

7 A. Well, the understanding that I had, sir, in my mind, in  
8 going in, that the leasehold would be carried - the  
9 freehold was the - if we could sort out, get the  
10 freehold and sort out the tenancies, that was going to  
11 be the key to development.

12 77 Q. Well, am I correct in thinking that what you were in  
13 was a project under which you had acquired the  
14 leasehold interest, you were to acquire the freehold  
15 interest. You would seek to acquire, by negotiation,  
16 an agreement, a getting in and a surrender of all the  
17 leasehold interests and possession of the premises  
18 which were held on - by sitting tenants, and get vacant  
19 possession of the building?

20 A. Yes, sir.

21 78 Q. Was it intended, then, that a planning application  
22 would be made for a particular development in the  
23 building?

24 A. Yes, sir. It was - it was intended that a planning  
25 application would be made for the development of the  
26 property.

27 79 Q. Yes. And the nature of the development, in respect of  
28 which planning was obtained, was what?

29 A. It was a mall.

30 80 Q. Like a galleria, is that what it was called?

- 1 A. That's what it was called, sir.
- 2 81 Q. This was a mall where there would be a number of unit  
3 holders having various retail outlets?
- 4 A. The biggest thing that - yes, sir, it was a question of  
5 having the individual unit, a mall, a number of shop  
6 units.
- 7 82 Q. So the business of the company, or the project would  
8 have been the - to the letting of these units, and the  
9 rental income of these units would have been, in fact,  
10 the income of the company?
- 11 A. That's right.
- 12 83 Q. On which, presumably, you would hope to make a profit,  
13 in due course?
- 14 A. Absolutely, sir. I think the most important thing was,  
15 at that time, was in turn that there had been some  
16 misunderstanding somewhere along the line that if you  
17 had the planning permission, the planning permission  
18 should have a right to get the tenants. But that  
19 wasn't correct.
- 20 84 Q. Yes.
- 21 A. So the planning permission was then sought. And the  
22 architects were instructed, and it was then to lay it  
23 out, like you said there, on the galleria. That's what  
24 it ended up to be.
- 25 85 Q. Was permission obtained for that use?
- 26 A. It was, sir, after quite a time. The one thing that  
27 did happen, though, sir, on that, was that the - there  
28 were long, long, drawn out discussions about this.
- 29 86 Q. Yes.
- 30 A. And the whole problem, though, that arose at the end of

1 the day was that the Local Authority would not grant  
2 permission to - they granted permission to go for the  
3 shop units, but not to go out on to Anne's Lane at the  
4 back.

5 87 Q. Yes.

6 A. And that was a major drawback, sir.

7 88 Q. I am sure it's a detail that isn't of particular  
8 concern in the context of these inquiries. If we could  
9 just - and forgive me for trying to move it along a  
10 bit, but we are just trying to get to the essentials.

11 .

12 You were in, at the start, then, on the full project.

13 You acquired the leasehold interest in July or August  
14 of 1978. You acquired the freehold interest from MEPC.  
15 Presumably, somebody had to then set about negotiations  
16 with the tenants in the building. Did you undertake  
17 that, or who undertook that?

18 A. Yes, sir, we - our firm undertook that, sir.

19 89 Q. Yes. Presumably, monies had to be paid to the tenants  
20 in exchange for the surrender of their leases?

21 A. Yes, sir. I am a little bit hazy as to how many of  
22 them were completed, sir, but there were - it wasn't a  
23 speedy scene, sir.

24 90 Q. No, but - all we do know is that --

25 A. They did --

26 91 Q. -- that property was sold to the Gallagher Group,  
27 wasn't it, in June of 1981?

28 A. Yes.

29 92 Q. And when it was sold to them, had you obtained vacant  
30 possession of the entire?

- 1 A. Not the entire, sir, but the best portion of it.
- 2 93 Q. Most of it?
- 3 A. Most of it. And I think at that particular time,
- 4 either - there were either agreements in place for --
- 5 94 Q. Or possession actually obtained --
- 6 A. Or possession obtained.
- 7 95 Q. Yes. In summary, how much had to be paid to all of the
- 8 tenants, including the sitting tenants, to buy out
- 9 their interests?
- 10 A. Actually, sir, I can't tell you.
- 11 96 Q. Do you have any ballpark figure? I mean, we know, for
- 12 example, that your belief is that it was something less
- 13 than ú500,000 paid for the Smiths of the Green
- 14 interest, ú90,000 for the freehold interest, and
- 15 obviously a further sum to buy out the tenants?
- 16 A. I know some of them - I think Usit Travel was quite
- 17 expensive.
- 18 97 Q. Yes.
- 19 A. I think that was by far the most expensive.
- 20 98 Q. Well, we know that the price for which the property was
- 21 sold was ú900,000 to the Gallagher Group. Isn't that
- 22 right?
- 23 A. For the freehold.
- 24 99 Q. Well, I don't know. I thought the entire property was
- 25 sold to Gallaghers?
- 26 A. It was, sir.
- 27 100 Q. Was it sold in different parts?
- 28 A. I think that there was - I think there was a division.
- 29 101 Q. Yes. And were the - there two different sales to the
- 30 Gallagher Group?

1 A. I think that's the way it worked out, sir.

2 102 Q. One of which was €900,000, is that right?

3 A. I think somewhere - now, give or take, somewhere --

4 103 Q. What was the total income received, or, sorry, the

5 total proceeds of sale received for the sale of the

6 property?

7 A. Well, what happened was this: The ballpark figure that

8 was being discussed with the Gallagher Group was

9 somewhere in the order of one and a half million, sir.

10 104 Q. Yes. I think that was Mr. Brennan's recollection as

11 well?

12 A. Now, when - so that was the sort of - now, the next

13 thing that happened, sir, was that the consultants for

14 the parties got together. And as far as I recollect,

15 that most of that dealing, the dealings from there on

16 were involved with Mr. Owens' people and the Gallagher

17 Group.

18 105 Q. Mr. Hugh Owens?

19 A. Yes, sir.

20 106 Q. Was he involved with the Gallagher Group?

21 A. No, sir. He was involved in the finalisation of the --

22 107 Q. We know he put together another scheme in relation to

23 this property involving a number of Jersey companies,

24 and what appears to have happened is that the freehold

25 interest was taken by Keno Investments Limited, and the

26 various leasehold interests, various portions of the

27 leasehold interests were taken by a series of other

28 Jersey companies, including Whisper Investments

29 Limited, Glencree Developments Limited, Arippe

30 Investments Limited and Worland Investments Limited.

1           Isn't that so? What was the purpose of that, in  
2           general?

3           A. I don't know, sir, if the - if all of those - when -  
4           were they all just put in place, sir, at one time,  
5           because I don't recollect - I think when we were doing  
6           the negotiations with the tenants - I think that what  
7           happened, there may have been agreements in place, sir,  
8           that were either transferred to these companies.

9 108 Q. Well, one of the things we do know that did happen, was  
10          that all of these companies, firstly, entered into a  
11          management agreement with an Irish company called Green  
12          Trees Limited. And secondly, all of these companies  
13          executed a debenture over their respective interests in  
14          the property as security for a borrowing of Green Trees  
15          Limited.

16          .  
17          Now, the monies that Green Trees Limited borrowed were  
18          for what? What was the role of Green Trees Limited,  
19          put it another way, in this development?

20         A. Sorry, I am a bit hazy today, sir. I think - as far as  
21         I recollect - I think that Green Trees had the  
22         leasehold, sir, I think.

23 109 Q. Green Trees had the leasehold. Well, we are not aware  
24         that it did. We haven't seen any indication that it  
25         did.

26         A. Sorry, sir. I am a bit mixed up in the --

27 110 Q. When Joe McGowan was putting his proposition to you for  
28         you to become involved, and when you agreed to become  
29         involved, did he explain to you that there was going to  
30         be a company, or that there was a company called Green

1 Trees Limited, an Irish company, and that he was going  
2 to use this Jersey company, Keno, to get in the  
3 freehold, and a series of other Jersey companies to buy  
4 bits of the leasehold?

5 A. Actually, that wouldn't have been discussed initially,  
6 sir.

7 111 Q. Was it discussed later, after the thing was up and  
8 running?

9 A. All I can say, it must have been, sir, but to actually  
10 remembering when, what --

11 112 Q. Yes. Well, if we just look at a chart of the title to  
12 this property. We'll put it up on screen and we'll  
13 give you a hard copy as well.

14 A. Thank you.

15 .

16 MR. DUNNE: I wonder, Sir, could we have a hard copy?

17 .

18 113 Q. MR. HANRATTY: The leasehold title is traced on the  
19 left-hand side. The freehold on the right-hand side.  
20 And a number of related transactions in the middle.

21 .

22 And without getting into too much detail, you can see  
23 in the first yellow bubble that there were four  
24 substantive leasehold interests, and that they were  
25 subject to sub-leases. And that on the 17th of June,  
26 1981, Green Trees --

27 .

28 MR. HUSSEY: I am sorry, Mr. Hanratty. I beg your  
29 pardon, Sir. I wonder, will you go a little bit  
30 slower? Mr. Finnegan has told me he has difficulty

1 following the speed of these charts. So just go a

2 little bit slower, if you wouldn't mind.

3 .

4 114 Q. MR. HANRATTY: Look at the middle bubble on the  
5 left-hand side?

6 A. All right, sir.

7 115 Q. The 17th of June, 1981, Green Trees Limited assigned  
8 the leasehold interests in the property to the  
9 Gallagher Group Limited. So at some point in time,  
10 obviously, the leasehold interests did become vested in  
11 Green Trees, and presumably Green Trees, therefore, was  
12 used to gather the various leasehold interests. And  
13 the consideration was 500 to ú600,000.

14 A. Yes, I have this here, sir.

15 .

16 MR. HUSSEY: I am sorry, Sir. Again, I am sorry to  
17 interrupt.

18 .

19 I wonder - no, I am sorry. The references are on the  
20 page. I beg your pardon.

21 A. Yes, sir.

22 .

23 116 Q. MR. HANRATTY: And if you look at the second purple  
24 rectangle in the middle of the page, it says:

25 .

26 "Prior to the 28th of March, 1979, certain Jersey, and  
27 one Irish company, acquired the leasehold interest in

28 5, 6 and 7 St. Stephen's Green:

29 Green Trees had part of 5, 6 and 7.

30 Glencree had part of No. 7.



1 Whisper had part of 6 and 7.

2 Arippe had part of No. 6.

3 And Worland had part of No. 7."

4 .

5 And the document references are given where that

6 information is extrapolated from.

7 .

8 And I infer from that, that, in fact, Green Trees

9 Limited was the holder of the Smiths of the Green

10 interest. Does that sound right?

11 A. That sounds right, sir.

12 117 Q. And on the large oval - purple bubble in the middle it

13 says:

14 .

15 "On the 28th of March, 1979, there was a debenture and

16 mortgage by Green Trees to Hill Samuel, including the

17 interest of Keno Limited, Glencree Limited, Whisper

18 Limited, Victa Limited, Arippe Limited and Worland

19 Limited in the property against an advance of

20 ú300,000."

21 .

22 Do you see that?

23 A. Yes, I do, sir.

24 118 Q. Now, that ú300,000 appears to have been borrowed from

25 Hill Samuel at a point in time after both the leasehold

26 interest and the freehold interest had been bought and

27 paid for the previous year. Isn't that right?

28 A. Yes, sir.

29 119 Q. And that ú300,000 appears to be the monies which were

30 used as a deposit against the purchase of the Sandyford

1 lands. Isn't that right?

2 A. Yes, sir.

3 120 Q. They were sent over in two tranches, of ú225,000 and  
4 ú75,000, to Reid & McNabb, and used to pay the deposit  
5 on that property.

6 .

7 Now - sorry?

8 A. Sorry. Carry on.

9 121 Q. Isn't that correct?

10 A. I think so, sir.

11 122 Q. Yes. We have seen documentation already in the course  
12 of the evidence indicating that that is so. And we'll  
13 be looking at it again in a moment.

14 .

15 Moving over, just before we leave the chart, to the  
16 freehold side.

17 .

18 As you can see there on the - it's dated the 4th of  
19 July, 1978. MEPC (Ireland) Limited conveyed the  
20 freehold interest in the property to Keno Investments  
21 Limited, and the reference is given there.

22 .

23 At 4649, the Memorial of the deed I have just shown  
24 you. And if I could just show you another document  
25 reference that, perhaps, is not there, to indicate  
26 where the date of the 4th of July has been taken from.  
27 It's page 213.

28 .

29 This is a letter from Miley & Miley. And it's dated  
30 the 10th of July, 1978. Addressed to Hugh Owens, the

1 accountant. It's "re Keno Investments Limited, 6/7  
2 St. Stephen's Green."  
3 .  
4 "Dear Hugh, I enclose herewith the conveyance in  
5 duplicate for your attention, and will be obliged if  
6 you will arrange for them to be sealed by Keno  
7 Investments Limited, and return them as soon as  
8 possible. They must be lodged for stamping within 30  
9 days from the 4th of July." That's the 4th of July,  
10 1978. And it's on that basis that that was taken to be  
11 the actual date of the conveyance.  
12 .  
13 "I enclose a copy of our costs account in the matter,  
14 and this, together with the balance paid on closing  
15 comes to a total of ú74,643.  
16 .  
17 As you are aware, I received a sum of ú74,500, but I  
18 will be obliged if you will arrange for a further  
19 cheque for the difference, amounting to ú143.63."  
20 .  
21 Now, he had, in fact, received ú74,500, which is there  
22 referred to from Keno. We can - if we could look at  
23 page 210 for a moment.  
24 .  
25 210 is the deposit in Orion Bank (Guernsey) Limited on  
26 the 21st of July, 1978, of this figure of ú79,890.  
27 .  
28 That's the money which came, you will recall from  
29 yesterday, from Tritonville Road?  
30 A. Yes, sir.

1 123 Q. You remember that?

2 A. Yes, sir.

3 124 Q. And that was the net sum which, as I indicated to you,  
4 does not appear to have been distributed, but appears  
5 to have been deposited in the name of this company,  
6 Keno, in this particular branch.

7 .

8 Now, if we can go to page 211. This is a letter dated  
9 the 28th of June of 1978 from Orion Bank (Guernsey)  
10 Limited - sorry, to Orion Bank (Guernsey) Limited from  
11 Mr. Wheeler of Bedell & Cristin. It's "re Keno  
12 Investments Limited:

13 .

14 We have received instructions that 74,500 of the amount  
15 deposited with you on the 21st June should be  
16 transferred by telegraphic transfer to the account of  
17 Miley & Miley at Algemene Bank Nederland (Ireland)  
18 Limited, 46 St. Stephen's Green, Dublin.

19 .

20 We would be grateful if you would arrange for this to  
21 be done, so that the funds arrive by Friday, the 30th  
22 June. We realise that these instructions break the  
23 fixed term deposit, and naturally any penalty incurred  
24 should be deducted from the remaining funds in this  
25 account."

26 .

27 There is just one other document we might look at in  
28 this context. Page 4653.

29 .

30 This is a Bedell & Cristin statement of account in

1 connection with Keno, where you can see the first entry  
2 there is the 21st of June, 1978. A deposit to mature  
3 on the 30th of June, '78, ú79,890.

4 .

5 On the 30th of June, 1978, there was, in fact, pursuant  
6 to the letter we've just seen, a withdrawal on that date  
7 for ú74,500.

8 .

9 And it appears from the letter of Miley & Miley, if we  
10 might just go back to it at 213, that that ú74,500,  
11 which came from the Keno account in this Guernsey bank,  
12 was used in discharge of fees due to Miley & Miley. As  
13 you can see from the second paragraph on that letter,  
14 falling short, in fact, by a figure of ú143.63. Isn't  
15 that right?

16 A. Yes.

17 125 Q. That would mean, therefore, that that sum was not used  
18 for the purchase of the freehold, and that the sum used  
19 to purchase the freehold would have had to come from  
20 elsewhere.

21 .

22 I said "leasehold", I should have said "freehold". I'm  
23 sorry.

24 .

25 He says in the second paragraph:

26 .

27 "I enclose a copy of our costs account in the matter,  
28 and this, together with the balance paid on closing,  
29 comes to a total of ú74,643."

30 .

1        So the ú74,500 was applied towards a bill which was a  
2        combination of Miley & Miley's costs and the balance  
3        paid on closing for the freehold title from MEPC.

4        Isn't that right?

5        A.    Yes.

6 126 Q.    Which means that at some point, presumably, a deposit  
7        was paid initially to MEPC.

8        .

9        I wonder, can you assist us with where the funds for  
10       the deposit might have come from? We have the  
11       apportionment account. If we look at page 214. Yes.  
12       214 might assist in this.

13       .

14       It's a letter from Owens Murray to Mr. Wheeler, dated  
15       the 11th of July of 1978. It says:

16       .

17       "Dear Mr. Wheeler, I enclose conveyance in duplicate  
18       for sealing, together with the copy of the  
19       apportionment account, and of the solicitor's costs,  
20       and a copy of Miley & Miley's letter dated 10th July.

21       The balance of 143.63 is made up as follows:" - as you  
22       can see there, the balance paid on closing was ú68,515.

23       Stamp Duty was ú6,128.75. Giving a total of  
24       ú74,643.63. And from that is deducted the ú74,500  
25       received from the Orion Bank, the Guernsey bank of  
26       Keno, leaving a balance due to Miley & Miley of 143.63.

27       .

28       He then says:

29       .

30       "The initial deposit of 21,250 will have to be dealt

1 with later when funds are available. I hope your  
2 office will be prepared to undertake the collection of  
3 the rents as listed in the apportionment account. If  
4 so, I will get the addresses of the lessees for you.

5 .  
6 Would you please return direct to Miley & Miley, 12  
7 South Frederick Street, Dublin 2 the sealed conveyance,  
8 together with a cheque for 143.63."

9 .  
10 Now, do you have any idea by whom the deposit of  
11 ú21,250 was paid?

12 A. This is for the freehold, sir?

13 127 Q. Yes.

14 A. Yes. Well, I recollected I paid ú21,000 to it, sir.

15 128 Q. You paid the deposit?

16 A. Well, I don't know - I did put in 21,000 --

17 129 Q. We know the deposit, the figure for the deposit was  
18 21,250. And if I could refer you to the bank accounts  
19 which you have provided the Tribunal with, 4842 - page  
20 4842.

21 .

22 I'm sorry, that's right. I beg your pardon.

23 .

24 On some date, not clear, in April of 1978, you can see  
25 there is a debit on this account of Foxtown for  
26 ú21,250.

27 .

28 If I could also refer you to your explanation of that  
29 particular transaction. It's got a reference - one of  
30 these references of B 615. It's ú21,250. And

1 Mr. Turvey's handnote says: "SOG (PS)." What does that  
2 stand for? The explanation is: "Smiths"?

3 A. Yes.

4 130 Q. And I take "SOG" to be Smiths of the Green, and "PS",  
5 Pine Securities?

6 A. Oh.

7 131 Q. That would appear to be, therefore, the deposit on  
8 Smiths of the Green freehold to MEPC?

9 A. Yes, sir.

10 132 Q. And it appears to have been in April of 1978?

11 A. Yes, sir.

12 133 Q. So what's Pine Securities?

13 A. Pine Securities is a company of mine, sir, which was --

14 134 Q. This is an Irish company?

15 A. Yes, an Irish company.

16 135 Q. Yes. And was it paid through that company? Is that  
17 the reason for that annotation?

18 A. I would say so. Yes, sir.

19 136 Q. Can you just explain why? Because obviously the money  
20 came from Foxtown. It came out of the Foxtown account.

21 A. Well, I know that certainly Pine Securities is a  
22 company of mine, sir.

23 137 Q. Yes. Well, you see, this brings us back to the issue  
24 of the trustees.

25 .

26 This arrangement, as I understand your evidence so far,  
27 was an arrangement made between yourself and,  
28 essentially, Mr. McGowan. And it was an arrangement  
29 under which you committed yourself to a full one-third  
30 involvement in this particular project on an equal



1 basis with Messrs. Brennan and McGowan. And when the  
2 time came to pay the deposit on the freehold part of  
3 the title, that was paid by, in fact, Foxtown  
4 Investments Limited. And it appears from your evidence  
5 that it was you that made these decisions, not the  
6 trustees.

7 A. Well, I would think - I would like to say to you, sir,  
8 that when it comes down to the Trust - the Trust - all  
9 around this time I would have been talking to  
10 Mr. Traynor and various other people, sir, and the  
11 Trust would acknowledge my interest. Like, they - if  
12 it was something in here, sir, in Ireland, that they  
13 would respect that, sir, that - what advices I would  
14 have. And if I felt this was the right thing to do,  
15 they would, in the normal course of events, I think, go  
16 along with it, sir.

17 138 Q. Generally, in a trust, beneficiaries tend to be passive  
18 recipients of the benefits of the Trust as ordained by  
19 the Trust Deed, isn't that right?

20 A. Sorry?

21 139 Q. Beneficiaries are recipients. If you are the  
22 beneficiary of a trust, a family settlement, for  
23 example, as this, you tell us, is; beneficiaries are  
24 essentially passive recipients of whatever benefits are  
25 provided on their behalf in the Trust Deed. Isn't that  
26 so?

27 .

28 What I am suggesting to you is, it's highly unusual to  
29 find a beneficiary ordaining the investments, which the  
30 trustees should make with the Trust property?

1 A. I think, sir - I think that - I recollect that in the

2 Trust documentation, one of the beneficiaries, that

3 there's a schedule of beneficiaries, it's not --

4 140 Q. Indeed. All the more reason, though, for the trustees

5 to take their own counsel, rather than the counsel of

6 one beneficiary as to what investments they should make

7 with the Trust property.

8 A. Well, yes, but I think that they - when it had come

9 down to what the trustees would do, sir - I could play

10 a role, saying this is something which - "yes, sir,

11 subject to you - I feel it is a sound investment, sir."

12 141 Q. You could certainly give your opinion to that effect to

13 the trustees. But can we put it on a slightly broader

14 basis?

15 .

16 This investment, and indeed all of these other

17 investments, which you say they are, in which you put

18 money into Monkstown, Donnybrook, Newtownpark Avenue,

19 and now St. Stephen's Green, are, may I suggest to you,

20 not the kind of investments that a trust would normally

21 make, particularly a professional trust company like

22 Credit Suisse?

23 A. Well, I think all trusts, sir, are - whilst they may

24 have their own outlook, and the people who are involved

25 in it, sir - I think when a person who is involved in a

26 trust has a particular knowledge in one way, that I

27 think that the Trust - the Trust can - they can make a

28 decision which way to go, sir, whether they want to do

29 it, or they needn't do it.

30 142 Q. Well, let's take the Stephen's Green one for example.

1 This, undoubtedly, was a speculative venture,  
2 depending, as it did, on being in a position to reach  
3 agreement with the tenants at a realistic and  
4 reasonable rate for the surrender of their tenancies.  
5 And that would usually involve paying a premium over  
6 and above the actual present value, isn't that right,  
7 for them to surrender early? And there were a lot of  
8 imponderables, which if they didn't work out right,  
9 the investment could turn out to be a loss. Isn't that  
10 right? It was a risky investment?

11 A. Well, sir --

12 143 Q. What I am really putting to you, Mr. Finnegan, is that  
13 the fact that a firm of professional trustees would  
14 embark upon such a risky investment is another  
15 indicator that, in fact, and in reality, you were in  
16 control of the Trust?

17 A. No, sir. No, sir. I say to you that if in a trust  
18 that they have somebody that they know whom they are  
19 dealing with, and here they knew the person who they  
20 are dealing with, it came down to any of the skills in  
21 property or otherwise, that that would be - that I  
22 would be as good, if not better than most people they  
23 might be able to lay their hands on. So that having  
24 the - it wasn't just like putting it into Joe Bloggs,  
25 that I would have had a proven track record. And that,  
26 in going into something like this, of course, if you  
27 were a babe in arms, yes, sir, I could see that that  
28 would be one thing, but going in with having the  
29 ability to - as good an ability as anybody would have,  
30 to actually pull this through --

1 144 Q. Undoubtedly, but you didn't tell us this morning that  
2 this - and that you explained it to Mr. McGowan, this  
3 is a difficult investment, because there are so many  
4 elements - hurdles to cross, I think was the phrase  
5 that was used?

6 A. Yes.

7 145 Q. And undoubtedly there were. And presumably, if you did  
8 discuss it with the trustees, you would have told them  
9 that. And if the trustees, I suggest to you, were  
10 exercising their own discretion, they wouldn't touch  
11 this with a barge pole, because they would be  
12 responsible if it didn't go right?

13 A. Yes, sir. I think that whatever I know now would be  
14 probably hindsight, sir, but that looking at it now,  
15 that what I did put up, sir, did, in fact, happen. And  
16 that the - that most investments that anyone makes,  
17 anyway, would have - goodness knows, that there is  
18 always an element of chance, one way or the other. But  
19 I think in this I would have been - yes, I agree with  
20 you, that there was an element of chance in this. Yes,  
21 any of these, that there are --

22 146 Q. In the case of sitting tenants, there is an element of  
23 a big chance. They could dig in their heels and say,  
24 "I don't want any money at all. I've lived here all my  
25 life and I want to stay here" --

26 A. Sir, I might say to you --

27 147 Q. If any one of them did that, or if Usit Travel or any  
28 of the other commercial tenants, whoever they were, in  
29 the building said, "No, look, we are terribly sorry,  
30 this is our place of business, we want to stay," you

- 1 would have been in the grocery business?
- 2 A. Sir, I might just say this, and I don't want to pat  
3 myself on the back. I think I would be counted as  
4 being one of the renown most skillful persons in Dublin  
5 to do this sort of work. I think I have a more - more  
6 experience of it than anybody else who had done it, and  
7 had a track record of doing it. So whilst - and that  
8 it is not - I know it's not an easy job, but I would  
9 have been more prepared for it than a lot of people,  
10 sir.
- 11 148 Q. Well, are you saying that because of your expertise,  
12 this was not a risky venture?
- 13 A. I put it like this, sir: That it is better to have  
14 skills around, that if you are looking at what - it can  
15 diminish a risk, sir, to somebody who knows the  
16 business well.
- 17 149 Q. Well, the best thing about skills is they can assess  
18 the risk. And on any assessment, this was risky.
- 19 A. Hum.
- 20 150 Q. But yet the trustees were happy to go along with it?
- 21 A. Yes, sir.
- 22 151 Q. I suggest the reason being is that you decided to go  
23 along with it, effectively?
- 24 A. No. I would have explained that I would have discussed  
25 this at the particular time with Mr. Traynor, and that  
26 - and who was in direct contact with the trustees all  
27 of the time, sir. And he would have known, because I  
28 had been through the mill with him and other colleagues  
29 on other property ventures, sir.
- 30 152 Q. Yes. Well, now, going back to the actual investment.

1 Earlier this morning you told me that you put in  
2 something in excess of ú20,000. May I take it that  
3 what you were actually referring to was this ú21,250?

4 A. I think - that's what I was referring to, yes.

5 153 Q. Which appears to have been used by way of deposit in  
6 April of 1978.

7 .

8 Did you have to put your hand, or should I say, did  
9 Foxtown Investments Limited have to put its hand in its  
10 pocket for any other outlay in this project?

11 A. One of the things, sir, as I recollect about - Brennan  
12 and McGowan did say, sir - well, there was - the part  
13 they would play in this, sir, was they had a great -  
14 that they had great connections with the banks and one  
15 thing and another. And on funding, that they would  
16 arrange --

17 154 Q. We know there was borrowing from some bank for the  
18 purpose - you've told us for the purpose of purchasing  
19 the Smiths of the Green interest. Were you required to  
20 provide any money to assist in the Smiths of the Green  
21 interest, other than over and above what was borrowed  
22 to buy it, put it that way?

23 A. Sorry, sir --

24 155 Q. Smiths of the Green's interest was bought, you tell us,  
25 for something like ú500,000 --

26 A. Yes, sir.

27 156 Q. You've told us earlier this morning that you believed  
28 that that was borrowed money?

29 A. Yes, sir.

30 157 Q. And I am trying to establish was it all borrowed, or

1 was there any element of cash put up with borrowings to  
2 buy it?

3 A. I am not sure, sir.

4 158 Q. Well, are you aware of whether Foxtown paid out any  
5 other money apart from this ú21,250 --

6 A. No, sir.

7 159 Q. -- for Stephen's Green?

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

9 160 Q. Are you aware - did you personally, as opposed to  
10 Foxtown, put up any money to buy the Smiths of the  
11 Green interest?

12 A. No, sir.

13 161 Q. Yes. Well, may I take it, then, that the only actual  
14 cash outlay that you were required to put into this was  
15 the sum that you did put up by way of - Foxtown put up  
16 by way of deposit, in the sum of ú21,250?

17 A. Yes.

18 162 Q. Did Messrs. Brennan and McGowan put up similar sums?

19 A. As far as I am aware, they did, sir.

20 163 Q. Yes. We do know that, both Messrs. Brennan and McGowan  
21 have told the Tribunal in evidence that the ú79,000  
22 from Orion which was used to pay the balance of the  
23 purchase price on the freehold, and the Miley & Miley  
24 fees in connection with that transaction, was as much  
25 yours as theirs. This is the money that came from the  
26 Tritonville transaction. You remember that evidence?

27 A. Yes, sir.

28 164 Q. So if that is correct, then, to that extent you  
29 contributed the equivalent, or the cash equivalent of  
30 one-third of whatever it was, ú74,500, that was sent

1 over to Miley & Miley. Isn't that right?

2 A. I would take that, sir, as being part of what I would  
3 see - part of the funding operation being supplied by  
4 Brennan and McGowan, their part of the deal.

5 165 Q. Well, they say it was partly yours?

6 A. Well, my understanding, sir, is that that was one of  
7 the considerations - that that came in, as far as I  
8 recollect, as far as I recollect, as a loan, sir.

9 166 Q. Well, let's put it this way: If it isn't, if the - if  
10 you were not entitled to 74,500, or to a third of this  
11  79,800, if you were not entitled to that, it would be  
12 exceptional, because it would be the only case in which  
13 you were involved in a transaction in these series of  
14 transactions that we've been talking about with Brennan  
15 and McGowan where you weren't entitled to share, where  
16 they had set up Jersey companies into which the profits  
17 or proceeds would be distributed.

18 .

19 You were involved with them in the case of Monkstown.  
20 You were involved with them in the case of Newtownpark  
21 Avenue, in the case of Donnybrook, and now in the case  
22 of St. Stephen's Green. All of them involving Jersey  
23 companies. And you were also involved with them in  
24 Tritonville Avenue. So what reason do you have to  
25 believe, and I appreciate that your evidence yesterday  
26 was that you don't remember, but what reason do you  
27 have to think that they are incorrect in saying that  
28 you were equally entitled to the  79,800 that came out  
29 of Tritonville Road?

30 A. Well, sir, I don't know what - that wasn't my



1 understanding, because at the stage when Mr. Brennan  
2 and Mr. McGowan were saying that they would provide  
3 funding, sir, that was one of the things - and I reckon  
4 that that was part of the funding. And I think that  
5 may have been - that was coming out of the wash at the  
6 end of the day, sir.

7 167 Q. Yes. The borrowing which was used to purchase the  
8 Smiths of the Green interest, were you a guarantor or a  
9 surety in respect of that borrowing to the bank?

10 A. Not that I recollect, sir.

11 168 Q. It's the kind of thing you wouldn't forget if you were,  
12 is it?

13 A. I don't think I would, sir.

14 169 Q. We know that security was provided to Hill Samuel for  
15 the subsequent £300,000. But was any security provided  
16 to the bank that provided the monies to pay Smiths of  
17 the Green?

18 A. I don't know, sir.

19 170 Q. Presumably they required security?

20 A. I don't know, sir.

21 171 Q. Yes. Where did the monies come from that was used to  
22 pay off the tenants?

23 A. I don't know, sir, exactly where the - I can't just put  
24 my finger on it --

25 172 Q. Who paid them? Usit Travel, for example, they were the  
26 biggest?

27 A. Yes.

28 173 Q. Who paid them? And how much were they paid?

29 A. I think what the - I think that Usit Travel was the  
30 biggest of them. I am not sure, sir, but I think that

1 contracts were in existence with Usit Travel. And I am  
2 not sure what stage, sir, that they were actually paid.

3 174 Q. Do you think that Usit Travel had committed themselves  
4 to surrender for a particular price, but that the  
5 Gallagher Group took a conveyance of the property with  
6 the benefit of those contracts, on the basis that --

7 A. I am not sure.

8 175 Q. Well, either the Gallagher Group paid them, or yourself  
9 and Messrs. Brennan and McGowan paid them. They had to  
10 be paid, obviously?

11 A. Mm-hmm.

12 176 Q. And can you say who paid them? We can do it by  
13 exclusion. Was it the Gallagher Group?

14 A. I think - sorry, I am a bit hazy on this, sir, but I  
15 think that the - I think when the - I am trying to  
16 remember, sir, what was left over, but I think that  
17 there was - there were a number of tenants that were  
18 there. And I think that it might have been one of them  
19 that was passed on, sir, I am not sure.

20 .

21 MR. HANRATTY: Perhaps we could take a break at this  
22 point, Sir?

23 .

24 CHAIRMAN: We'll break for twenty minutes.

25 .

26 THE TRIBUNAL THEN ADJOURNED FOR A SHORT RECESS AND  
27 RESUMED AGAIN AS FOLLOWS:

28 .

29 .

30 177 Q. MR. HANRATTY: Mr. Finnegan, in December 1978, Mr. Hugh

1 Owens wrote a letter setting out some information about  
2 the ú300,000 that was borrowed from Hill Samuel.  
3 .  
4 If we could just have a look at page 726. Sorry, it's  
5 a letter dated the 9th of October, 1984. And it's to  
6 Mr. Wheeler from Mr. Owens.  
7 .  
8 As you can see there, he's talking about Canio Limited.  
9 He has the Canio reference on it, C758. He says:  
10 .  
11 "Dear Mr. Wheeler, with reference to your letter of the  
12 17th September, the breakdown of the amount of ú663,743  
13 is as follows:" - now, that figure, of course, is the  
14 price of the Sandyford lands.  
15 .  
16 "The original investment - ú660,000.  
17 Add expense payments, 1981" - and then he lists a  
18 number of expense payments, and comes up with a total  
19 of ú663,743.  
20 .  
21 As you can see, the share capital figure is actually  
22 just ú12.  
23 .  
24 He says:  
25 .  
26 "All the money paid was paid equally by the three  
27 shareholders of the original investment of ú300,000 had  
28 been invested in December 1978 into a company called  
29 Green Trees Limited. This money was transferred in May  
30 1979 and was used to pay the deposit on Sandyford. In

1 February 1980, a total of ú150,000 was paid from  
2 Jersey. And in November 1980 a total of ú210,000 was  
3 paid."

4 .

5 Now, the 150 is 50,000 from each of the three of you,  
6 isn't that right? And the 210,000 is a subsequent  
7 70,000 from each of the three of you, making up a total  
8 from you of 120,000?

9 A. Mm-hmm.

10 178 Q. But for present purposes, it's quite clear that that  
11 ú300,000 came out of Green Trees. Isn't that right?

12 A. Mm-hmm. Yes, sir.

13 179 Q. And we know that Green Trees Limited borrowed ú300,000,  
14 this ú300,000, it would appear, from Hill Samuel.

15 .

16 If we could look at page 2496.

17 .

18 This is Mr. Simon Howard's note. And towards the  
19 bottom of the page, he is talking about Worland  
20 Investments Limited. Now, he says:

21 .

22 "This company was party to a management agreement of  
23 the 22nd of January, 1979, for acquisition, development  
24 and management of premises at 6/7 St. Stephen's Green,  
25 Dublin."

26 .

27 Can you tell us about this management agreement that  
28 all of these Jersey companies, that is Worland, Arippe,  
29 Whisper, Glencree, and Keno entered into with Green  
30 Trees?

1 A. No, sir.

2 180 Q. As far as you were aware, was there any management  
3 services ever provided by Green Trees to anybody in  
4 connection with this property?

5 A. I don't recollect, sir. Not that I am aware of at the  
6 moment, sir. Maybe there was something, but I wasn't  
7 --

8 181 Q. Would I be right in thinking that between the time that  
9 the properties - the titles in the property were  
10 purchased, both from MEPC and Smiths of the Green, that  
11 there was no management to be done, apart from  
12 negotiating with the tenants for a surrender of their  
13 leases, and ultimately selling it on to the Gallagher  
14 Group in 1981?

15 A. That would be - that's the sort of thing, sir. There  
16 were - yeah, rents paid, negotiations with tenants --

17 182 Q. Yes. And who did that?

18 A. The --

19 183 Q. Who collected the rents and negotiated with the  
20 tenants?

21 A. We negotiated with the tenants, sir.

22 184 Q. Yes. And as far as you were aware, was there any  
23 company called, or any personnel, or employees, or  
24 managers of a company called Green Trees going around  
25 doing anything about this property during that period?

26 A. Sir, I don't recollect.

27 185 Q. Are you in a position to assist - sorry?

28 A. Sorry?

29 186 Q. Are you in a position to assist us with what was the  
30 purpose of this management agreement?

1 A. No, sir. I am sorry.

2 187 Q. We know that Keno Investments Limited, Whisper,  
3 Glencree, and the other Jersey companies also executed  
4 a debenture in 1979. And it would appear, for the  
5 purpose of securing the ú300,000 borrowing. Is that  
6 right?

7 A. I --

8 188 Q. It's in favour of Hill Samuel.

9 A. Sir, this appears to be the situation, as I have seen  
10 it now.

11 189 Q. Of course.

12 A. Whatever it is, it is --

13 190 Q. Well, yes, it does appear to be - it is a debenture in  
14 favour of Hill Samuel, and Hill Samuel is the bank from  
15 which the ú300,000 was borrowed. So it seems very  
16 clear it was to secure the borrowing of ú300,000 which  
17 was sent over to pay the deposit on the lands in  
18 Sandyford for Canio.

19 .

20 Why was it decided that the monies to buy the Sandyford  
21 lands would be, or at least to pay a deposit on them,  
22 would be raised in this particular way?

23 A. I don't know, sir.

24 191 Q. Is it, for example, because these companies, given that  
25 in one shape or another they appear to have been vested  
26 with bits of the title, had something to offer by way  
27 of security? Or is it simply because the St. Stephen's  
28 Green property could be used for the provision of  
29 security against the borrowing?

30 A. The position at the time, didn't they - and I see this

1 looking back now, they held parts of the tenancies --

2 192 Q. Well, it appears that way from correspondence which  
3 we've already had, and we'll look at again, where you  
4 recall in the acceptance - sorry, in the letter, in  
5 response to your letter, looking for, or seeking to buy  
6 it on behalf of the Gallagher Group for 750, making an  
7 offer of 750. There was a response in which they said  
8 they wanted ú900,000, and it was - there was a  
9 breakdown set out in the letters to the various sums,  
10 to the various sums which amounted to the total. But  
11 whether or not these Jersey companies actually owned  
12 these bits of these titles - property was owned in such  
13 a way as it could be used for the provision of  
14 security.

15 .

16 What I am inquiring about is: Is that the reason that  
17 the ú300,000 was raised out of St. Stephen's Green or  
18 was there some other reason?

19 A. I see what you - I see what you are saying, sir. So  
20 the security of the - the bits and pieces.

21 193 Q. Yes. I mean, perhaps, depending on the stages of the  
22 negotiations, they may not have amounted to much  
23 security, but undoubtedly, all of these companies,  
24 including Worland, Whisper, Arippe, Glencree and Keno,  
25 did execute a debenture over what appeared to be their  
26 respective interests in various leasehold bits of this  
27 property. And in the case of Keno, its freehold?

28 A. Yeah.

29 194 Q. As security for a borrowing of ú300,000, which was sent  
30 over to Reid & McNabb and was, in fact, used to pay the

1 deposit on the Sandyford property.

2 A. Right.

3 195 Q. And what I am trying to ascertain from you is any  
4 information you may have as to why it was done in this  
5 particular way.

6 A. I'd say it was part of - like, it was kind of news to  
7 me to see the way all the companies were - all these  
8 companies were involved there. I would say it was part  
9 of an overall plan, sir.

10 196 Q. Well, we also know that you were a full one-third  
11 partner in the Sandyford property.

12 A. Yes, sir.

13 197 Q. And we know, for example, as we've just seen from that  
14 document that we put up, when the time came to pay 150,  
15 you put up your 50. When the time came to put up 210,  
16 you put up your 70. So you were quite clearly, from  
17 the outset, a full 100 percent partner in this venture.  
18 And unlike in all of the previous ventures, including  
19 possibly St. Stephen's Green, you actually were  
20 involved in the provision of one-third of the original  
21 capital investment.

22 .

23 Now, that means, presumably, therefore, that at the  
24 outset you would have been told that there was a  
25 prospect of this property in Sandyford by somebody, and  
26 that it could be purchased for a particular price. In  
27 fact, your office was involved in --

28 A. Yeah.

29 198 Q. -- correspondence at a very early stage with Mr. - I  
30 can't remember the gentleman's name?



1 A. Whatever.

2 199 Q. Yes. So you would have known about it from the start.

3 You would have known, ultimately, that the price that  
4 it was going to be bought for was 660,000, or 630 plus  
5 whatever?

6 A. Yeah.

7 200 Q. And therefore you would have known that there was going

8 to be a requirement to pay a deposit, and how much the  
9 deposit was. And presumably, therefore, you would have  
10 known that this was going to be borrowed by Green  
11 Trees?

12 A. Well, how that just came about, I know now it did come  
13 about, sir, but, you know, just - you are right, there  
14 must have been some discussion about when the lands  
15 were going to be bought, but I think that must have  
16 been done by Mr. Owens.

17 201 Q. Yes. But who paid back that borrowing, the Hill Samuel  
18 borrowing?

19 A. I am not sure, sir, how that worked out. I think that,  
20 the only thing there is that I think there was quite a  
21 lot of maneuvering - sorry, "maneuvering" may not be  
22 the right word, but adjustments in the sale on of the  
23 freehold and of the Smiths of the Green. They had all  
24 these various companies, as you say. I don't know  
25 whether there was - well - I am only surmising.

26 202 Q. We know about a sum of ú826,438 that went over to  
27 Jersey, from which a number of expenses, including  
28 ú154,000 composite figure, which is broken down by  
29 Miley & Miley, were paid. And after which a net sum of  
30 ú671,840 was left. And that sum was divided into three

1 portions of ú223,946, of which you got one, or at least  
2 of which Foxtown got one. You remember that? That was  
3 the division here.

4 A. Yes, sir.

5 203 Q. That was part of the ú900,000 payment paid by the  
6 Gallagher Group Limited, but from the ú900,000 we  
7 understand that there was a 15 percent deduction for -  
8 against future liability to Capital Gains Tax. So that  
9 accounts for 900,000. The remaining balance, we do not  
10 have complete documentation about. And am I correct in  
11 surmising that the borrowings - first of all, the  
12 borrowings which were used to purchase the Smith's  
13 interest, and secondly the Green Trees borrowings which  
14 was used to pay the deposit on Canio, were they paid  
15 out of the balance of ú600,000, which was still due?  
16 .  
17 In other words, we have accounted for ú900,000 from the  
18 Gallagher Group?

19 A. Yes.

20 204 Q. We have not accounted for ú600,000?

21 A. Yes.

22 205 Q. We do know, on the basis of your evidence, that there  
23 was borrowings to buy the Smiths of the Green interest,  
24 which was approximately ú500,000, or something less  
25 than that. And we do know for certain that there was  
26 ú300,000 borrowings by Green Trees from Hill Samuel?

27 A. I couldn't say exactly what was borrowed, sir, on the  
28 leasehold, but I think you mentioned there was - maybe  
29 this is the 300 we are talking about.

30 206 Q. No, the 300 was borrowed from Green Trees after Smiths

1 of the Green had been bought, and after the MEPC  
2 freehold had been bought, that was all in 1978. The  
3 Green Trees borrowing was actually 1979. So Smiths of  
4 the Green had already been bought and paid for, and the  
5 MEPC interest had already been bought and paid for.

6 .

7 The MEPC interest, we have accounted for, because we  
8 know that you, or Foxtown Investments Limited paid the  
9 deposit, and we know that the balance of that, and  
10 Miley & Miley's fees, were paid out of the Keno money  
11 which came from Tritonville Road, and which was put in  
12 the Guernsey bank.

13 .

14 So we've accounted for the freehold. So the question  
15 is: Where did the money come from that bought the  
16 Smiths of the Green leasehold interest? You told us it  
17 came from borrowings. If that was correct, that had to  
18 be repaid from something?

19 A. Sure.

20 207 Q. We know for certain that after these interests were  
21 bought, in 1979 Green Trees borrowed another 300,000  
22 from Hill Samuel. And we presume that had to be repaid  
23 from somewhere. Isn't that so?

24 A. Yes, sir.

25 208 Q. Presumably there was discussions between yourself and  
26 Brennan and McGowan at the time, and agreement that the  
27 St. Stephen's Green property would be used as security  
28 for borrowing to pay the deposit on Sandyford?

29 A. I would say that all of that just probably happened,  
30 sir. I can't just say to you that I recollect the

1 discussions, but for the purpose - there must have  
2 been, you know, but I don't --

3 209 Q. Well, do you remember any form of connection at all  
4 between St. Stephen's Green and Sandyford?

5 A. Well, again, as - it's often very hard, sir, to cut  
6 between what you see here - what we are seeing now and  
7 what we heard at the time, but it looks as though - I  
8 can't say absolutely I do, sir, but we have to assume  
9 that there must have been a discussion.

10 210 Q. If we could just have page 726. Sorry, that's just the  
11 one we've had. Page 283.

12 .  
13 This is a letter to Hill Samuel, dated the 24th of  
14 August, 1979. It's not clear who it's from, but it's  
15 obviously in connection with Green Trees. It says:  
16 "Re Green Trees Limited deposit account." And I  
17 presume it's from Mr. Wheeler, although we don't have a  
18 reference on the top of the page. It says:

19 .  
20 "At the request of Mr. Thomas Brennan we enclose  
21 herewith our cheque for ú20,000 made payable to you  
22 which we kindly lodge to the credit of the above  
23 deposit account."

24 .  
25 So it appears that Green Trees Limited did have a  
26 deposit account in Hill Samuel, and that in this  
27 instance Mr., we believe, Wheeler, was sending ú20,000  
28 to that account. What was that for?

29 A. I don't know, sir.

30 211 Q. Could we just have a look at page - let's have a look

1 at page 340.

2 .

3 This is your letter that we've already had, and we  
4 don't need to dwell on it too much. But this is your  
5 letter which you have told us was drafted by Mr. Owens,  
6 which you said that you signed on the basis that he  
7 asked you to sign it, but in which you purport to make  
8 an offer on behalf of the Gallagher Group Limited. And  
9 which, you've already told us that --

10 A. That was between the parties.

11 212 Q. Yes. And it purports to make an offer for ú750,000.

12 Yes.

13 .

14 "We have clients who are interested in acquiring the  
15 above interests, and we are instructed to make an offer  
16 of ú750,000 for all the above interests.

17 .

18 It is essential that all the interests would be  
19 acquired, but as there appear to be several different  
20 parties, would you please negotiate prices within the  
21 above-mentioned global figure."

22 .

23 This is part of Mr. Owens', what has been referred to  
24 as "orchestrated correspondence".

25 .

26 If we could just briefly look at 345.

27 .

28 This is Mr. Owens' draft of the reply to Finnegan

29 Menton from - I am not sure who signed it.

30 Mr. Wheeler, presumably. Yes. But you can see, that's

1 his draft. If we look at page 343, we see the letter  
2 sent in accordance with that draft, and in the terms of  
3 that draft.

4 .

5 Now, this is dated the 22nd of February of 1980.

6 It says:

7 .

8 "Re 6/7 St. Stephen's Green, Dublin.

9 .

10 We acknowledge receipt of your letter of the 7th  
11 February, 1980. We have consulted with our clients on  
12 the contents thereof, and regret your offer is not  
13 acceptable. However, our clients would be prepared to  
14 accept the following amounts for their respective  
15 interests (all in Irish pounds):

16 .

17 Keno Investments Limited - ú842.

18 Glencree Investments Limited (CI) Limited - ú11,000.

19 Whisper Investments Limited - ú12,000.

20 Victa Investments Limited - ú9,500.

21 Arippe Investments Limited - ú13,000.

22 Worland Investments Limited - ú12,000."

23 That makes a total of ú900,000.

24 .

25 "This is subject to acceptance and exchange of  
26 contracts, together with a ten percent deposit, not  
27 later than 31st March, 1980, and completion not later  
28 than 3rd of July, 1980. Completion to take place at  
29 this office at 12 noon on that day.

30 .

1 If your clients accept, would you please furnish with  
2 the name and address of the solicitors to whom to send  
3 the contracts." And he deals with agency fees and so  
4 on.

5 .  
6 Now, as you can see, he gives this breakdown.

7 Do you ever my any idea on what basis these valuations  
8 were arrived at, or the prices that he set against each  
9 of these respective Jersey companies were arrived at?

10 A. I don't have any idea, sir.

11 213 Q. The most spectacular feature of this letter is the fact  
12 that the Keno Investments Limited interest, which is  
13 the freehold interest which we've been speaking about  
14 this morning, and which was bought for ú90,000, is now  
15 here valued at ú842,000. Why was he doing that, or  
16 what was the purpose of that?

17 A. Well, first of all I would say I am not really sure,  
18 but if I was just to give you - just, first of all an  
19 observation on it, sir - but I suppose that at the  
20 stage which we are talking about there, things have all  
21 happened, like it's - there is planning permission in  
22 situ, there is - tenants have been more or less, as far  
23 as I recollect, most of the tenants have been dealt  
24 with.

25 214 Q. Yes.

26 A. And I suppose that - it's the freehold interest.

27 215 Q. Yes.

28 A. And it was probably giving vacant possession of a large  
29 chunk of the upper portion of the building, without  
30 which anything couldn't happen.

1 216 Q. Well, is it conceivably possible that the freehold had  
2 gone from 90,000 to ú842,000 in value?

3 A. Just to look at it in general terms, sir. The position  
4 regarding - without the freehold, nothing could happen.

5 217 Q. Undoubtedly.

6 A. You had - the freehold had an interest - had the  
7 interest. Without the interest over and above all the  
8 thing, first of all, you couldn't go in there and start  
9 demolition work inside or whatever.

10 218 Q. Yes.

11 A. And it controlled the shop as well, so it would be  
12 deemed to be a very important part of the whole scene.

13 219 Q. I understand all of that, Mr. Finnegan, but if I may  
14 say so, you are the valuer here.

15 .  
16 Is it your view that the figure which you put on the  
17 freehold at this point in time, that is in February of  
18 1980, ú842,000, accurately reflects the actual value of  
19 the freehold at that point in time?

20 A. Well --

21 220 Q. Or is this some sort of an accountancy exercise?

22 A. I would say that it is an accountancy exercise, but  
23 must play some sort of realism - should reflect some  
24 sort of realism on it. I would imagine - I think that  
25 maybe what we discussed, sir, not too long ago there,  
26 when we discussed individual tenants and all of that  
27 sort of thing, that if you didn't get them, you had no  
28 right to buy them.

29 221 Q. Yes.

30 A. And like, there could have been - you could look at all



1 sorts of figures, I suppose, to make it up. You see  
2 what I mean? If any one of them wasn't there at these  
3 numbers, but I am not sure - sorry?

4 222 Q. Sorry?

5 A. It would be a very important part of it, because it  
6 controlled the --

7 223 Q. Yes.

8 A. And without that, you couldn't do - implement the  
9 planning permission. Now, I am not saying it is - I  
10 didn't do the - sir, just to be fair, I didn't do the  
11 exercise as to whether --

12 224 Q. What is being discussed here is a property which,  
13 leaving aside the respective values of the leasehold  
14 and the freehold, is a property, the freehold of which  
15 had been acquired for ú90,000, and the main leasehold  
16 interests of which had been acquired for something less  
17 than ú500,000, and in respect of which there obviously  
18 must have been some further expenditure in acquiring  
19 the other leasehold interests and possession of the  
20 properties occupied by sitting tenants, isn't that  
21 right?

22 A. Yes, sir.

23 225 Q. And we know that the ú900,000 was proceeded with. And  
24 that after a deduction of 15 percent, or thereabouts,  
25 for Capital Gains Tax, was sent over to Jersey. And if  
26 we can look at page 376.

27 .

28 This is, I believe, a Miley & Miley document giving a  
29 breakdown of the disposition of that figure. The  
30 figure that went over was - appears to be ú784,817.94.

1       There were, added to that, ú37,058.01, ú4,466.68. And  
2       it says "On dep", which I take to mean "on deposit",  
3       and a cash figure of ú95.

4       .

5       Just in relation to that deposit figure, I wonder can  
6       we just see if we can identify that. Yes, if you just  
7       bear with me for a moment. Yes, if we could just look  
8       at page 360.

9       .

10      This is Chase Bank, and it's confirming a deposit value  
11      of the 16th of May, 1980, at seven days notice in the  
12      amount of ú4,466.68.

13      .

14      MR. HUSSEY: I wonder, can you see that, Mr. Finnegan?

15      I know you have difficulty looking at the screen.

16    A.   Yeah.

17      .

18      MR. HUSSEY: Sorry.

19      .

20 226 Q.   MR. HANRATTY: It's an advice note from Chase Bank to  
21      Bedell & Cristin?

22    A.   Sorry?

23 227 Q.   It bears the Keno reference. If you see, "To Bedell &  
24      Cristin" towards the bottom of the page, it says  
25      "re K 164", which, I think, is the Keno reference.

26      .

27      If you recall, we know that the amount of money that  
28      was sent over to Keno was - from Tritonville Road, was  
29      ú79,800. We know that the amount of money that was  
30      sent over to Miley & Miley for the balance of the

1 purchase price of the freehold to MEPC, and some Miley  
2 & Miley fees, was ú74,500. And what I wanted to ask  
3 you is: Is it - would I be correct in thinking that  
4 this is the balance of the Keno monies that was left in  
5 the account, albeit that it started off life in Orion  
6 Bank (Guernsey) Limited and somehow appears to have  
7 found its way into Chase Bank?

8 A. I -

9 228 Q. You don't know -

10 A. I don't know that, sir.

11 229 Q. All right. Well, on a working assumption, and subject  
12 to anything anybody else will tell us, we will proceed  
13 on the basis that that is, in fact, what that is,  
14 because there was undoubtedly ú5,000 of Keno's monies  
15 left after the 74,500 went over to Ireland.

16 .

17 In any event, getting back to the breakdown. If we  
18 could look at page 1683.

19 .

20 You can see there the amounts that were held were in  
21 the Investment Bank of Ireland, ú784,817.95, and a  
22 separate balance in the same bank for ú37,058.01. And  
23 those are the two figures which are at the top of the  
24 handwritten document - which we'll go back to now, page  
25 376 - of ú784,817.94, and ú37,058.01. So those sums  
26 came through the Investment Bank of Ireland Limited.

27 .

28 Now, we have some correspondence, just for the sake of  
29 completeness, that we'll look at relating to those  
30 figures.

1 .  
2 First of all, page 371. And this is a letter from  
3 Bedell & Cristin to the Manager of Chase Bank (CI)  
4 Limited, dated the 27th of June, 1980.

5 .  
6 "We enclose herewith two cheques in the sum of  
7 ú784,817.95 and ú37,058.01 for special clearance, to be  
8 credited to our client account 8103.

9 .  
10 We would be obliged if you could advise us as soon as  
11 possible whether or not these cheques have been  
12 cleared."

13 .  
14 And if we look at page 378?

15 A. Excuse me.

16 230 Q. Would you like --

17 A. No, it's all right. I just lost the track of that a  
18 little bit, sir. What? All of this has been  
19 transferred --

20 231 Q. To Jersey and distributed.

21 A. All right.

22 232 Q. In fact, if I just refer you back to the sheet, it will  
23 show you what was done. Page 376.

24 A. I'd lost the swing - it's all right. No, carry on.

25 233 Q. You can see the two figures, 784 and the 37 there. The  
26 4,466.68 which I indicated we believed to be the rest  
27 due of the Keno monies, and a cash figure of 95, making  
28 a total of 826,438.61.

29 .  
30 Now --

1 A. I just had lost - I didn't know which way you were  
2 going.

3 234 Q. That's all right. Then you can see that the author of  
4 this document writes out a number of expenses,  
5 including Gore and Grimes' expenses, Stephen Miley's  
6 fees, Mr. Owens' fees, and Bedell & Cristin's fees.  
7 And they amount in total to ú154,598.49, as you can  
8 see, leaving a balance of ú671,840.12.

9 .  
10 And then the author writes in:

11 .  
12 "Foxtown Investments, care of Guinness & Mahon  
13 (Guernsey) - ú223,946.71.  
14 Kalabraki Limited - ú223,946.71.  
15 Gasche Investments Limited - ú223,946.70."  
16 Making up that total of ú671,840.12.

17 .  
18 So that is the breakdown of the figure of the proceeds  
19 of sale, and that is the disposition, in effect, of the  
20 ú900,000 after the capital gains tax deduction. If I  
21 can just briefly refer you to the letters disposing of  
22 that money, page 378.

23 .  
24 On the 4th of July 1980, Bedell & Cristin writes to the  
25 manager of Allied Irish Banks in Bruton Street,  
26 attention Mr. Godfrey:

27 .  
28 "Dear sir, we now have pleasure in enclosing herewith  
29 two cheques in the sum of ú223,946.71 and ú223,946.70  
30 in favour of Kalabraki Limited and Gasche Investments

1 Limited respectively. Kindly acknowledge receipt by  
2 return of post."

3 .

4 So that's Mr. Brennan's share and Mr. McGowan's share.

5 And then on page 377 we have your share, and  
6 unfortunately in this document the bank is obscured.

7 But it's - in fact, I wonder, do we have a clearer copy  
8 of that document to identify the bank?

9 .

10 In any event, it's from Bedell & Cristin. It's clearly  
11 the third portion of this division. It's dated also  
12 the 4th of July 1980, and he says:

13 .

14 "Dear sir, we would be obliged if you would immediately  
15 telegraphically transfer an amount of ú223,946.81 to  
16 Midland Bank Limited, Poultry and Princess Street,  
17 London for crediting to the account of Guinness & Mahon  
18 Limited, reference Guernsey account Foxtown."

19 .

20 Now, that was your share of the division, isn't that  
21 right?

22 A. Yes, sir.

23 235 Q. Why was it sent over to Midland Bank, as a matter of  
24 interest, when it clearly could have been sent directly  
25 to the Foxtown account?

26 A. Who sent that, by the way?

27 236 Q. Bedell & Cristin. It's Mr. ER Morin, I think.

28 A. I have - really, sir, I have no idea.

29 237 Q. Well, would you not have given an instruction to Bedell  
30 & Cristin as to where it should be sent?

1 A. I would - it's the first time I've even sort of come

2 across this, sir. I would say that Mr. Owens did, sir.

3 238 Q. Yes. Well, if he did that, he would have done so on

4 your instructions, presumably?

5 A. Well --

6 239 Q. I mean, he wouldn't know that it should be sent to

7 Midland Bank in Poultry and Princess Street without

8 having been told that by somebody.

9 A. No. I see what you mean, sir. Well, I don't recollect

10 telling him.

11 240 Q. All right. The point about all of this is, though,

12 that out of this ú900,000, we know for certain that the

13 borrowings, if there were borrowings to buy the Smiths

14 of the Green leasehold interest, and the ú300,000 Green

15 Trees borrowing, Green Trees borrowings, which was used

16 to pay the deposit on Sandyford, those borrowings were

17 not repaid out of this ú900,000.

18 .

19 And the other question that arises is: Where is the

20 rest? We've been told that the sale price to the

21 Gallaghers was ú900,000, and we have seen no evidence,

22 documentary or otherwise, indicating either a receipt

23 or a disposition of the balance of the purchase price;

24 in other words, this 900,000 is the only 900,000 that

25 we've been able to find. Can you assist us as to

26 whether we are missing some documents or whether we are

27 missing something in the documents we have about the

28 whereabouts of the remaining 600,000?

29 A. No, sir.

30 241 Q. You mentioned earlier this morning that there was some

1 kind of splitting of the sale to Gallagher Group?

2 A. Yes, I understood - I thought that, sir.

3 MR. HANRATTY: Perhaps we might deal with that after

4 lunch, sir.

5 .

6 CHAIRMAN: Very good.

7 .

8 MR. HANRATTY: If that's all right.

9 .

10 CHAIRMAN: Quarter past 1.

11

12 THE TRIBUNAL THEN ADJOURNED FOR LUNCH AND RESUMED AS

13 FOLLOWS:

14 .

15 .

16 .

17 .

18 .

19 .

20 .

21 .

22 .

23 .

24 .

25 .

26 .

27 .

28 .

29 .

30 .



1 THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

2 .

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

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

5 .

6 242 Q. MR. HANRATTY: Mr. Finnegan, just to briefly revisit

7 two of the letters we had this morning. These are the

8 letters drafted by Mr. Owens. The first one is page

9 340.

10 .

11 Really, just to separate out, and so that we can all be

12 clear about what interests are being referred to in

13 these documents.

14 .

15 What is stated here is:

16 .

17 "We understand you act for Keno Investments Limited

18 which owns the freehold of the above property and for

19 Glencree Investments Limited, Whisper Investments

20 Limited, Victa Investments Limited, Arippe Investments

21 Limited, and Worland Investments Limited, which have

22 certain leases relating to the above property."

23 .

24 Then you go on to make the offer of ú750,000 for all of

25 the above interests.

26 .

27 The point I wish simply to draw your attention to, is

28 that document makes no reference to Green Trees, which

29 is the company which held the Smiths of the Green

30 interest?

1 A. Yes, sir.

2 243 Q. So what this offer of ú750,000 refers to is the  
3 freehold interest which is held by Keno and the smaller  
4 leasehold interests held by this series of Jersey  
5 companies, but does not include the main leasehold  
6 interest, shall we say, of Smiths of the Green which  
7 was held by Green Trees.

8 .  
9 Then, in the letter of - where they come back and say  
10 that they want ú900,000, page 343, which we have had  
11 this morning in a different context. You can see there  
12 that it refers to Keno, Glencree, Whisper, Arippe and  
13 Worland, and with the exception of Keno, all those  
14 Jersey companies hold rather small, at least on the  
15 basis of the valuations that is put to them, leasehold  
16 interests, but certainly this document does not make  
17 any reference to the Smiths of the Green leasehold  
18 interest, which is held by Green Trees. Isn't that  
19 right?

20 A. That's right, sir.

21 244 Q. But it does make reference to the freehold interest  
22 which is held by Keno?

23 A. Yes, sir.

24 245 Q. And in fact, we know that the Green Trees interest -  
25 sorry, we know that that interest, or the interests  
26 referred to in that correspondence, was transferred for  
27 a sum of ú900,000. You will recall before lunch I was  
28 indicating to you that we don't appear to have any  
29 documentation at all, giving any information about the  
30 payment or disposition of the balance of ú600,000.

1       What we do have, however, is the Deed of Assignment of  
2       the Green Trees interest, which is at page 4658.

3       .

4       Sorry, we have a memorial of the deed, which  
5       unfortunately does not contain any reference to the  
6       consideration, but as you can see from that document,  
7       it is an indenture, it is a memorial of the Indenture  
8       of Assignment of the 17th of June, 1981 between Green  
9       Trees Limited, with offices, 12 South Frederick Street,  
10       and the Gallagher Group Limited, as can be seen from  
11       the schedules. I am not going to go through them in  
12       detail, but it is quite clear that the various  
13       leasehold interests instituting the Smiths of the Green  
14       interest are assigned in the deed of which this is a  
15       memorial. I think that appears to be the case.

16      A.   Yes, sir.

17 246   Q.   So, it would appear that there was a separate - there  
18       would have to have been a separate conveyance of the  
19       freehold and the minority leasehold interests to the  
20       Gallagher Group as well as this Green Trees, Smiths of  
21       the Green interest. And that would imply that there  
22       was a separate payment to the ú900,000 as well, albeit  
23       that we don't appear to have any trace of it.

24       .

25       If I could just put to you another document. It is a  
26       Document No. 4655.

27       .

28       It is dated the 17th of April, 1980. It is from Gore &  
29       Grimes, who acted for the Gallagher Group Limited, to  
30       Bedell & Cristin. It is "Re Gallagher Group Limited

1 purchase of premises at St. Stephen's Green."  
2 .  
3 "Dear Sirs, we now enclose herewith the following  
4 contracts duly completed, namely:  
5 .  
6 1. Contract made between Glencree Investments Limited  
7 of the one part and Gallagher Group Limited of the  
8 other part.  
9 .  
10 2. Contract made between Whisper Investments Limited  
11 on the one part and Gallagher Group Limited of the  
12 other part.  
13 .  
14 3. Contract made between Victa Investments Limited of  
15 the one part and Gallagher Group Limited of the other  
16 part.  
17 .  
18 4. Contract made between Worland Investments Limited  
19 of the one part and Gallagher Group Limited of the  
20 other part.  
21 .  
22 5. Contract made between Keno Investments Limited of  
23 the one part and Gallagher Group Limited of the other  
24 part."  
25 .  
26 They also enclose bank drafts to the respective amounts  
27 specified as deposits.  
28 .  
29 They say:  
30 .

1 "We will be obliged if you would have one part of this  
2 contract completed by your clients and returned to us  
3 at your earliest convenience. When returning the  
4 contracts, perhaps you would also let us have all  
5 outstanding title to enable us to raise requisitions on  
6 title."

7 .

8 That clearly indicates that there appears to be  
9 contracts, in fact, by these various Jersey companies  
10 holding small leasehold interests to sell those  
11 interests to the Gallagher Group Limited, and  
12 presumably, that was affected in the deed, which we do  
13 not have, together with the deed also conveying the  
14 freehold interest from Keno.

15 .

16 Now, do you have any recollection at all of the  
17 ú600,000 being paid to the Gallagher Group and where it  
18 - sorry, had been received from the Gallagher Group,  
19 and what was done with it?

20 A. No, sir. All the documentation I see now, I am seeing  
21 it for first time, or whenever you showed it here.

22 247 Q. Do you have any recollection of the loans, that such  
23 loans, as existed, being paid out of the proceeds of  
24 the monies received from Gallagher Group?

25 A. No. It is - the position, that all of the, all of this  
26 was done between the lawyers and the accountants, so -  
27 actually, unless it was and I had forgotten about it,  
28 I don't think any of that stuff is referred to me at  
29 all.

30 248 Q. Right?

- 1 A. But I say the two accountants, between Mr. Owens' and  
2 Mr. Gallagher's accountant.
- 3 249 Q. We will just have to wait and see what Mr. Owens tells  
4 us about that.
- 5 A. Yes.
- 6 250 Q. So overall in this particular deal you paid the deposit  
7 for the freehold in the sum of ú21,250. If you owned  
8 one-third of the Keno monies of ú79,800, that would  
9 have added to your contribution as well, although you  
10 say you have no recollection of being involved in that?
- 11 A. No, sir.
- 12 251 Q. But that was the entire extent of your outlay, so far  
13 as this transaction was concerned, is that right?
- 14 A. To the best of my recollection, sir.
- 15 252 Q. Were you, in fact, the auctioneer acting for Gallagher  
16 Group in the purchase, in the end?
- 17 A. No, sir.
- 18 253 Q. Despite that correspondence?
- 19 A. Despite that - that was only sending mail around, sir.
- 20 254 Q. Mr. Owens' correspondence?
- 21 A. Yes.
- 22 255 Q. Were Gallagher Group a client of yours?
- 23 A. I had done business with the Gallagher Group before,  
24 sir.
- 25 256 Q. I see. But were they, at the point in time when this  
26 transaction was effected, when they bought this  
27 property, were you acting for them in any other  
28 capacity?
- 29 A. No, sir.
- 30 257 Q. Yes. Did you subsequently act for them in any

1 capacity? Put it another way. Was there anything  
2 current between yourself and the Gallagher Group at  
3 that time?

4 A. Not that - not that I am aware of, sir. Just at that  
5 time.

6 258 Q. Yes. Right. And if further sums were outlaid in  
7 respect of the payment of the tenants, you did not pay  
8 those tenants, or contribute towards the payment of  
9 those tenants, is that right?

10 A. To the best of my recollection, sir.

11 259 Q. Yes. Can you recall how much was paid to the sitting  
12 tenants?

13 A. Again, as I say, it is a long time ago, but the --

14 260 Q. Well, did you negotiate it?

15 A. Yes, I would, or somebody in my office would have, sir.

16 261 Q. And did the tenants have somebody acting on their  
17 behalf, or were you dealing with them directly?

18 A. Just - again - just a stab at it, sir. I would imagine  
19 that main parties there would have been represented by  
20 somebody.

21 262 Q. Yes?

22 A. It would be the norm.

23 263 Q. And can you give us any assistance as to what sort of  
24 money had to be paid to them?

25 A. The representatives?

26 264 Q. No, the sitting tenants?

27 A. Well, I can say to the best - again, looking back, I  
28 feel that the travel agent, Usit, I think that was  
29 around €100,000, or something around that. Now, this  
30 is only recollection. I could be --

1 265 Q. But there were two, were there not, controlled tenants,  
2 residential tenants, or am I incorrect?

3 A. There were, yes, sir.

4 266 Q. And they presumably had to be bought out as well?

5 A. Yes.

6 267 Q. What type of money would they have had to have been  
7 paid?

8 A. Now, you jogged my memory, sir. I seem to remember now  
9 that one of them - flashes - that one had to get  
10 sufficient for another apartment.

11 268 Q. And did you have to buy an apartment for them, or for  
12 that tenant?

13 A. Or to give enough money for --

14 269 Q. For the price of an apartment?

15 A. The price of an apartment.

16 270 Q. Approximately how much can you recall?

17 A. The trouble about this, sir, I am guessing, which is  
18 not a good thing to be doing.

19 271 Q. Yes. What would you guess? I mean, we are not going  
20 to hold you to this, this is just to try to --

21 A. How it comes into my mind, 40 odd thousand or something  
22 like that, where that comes from, it could have come  
23 out of the sky, sir. It seems to --

24 272 Q. It is really just to try and get a handle on whether  
25 there was, in fact, significant outlay involved in  
26 dealing with the tenants' part, altogether from the  
27 acquisition costs of the Smiths of the Green interest  
28 and the freehold interest.

29 .

30 It would appear, from what you are saying, that there



1 was, albeit that you can't recall the amounts?

2 A. No, I think, as you say, there were two sitting  
3 tenants, because - I think one thing does stand out to  
4 me, that there was ferocious trouble with one remaining  
5 one, because Gallaghers came in to demolish part of an  
6 apartment.

7 273 Q. Prior to the departure of the tenant?

8 A. To my recollection, yes.

9 274 Q. But that tenant was paid off, I take it? Was it paid  
10 off by the group, as it were, apart - rather than  
11 Gallaghers?

12 A. I was just trying to think about this, sir, during the  
13 break as well. I think that - I don't remember any of  
14 them being completed, the purchasers - perhaps they  
15 were. But I think that there were contracts, sir,  
16 agreements in place with most of them. I think there  
17 may have been more than what we were just talking about  
18 there, three, four.

19 275 Q. Tenants?

20 A. Yeah.

21 276 Q. Oh, yes, other commercial tenants as well as the  
22 residential tenants. Well, is it your belief that the  
23 tenants were all paid off before the transfers to  
24 Gallaghers, or was it simply a case that you negotiated  
25 how much it would cost to buy them off, and then you  
26 sold on to Gallaghers, with the benefit of such  
27 agreements as you had with the tenants?

28 A. That seems to be what is in my mind now, sir. I  
29 wouldn't like to say that that is absolutely correct,  
30 but it - that would be a recollection that --

1 277 Q. As far as you were aware, was there any necessity for  
2 the consortium, that is yourself, Mr. Brennan and  
3 Mr. McGowan, or perhaps even Mr. Brennan, Mr. McGowan  
4 on their own, to pay out money to any of the tenants  
5 before the sale to Gallaghers?

6 A. I don't --

7 278 Q. Yes. If we could just look at page 376. This is the  
8 sheet we looked at this morning. If you see on the  
9 left-hand side there, the list of expenses beginning  
10 with the figure of ú116,168.48 to Gore & Grimes?

11 A. Yes.

12 279 Q. Judging by its size, that does not appear to be legal  
13 fees. Gore Grimes, as you recall, were the solicitors  
14 acting for Gallagher Group?

15 A. Yes, sir.

16 280 Q. And it is possible that that includes within it monies  
17 for the payment to some tenant?

18 A. Yes, sir.

19 281 Q. Perhaps even Usit Travel?

20 A. Mmm.

21 282 Q. Because you can see that Miley & Miley's fees in the  
22 transactions were ú8,218?

23 A. Yes.

24 283 Q. And it would seem that the Gore Grimes figure included  
25 more than simply legal fees in respect of a  
26 conveyancing transaction?

27 A. It looks like that, sir.

28 284 Q. Can you assist at all as to what that might be? I am  
29 guessing that it might be the Usit Travel surrender  
30 price?

1 A. I don't - I don't know.

2 285 Q. All right. Well, if you don't know, that is as much as  
3 you can do.

4 .

5 Well, at the end of the day, then, the bottom line  
6 situation, so far as you are concerned, is that you put  
7 in ú21,250, and you got out ú223,000?

8 A. Mm-hmm.

9 286 Q. Isn't that right?

10 A. Yes, sir.

11 287 Q. You were not liable on the borrowing that was used, or  
12 that you believe was used to buy in the leasehold?

13 A. Not that I am aware, sir. What I would say to you as  
14 well, sir, is that, you know, I was a little bit back  
15 from this, that the - I wouldn't necessarily have been  
16 up to speed on all things that were going on, because  
17 we weren't running it. Now, there could be something I  
18 have missed there, sir, but I --

19 288 Q. Well, in your belief, did Messrs. Brennan and McGowan  
20 put in more than you did?

21 A. There may have been - I am only - I think it is better  
22 to say I don't know, because I would be only --

23 289 Q. Would you not have known at the time, for example, that  
24 you were in as an equal partner on the basis that you  
25 would contribute equally, or that you were in as an  
26 equal partner, in the sense that you would share  
27 equally with them, but you weren't going to put in the  
28 same amount of money as them? I mean, what was your  
29 belief at the time?

30 A. My belief at the time was that I was going in for the

1 acquisition of the freehold, and I was putting in my  
2 money, and - it was always, Brennan and McGowan always  
3 - they would have organised any of the financing that  
4 was done, or through Hugh Owens. I don't think I put -  
5 to answer your question, I don't think I put in any  
6 more than that, sir.

7 290 Q. The point, really, is if there were any additional  
8 outlays, and I appreciate that you are saying that you  
9 are not sure whether there were or not, or whether they  
10 were carried by Gallaghers, but if they were, they  
11 could only have been paid either out of borrowings or  
12 by Brennan and McGowan?

13 A. Yes, sir.

14 291 Q. And of course, if you were not, as you believe you were  
15 not, entitled to the 79,000 for a share in the ú79,800  
16 that came from Tritonville, well, then, all of that was  
17 their money going into it, isn't that right?

18 A. Yes, sir.

19 292 Q. In which event, you would have been getting out the  
20 same as them, for having put in less?

21 A. I see your point, sir.

22 293 Q. If that were the case, and I know there are a lot of  
23 ifs in here, if that was the case, why would you be  
24 getting out more than they were, having put in less?

25 A. I hear what you are saying, sir. As far as I  
26 recollect, I don't think there was any, or much  
27 explaining done about all of this to be at the - at the  
28 end, sir, because what - it seemed, sir, as if the  
29 whole thing just moved, that it was all done by the  
30 lawyers and by Hugh Owens. And I think a lot of the

1 things were done outside the country as well, sir, the  
2 negotiations, I think.

3 294 Q. Well, you did say that in connection with the MEPC?

4 A. No, but - I mean that - yes. But I think that the  
5 final negotiations, the freehold and all of that, sir,  
6 I think that was all done between the accountants and  
7 the lawyers.

8 295 Q. Undoubtedly, Mr. Owens did have a scheme, but was there  
9 any particular reason why you should have got the same  
10 out of this, as Messrs. Brennan and McGowan, even  
11 though you put in less than them, if you did put in  
12 less than them?

13 A. Not that - not that I can say, sir.

14 296 Q. Well, in some of the other deals in Monkstown, and in  
15 Donnybrook, and Newtownpark Avenue, I suggest to you as  
16 a possibility, or one possible reason why they were  
17 giving you this very substantial sum of money, as they  
18 did in each of those cases, one of the possible reasons  
19 might have been to do with the fact that you acted for  
20 the vendor. Is it possible that, in the case of St.  
21 Stephen's Green, that they may have been agreeing to  
22 you receiving the same as them from this development,  
23 albeit that you didn't put in the same as them into it?

24 A. No, sir. Definitely not.

25 297 Q. Are we in agreement that you did receive from this  
26 development the same as they did, in the sense that you  
27 got the 223 as they did, and you also got the benefit,  
28 as it were, of the ú300,000 as the payment of the  
29 deposit on the purchase of the Sandyford lands?

30 A. Sir, I would say to you, I agree - I would say to you

1           that I got that sum, but I don't know --

2 298 Q.   Which sum are you talking about now?

3    A.   The sum you mentioned to me.

4 299 Q.   223. Yes. You undoubtedly got that sum, as they did

5           as well. So you were equal in terms of your receipts

6           out of the development, isn't that right?

7    A.   Yes, as per this.

8 300 Q.   And the other benefit that came out of this development

9           was that ú300,000 was provided by Green Trees to Canio,

10          to purchase the said, or to put a deposit on the

11          Sandyford lands?

12   A.   Yes, sir.

13 301 Q.   And you shared equally in the benefit of that with the

14          other two as well?

15   A.   The - sorry --

16 302 Q.   With Mr. Brennan and Mr. McGowan, you got the benefit

17          of that. You subsequently each put in ú50,000 and

18          subsequently again another ú70,000. So, you were equal

19          right down the line from day one on Sandyford, isn't

20          that so?

21   A.   Yes, sir.

22 303 Q.   And all I am saying --

23   A.   That is what I thought.

24 304 Q.   To the extent of the ú300,000 that came out of

25          Stephen's Green, in the sense that it was borrowed by

26          Green Trees, you shared equally in the benefit of that,

27          in buying the Sandyford land; in other words, one-third

28          of it was yours?

29   A.   I think that was a loan, sir, was it?

30 305 Q.   Well, was it? Was it ever repaid to Green Trees?

1 A. Well, you see, that - I don't know what way that --

2 306 Q. There is a document, I can't actually remember it,  
3 where it is referred to as a loan, where this ú300,000  
4 going over from Green Trees to Canio is, in fact,  
5 referred to as a loan, but there is no evidence, if I  
6 am not incorrect about this, that it was ever repaid by  
7 Canio?

8 A. Well, sir, the - as we discussed earlier when we were  
9 talking about Canio, when I got out of that, sir, I  
10 sold the shares in my company, or I sold the shares --

11 307 Q. That was in 1990?

12 A. Yeah, whenever it was.

13 308 Q. Yes.

14 A. And I don't know what - you see, I never got, or we  
15 never got any sort of state of play. I never came up  
16 at the time on what was in Canio. I don't know what  
17 sort of - what sorting out there might have been done.  
18 That company, I just left it, sir.

19 309 Q. Well, it is a company that was formed?

20 A. Yes.

21 310 Q. And the manner in which it was formed was that it was  
22 formed as a subsidiary of another Jersey company called  
23 Ardcar Limited?

24 A. Mm-hmm.

25 311 Q. And, in fact, the interest which Foxtown Investments  
26 Limited held was a one-third beneficial interest in  
27 Ardcar, which owned Canio one hundred percent, if you  
28 know what I mean?

29 A. Yes, sir.

30 312 Q. And Canio, as you know, is the company which acquired

1 the Sandyford land, including by paying this deposit of  
2 ú300,000.

3 .

4 Was it your recollection that the monies provided by  
5 Green Trees, that's this ú300,000, was at the time  
6 intended to be a loan; in other words, was it intended  
7 that it should be repaid at some point?

8 A. It is my recollection, my recollection, sir, it was a  
9 loan. Now, what I don't know is this, that I don't  
10 know whether that stayed on as a loan in Canio, or  
11 what, because when I - I think Canio is still there, or  
12 --

13 313 Q. Yes. Was it ever paid back to Green Trees?

14 A. I don't know, sir. I am not - "I don't know" is, I  
15 think, better.

16 314 Q. Yes. If we could just have a look at page 1599.

17 .

18 This is Mr. Owens' document, in which he sets out the  
19 lands that are being purchased. We have seen this  
20 document before. He sets out the price there. He  
21 says:

22 .

23 "Canio Limited was incorporated on the 1st of December,  
24 1980."

25 .

26 "The contract for the purchase of the land was signed  
27 12th April, 1979, by James Gleeson (in trust) 86.458  
28 acres, costing ú630,000.

29 .

30 The land was taken into Canio Limited on the 2nd of



1 December, 1980."

2 .

3 Then it goes on to deal with some tax issues relating  
4 to Kilnamanagh.

5 .

6 First of all, what was your understanding in relation  
7 to Mr. Gleeson's involvement in relation to this  
8 matter?

9 A. My understanding about Mr. Gleeson is that he is - he  
10 was an old friend of Joe McGowan's, and that it was  
11 suggested that he - I think he was a farmer, and I  
12 think he ran a butchering business as well or  
13 something.

14 315 Q. Yes?

15 A. It was suggested that that might be a good idea, that  
16 he would be involved in it, in the acquisition in  
17 trust.

18 316 Q. Yes. To avoid the perception, we have been told by  
19 Mr. McGowan that it was Brennan and McGowan --

20 A. Yes, that it -- that is what I recollect.

21 317 Q. All right. Before we get into the detail of the Canio  
22 transaction, so far as you were concerned, and before  
23 we leave St. Stephen's Green, am I correct in thinking  
24 that prior to the sale of its interest, Smiths of the  
25 Green had, itself, previously sought planning  
26 permission for some development which they had been  
27 unsuccessful in obtaining?

28 A. I don't think so, sir. There was - not that I  
29 recollect. There was a planning permission sought and  
30 obtained, I think, for a restaurant, but because that

1 is what the subletting was for --

2 318 Q. Yes. Apart from the restaurant, had they made any  
3 other planning application?

4 A. I can't recollect, sir, if there is anything that  
5 points in that direction that jogs my memory. I don't  
6 think there would have been anything of substance, or I  
7 would have - or I would have known.

8 319 Q. All right. Did you act for them, or do you recall  
9 whether you would have acted for them, if there had  
10 been such a planning application, in rather the same  
11 way you acted for Brennan and McGowan in the Herbert  
12 Street Plantation?

13 A. I should have been - I know Mr. O'Neill very well, and  
14 - unless there was a good time beforehand, sir. Again,  
15 I can't be absolutely sure, but you see, he wouldn't -  
16 the thing is, is this; whether it had been any sort of  
17 a comprehensive development. I don't think it could  
18 have been, if he made any application, because he  
19 wouldn't have been able to --

20 320 Q. You have no recollection of any such, anyway. All  
21 right.

22 .  
23 Now, this Canio transaction overlapped to some extent  
24 the St. Stephen's Green transaction, and it was - while  
25 the St. Stephen's Green transaction was still extant,  
26 in the sense that it was after it was acquired but  
27 before it was sold, that the Canio matter came up.  
28 Isn't that right?

29 A. Yes, sir.

30 321 Q. We know that Green Trees, which was one of the

1 Stephen's Green companies, provided this, it appears,  
2 loan for ú300,000 to go towards the deposit.

3 .

4 If we could just look at page 419.

5 .

6 I presume this would be a document produced by

7 Mr. Owens, but it is described as "Canio Limited

8 balance sheet as of the 31st of December, 1980."

9 It lists as its assets: Land at Sandyford, 671,000,

10 ú154 cash on deposit, Reid and McNabb, ú52,775.

11 .

12 And it lists as its liabilities, as you see there,

13 "loan via Green Trees, ú300,000." That's the document

14 I mentioned earlier, that that describes this

15 explicitly as a loan?

16 A. Yes, sir.

17 322 Q. And then it says:

18 Ardcarne - ú240,000 Sterling. 281,426 Punts.

19 Guinness & Mahon - ú120,000 Sterling. ú140,498.

20 Giving a total of 721,920, and net assets of ú2,009."

21 It gives a breakdown of that figure.

22 .

23 When you were going into this project in respect of

24 Sandyford, who first approached you and what was the

25 proposition that was put to you?

26 A. First of all, we came across the lands, sir, the sale

27 to one, to Mr. Bill O'Keeffe in the office, sir, who

28 brought it to our attention that the lands were for

29 sale.

30 323 Q. And did you then bring it to Mr. McGowan's attention?

1 A. Yes, sir.

2 324 Q. Yes. And having brought it to his attention,  
3 presumably he expressed interest in it?

4 A. Yes, sir.

5 325 Q. And in bringing it to his attention, were you bringing  
6 a proposition to him?

7 A. Yes, sir.

8 326 Q. About a partnership?

9 A. No, sir.

10 327 Q. Just about a purchase?

11 A. About a purchase. Started off as a purchase, sir.

12 328 Q. Yes. Well, did you yourself not contemplate that this  
13 might have the potential for a partnership arrangement,  
14 given that by this time you had already been involved  
15 in a number of successful transactions with them?

16 A. I think even - I am not even quite sure, sir, whether I  
17 made the first call to them, or whether it was what  
18 O'Keeffe may have done. But the land was for sale,  
19 sir, but I don't think it is --

20 329 Q. In this case Finnegan Menton didn't have carriage of  
21 sale?

22 A. No, sir.

23 330 Q. And you found out about it, you become aware that it  
24 was coming on the market or on the market, whatever the  
25 state of play was at the time, and as I understand your  
26 last answer, you informed Mr. McGowan of this fact?

27 A. Yes, sir.

28 331 Q. And he expressed an interest. When you were informing  
29 Mr. McGowan, were you proposing some kind of a joint  
30 venture to him, or were you simply saying, "Look, there

1 is land here, would you be interested in buying it?"

2 A. To the best of my recollection, sir, it was a question  
3 of these lands are for sale.

4 332 Q. Yes. Presumably, you would have viewed these as lands  
5 --

6 A. I can't even remember the first part of that, sir, but  
7 I think - it was either I or someone else did.

8 333 Q. Presumably, you would have been proposing these to  
9 Mr. McGowan on the basis that you would have had a view  
10 that they had, or may have had development potential?

11 A. Well, I think, sir, that there was always - I did know  
12 of the area, because the late Colonel Dudgeon had -  
13 going up at that road, sir, the Local Authority, Dun  
14 Laoghaire had bought, had CPOed a lot of land, which  
15 now became Sandyford Industrial Estate.

16 334 Q. Yes, undoubtedly. It was on the periphery of the city?

17 A. It was on the periphery of the city, and it would --

18 335 Q. While it wasn't zoned at that point in time for  
19 development, it was clear it was going to be at some  
20 point of time in the future?

21 A. Yes, that was also - it wasn't too far away from - the  
22 McGraths had 'The Gallops' which was bought by --

23 336 Q. I don't think we need to spend too much time on this.  
24 Mr. McGowan, if he was interested, it wasn't going to  
25 be on the basis that he was going into farming, it was  
26 going to be on the basis that he would like to develop  
27 it, being a house builder?

28 A. It was - actually, it was on the basis that - maybe a  
29 reasonably medium, long-term hold, sir.

30 337 Q. Now, did he propose a joint venture to you or did you

1 propose a joint venture to him?

2 A. I think - again, I think that he proposed it to me,  
3 sir.

4 338 Q. Yes. And was it on the occasion that you brought it to  
5 his attention, or did he go off and discuss it with  
6 Mr. Brennan and come back to you with his proposal?

7 A. I think it was quite a while, sir.

8 339 Q. Well, I take it you knew at the time what the asking  
9 price was?

10 A. I would, sir.

11 340 Q. And would you have told him? Did you negotiate the  
12 price or the purchase of it?

13 A. I think personally, sir.

14 341 Q. Well, did somebody in your office do that?

15 A. This - Mr. O'Keeffe, who, because the negotiations were  
16 done through the other agents, sir, and we knew them.

17 342 Q. But somebody would have had to have negotiated them?

18 A. Yes, absolutely.

19 343 Q. Ultimately did Mr. O'Keeffe make an offer of - we know  
20 that, in the correspondence from the butcher gentleman  
21 there was an offer, but leading to that, somebody had  
22 to come to a decision that they were going to offer  
23 ú630,000. I take it that the asking price would have  
24 probably been greater at the time?

25 A. Yes, as far as I recollect, it was, sir.

26 344 Q. Well, anyway, if we could just --

27 A. Sorry. Yes, sir.

28 345 Q. On the 29th of March of 1979, page 251, the gentleman  
29 in question is Mr. Gleeson. He wrote a letter to  
30 Mr. Wheeler, and he says:

1 .  
2 "Dear Laurence, further to my telephone conversation I  
3 confirm that I have found a suitable piece of land for  
4 your clients. It is approximately 86 acres of land at  
5 Sandyford, County Dublin, which is about 67 miles from  
6 the city centre and has long-term development potential  
7 and appears to be a good investment.

8 .  
9 The price I have agreed is ú630,000 payable as follows:  
10 .  
11 ú75,000 deposit on signing of contract to be executed  
12 12th of April, ú225,000 on the 1st of June, ú118,000 on  
13 the 29th of February, 1980, and the balance of ú212,000  
14 on the 28th of November, 1980.

15 .  
16 To preserve secrecy, I will have to sign the contract  
17 in trust. My solicitor is George Russell of Reid and  
18 McNabb, 11 South Frederick Street, Dublin 2, and his  
19 bank account is at Allied Irish Bank, 5 College Street,  
20 Dublin 2, so please arrange to put him in funds.

21 .  
22 Would you please confirm that I will be paid an  
23 introductory fee of 1 percent, ú6,300 with interest of  
24 15 percent per annum until paid.

25 .  
26 Looking forward to meeting you again, perhaps at  
27 Ascot?"

28 .  
29 Mr. Simon Howard has told us that there was essentially  
30 no reality in this correspondence.

1 A. Who is that from?

2 346 Q. This is from Mr. Gleeson to Mr. Laurence Wheeler.

3 .

4 It has the tenor of a letter where they are old,  
5 long-standing friends when he addresses him as "Dear  
6 Laurence", and talks about meeting him at Ascot.

7 .

8 Mr. Simon Howard - unfortunately we haven't had the  
9 benefit of Mr. Wheeler, who has declined to come over  
10 and assist the Tribunal, but Mr. Simon Howard, a  
11 present partner in the firm of Bedell & Cristin, has  
12 told us, as far as he would have been aware, there was  
13 no acquaintance of any kind at all between them, and  
14 that this appears to have been, or one infers it to  
15 have been Mr. Owens' own correspondence, or Mr. Owens'  
16 typed correspondence typed by somebody.

17 .

18 There is a reply from Mr. Wheeler, which is page 252,  
19 dated the 5th of April, 1979. Mr. James Gleeson.

20 .

21 "Re land at Sandyford, County Dublin.

22 .

23 Dear Jim, thank you for letter of 29th March. My  
24 clients are pleased with the proposed purchase, and I  
25 confirm your solicitors will be put in funds to meet  
26 the required payment dates. I will also instruct them  
27 regarding the name of the company into which the land  
28 will be put.

29 .

30 I confirm agreement of your fee which will be payable



1 on completion of the transaction.

2 .

3 I think I will avoid Ascot, but if you are in Jersey

4 please contact me."

5 .

6 That is, we have been told, fabricated correspondence.

7 .

8 In essence, an offer of ú630,000 was made, and

9 presumably this charade was put together to insert Mr.

10 Gleeson, because Mr. McGowan didn't want to be seen to

11 be associated, and perhaps to create the expectation of

12 what the purchase price might be. Anyway, the offer of

13 ú630,000 was paid, or was made.

14 .

15 May I take it that before that offer was made, you

16 were, as it were, in? You had agreed with Messrs.

17 Brennan and McGowan that you would buy this property in

18 conjunction with them?

19 A. I would imagine so, sir.

20 347 Q. Yes. Well, do you remember agreeing on what sum you

21 all would offer to buy the property?

22 A. Well, I think it came - it came around, sir, I can't

23 just remember, but it - I must have had chats with

24 them. You can take it that I had.

25 348 Q. Well, to the extent that you were going to be a

26 one-third partner?

27 A. Indeed.

28 349 Q. They wouldn't make an offer, or indeed I think you

29 wouldn't make an offer without everybody being in

30 agreement?

1 A. That's correct, sir.

2 350 Q. Right. So the offer was made. As we know, it was  
3 accepted and we can move it along. The land, as was  
4 stated in one of those documents, was subsequently  
5 taken into Canio, and Canio became the owner of the  
6 land.

7 .  
8 If we just look at the transmission of the ú75,000. If  
9 we could have page 809. Sorry, page 251.

10 .  
11 No, we have had that one. Could we try 809. Yes.

12 .  
13 This is Mr. Russell's accounts in Reid and McNabb. As  
14 you can see, the first entry on the top, it is  
15 described as "Canio Limited", an account of Reid and  
16 McNabb. 255. Yes.

17 .  
18 The first one is April. Unfortunately, the precise  
19 date is obscured. In any event, it is, "Dep receive",  
20 which is "deposit receipt Green Trees - ú75,000."  
21 And, "May deposit received - ú225,000." That is a  
22 clear indication that Mr. Russell was in receipt of  
23 these two sums, amounting in total to ú300,000, from  
24 Green Trees. Isn't that so?

25 A. Yes, sir.

26 351 Q. And we have had these documents - just very briefly  
27 again, page 260. This is the Allied Irish Banks'  
28 docket, Allied Irish Banks being the bank in which Reid  
29 and McNabb had its account indicating receipt of that  
30 sum per Hill Samuel, Hill Samuel being the bank that

1           made the loan to Green Trees.

2       A.   Right.

3 352   Q.   You can see that. So, in fact, it appears that this

4           money, these monies were never actually drawn down by

5           Green Trees itself, as such, but were simply

6           transmitted directly from Hill Samuel, the lending

7           bank, to the solicitor for Canio. Similarly with the

8           ú225,000, page 270, 31st of May, 1979. You can see

9           there the ú225,000, being the second payment that came

10          in, in May, on the 31st of May, 1979. That is the

11          deposit, and that was, in fact, paid by Mr. Russell as

12          part of the price of the lands in Sandyford.

13       A.   When was - is this a long time after the other one you

14          mentioned, sir?

15 353   Q.   Within a month.

16       A.   A month.

17 354   Q.   The entire ú300,000, Green Trees borrowings, had been

18          paid out within a month, one in April and one in May.

19          .

20          Now, if we could just have page 346.

21          .

22          And this is a letter, it is dated the 26th of February,

23          1980. It is to Jersey International Bank from, I

24          believe, Mr. Wheeler. He says:

25          .

26          "I write to confirm that you should telegraphically

27          transfer ú50,000 from the account of Gasche Investments

28          Limited and another ú50,000 from the account of

29          Kalabraki Limited to the Allied Irish Banks, 5 College

30          Street, Dublin for the account of Messrs. Reid and

1 McNabb solicitors, account number" - and it gives the  
2 Reid and McNabb account number.

3 .

4 And then if we look at page 604, we can see the  
5 telegraphic transfer to Allied Irish Banks Limited,  
6 5 College Green, Dublin, for the account of Messrs.  
7 Reid and McNabb - ú50,000.

8 .

9 And 306, the one we have just looked at, was Kalabraki.

10 If we just scroll up on this one, we will see it is for  
11 Gasche Investments Limited. Again you can see the  
12 telegraphic transfer on that page of ú50,000?

13 A. Yes, sir.

14 355 Q. I think you also paid ú50,000 in February of 1980,  
15 isn't that right?

16 A. That is as far as --

17 356 Q. Was that drawn down from Foxtown?

18 A. I thought you were looking it up. I thought it was,  
19 sir.

20 357 Q. Yes. Well, let's put it this way: When you agreed  
21 with Messrs. Brennan and McGowan that you would go into  
22 this arrangement with them as an equal one-third  
23 partner.

24 A. Mm-hmm.

25 358 Q. And when you, presumably, agreed the price that would  
26 be offered to the vendor of this property, obviously it  
27 was agreed between you that it would be bought by a  
28 Jersey company, isn't that so, because it was bought by  
29 a Jersey company?

30 A. It was, whatever way it came around, yes, sir.

1 359 Q. And presumably it was also agreed by you, that it would  
2 be bought by a Jersey company, which would be owned by  
3 another Jersey company?

4 A. Well, I presume it was, but I think all of that would  
5 have been --

6 360 Q. Well, in that case would you have to have been aware of  
7 it, Mr. Finnegan, because you would have had to make  
8 arrangements for Foxtown to become the owner of the  
9 holding Jersey company, Ardcarne? So, to that extent  
10 you must have been aware of it, I suggest?

11 A. I am just hazy. If it happened, it happened. I just  
12 couldn't recollect just being aware of it at the actual  
13 time. You know, I am sure I must have.

14 361 Q. Yes.

15 A. But just to be --

16 362 Q. Well, would you have had to, for example, instruct the  
17 trustees that you were embarking upon this venture;  
18 that the nature of the venture was the acquisition of  
19 land with potential development in Sandyford, County  
20 Dublin; that it was going to be owned by a Jersey  
21 company, but that the Jersey company was going to be  
22 owned by another Jersey holding company called Ardcarne;  
23 that the shares in Canio Limited would be held in trust  
24 for Ardcarne; and that Foxtown Investments Limited,  
25 which is the Trust company, would hold one-third,  
26 beneficially hold one-third of the shareholding in  
27 Ardcarne. All of that is not something that would not  
28 have been known by somebody without them having been  
29 told.

30 .

1 It seems reasonable to assume that you gave this  
2 information to the trustees at the time so that they  
3 could make the arrangements to have Foxtown registered  
4 as the one-third owners of the company.

5 Isn't that so?

6 A. Yes, sir.

7 363 Q. And I take it that at the time, therefore, the trustees  
8 would have fully understood that the holding that the  
9 Trust company, Foxtown, had in Ardcar, was ultimately  
10 for the purpose of holding a one-third equal share in  
11 this property in Sandyford, County Dublin?

12 A. Yes. I am sure, if that was the structure, sir, I am  
13 sure they would, yes.

14 364 Q. Yes. And they would make it their business to know,  
15 certainly when the time came to write cheques?

16 A. Yes, sir.

17 365 Q. They did. In fact, the monies for the venture, as far  
18 as you were concerned, which you contributed, came from  
19 Foxtown, and that seems reasonable, given that Foxtown  
20 did, in fact, become the registered owner, or not the  
21 registered owner, but the registered beneficial owner  
22 of one-third of Ardcar. And the cheques that were  
23 paid out in the sum of 50 and 70, therefore, presumably  
24 were paid out by the trustees, is that reasonable?

25 A. Yes, sir. Because I was - I must say that - I did  
26 know, when I embarked on the acquisition of this, I did  
27 feel that it was a great chunk of ground to have an  
28 interest in so close to town and so close to other  
29 developments.

30 366 Q. Indeed. Yes. Indeed. If we go to page - just go back

1 briefly to page 225. It would appear that in February  
2 1980 - in fact, Foxtown appears to have put in  
3 ú54,373.83, as you can see under February 1980 - yes, I  
4 think what you did was, in fact, you put in ú50,000  
5 Sterling, and this is the Irish equivalent of ú50,000  
6 Sterling, ú54,374.83, you see that. We know that that  
7 came from Guinness & Mahon.  
8 .  
9 If we look at page 352. 4th of March, 1980.  
10 "Pay Messrs. Reid and McNabb." This is Guinness &  
11 Mahon (Dublin) now, "54,374".  
12 .  
13 That appears to be the Foxtown money coming in, would  
14 you agree?  
15 A. I would agree, yes, sir.  
16 367 Q. Now, I think subsequently each of the three of you put  
17 in ú70,000, and again, presumably, the ú70,000 from  
18 your end was Foxtown money?  
19 A. Yes, sir.  
20 368 Q. If we just have page 393. Can you read that,  
21 Mr. Finnegan. It is not terribly clear, but I will  
22 read it out for you when I get a hard copy.  
23 .  
24 It is a letter from Mr. Owens, I presume to  
25 Mr. Wheeler. Yes, it is to Mr. Wheeler. It is - it  
26 looks like November 1980.  
27 .  
28 "I confirm instruction to withdraw by telegraphic  
29 transfer ú70,000 each from Kalabraki and Gasche at AIB  
30 Bruton Street, London. Telex number" - and he gives a

1 telex number there.

2 .

3 "The Manager is Tim Godfrey. When received, plus  
4 ú70,000 from Guinness & Mahon (Guernsey) please  
5 telegraphically transfer ú210,000 to Allied Irish Banks  
6 College Street, Dublin, for account Reid and McNabb.  
7 Transaction is for the account of Arcarn," and so on.

8 .

9 So that is an indication of that transaction, and just  
10 implementing those instructions.

11 .

12 Page 400. 11th of November, 1980, Mr. Wheeler writes  
13 to the Manager of Allied Irish Banks. He says:

14 .

15 "We refer to our telex of today's date and confirm our  
16 instruction that you should send us two cheques for  
17 ú70,000 and debit each of the accounts of Kalabraki  
18 Limited and Gasche Investments Limited with the sum of  
19 ú70,000."

20 .

21 That's addressed to Allied Irish Banks in Bruton  
22 Street, in which at the time there resided an account  
23 in the name of both of those companies, Kalabraki and  
24 Gasche, as we know.

25 .

26 Then at page 402, on the 14th of November he writes to  
27 the Manager at Chase Bank (CI) Limited in St. Helier  
28 Jersey. He says:

29 .

30 "We would be obliged if you would accept this letter as



1 such authority to credit the two amounts of ú70,000  
2 each, received from Allied Irish Banks, to our client's  
3 account number 8103."

4 .

5 We can see, then, on the 18th of November, 1980 - this  
6 is another Allied Irish - page 403 - an Allied Irish  
7 Banks Limited docket. It is addressed to Reid and  
8 McNabb, and it is advising them that, "No. 2 clients  
9 account", that they had credited the sum of ú86,119 in  
10 respect of Chase and Bank of Ireland, which appears to  
11 have been the route that the money came in, on this  
12 occasion, but that appears to be the Sterling  
13 equivalent of the ú70,000 from Foxtown Investments  
14 Limited. Would that be correct?

15 A. I would think so, sir.

16 369 Q. So there we have the third payment. So we now have had  
17 three payments, the original deposit of ú300,000, the  
18 second payment from each of you of ú50,000, amounting  
19 in total to 150, and then another ú70,000 each,  
20 amounting in total to 210. That gives us a total of  
21 ú660,000. And that would contain within it some costs  
22 which may have been paid as well.

23 .

24 Just a small point. Your money, as was paid out, was  
25 paid out in Sterling. What Messrs. Brennan and McGowan  
26 put in was Punts. Did you ever do an adjustment about  
27 that?

28 A. Never even thought about it before.

29 370 Q. I have just been reminded that the Gasche and Kalabraki  
30 ones were paid in Sterling as well, so they would have

1 yielded a higher figure of Punts. Presumably, that  
2 generated a surplus from which fees were paid. We do  
3 know from Mr. Russell's account that certain fees were  
4 paid.

5 .  
6 So at this point in time all of the monies had been  
7 paid and the lands were brought into Canio. Canio  
8 became the owner of the property.

9 .  
10 Now, what was the plan --

11 .  
12 CHAIRMAN: Before you move to a plan, would you like to  
13 take a five-minute break?

14 .  
15 PROCEEDINGS ADJOURNED FOR A BRIEF RECESS AND RESUMED AS  
16 FOLLOWS:

17 .  
18 371 Q. MR. HANRATTY: So by the end of 1980, Mr. Finnegan, the  
19 lands had been bought and paid for, and Canio was the  
20 owner of the lands?

21 A. Yes, sir.

22 372 Q. Now, going back to a document we looked at briefly  
23 earlier this afternoon, No. 406. This is a document,  
24 we understand, that was prepared by Mr. Owens. And as  
25 we have already seen, he sets out at the top of it the  
26 acreage and so on. He said that Canio, at paragraph  
27 one, Canio was incorporated on the 1st of December, the  
28 contract was signed on the 12th of April by Mr.  
29 Gleeson, in trust for 86 acres. The land was taken  
30 into Canio on the 2nd of December, 1980. Then at

1 paragraph four he says.

2 .

3 "For tax purposes, Kilnarnagh Estate Limited wanted to

4 acquire 74.183 acres in September 1979 for ú1.3

5 million. Closing date, 31st of March 1982. As Canio

6 Limited was not incorporated at that time and as James

7 Gleeson was acting as a pure nominee it is desired that

8 LA Wheeler execute the contract in trust.

9 .

10 5. Grange Developments Limited contracted on the 16th

11 of December, 1980 to purchase from Canio Limited the

12 balance of the land. 12.275 acres for ú260,000,

13 closing date 31st of March 1982.

14 .

15 6. On the 17th of November 1981, Grange Developments

16 Limited subcontracted with Kilnarnagh Estates Limited

17 to purchase 53.893 acres for ú840,000, completion 31st

18 of March 1982.

19 .

20 7. In 1982 Grange will acquire from Kilnarnagh 20.29

21 acres for ú400,000. Completion 31st March, 1982."

22 .

23 Then at paragraph 8 he says:

24 .

25 "The effect of 6 and 7 is that 4 will not be complete,

26 and Grange will take a conveyance of the entire on the

27 31st of March, 1982."

28 .

29 Now, first of all, had you agreed this with Messrs.

30 Brennan and McGowan?

1 A. No, sir.

2 373 Q. Did you know about it?

3 A. No, sir.

4 374 Q. And what do you think they were doing?

5 A. What I understood exactly, when I realised that this  
6 happened, or was told or something, that it was for, it  
7 was for stock relief, and I was quite taken aback at  
8 the time, and - but that it was only, it was only  
9 temporary, but it was of great concern to me, sir.

10 375 Q. When did you first find out about it? It would have  
11 been in 1984?

12 A. When was this --

13 376 Q. This document isn't dated. The only thing we can say  
14 is it was done sometime after March 1982, because that  
15 is at a time which is referred to in the document, and  
16 an event which occurred on that occasion.

17 .

18 MR. HUSSEY: I think it was before March 1982 rather  
19 than after. Sorry, Mr. Hanratty.

20 .

21 377 Q. MR. HANRATTY: Perhaps, yes. It says:

22 .

23 "In 1982 Grange will acquire from Kilnarnagh 20.29  
24 acres."

25 .

26 It refers to, in paragraph 6: "On the 17th of  
27 November, 1981, Grange Developments subcontracted" - it  
28 must have been sometime between the 17th of November,  
29 1981 and 1982, any date in 1982?

30 A. Yes, I accept that it was around then, sir.

1 378 Q. Well, did anybody mention anything about this to you at  
2 all at the time, that they were using the lands or  
3 proposing to use the lands for stock relief, or that  
4 they were going to enter into contracts, some of which  
5 would never be completed, but just to let you know that  
6 this has happened?

7 A. No, sir.

8 379 Q. How did you come to find out about it?

9 A. I am not quite sure, sir, but it may have come about  
10 with - through some discussions that were taking place  
11 in Stokes Kennedy Crowley. I am not sure now. I  
12 wouldn't like to be adamant about this. I know that I  
13 was quite taken aback and surprised, sir, at the time,  
14 and because I could see that this was something that  
15 was tying up the asset.

16 380 Q. Yes?

17 A. And that - I was gravely concerned.

18 381 Q. If we could just look briefly at page 1599.

19 .  
20 Sorry, it is the same page. I thought we had a copy of  
21 the contract. Maybe we don't. Let's just leave that  
22 aside.

23 .  
24 Can you recall how long after the lands were bought was  
25 it that you found this out, without necessarily putting  
26 a date or a month on it?

27 A. I don't think there was - now, just a recollection - I  
28 don't think it was a year.

29 382 Q. Yes. Yes. Page 487 is a contract, dated the 17th of  
30 November of 1981, between Kilnamanagh Estates Limited

1 and Grange Developments Limited, where Grange  
2 Developments Limited agrees for ú840,000 to sell lands  
3 comprising lands of Woodside and Murphystown, which we  
4 understand to be a portion of the Sandyford lands. And  
5 this scheme, as outlined in Mr. Owens' document, which  
6 we have just had, appears to have been implemented, to  
7 the extent that contracts certainly were signed, albeit  
8 that --

9 A. Yes.

10 383 Q. -- as far as we know, no conveyances were ever  
11 executed?

12 A. But there was a contract.

13 384 Q. That is one of the contracts. There was - you  
14 mentioned stock relief. Did you at some point in time  
15 approach Mr. McGowan or Mr. Brennan about this and  
16 confront them with it, having found out about it?

17 A. At some stage around then, because I was told then that  
18 this was only for stock relief, but that still - yes.

19 385 Q. Well, what were the circumstances of you approaching -  
20 first of all, who did you approach?

21 A. I would say it was more than likely - it was - I am not  
22 quite sure, but I think it was Joe McGowan.

23 386 Q. Yes. And what did you say to him?

24 A. I couldn't be - I don't know what I said to him. What  
25 I - I would have said that, "What about all these  
26 things, these contracts?" I remember something like,  
27 "Oh, you needn't be concerned, these are only  
28 temporary. There is nothing at all here. This is all  
29 fine. This is not a permanent situation."

30 387 Q. This would have been a fairly alarming discovery, from

1 your point of view?

2 A. It was.

3 388 Q. That lands that you had put up your money for, somebody  
4 was signing contracts to sell them, as it turns out,  
5 Brennan and McGowan were signing contracts to sell them  
6 to another Brennan and McGowan company, behind your  
7 back?

8 A. I was upset, very upset, because apart from anything  
9 else, sir, that naturally that selling off any part of  
10 a large holding like this, you wouldn't know what  
11 effect it would have on the balance of it.

12 389 Q. Yes. You indicated at the start that this was intended  
13 to be an investment for the long haul?

14 A. Yes, sir.

15 390 Q. By that, I take it, to mean that you would wait for it  
16 to be rezoned and then put together some sort of  
17 development or sell it for development or something?

18 A. I think with anything, with an investment like this,  
19 sir, the sort of thing you would be hoping for would be  
20 what you say, that you would be looking forward to the  
21 day that you would have it as development land.

22 391 Q. Yes?

23 A. And at that stage, then, that you could make up your  
24 mind what you wanted to do with it.

25 392 Q. There is just one point that perhaps I should, in  
26 fairness, put to you, Mr. Finnegan, and that is that -  
27 you remember that we discussed slightly earlier in the  
28 afternoon about this ú300,000 that came from Green  
29 Trees. I was putting it to you on the basis that you  
30 were an equal one-third beneficiary, as it were, of

1 that borrowing. Am I right about that? I mean, I  
2 don't want - you sort of agreed with me, but I should  
3 draw your attention to the fact that your own counsel  
4 cross-examined Mr. McGowan on the basis, we believe,  
5 that you did not participate in that part of it at all.

6 A. That's right, sir. No, I think you said to me, "if you  
7 were", sir.

8 393 Q. I said that as well. I just want to be clear about it,  
9 because I want to avoid any confusion. What is your  
10 position about the ú300,000 borrowing of Green Trees?

11 A. In Canio?

12 394 Q. No, it was borrowed in St. Stephen's Green. Green  
13 Trees was the Irish company involved with the Smiths of  
14 the Green interest in St. Stephen's Green. Green Trees  
15 borrowed ú300,000 from Hill Samuel, and that ú300,000  
16 was used to pay the deposit in Sandyford.

17 .

18 Now, if I am not mistaken, and I am sure if I am, Mr.  
19 Hussey will correct me, and I would invite him to do so  
20 if I am mistaken, because I am just trying to clear  
21 this up. I thought that Mr. Hussey put it to  
22 Mr. McGowan, on the basis that you had nothing to do  
23 with that particular borrowing, that essentially your  
24 involvement related, was it, to the freehold?

25 A. Yes, sir.

26 395 Q. Well, perhaps I will stop talking. Would you tell us  
27 what the position was?

28 A. About the --

29 396 Q. Yes, what I want to know is - I know that ú300,000 came  
30 in from Green Trees. I know where Green Trees got that



1 money. What I want to know is, did it have anything to  
2 do with you?

3 A. No, sir, but - I was listening to what you were saying  
4 there earlier on, because a lot of this has been  
5 revisited now, sir, and I am only getting the hang of  
6 some of it. I think that - but part of the - I would  
7 always - in my mind, I would be looking at the freehold  
8 as being all the top end of it, the property. They  
9 did, in that - apparently there were pledges of various  
10 interests, for some reason.

11 397 Q. Well, put it another way: If the £300,000 --

12 A. Yes.

13 398 Q. -- it had nothing to do with you, it would seem to  
14 follow that your investment in Sandyford was £100,000  
15 less than the other two?

16 A. Yes, sir.

17 399 Q. Or to put it another way - well, no. £100,000, in  
18 fact, less than the other two. Is that, in fact, the  
19 case?

20 A. Well, I always thought, sir, that I was a third holder  
21 in Sandyford.

22 400 Q. Yes. And was it always your perception at the time,  
23 and is it still your perception that you were an equal  
24 contributory to the extent of a full one-third of the  
25 purchase price?

26 A. Well, I - my understanding, sir, was that I was a  
27 third, and that I had contributed, but that there was a  
28 loan from Green Trees.

29 401 Q. Yes?

30 A. Now

1 402 Q. But to the benefit of which you would have been  
2 entitled one-third as far as it was used as a deposit  
3 on Sandyford?

4 A. This is all, sir - what was a little bit surprising,  
5 but I am sure it is right, sir, that at the time, at  
6 the time that this came in, very early, but anyway, I  
7 take it that - I felt that I was a third holder in the  
8 thing.

9 403 Q. All right.

10 A. Now, as it transpired, that it didn't look as if it was  
11 the way the thing ended up, anyway.

12 404 Q. In any event, we do know, at the end of the day, you  
13 were paid a sum of money for your one-third  
14 shareholding, and it was on the basis of you owning,  
15 which you obviously, or Foxtown obviously did, own a  
16 full one-third of the company?

17 A. Yes, sir. It was - sorry, go on.

18 405 Q. I was going to go back to the other, what we just left  
19 off a minute ago, unless you wanted to say something  
20 else?

21 A. Carry on.

22 406 Q. Just going back to this alarming discovery that you  
23 made about Messrs. Brennan and McGowan entering into  
24 various contracts under which other Brennan and McGowan  
25 companies were buying bits and pieces of this property.  
26 As you have indicated, it was a worry, you confronted  
27 Mr. McGowan with it, and he gave you some kind of an  
28 explanation indicating that these arrangements were  
29 only temporary arrangements, something to do with stock  
30 relief?

1 A. Hum.

2 407 Q. What did you understand him to mean by all of that ?

3 A. To be honest with you, sir, it was, the whole thing was  
4 such a shock to me. I couldn't even see - I didn't  
5 understand, how could you get stock relief, and I  
6 quizzed him on that. He said that is what it is. It  
7 is only temporary. It is only temporary. And because  
8 it was the first I had ever heard of being able to get  
9 - well, I wasn't up to speed on that, sir, but I was  
10 concerned, very concerned.

11 408 Q. Yes. Of course, to the extent that they wished to do  
12 anything in relation to these lands, it would have had  
13 to have been done through Bedell & Cristin?

14 A. Mm-hmm.

15 409 Q. Mr. Wheeler, who was dealing with the matter, and  
16 Mr. Wheeler was a person with whom you had previously  
17 had dealings, even prior to this particular  
18 transaction, isn't that right?

19 A. No, sir.

20 410 Q. Oh, did you not?

21 A. When?

22 411 Q. Well, Bedell & Cristin were the solicitors involved in  
23 Herbert Properties Limited and Herbert Estates Limited?

24 A. Well, I didn't have anything to do with them on - I had  
25 no dealings with them. Any dealings to do with the  
26 Pembroke Estate were done by --

27 412 Q. Mr. Cassidy?

28 A. No, no, sir. I would think that all of that was done  
29 by Withers.

30 413 Q. Mr. Withers?

1 A. Sorry, John, Mr. Roome of Withers. And I forget now -  
2 I would be able to give it to you - but the UK  
3 accountants.

4 414 Q. Yes?

5 A. And the Irish accountants, I can give you the name.

6 415 Q. That doesn't matter. Is that the position, that you  
7 didn't know Mr. Wheeler at this point in time?

8 A. No, sir.

9 416 Q. So you would have had no comfort, in the sense that you  
10 didn't know who was dealing with it in Bedell &  
11 Cristin, and whether it was a person who was prepared  
12 to act on the directions of Brennan and McGowan,  
13 without reference to you?

14 A. Well, indeed, sir. I can't just tell you now, the  
15 dates and years and things might go adrift a bit, but  
16 this is one of the reasons why I had to get and did get  
17 my representative in.

18 417 Q. Yes. As a result of your conversation with  
19 Mr. McGowan, I understand that you weren't terribly  
20 happy and you decided to do something about it?

21 A. Yes, sir. Names aren't coming now. But --

22 418 Q. Is it Mr. Barry?

23 A. Mr. Barry, yes. I am not quite sure whether it was -  
24 just then - there was yet another shock to come.

25 419 Q. What was that?

26 A. That I learnt, that apart from this, that there had  
27 been a pledge of the title deeds.

28 420 Q. When did you find that out?

29 A. Well, now --

30 421 Q. That, we know, didn't blow up until 1985?

1 A. When are we now?

2 422 Q. We are still in - well, we are around 1981, but --

3 A. Are we? Sorry, sir.

4 423 Q. When the contracts - you know, depending on which one

5 you pick, there were a number of contracts.

6 .

7 At some point in time, which I understand from your

8 evidence you can't identify, when you discovered this,

9 you then had this conversation with Mr. McGowan, and I

10 think there was communication between Mr. Barry, on

11 your behalf, and Mr. Wheeler in connection with your

12 concerns, and we know that that took place in 1984?

13 A. Right.

14 424 Q. Well, can you, just before we come to deal with the

15 communications between those two, tell us what you did

16 and how did you do it? I take it you approached Mr.

17 Barry?

18 A. Oh, I did, sir, yes.

19 425 Q. And what did you tell him?

20 A. I did say that I was terribly surprised that anything,

21 that anyone could make a decision regarding the lands

22 which I had an investment - that the Trust had through

23 the - through whatever, Foxtown, but that acts could be

24 taken without my knowing. And then there was a whole

25 question of, well, how could you keep - how could you

26 get control? Well, I said, "How could you keep an eye

27 on it?" Well, then, I don't know whether it was just

28 at that stage or a little bit later they advised me - I

29 am not sure now, the timescale, I may be wrong, but I

30 think we got Crills, I remember the name of lawyers,

1       were consulted. I think what the advice was, was that  
2       Mr. Barry should be put on, that is what it is, that  
3       Mr. Barry would be put, made a director, or maybe put  
4       on the Board or something, then that would mean that  
5       nothing could be - he could keep, maybe, an eye on  
6       things, that it would have to go through, or should go  
7       through that source.

8       .

9       Sorry, I am going around in circles.

10 426 Q.   Are you in a position to continue, or would you like --

11       A.   It is all right, yes.

12 427 Q.   There is a letter of the 27th of June, '84. No. 698.

13       .

14       It is a letter from Mr. Barry to Mr. Wheeler,  
15       subsequent to a meeting which they had. As you can  
16       see, it is on College Trustees Limited's headed  
17       notepaper. And Mr. Barry says to Mr. Wheeler:

18       .

19       "I am enclosing some notes on our meeting yesterday,  
20       for the record. Please let me know immediately if  
21       there is anything in these notes which does not  
22       coincide with your own recollection of the meeting.  
23       Please also confirm that you have dealt with Item 4 as  
24       soon as possible.

25       .

26       I also enclose for your information, a balance sheet of  
27       Canio, which I understand was prepared by Mr. Hugh  
28       Owens. I am advised that there should be little change  
29       in Canio's current balance sheet, apart from the  
30       receipt of deposit interest, and perhaps, disbursement

1 of minor expenses.

2 .

3 I am not sure that it is correct to show a direct loan  
4 from Foxtown to Canio, i.e. perhaps it should be  
5 rerouted through Ardcarn. Nor am I sure who "Green  
6 Trees" is, but I will endeavour to find out.

7 .

8 I think it would be appropriate for you to obtain a  
9 cash statement from Mr. Russell, since he obviously  
10 held a fairly sizable sum for Canio on the 31st of  
11 December, 1980. And I would hope that it is still  
12 substantially intact.

13 .

14 Yours sincerely David Barry."

15 .

16 So Mr. Barry is, obviously, tightening up things, shall  
17 we say. And the meeting - sorry, the response from  
18 Mr. Wheeler, before we go to the details of the  
19 meeting, is dated the 4th of July, 1984. Page 706.

20 .

21 Mr. Wheeler says to Mr. Barry:

22 .

23 "Thank you for your letter of the 27th of June, and I  
24 confirm that the notes of the meeting accurately  
25 reflect what was discussed.

26 .

27 I confirm that your appointment as director of Canio  
28 and Ardcarn has been put into effect, and enclose  
29 copies of the two minutes.

30 .

1 I find the balance sheet of Canio which you enclose  
2 with your letter a little puzzling, because on the face  
3 of it the three contributions do not seem to be equal.  
4 However, I do not think that this is worth pursuing  
5 until I hear from Mr. Owens, since I believe that the  
6 figures that he will produce will clarify the  
7 position."

8 .  
9 Now, the meeting is at page 699. And it is described  
10 as "Notes on a meeting held at the offices of Bedell &  
11 Cristin, Normandy House, St. Helier, Jersey, on the  
12 26th of June, 1984, at 2:30 p.m.."

13 .  
14 As you can see, present were Mr. Wheeler of Bedell &  
15 Cristin. And it is also noted that he was a director  
16 of Ardcarn and Canio Limited. Tom Brennan was there.  
17 You were there. Joe McGowan was there. George Russell  
18 of Reid and McNabb was there. And Mr. Barry was there.  
19 So, this was obviously a fairly serious meeting, wasn't  
20 it?

21 A. Yes, sir.

22 428 Q. Where all of you took the trouble of going from  
23 Ireland, presumably via London to Jersey, to attend  
24 this meeting. And Mr. Barry, presumably, took the  
25 trouble of going from Guernsey to Jersey to attend this  
26 meeting.

27 .  
28 Who called this meeting?

29 A. I think - first of all before I answer that, Sir, I am  
30 not quite sure who did. Let's just look at the



1 circumstances of this.

2 429 Q. Yes.

3 A. Because you remember I said, I just said earlier on  
4 that something else was yet to come, apart from the  
5 contracts. This is when - at this stage, or prior to  
6 this meeting there was a definite suggestion, and it  
7 would appear that the lands had been pledged - Mr.  
8 George Russell had either acknowledged that he would  
9 hold these, the deeds of the property in favour of AIB  
10 --

11 430 Q. And are you - do you recall that that knowledge or  
12 information came to you prior to this meeting?

13 A. Yes, sir.

14 431 Q. In other words, that the meeting was about two  
15 problems, not just one problem, not just the contracts?

16 A. No, I think that this meeting, sir, was about a whole  
17 lot, and in particular, I think, that the title deeds,  
18 that there was this pledge.

19 432 Q. Yes.

20 A. And sometime I heard about this, now exactly how I  
21 can't tell you now at the moment, but I had heard, and  
22 I queried this. And again that was, there was some  
23 question that that might have been just - "Oh, that was  
24 very much just a short-term", or it was just by-the-by.  
25 Or something. But this - anyway, but what happened,  
26 anyway, was I queried this again and I said to, I think  
27 it was Mr. Joe McGowan, I said that I was very  
28 concerned that, of the fact that now if the title deeds  
29 were pledged that this was now a very serious matter.  
30 He said, anyway he went on and on and on. Then I heard

1 from him to say, I don't know the timespan at this  
2 stage, sir. "No, no, it is fine. There isn't, or  
3 there aren't any - there isn't a pledge of anything."

4 433 Q. Yes.

5 A. And --

6 434 Q. Well, let's just look, then, at what was said at the  
7 meeting.

8 A. Sorry.

9 435 Q. What was arranged at the meeting. It is on the screen  
10 there.

11 .

12 It says: "The purpose of the meeting was to clarify  
13 the current status of Canio Limited and Ardcarn  
14 Limited, and to deliver the title deeds to Canio  
15 Limited's Irish land holdings to Bedell & Cristin."  
16 Bedell & Cristin being the registered office of the  
17 company that owned the property. So obviously whoever  
18 asked for this meeting had included in his request a  
19 requirement that the title deeds be produced and given  
20 to Bedell & Cristin. Isn't that right?

21 A. Yes. I think that on that, sir, that I think that -  
22 however it came around - was to show now that there  
23 wasn't a charge on it.

24 436 Q. Yes. Yes.

25 A. That he was going to hand them over. I don't know  
26 whether Mr. Barry had discussed that or whatever, but  
27 that was the reason behind that, I think.

28 437 Q. Yes. It says: "The status of Canio and Ardcarn was  
29 considered, in conjunction with a letter from Mr. Barry  
30 to Mr. Wheeler, dated the 11th of June, 1984. (A copy

1 of which is attached hereto.)

2 .

3 1. It was agreed that the ownership of Canio and  
4 Ardcarn was well understood by all present, i.e. Canio  
5 is a wholly-owned subsidiary of Ardcarn, and Ardcarn is  
6 owned as to one-third each by Foxtown Investments  
7 Limited, Gasche Investments Limited, and Kalabradi  
8 Limited.

9 .

10 2. It was agreed that audited accounts should be  
11 prepared for Ardcarn and Canio, and that Hugh Owens, of  
12 accountants Owens Murray in Dublin, should be  
13 approached to assist in the preparation of such  
14 accounts. Subject to Mr. Owens' agreement Price  
15 Waterhouse, Jersey, were suggested as auditors, being  
16 affiliated with Stokes Kennedy Crowley in Dublin.

17 .

18 3. Mr. Russell confirmed that Canio had good clean  
19 title to its land assets in Ireland, and that they were  
20 not subject to any mortgage, pledge, bond, or charge,  
21 etc.. He agreed to confirm this fact to Mr. Wheeler in  
22 writing, so as to enable Mr. Wheeler to give a similar  
23 confirmation to Mr. Barry.

24 .

25 Mr. Russell stated that the title deeds had been in the  
26 custody of his firm since the land's acquisition by  
27 Canio.

28 .

29 He listed the deeds and delivered them to Mr. Wheeler  
30 for safekeeping, against an acknowledgment of receipt."

1 .

2 So the deeds were, apparently, handed over?

3 A. That was one of the most important parts of the

4 meeting, sir.

5 438 Q. "4. It was agreed that Mr. Barry should be appointed a

6 director of both Canio and Ardcarn as soon as possible.

7 .

8 5. Agreement was unanimous on all points considered

9 and decisions taken."

10 .

11 Now, you will recall from the letter sent by Mr. Barry

12 to Mr. Wheeler, enclosing his note of this meeting, he

13 was particularly concerned to see that "4" was taken

14 care of straight away. "4" being the requirement that

15 Mr. Barry should be appointed a director of Canio and

16 Ardcarn, that being the mechanism, obviously, by which

17 yourself and he had decided your interests could best

18 be protected. Isn't that so?

19 A. Yes, sir.

20 439 Q. Now, subsequent to that, how did matters progress? I

21 take it, for a start, that Mr. Barry was, in fact, made

22 a director of the company, and that he acted in that

23 capacity from that point on?

24 A. Yes, sir.

25 440 Q. What was the next thing to happen, then, after that,

26 vis-a-vis your relationship with Brennan and McGowan?

27 A. Well, I think - I must say, that at that stage there

28 was relief that, one, that the title deeds were now

29 unencumbered, and that was important.

30 441 Q. Yes.

1 A. It was very important to have that established. I am  
2 not quite sure when, was it then or just a short time  
3 afterwards that it was suggested that, I am not sure by  
4 Joe, by Mr. Joe McGowan or Mr. Tom Brennan that, I  
5 don't know, I can't tell you the exact timespan, but I  
6 don't think it was too long after that, that perhaps it  
7 would be a good thing to, to take a loan out with, to  
8 organise a loan, and there was a question of refinance,  
9 or to --

10 442 Q. Yes, perhaps we will come to the loan in a moment,  
11 but --

12 A. Oh, sorry.

13 443 Q. Just before we move on, that is slightly later in 1984.

14 A. Is it? Sorry.

15 444 Q. There is another event in 1984 which is a matter into  
16 which the Tribunal is inquiring, and that is that in  
17 April of 1984 there was a lodgement into Mr. Burke's  
18 bank account, called - in the name of a company called  
19 Caviar Limited, of a sum of ú35,000. And the Tribunal  
20 is inquiring into whether or not this was a payment  
21 from Messrs. Brennan and McGowan.

22 .

23 Now, this ú35,000 is the subject of some controversy,  
24 because originally Mr. Burke gave testimony to the fact  
25 that this formed part of the monies of which he was in  
26 receipt, from Messrs. Brennan and McGowan, from  
27 fundraising activities. We now understand that Mr.  
28 Burke's position is that there was no fundraising  
29 activities.

30 .

1 We know that Mr. Burke was in Jersey in April of 1984.

2 We know that Mr. Burke, prior to his visit to Jersey,  
3 his solicitor, Mr. Conlon in Dublin, had been in  
4 communication with Bedell & Cristin with a view to  
5 establishing a company urgently for the purpose of  
6 having a bank account. And we know that Mr. Burke did,  
7 in fact, set up that bank account.

8 .

9 Mr. Burke's counsel, in examining Mr. McGowan the first  
10 time Mr. McGowan gave testimony, put it to Mr. McGowan  
11 that Messrs. Brennan and McGowan had made two payments  
12 to Mr. Burke in the sum - in 1984 - one in the sum of  
13 ú35,000, and one in the sum of ú60,000.

14 .

15 Now, we do know that there were two lodgements into Mr.  
16 Burke account in 1984, of ú35,000 and ú60,000. But Mr.  
17 Burke has since given testimony, and it is now his  
18 testimony, and he insists that the ú35,000 lodgement in  
19 his account is a relodgement of a previous withdrawal  
20 which he made from an account that he had in the Isle  
21 of Man.

22 .

23 Now, that sounds a bit convoluted, but I felt, in  
24 fairness, before I put the question to you I should, at  
25 least in outline, set out the state of the evidence as  
26 it stands before the Tribunal.

27 .

28 What I want to ask you is, are you aware of any payment  
29 by Messrs. Brennan and McGowan to Ray Burke of ú35,000  
30 in April of 1984?

1 A. That was long before the mortgage --

2 445 Q. Yes?

3 A. No, sir.

4 446 Q. Are you aware of any payment by Messrs. Brennan and  
5 McGowan to Mr. Burke at any time, in any amount, prior  
6 to November of 1984?

7 A. No, sir. As a matter of fact I was - it was all quite  
8 a shock to me, sir, that I did hear about any payment,  
9 because I might have been saying thank goodness I am  
10 not involved here, when the whole thing was going on.  
11 And it was a great shock to me, actually, when I heard  
12 that a payment had been made from Canio.

13 447 Q. Yes.

14 A. You would have been in contact on a reasonably regular  
15 basis, I take it, around April of 1984 with Mr. Brennan  
16 and Mr. McGowan, particularly, presumably, Mr. McGowan?

17 448 Q. This was the time, you will recall - just the previous  
18 Monday, for example, that the planning permission came  
19 through on appeal from An Bord Pleanala in the case of,  
20 in relation to the Herbert Street Plantation?

21 A. Yes, sir.

22 449 Q. And you were involved in some, to some extent in the  
23 effort to obtain that planning, isn't that right?

24 A. Yes, sir.

25 450 Q. But in addition to that, you were involved in other  
26 projects with Brennan and McGowan, because there was  
27 still a number of on-going matters, including, of  
28 course, Sandyford?

29 A. Mm-hmm.

30 451 Q. Did either Mr. Brennan or Mr. McGowan make any mention

1 to you in connection with any actual or proposed  
2 payment to Mr. Burke in 1984, or indeed at any other  
3 time?

4 A. No, sir.

5 452 Q. We know that they did make a payment to Mr. Burke in  
6 1985 of ú15,000. That was also a payment which Mr.  
7 Burke told the Tribunal was a rededgement of a previous  
8 withdrawal, although we have now established that it  
9 went --

10 A. Oh --

11 453 Q. Did they ever tell you that they were going to make a  
12 payment, or that they had made a payment to Mr. Burke  
13 of ú15,000 in 1985?

14 A. No, sir.

15 454 Q. Were you ever approached by a Mr. Ottiwell for a  
16 contribution towards Mr. Burke/Fianna Fail?

17 A. No, sir.

18 455 Q. Did you ever hear of Mr. Ottiwell?

19 A. Oh, yes.

20 456 Q. You heard of him?

21 A. Yes.

22 457 Q. He was a property man?

23 A. Yes, sir.

24 458 Q. You would have heard of him, presumably, in that  
25 capacity?

26 A. Years ago, yes, sir.

27 459 Q. Well, moving further into 1984. We know that at some  
28 point in time the question of this borrowing from  
29 Lombard and Ulster came up. How did you first become  
30 aware of any proposed borrowing from Lombard and



1 Ulster?

2 A. Joe McGowan - Joe McGowan mentioned to me that the,  
3 that there was a suggestion that they could raise a  
4 loan and take out some of the money that was put into  
5 Canio, and I just sort of - I remember something like -  
6 well - and he said, "Well, it will do two things. You  
7 will be able to get - you will get, you will get some  
8 of the investment back." But it was also, I would also  
9 confirm to you, sir, that there is no trouble on the  
10 title. I was all the time concerned about that.

11 .

12 MR. HAYDEN: Sir, at this stage if I might - sorry, I  
13 didn't wish to delay or prolong things, but given what  
14 the witness has just said now, that he seems to have  
15 had a recollection of all of this, none of it was put  
16 to either Mr. McGowan or Mr. Brennan by Mr. Hussey,  
17 which seems to be somewhat unfair, from the point of  
18 view of a version of events that is now being put up as  
19 to how the loan came to exist.

20 .

21 MR. HUSSEY: Sorry, Sir, I don't think that is fair. I  
22 think I did put to Mr. McGowan, that Mr. Finnegan did  
23 know of the Lombard and Ulster loan.

24 .

25 MR. HAYDEN: This issue that has now arisen, that what  
26 the witness has said is that this would show,  
27 Mr. McGowan supposedly saying that this would show that  
28 there would be no difficulty with the property  
29 previously having been pledged. None of that was put  
30 to Mr. McGowan, that the taking out of the loan by

1 Lombard and Ulster would in some form or fashion allay  
2 any concerns that Mr. Finnegan may or may not have had  
3 in relation to whether the property had previously been  
4 secured.

5 .  
6 MR. HANRATTY: Well, Mr. Brennan is coming back, in any  
7 event. And of course, it can be put to him then,  
8 anyway.

9 .  
10 I don't know if you wish me to stop at this point, Sir?

11 .  
12 CHAIRMAN: I think it might be a good idea. It has  
13 been a long day for the witness.

14 .  
15 Half past nine on Tuesday morning. Is that right?

16 .  
17 MR. HANRATTY: Yes, Sir.

18 .  
19 CHAIRMAN: Half past nine on Tuesday morning. And the  
20 sessions will end at a quarter to two.

21 .  
22 THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,  
23 TUESDAY, THE 23RD OF OCTOBER, 2001, AT 9:30 A.M...

24 .  
25  
26  
27  
28  
29  
30

