

1 THE TRIBUNAL THEN RESUMED AS FOLLOWS ON THE 25TH OF
2 OCTOBER, 2001, AT 10:30 A.M.:

3

4 CHAIRMAN: Good morning everyone.

5

6 MR. HANRATTY: Good morning, Sir.

7

8 MR. JOHN FINNEGAN'S RETURNS TO THE WITNESS-BOX AND
9 CONTINUES TO BE CROSS-EXAMINED BY MR. HAYDEN AS
10 FOLLOWS:

11

12 1 Q. MR. HAYDEN: Morning, Mr. Finnegan. I was asking you
13 yesterday about the events leading up to the 26th of
14 June meeting. Just before that, as I understand your
15 answer to Mr. Hanratty yesterday, in relation to
16 contributions to political parties, it is something
17 that you have done in the past?

18 A. I have - yes, sir, to all parties I have given
19 donations, in the way of attending functions and
20 dinners.

21 2 Q. Yes. You would take a table?

22 A. Yes.

23 3 Q. Or --

24 A. Yes, sir.

25 4 Q. Would you sponsor an event, a golf classic or something
26 like that?

27 A. That sort of thing, or part -

28 5 Q. One of a number of sponsors of an event. Would that be
29 in the main for Fianna Fail or would it be equal
30 between all or - if you were asked ultimately which,

1 had you even subconsciously favoured, which one would
2 you pick?

3 .

4 MR. HUSSEY: I think we are entitled to the secrecy of
5 the ballot here.

6

7 6 Q. MR. HAYDEN: Even if you consciously favoured, would
8 one have appealed to your political aspirations more
9 than the other?

10 A. I don't think that is fair, sir. I think what I would
11 say to you is this: I would have attended at lunches
12 and dinners, and various things for both Fianna Gael
13 and Fianna Fail, and indeed other ones, with the TDs
14 and Labour, but all of them are different, maybe not
15 all to the same extent, sir, but --

16 7 Q. Depending on various things, but over the, a long
17 career you would have supported all, to some degree,
18 would that be a fair way of putting it?

19 A. Yes, sir.

20 8 Q. And you wouldn't have seen yourself, perhaps, slightly
21 more favouring Fianna Fail over the others?

22 A. Well, I think that it would probably be that, perhaps
23 that would be the case, but I certainly would have been
24 at a lot of things in Fine Gael.

25 9 Q. Oh, yes. I am not saying - I don't think, it is not
26 that. But, of the two, of the ones that you would
27 have, of Fianna Fail, Fine Gael, Labour?

28 A. Yes, sir.

29 10 Q. And the others, you probably would have, would it be
30 fair to say you probably would have been, of all of

1 them, the supporter of Fianna Fail most?

2 A. You could take that, sir, that is more than likely.

3 11 Q. And --

4 A. The levels are hard to say, but --

5 12 Q. Yes, but I mean, over the number of years in question,

6 it is hard to recollect at this stage. The fact of a

7 contribution to a party isn't something that causes you

8 upset or concern. This issue obviously of the €10,000

9 is in issue, I accept that, you have quite clearly said

10 that. But the fact that a contribution would be made

11 to Fianna Fail is not something, is it, that you would

12 have found difficulty with?

13 A. No, sir.

14 13 Q. And you have heard the evidence of Mr. Brennan,

15 particularly, and Mr. McGowan as well, that they

16 themselves were add individual Fianna Fail supporters?

17 A. Yes, sir.

18 14 Q. In all the years that they were doing business with

19 them, did you ever discuss politics with them at all?

20 A. Well, I think that, sir, that anyone in Ireland, I am

21 quite sure that the things of the day would have been

22 discussed at times, whatever - but, by the way --

23 15 Q. I suppose the two big things, weather and politics in

24 Irish conversation?

25 A. Yes, but I am not a - they would have known too, that I

26 was not an individual, sort of, follower of any

27 political party, I was never any member of any, or --

28 16 Q. You wouldn't have been up to the same level of support,

29 say, of Mr. Brennan, going out at the election stages?

30 A. I never did anything like that in my life.

1 17 Q. Yes. You see, it does seem to be the case, though,
2 that, I mean, you would have had some support for, from
3 your perspective for Fianna Fail?

4 A. Yes, sir.

5 18 Q. And it seems hard to believe that, well sorry, - it
6 seems to be the case that you are saying that over the
7 years of your involvement, businesswise, with Messrs.
8 Brennan and McGowan, it may have been an issue that
9 came up for discussion or - it is hard to say at this
10 remove, I accept - but it is not something to have been
11 surprising for you to have discussed, with all the
12 elections going on, particularly in the 80s?

13 A. I think apart from any normal discussion that I -
14 business people would have about what the policy of the
15 day or whatever was happening or - yes.

16 19 Q. You yourself would have taken tables at various events,
17 not solely Fianna Fail, but the other parties as well,
18 and would those events, at this remove, say in the 80s,
19 late 70s and 80s, would they have been tables for a
20 particular politician or a particular party or would it
21 have been a combination of both? Or if you were
22 sponsoring a golf classic would it have been for a
23 particular politician, or a particular party or a
24 combination?

25 A. Well, first of all, the golf outings would be rare
26 because I don't play golf. The - no, I think that what
27 they would have been, it would have been the political
28 parties, I would have been at certain societies and
29 things like that, at lunches.

30 20 Q. Yes. It could be the Party, it could be, it needn't

1 necessarily have been one particular politician in
2 question, no?

3 A. No.

4 21 Q. Not that you remember.

5 .

6 CHAIRMAN: Mr. Hayden, where exactly is this leading?

7 We have now been patrolling around various political
8 parties for the last five minutes. Could we get out
9 into some particular direction or purpose in the
10 question.

11 .

12 22 Q. MR. HAYDEN: It will probably become clear. I know you
13 will probably like it to become clearer quicker. I
14 will move it along.

15

16 Yesterday we were talking about the events leading up
17 to the meeting of the 26th of June, '84. I think I
18 opened to you a letter of Mr. Wheeler's of the 22nd of
19 March, 1984 to Mr. Barry which was at page 663. And
20 that letter had ended at page 664 with the suggestion
21 from Mr. Wheeler to Mr. Barry that "it may be that we
22 will have to meet up to sort out what could prove a
23 disastrous muddle."

24 .

25 You recollect that yesterday?

26 A. Yes, sir, I do.

27 23 Q. And that had been brought about by the combination of
28 letters of, from Mr. Owens of the 6th of March, '84 and
29 Mr. Barry himself of the 20th of March, '84, whereby
30 people were trying to just set out or fix what the

1 structures were and what, in fact, had happened to
2 date?

3 A. Yes, sir.

4 24 Q. But, of course, it was Mr. Owens, was it, or had set up
5 Canio on behalf of you, and on behalf of Foxtown,
6 Kalabraki and Gasche; isn't it?

7 A. Yes, sir.

8 25 Q. And you were aware that Mr. Owens had set that up on
9 your behalf, and Ardcarn?

10 A. Yes, sir.

11 26 Q. And what seems to have happened was that the paperwork
12 wasn't put in place by the time the correspondence
13 comes around in March of '84, isn't that correct? It
14 seems to be anyway?

15 A. Yes, sir.

16 27 Q. It seems to be what motivated your concerns, as we saw
17 yesterday in the 6th of March, '84 letter from
18 Mr. Owens, was a fear on your part that if anything
19 ever did happen to you, at least everything would be in
20 order, and Foxtown's interest would have been
21 identified and there wouldn't be a question of anybody
22 having to go back to recollections or ask for advice as
23 to who was meant to have what share or otherwise. I
24 presume that is where that was coming from?

25 A. Yes, sir.

26 28 Q. And likewise, we see from Mr. Barry's letter of the
27 28th of March, '84 what he said, which is at page 659,
28 under the numbers 1 to 4. He says:

29

30 "You will note from Mr. Owens' letter that our client

1 would like to be confident that Foxtown's investment is
2 entirely secure, and this is not unnatural in view of
3 the value of that investment."

4
5 It seems to be along the same line of country.

6 .
7 The letter of the 22nd of March at page 663 we have
8 Mr. Wheeler writing back to Mr. Barry, doing as best he
9 can, setting out the position as he had it on his
10 records, but importantly enough, saying on the last
11 page at page 664 of the letter, that "we should have a
12 meeting."

13 A. Yes, sir.

14 29 Q. There is then a letter of the 11th of June, which is at
15 page 690. That at this stage are you saying that you
16 had still not heard of the idea of a loan with Lombard
17 and Ulster?

18 A. No, sir.

19 30 Q. Although you had gone to Mr. Owens in March, well as
20 you say you knew - Mr. Owens knew of Foxtown's
21 entitlement from the outset?

22 A. Sorry?

23 31 Q. Mr. Owens knew of Foxtown's entitlement in relation to
24 Ardcarn and Canio from the outset. I mean, he set it
25 up?

26 A. Yes, sir.

27 32 Q. In fact, that had been re-emphasised in March at that
28 meeting that he has written about in the 6th March
29 letter that I have opened to you?

30 A. Yes, sir.

1 33 Q. And we have Mr. Barry now on the 11th of June, 1984,
2 writing, seeking further clarification in relation to
3 the status of the various issues.

4 One, you confirm that Canio is a wholly-owned
5 subsidiary. It is dealing with the issues in a more
6 fulsome manner than he had in the light of his first
7 letter of the 20th of March, which I have already
8 opened to you, in which it asked a number of questions
9 of Mr. Wheeler, to which Mr. Wheeler had replied to on
10 the 22nd of March, indicating his answers as best he
11 could.

12 .
13 Here was further confirmation of how the information
14 was unfolding, or at least how the paperwork was being
15 put together. Isn't that correct?

16 A. Yes, sir.

17 34 Q. And we note a significant change in number 2, in that
18 in the letter of the 22nd of March, 1984, which is at
19 page 663, at the bottom of the first paragraph, we have
20 Mr. Wheeler writing back to Mr. Barry saying, "My
21 records" - this is the last sentence of the first
22 paragraph - "My records show that Canio Limited is
23 one-third owned by Foxtown Investments Limited but
24 Ardcar Limited is owned by three individuals."

25 A. Yes, sir.

26 35 Q. Whereas by the time we come around to the 11th of June,
27 1984, which is at page 690, subsequent to the meeting
28 that Mr. Barry had with Mr. Wheeler on Friday, he
29 commences by "thanking for your time on Friday." He
30 says at paragraph 2: "You confirm that the issued

1 share capital of Ardcard Limited being 12 shares is
2 owned as follows: Gasche, Kalabraki and Foxtown
3 Limited."

4

5 You see that?

6 A. Yes, sir.

7 36 Q. So obviously what is going on is putting in place what
8 people had thought to have been the situation that
9 hadn't been actually regularised when Canio and Ardcard
10 were set up?

11 A. Yes, sir.

12 37 Q. As I understand it, and correct me if I am wrong, but
13 certainly from the evidence of Messrs. Brennan and
14 McGowan, the structure that had been set up had been
15 set up by Mr. Owens; they understood that each of their
16 shareholding in Ardcard/Canio was held by Kalabraki and
17 Gasche, and I presume you thought, you understood that
18 your entitlement was similarly held by Foxtown?

19 A. Yes, the Trust, yes, sir.

20 38 Q. Obviously the letter of the 22nd of June, '84 from
21 Mr. Wheeler saying that it was held by three
22 individuals wasn't in keeping with the understanding of
23 the parties, and that seems to have been regularised
24 between the 22nd of March, '84 and the 11th of June,
25 '84, where the shares are issued in Gasche, Kalabraki
26 and Foxtown.

27 .

28 And that letter asks for Mr. Wheeler, it goes through
29 the other issues, concluding with number 5: "You have
30 agreed that I should be appointed a director of both

1 Ardcarn and Canio."

2 A. Sorry, sir, just back there, didn't he ask him about
3 the, was it on the mortgage or - back a little bit. He
4 cleared the mortgage, yes.

5 39 Q. "No. 3: I have informed you that it is our Foxtown's
6 understanding that the assets of Ardcarn Limited and
7 Canio Limited are principally land in Ireland and not
8 subject to any mortgage, pledge, bond, or charge and
9 that they should not be so encumbered nor disposed of
10 without Foxtown's prior written consent." You have
11 accepted this point, that was the position you are a
12 one-third owner?

13 A. Sorry?

14 40 Q. You are a one-third owner?

15 A. No, it was just the pledge, bond or charge).

16 41 Q. As I understand your position to be, as you say you
17 knew nothing of the 1981 undertaking to AIF, that AIF
18 subsequently relied upon?

19 A. Yes.

20 42 Q. You heard the evidence of Mr. McGowan, and we have the
21 notes of the meeting of the 26th of June from Mr.
22 Russell that neither of them understood AIF to have a
23 charge on the lands, Mr. McGowan's view of it being
24 that he understood always that that was only, if monies
25 had been advanced on those lands?

26 A. Well, sir, my understanding is that the lands were
27 pledged, whether the money was drawn down on the land
28 or other land, that there was a pledge, references
29 back, I know now, I didn't see it then, where that
30 there was a minute of that.

1 43 Q. Yes, we have seen the minute, it is at page 423. Just
2 so that I put to you what Mr. McGowan's understanding
3 of the position was that he never understood AIF to
4 have any entitlement to the Canio lands unless the
5 monies had been advanced for the purposes of those
6 lands to Kilnamanagh?

7 A. Well, I don't know what Mr. McGowan's, you know,
8 whatever Mr. McGowan's understandings were or are, sir,
9 my understanding of it is or was that there was a
10 charge.

11 44 Q. Yes. So, your - are you saying your understanding was
12 that back then that there was a charge simpliciter,
13 that it didn't matter whether the monies were advanced
14 to Kilnamanagh, whether it was for anything else?

15 A. Let's put it this way: that what concerned me was that
16 I had heard that, at a particular stage, that the lands
17 may or may not, that there could be a pledge, and I
18 think, on the lands, to a bank.

19 45 Q. Yes.

20 A. And I think what - so whether - and I understand that,
21 now looking back, that there was a pledge. Now, I
22 think, I wonder just that there was a pledge.

23 46 Q. Yes. There was a whole litigation over whether that
24 pledge, whether that undertaking did in fact apply and
25 the Chairman has heard the evidence thus far as to Mr.
26 McGowan's position, that the action ran and that there
27 was no monies advanced on the lands, and all of that,
28 so I don't think we need to delay that. I understand
29 the point you are making.

30 A. I understood that there was a charge.

1 47 Q. Yes?

2 A. There was a charge.

3 48 Q. As I have already, as we have already seen from the
4 correspondence, the events leading up to this, the
5 correspondence from Mr. Owens, the correspondence from
6 Mr. Wheeler, the correspondence from Mr. Barry up to
7 the 11th of June, makes no references of this event
8 that you say, this charge that you say at some stage
9 Mr. McGowan told you about?

10 A. Well, I think that Mr. Barry was doing, going about his
11 job in a professional way, whilst I had heard and there
12 was talk and there was talk that there was or there
13 wasn't, I think he - he was going about it in a normal
14 orderly way to establish what the facts were, because
15 could it be that there was or there wasn't. I think he
16 was just doing groundwork there, sir.

17 49 Q. If it is the case, I must put it now, Mr. Finnegan, if
18 it is the case that you say that you were told that
19 there was a charge on these lands in the manner that
20 you say you were told, namely that it affected these
21 lands regardless of where the monies went, as I
22 understand, the charge was on the lands?

23 A. I think what we have to look at here, sir, I don't want
24 any misunderstandings on it. What we know now and what
25 we knew then --

26 50 Q. What you knew then, as I understand your evidence so
27 far, was that there was a charge on the land?

28 A. There was a charge.

29 51 Q. Yes?

30 A. Details of which I hadn't got.

1 52 Q. I accept that entirely.

2 A. There was a charge.

3 53 Q. That you say that you were told, again it wasn't put to
4 Mr. McGowan that he had told you of this when he was in
5 the witness-box.

6 A. I put it this way to you, sir, and not to be - I heard,
7 I can't be adamant. It is a hell of a long time ago.
8 I put it this way, I heard or somebody told me, I can't
9 just say, pinpoint exactly what, but that there was, so
10 on whatever - I did hear there was something about it.
11 So on foot of that, and I was talking to Mr. McGowan
12 and Mr. McGowan did say something like what you had
13 said to me there, there may have been - "I think there
14 may have been some mistakes about something, in any
15 event that will be cleared up."

16 54 Q. You see, the thing is, in 1984 Mr. McGowan didn't know
17 that AIF were going to rely upon this undertaking,
18 because AIF didn't sue until the following year so how
19 could he have told you that there was a mistake on this
20 and it would be cleared up, in 1984? Nobody knew that
21 AIF was going to rely upon this undertaking until the
22 following year.

23 A. Really, you know, sorry --

24 55 Q. It is just, if, as you say, somebody told you, you
25 don't know who, but the event came into your knowledge,
26 you then say at some stage prior to the 26th of June,
27 1984 you spoke to Mr. McGowan, and as I understand what
28 you told me a moment ago, Mr. McGowan told you that,
29 that there is something but there is a mistake and it
30 will be cleared up. Am I correct, is that what you --

1 A. Let's just simplify it.

2 56 Q. I thought I had. Is that what you said?

3 A. Sorry, for misunderstanding you. I heard there was a
4 charge. Barry was instructed to do a mopping up job
5 and to clear the decks and see what the situation, how
6 it stood. It could have been that there wasn't,
7 whatever. He made his inquiries in an orderly way
8 about the, to the parties involved, as to what the
9 up-to-date situation, taking it, I think, step-by-step,
10 and establishing the fundamental facts as he went
11 along. So, then it - this then, by the way, - sorry -
12 regarding the charge then, then there was a question
13 of, that Mr. McGowan said, "Look, there is no question
14 about anything on the charge. Mr. Russell, we have
15 been talking to Mr. Russell, and in fact what
16 Mr. Russell is going to do is, that Mr. Russell is
17 going to, Mr. Russell has the deeds and he is going to
18 come to - he is going to bring the deeds. He will
19 travel to Guernsey and he will bring the deeds with
20 him. And he is going to confirm that there isn't a
21 charge of any kind on the lands."

22 .

23 Well that was, that was very important, and that's what
24 - and sir, that is what did happen, actually. And that
25 was a relief to me, that now we are in a position that
26 - I had a fear, naturally, and that there was - but now
27 he is going to tell, he is going to tell everyone, he
28 is going to confirm that there isn't. He did do that,
29 sir.

30 57 Q. A few moments ago, in answer to another question, you

1 told me that somehow you can't be sure, you heard there
2 might have been a charge. You said you contacted
3 Mr. McGowan, and Mr. McGowan said to you that "that's a
4 mistake, there won't be any trouble." Isn't that what
5 you told me?

6 A. Look, to get --

7 58 Q. Just maybe it was in error that you said that to me.

8 Just let me understand what it is that you are saying,
9 Mr. Finnegan.

10

11 A few moments ago when I asked you how did you come to
12 know of the charge, you said you couldn't be exactly
13 sure as to who told you first. Now, I might be
14 summarising this incorrectly, and correct me if I am
15 wrong: You couldn't be sure who told you about it
16 first, but you knew of the charge. You said you went
17 to Mr. McGowan, who said, "No, that is a mistake, there
18 will be no difficulty with that at all." That is what
19 you said.

20

21 Now, if that is what, if that is what you understood
22 the position to be, and if that is what you are telling
23 the Chairman, can you tell me then how it was, given
24 that the AIF position on this charge wasn't known for
25 another year; namely that they were going to be able to
26 rely upon it for monies not advanced in Sandyford, but
27 advanced to Kilnamanagh elsewhere, since AIF's position
28 on that wasn't known for another year, they didn't
29 issue the proceedings until another year, having
30 already issued proceedings in relation to the actual

1 advance to Kilnamanagh, they then rely upon the
2 undertaking and issue the proceedings against
3 Mr. Russell. That didn't happen for another year. How
4 could Mr. McGowan have known that there was a mistake,
5 but that it will be cleared up, since he didn't even
6 know they were going to rely on it?

7 A. Let's put it this way, sir --

8 59 Q. Can explain that to me? If there was a year --

9 A. I just want to say this: that around about that time
10 when we were talking, it was there or was not there. I
11 didn't know absolutely, sir, that there was a charge,
12 so there was a question of a charge. There was a
13 question of a charge. I spoke to - Mr. McGowan allayed
14 whatever my fears were by saying, "This will all be
15 cleared up. We have been talking to Mr. Russell.
16 There may have been something done in error. I can't
17 exactly say which way it was, but all of this is going
18 to be cleared, will be cleared up. And that Mr. Russell
19 is going to do what I said to you before, is going to
20 come over and he is going to acknowledge that there
21 aren't any charges on the property." And which he did
22 do.

23 60 Q. So you see, maybe it is that you are not going to
24 answer the question. My difficulty, Mr. Finnegan, is
25 that if it is the case, as you tell the Chairperson,
26 that in 1984 Mr. McGowan, in a conversation with you,
27 indicated that there was a charge potentially, but
28 there was a mistake, and that it would be cleared up,
29 and that resulted, and Mr. Russell was going to confirm
30 that, that it was going to be cleared up --

1 A. Not much time --

2 61 Q. If you bear with me, Mr. Finnegan?

3 A. Yes, sorry.

4 62 Q. If that is the position leading up to June, and given,
5 on the evidence of Mr. McGowan, he said that nobody
6 knew that AIF were going to be able to rely upon this,
7 including Mr. Russell.

8 A. Yes, sir.

9 63 Q. Even Mr. Russell didn't realise that AIF were going to
10 be able to rely on this as an entitlement to sue for
11 monies advanced to Kilnamanagh, but not on the strength
12 of the Sandyford land, since none of them knew that
13 this was a potential interpretation that was going to
14 be put on the undertaking by AIF until the following
15 year, how could Mr. McGowan have said to you "that was
16 a mistake and it will be cleared up"?

17 A. That's right --

18 64 Q. How could he say that a year earlier? He didn't even
19 know --

20 A. I put it this way: he wasn't confirming to me that
21 there was a charge on it, but there was some question
22 of something taking place, and now that we do know,
23 sir, actually to clear the decks on it, that in 1981
24 that there was a, there was a pledge of the deeds.
25 Well, pledge or charge, I am not quite sure which, but
26 there was a pledge back then and how it was used, I
27 don't know, how it was binding --

28 65 Q. Wasn't the idea behind it in 1981, to do as you had
29 done with each of the other transactions leading up to
30 the Canio lands, wasn't it for the purposes of getting

1 an advance on the lands for a distribution in 1981 that
2 didn't go ahead?

3 .

4 MR. HUSSEY: I am sorry I have to interrupt. I am
5 going to interject Mr. Hayden here.

6

7 There was no advance on these lands.

8

9 I thought that was Mr. Hayden's fundamental position,
10 there was no advance whatsoever to Canio on the Canio
11 lands. This was an advance to Kilnarnagh on the
12 security of the Canio lands. It is a completely
13 different thing. So I think the basis of the question.

14 .

15 MR. HAYDEN: Hadn't Kilnarnagh a contract to buy some
16 of the land, the other aspect of Mr. Finnegan's
17 concerns the contract that he, that existed for
18 Kilnarnagh to buy a portion of the lands from Canio?
19 It was going to get money to buy a portion of the
20 lands. That never went ahead --

21 A. Well, on that now, there are two different --

22 66 Q. -- in 1981?

23 A. They are two different matters, sir. One I would say
24 in the first instance, that there was a question of -
25 contracts were entered into between the parties without
26 my consent and without my knowledge. Now, that way
27 back then, to Kilnarnagh and others, and when that
28 came out, sir, I - Mr. Joe McGowan did say to me, "This
29 is in connection with a stock relief, and that it is
30 not - they are all right, they are only temporary." And

1 I accepted that on that particular thing. I accepted

2 that, his word on that. And that was the situation.

3 But I didn't know that they had entered into, sorry, I

4 didn't know that they had entered into the --

5 67 Q. The undertaking?

6 A. No, sorry, they are two different - I didn't know that

7 they entered into the contracts; they were done without

8 my consent.

9 68 Q. When do you say that you found out about the contract?

10 A. About which, sir?

11 69 Q. What we have just spoken about, the contract with

12 Kilnamanagh - this conversation you had with

13 Mr. McGowan, that you just told us about a moment ago,

14 I have just gone through the undertaking and when you

15 found out about that. When do you say that you found

16 out about the contract to Kilnamanagh? As I understand

17 your evidence so far, these were the two events, albeit

18 two issues?

19 A. Two issues --

20 70 Q. So when did you find out about the contract and who

21 told you?

22 A. I can't recollect exactly who told me, sir, but I think

23 it may have been mentioned to me about the, about them

24 by the accountant, sir.

25 71 Q. Mr. Owens?

26 A. No, not Mr. Owens, but - in Stokes Kennedy Crowley.

27 72 Q. Mr. Reid?

28 A. Mr. Reid.

29 73 Q. Mr. Reid told you, in KPMG?

30 A. It may have been mentioned.

1 74 Q. In Stokes Kennedy - it was him. When was that?

2 A. Somewhere in around about, I think that was somewhere
3 in around about '80 - somewhere around about '83 or so,
4 sir.

5 75 Q. '83. As I understand your evidence to Mr. Hanratty, it
6 was the combination of the two events that propelled
7 you to the meeting of the 26th of June. It was the
8 undertaking to the bank and the existence of a
9 contract. If you had heard about the existence of the
10 account in 1983, how come nothing happened in 1983 in
11 relation to it? How come you, when you went to
12 Mr. Owens in March of '84, you make no mention of it,
13 you are talking about --

14 A. Well, I had been - regarding the contract, sir, just to
15 clear that. When I heard about the contract, however I
16 heard about it, it was discussed with Mr. Joe McGowan.
17 Regarding those, now they were entered into without my
18 consent or knowledge. However, notwithstanding that,
19 he did say to me, "Now regarding these, these are only
20 for stock relief. They are not going to be proceeded
21 with, and you have no fears on that." I accepted the
22 position from him regarding that.

23 76 Q. So then, when it came to the meeting on the 26th of
24 June, '84, the contract wasn't an issue for you, is
25 that what you are telling us now?

26 A. No, take it that at the time we weren't - I had been
27 informed that there was to be, that there was no issue
28 regarding the contracts.

29 77 Q. Sorry, to Mr. Hanratty, I am not sure what day, but in
30 the last number of days, you indicated to him that you

1 were shocked by the existence of a contract for a sale
2 of a portion of the land.

3 A. Yes, sir.

4 78 Q. You give a long explanation from a value perspective as
5 to what it might have meant if you sold the wrong
6 section of it, if it compromised the entirety of the
7 block; a whole list of issues as to why this might be a
8 major issue for you in the context - if you bear with
9 me - a major issue in the context of coming upon this
10 knowledge, that there was potentially in existence a
11 contract to dispose potentially of a portion of the
12 Sandyford lands.

13

14 As I understood you to say to Mr. Hanratty, that was a
15 matter of major concern to you, it came as a shock and
16 a surprise that that could have happened, for various
17 reasons, including the potential devaluing of the plot
18 up there.

19

20 If you now tell us that you heard of this a year
21 earlier in 1983, and that it had been told to you by
22 Mr. Reid, can you please tell me why it became such a
23 major issue, coming up to June '84, that it was one of
24 the two issues why you wanted to have a meeting to
25 clarify the air?

26 A. I will explain to you, sir.

27 79 Q. Why wasn't it a year earlier?

28 A. Let me just clear the decks. I was the party on the
29 side, that I first of all - I went into the acquisition
30 of this property --

1 80 Q. Could you just answer the question?

2 A. Sorry?

3 81 Q. Could you just answer the question?

4 .

5 MR. HUSSEY: The witness has said that he wishes to
6 clear the decks. Let him answer.

7

8 MR. HAYDEN: If he would answer the question I would
9 let him answer.

10 A. I went in - I tell you what concerned me was this, and
11 when I answered Mr. Hanratty, I answered two questions
12 to Mr. Hanratty. That I was concerned that anyone who
13 was in, owning land with other parties, and to find
14 out, find out, out of the blue that contracts had been
15 entered into without the consent, their consent, was a
16 great shock to me, particularly so, sir, that it could
17 be done without my knowledge. Now, that was a big
18 thing, that how could that happen?

19

20 Now, that was a big - that was a shock to me. Now,
21 when I put that, in the first instance, to Mr. McGowan,
22 I put it to him and he then said to me, "This is for
23 stock relief. You don't have any worries there." But
24 the worry was to me that it could be done without my
25 knowing or knowledge of it. He put my mind at ease as
26 much as one could. Naturally there would have been,
27 all the time, a lingering worry about a contract - by
28 the way, if I was knocked down by a bus or otherwise,
29 that those contracts, apparently, give or take, could
30 have been exercised, sir. That was left aside.

1

2 Now, so the next - so when I answered Mr. Hanratty's
3 question, I said there were two matters. Now, so I had
4 the contracts, and then the next thing I hear about a
5 lien. Now, a lien or a pledge to a bank, now that's,
6 now, a different matter. That is what I wanted to get,
7 naturally I wanted to get clarified.

8 82 Q. And these were matters of grave concern?

9 A. To any, I think --

10 83 Q. And yet in correspondence from Mr. Owens, there is no
11 references to it; in correspondence from Mr. Barry, on
12 the 20th of March, there is no references to it. It is
13 about protecting a valuable investment. All --

14 A. Yes, sir.

15 84 Q. The content and context of the correspondence leading
16 up to, we need to put the house in order?

17 A. Yes, sir.

18 85 Q. When you look at the start of Mr. Barry's notes on the
19 meeting of the 27th of June, which is at page 699, it
20 states:

21

22 "The purpose of the meeting was to clarify the current
23 status of Canio Limited and Ardcarne Limited, and to
24 deliver the title deeds to Canio Limited's Irish land
25 holdings to Bedell & Cristin.

26

27 The status of Canio and Ardcarne was considered in
28 conjunction with a letter from Mr. Barry to Mr. Wheeler
29 dated the 11th of June, 1984."

30

1 That is the letter I have just referred you to a moment
2 ago?

3 A. Yes, sir.

4 86 Q. It goes through the ownership. I have to put it to
5 you, Mr. Finnegan, that the sequence of events in that
6 document seems to be in keeping with the lead-up
7 documentation that it is everybody putting their house
8 in order. There is none of this --

9 A. Yes, sir.

10 87 Q. If that is the case, if you had two pieces of
11 fundamentally important information to you, why is it
12 not put down there in black-and-white, that these are
13 the issues you want answered, the contract and a
14 supposed lien to the bank?

15 A. I think that, sir, that the course of the
16 correspondence would have been done in, as I say, an
17 orderly way for the parties to come out and say
18 whatever, if there was. He asked us questions in a
19 pleasant way as to what the status was. Because I
20 didn't know what the status, by the way, of it. It
21 might have been - and you are telling me now, sir, that
22 it might have been this or that or another about the
23 pledge, but he was looking, he was just going through
24 his - doing his job, leading through the situation.
25 And I think you will see from the correspondence then
26 that he did ask, or there was a question of coming up
27 to the meeting, was there a pledge or otherwise on the
28 lands? He --

29 88 Q. Mr. Russell confirmed that there wasn't?

30 A. That there wasn't.

1 89 Q. And to his understanding and to the evidence from Mr.
2 McGowan's understanding was that AIF didn't have a call
3 on these lands because no monies had been advanced on
4 it?

5 A. Well, that - and that was very good.

6 90 Q. Yes. So therefore the conversation you say you had
7 with Mr. McGowan saying that this was a mistake and it
8 will be cleared up couldn't have happened, because
9 Mr. McGowan and Mr. Russell didn't even know that AIF
10 were going to rely upon that?

11 A. No, sir. What I said to you is this, that let's clear
12 the decks, sir. There was a pledge of some kind or
13 other on the lands, which was effected in 1981.
14 Whether - so, we know now, sir, about that and there
15 was a memorandum to that effect.

16
17 Now - so later hearing whatever way it was going - you
18 know, there was a pledge. We now know there was. All
19 I was doing and I was doing at that time was what was
20 the actual situation?

21 91 Q. Sorry?

22 A. Sorry.

23 92 Q. I have to put it to you --

24 A. Okay.

25 93 Q. Before I do, you are saying you didn't know about the
26 loan before this meeting. I have to put it to you that
27 this was, in fact, part and parcel of being able to get
28 the loan from Lombard and Ulster to make sure that the
29 house was in order?

30 A. No, sir.

1 94 Q. You say, then, that the first you heard of the loan was
2 at some stage after the 26th of June?

3 A. That is correct, sir.

4 95 Q. And that you had no idea that any of this was going on
5 in your, without your knowledge - sorry, that it was
6 going on without your knowledge?

7 A. That's correct, sir.

8 96 Q. And Mr. Hanratty has already put to you the telex of
9 Mr. Owens, at page 692, which is the application in
10 relation to, including Mr., the inclusion of Mr.
11 Wreford's name. This is the 14th of June document?

12 A. Yes, sir.

13 97 Q. Can you give us any explanation - you had dealt with
14 Mr. Owens, in fact it was to Mr. Owens you went to on
15 the 6th of March, 1984 to make sure everything, to make
16 sure things were in order. We have seen that letter of
17 the 6th of March, 1984, where you had gone to him, laid
18 out your stall very clearly as to what you wanted to
19 make sure was the case. Because what the letter
20 actually says at page 655, is:

21

22 "I have arranged David Barry of Guinness & Mahon
23 (Guernsey), who are the trustees of Foxtown will
24 contact you with a view to setting up machinery whereby
25 in the event of a sale by Canio the proper proportion
26 of the proceeds will find their way to Foxtown."

27

28 So Mr. Owens was in no doubt that whatever was to
29 happen in relation to the lands, not that there could
30 have been any doubt, but whatever was to happen, here

1 it is in black-and-white: you are going to meet the man
2 in March of 1984. You are saying, "Look, in case
3 anything happens to me, make sure the machinery is in
4 place." He is writing to Mr. Wheeler to make sure that
5 is put in place.

6

7 Here we have him on the 14th of June, according to you
8 as I understand it, going off on a voyage completely
9 without any instruction from you, to include Mr.
10 Wreford's name. Is that what you are telling us?

11 A. That's what I am saying to you --

12 98 Q. That he is participating, or that he was assisting in
13 the obtaining of a loan from Lombard and Ulster, in
14 essence, seeking to conceal it from you. Is that what
15 you are telling us?

16 A. I am saying to you that I never gave my consent for Mr.
17 Wreford's name to substitute mine. If anything was
18 being done, it was without my consent.

19 99 Q. So when Mr. Owens put in this references to Roger
20 Wreford's name on the basis that you wished to remain
21 silent, this is a complete figment of Mr. Owens'
22 imagination?

23 A. Yes, sir, whichever way it came around and I think that
24 I will go on to say here, sir, that what we know now as
25 well, that all I can think of is that, of course, you
26 know I was creating a fuss about the purported charge
27 on the lands and if they were exploring or whatever, or
28 whatever, whatever about a loan, that's one matter,
29 sir. But they were not doing it with my knowledge or
30 consent.

1 100 Q. So they were going to compound the fuss by you making a
2 fuss over a charge you say you knew nothing about and
3 then compounding the situation by Mr. Owens
4 participating in an application for a loan without
5 telling you?

6 A. Well --

7 101 Q. Is that what you are saying?

8 A. Well, I am saying, sir, whatever the reasons were, that
9 it was not done with my knowledge or consent.

10 102 Q. Can you offer the Chairman any reason as to why
11 Mr. Owens would, in essence, compromise his own
12 professional standing by doing what you are alleging he
13 did, namely, participating, assisting an application
14 for a loan concealing an interest of a party whom he
15 had a meeting with no more than a number of months
16 earlier in March where you had made it quite plain you
17 wanted him to put in place machinery to protect
18 Foxtown's interest? Can you offer the Chairman any
19 explanation for the, for any professional to conduct
20 themselves in that manner?

21 A. Well, sir, all I can go on to say to you is this: that
22 there were now - now I know and I didn't know then,
23 that came out in this Tribunal, sir, that the question
24 of guarantees had been sought on foot of the loan --

25 103 Q. Well, we couldn't have known about the guarantees at
26 this stage, Mr. Finnegan. Let's deal with the facts.
27 The guarantee reference doesn't exist until the loan
28 application is made, isn't that correct? And the loan
29 application isn't approved until the 22nd of June,
30 1984, when there is references made to the fact that

1 there is guarantees to be provided by Messrs. Brennan
2 and McGowan. That hadn't happened yet. Nor is there
3 any documents to show that Lombard and Ulster had asked
4 for it to happen yet. So let's deal with the facts as
5 they appear in the documentation.

6
7 Are you going to answer the question, or have you an
8 answer to the question as to what possible reason could
9 any professional have for doing what you allege he did,
10 whereby you made it abundantly clear to him in March of
11 1984, where you made sure that Foxtown's interest, and
12 absolutely even used the phrase "proper proportion of
13 the proceeds will find their way to Foxtown."

14
15 Can you offer us any explanation for that?

16 A. Sir, I don't quite understand that question. Can you
17 go back for a moment?

18 104 Q. Can you offer the Chairman any explanation why a
19 professional person would assist in an application for
20 a loan concealing your interests, without your
21 permission, in circumstances whereby no earlier than
22 the 6th of March you had been in his office asking him
23 to make sure that he had in place proper machinery,
24 whereby in the event of a sale by Canio, that
25 proportion of the proceeds will find their way to
26 Foxtown?

27 A. No, sir, I can't.

28 105 Q. Isn't it the case that you knew that there was a loan
29 application being made, Mr. Finnegan?

30 A. No, I didn't know, sir.

1 106 Q. Isn't it the case that you didn't want your name to be
2 associated with it in Lombard and Ulster?

3 A. No, sir.

4 107 Q. Doesn't the interim memo of Lombard and Ulster, that
5 Mr. Hanratty put to you yesterday at page 1072 which is
6 the memo of the 27th of September, 1985, confirm at
7 least from the perspective of the documentation, that
8 Lombard and Ulster had no knowledge of your involvement
9 in this until 1985?

10 A. That may be the case, sir, but what I wish to say to
11 you is this: that the reasoning for this could be that
12 there were - by the way, that we can go back on the
13 guarantees that I see that --

14 108 Q. I will be back.

15

16 MR. HUSSEY: Sorry, let him answer the question please.

17

18 109 Q. MR. HAYDEN: I wish Mr. Hussey would allow me to
19 conduct the cross-examination. It is never pleasant, I
20 understand, when your witness is being cross-examined,
21 but I haven't gone to the guarantees. I am dealing
22 with a different topic. If the witness would just
23 finish with that topic, we can then go to another
24 topic.

25

26 Isn't it the case that the Lombard and Ulster memo of
27 the 27th of September, 1985, certainly from the
28 perspective of what the Chairman has to consider,
29 identifies, and the evidence from Lombard and Ulster
30 was to the effect that they were unaware of your

1 connection until 1985. One sees at page 1073, which
2 is, as I understand it, a handwritten note of a
3 conversation internally in Lombard and Ulster, of the
4 16th of the 9th, 1985, you see half way down in the
5 brackets 'John Finnegan'. That seems to be the first
6 indication that Lombard and Ulster had of your possible
7 involvement with these lands?

8 A. Well, whatever is written is written, sir, but I - and
9 if that is what they understood at the time, but what I
10 wish to say to you, sir, is this: that my understanding
11 is that during the course of this - there were
12 applications as we all now see, in granting the loan
13 here, that there was a question of that there should be
14 guarantees, guarantees given and where it was agreed
15 between Mr. Brennan and Mr. McGowan that they would
16 guarantee the loan, and there was a handwritten thing
17 showing that they would.

18
19 Now in that, sir, there was a question of - and that
20 that would not be made known to the third party. And
21 whoever the third party, that the third party would, I
22 suspect was me. I would say, sir, perhaps if my name
23 was in this at the time, I would have been called in to
24 probably give a guarantee. Then if I were called in to
25 give a guarantee at the time, sir, I would have
26 probably been in a situation where I would have been
27 creating flack sometime previously about a possible, or
28 whatever clarification regarding a charge.

29

30 Now, of course, sir, if I had been asked --

1 110 Q. But sure by the 26th of June you tell us that that
2 issue was resolved to your satisfaction when
3 Mr. Russell confirmed delivery of the title deeds?

4 A. But I had been --

5 111 Q. By the 26th of June. The issue of the guarantee
6 doesn't arise until the 1st of the Offer Letters of the
7 5th of July, 1984?

8 A. The guarantee, yes, sir.

9 112 Q. Yes. So that doesn't happen until the 5th of July,
10 1984. You are saying you found out about the loan
11 after the 26th of June, 1984. Isn't that correct?
12 When -- can you help us at all - did you actually find
13 out about the loan application?

14 A. Sir, the - it was after June, sir, that I --

15 113 Q. I know that. Was it after July? Was it after August?
16 Was it after September? Was it after November? When?
17 Well, certainly you knew by November?

18 A. It was between then and November that I --

19 114 Q. That is a big leap. Did you know in July about the
20 loan? And if you did, surely this is a matter that is
21 not insignificant in the comings and goings of your
22 business. Can you tell the Chairman when it is that
23 you say you found out about this loan and who told you,
24 if it is after the 26th of June?

25 A. Who told me about it? Mr. Joe McGowan informed me,
26 once he had cleared what was, by the way, a watershed
27 as far as I was concerned, we now had - by the way, we
28 had Mr. Wheeler, all the parties now confirming that
29 there wasn't --

30 115 Q. Could you tell us when you were told? You have told us

1 it was Mr. McGowan told you. Could you tell us when,
2 then, you were told of the loan?

3 A. It may have been within --

4 116 Q. Do you remember?

5 A. I can't remember exactly, sir.

6 117 Q. If you can't remember - you just remember it was

7 Mr. McGowan, but you can't remember when he told you?

8 A. I am just trying to give you a ballpark time, sir. It

9 was certainly a reasonable time, it could have been

10 within a month, maybe two or three weeks of the, of Mr.

11 - the clearing, the clearance with the deeds and all of

12 that, sir, our visit to Jersey.

13 118 Q. So, therefore, the Chairman must then decide that, must

14 then form a view as to what Mr. Owens was doing on the

15 14th of June. Your evidence is, to this Tribunal, that

16 you certainly didn't know about it before the 14th of

17 June, 1984, when Mr. Owens sent the telex he sent,

18 including the references to you wishing to remain

19 silent?

20 A. No, sir.

21 119 Q. And you are saying part of this reason for not telling

22 you, or keeping your name away from the loan

23 application is in order to prevent you being called

24 upon to give a guarantee?

25 A. No, sir, I think this could be one of the - I don't

26 know all of the reasons, sir, but all I have to say to

27 you is this: that I now see, and I have seen in the

28 correspondence that there was certain things were being

29 called upon, and that was - one was a guarantee, which

30 I didn't know about. I am saying, sir, that that could

1 have been one of the reasons why my name was not
2 brought up.

3 120 Q. But in relation to the guarantee, I think Mr. Barry was
4 getting the Offer Letters from Lombard and Ulster,
5 wasn't he?

6 A. That's correct.

7 121 Q. And in relation to that, we certainly have
8 documentation to the effect where he, in fact, forwards
9 the final version of the Offer Letter to Mr. Wheeler.
10 That is in a letter of the 8th of November, 1984 at
11 page 749.

12
13 He actually, even though the Offer Letter in question
14 is directed to the secretary of Canio at the address of
15 Bedell & Cristin, it is, in fact, Mr. Barry of College
16 Trustees Limited who is the one who is in possession of
17 the document?

18 A. Yes, sir.

19 122 Q. He forwards it to the addressee, namely Mr. Wheeler:
20 "Further to today's telephone conversation, I enclose a
21 copy of the Lombard and Ulster (Banking)(Ireland)
22 Limited facility letter."

23

24 Do you see that?

25 A. Yes, sir.

26 123 Q. And then I will be coming back to this in a few
27 moments. Receipt of it is acknowledged on the 14th of
28 November, '84, at page 757. It is clear, certainly on
29 such of the documentation as you have discovered, Mr.
30 Barry is very much involved in the process of the loan.

1 I mean, he is the one that is getting the Offer Letter

2 from the bank, or is it from you?

3 A. Where he got this, sir?

4 124 Q. Yes.

5 A. I don't know whether that was sent to me or whether it

6 was sent on to him directly, or either party.

7 125 Q. Do you have a recollection of getting the Offer Letter?

8 A. No, but I can't say I didn't, sir.

9 126 Q. I mean, it is a long time ago. Certainly Mr. Barry --

10 A. As long as Mr. Barry had had it, it was the same as my

11 having it.

12 127 Q. But, in your experience - well, do you find it strange

13 that rather than the actual secretary of Canio

14 receiving the Offer Letter, it is, in fact, your

15 representative who receives the Offer Letter from

16 Lombard and Ulster, from whoever gives it to him.

17 .

18 MR. HUSSEY: That is not clear at all. All Mr. Barry

19 says there is enclosed a copy of the facility letter;

20 not - there is no suggestion that that is the original

21 that was sent to Mr. Barry.

22 .

23 128 Q. MR. HAYDEN: At the 14th of November, 1984, Mr. Wheeler

24 "thanks him for his letter of the 8th sending me a copy

25 of the Lombard and Ulster letter."

26 A. Yes, well wherever --

27 129 Q. But if Mr. Barry got that Offer Letter, isn't it highly

28 likely he received the earlier Offer Letters or drafts

29 of the Offer Letters leading up to the final version?

30 A. Well, not that I am aware of, sir.

1 130 Q. Well, are you aware of now he even got this particular
2 version?

3 A. No, sir. He either got it from me or Mr. Owens.

4 131 Q. Mr. Owens might have sent it to him?

5 A. Could have sent it to him.

6 132 Q. Well --

7 A. Well, I would say that probably it came from Mr. Owens.

8 Again, I - a party involved sent it to him.

9 133 Q. Yes. If it is the case that Mr. Barry was receiving
10 the Offer Letters, then I have to put it to you that
11 either you or your representative, Mr. Barry, would
12 have already known of the requirement to furnish a
13 guarantee by Messrs. Brennan and McGowan?

14 A. No, sir.

15 134 Q. Because if one looks at the draft of the Offer Letter
16 of the 5th of July, 1984, which is at page 3400, under
17 "Guarantees" it requires a guarantee to be signed by
18 Messrs. Brennan and McGowan, at page 3403.

19

20 Do you see that?

21 A. But I - Mr. Barry never informed me about that, sir.

22 Are you saying that he got that, sir?

23 135 Q. I am saying such of the documentation as has been
24 furnished shows that he certainly had the later one, he
25 obviously was involved in the loop in some fashion?

26 A. Well, sir, to the best - as far - to the best of my
27 knowledge and belief, there was no, that I never seen
28 that or, if he had, sir, he would have sent it to me.

29 136 Q. Are you -- were you aware that he had even gotten the
30 letter, the Offer Letter that he did forward to

1 Mr. Wheeler, the last version of it, the last version
2 of the facility letter?

3 A. Oh, yes, I must take it that I was aware, sir.

4 137 Q. Yes. But you can't be sure or you don't remember any
5 discussions about earlier drafts of the Offer Letter?

6 A. No, sir.

7 138 Q. Were you not remotely interested what were the terms
8 upon which the monies were being advanced to Lombard
9 and Ulster or being advanced to Canio from Lombard and
10 Ulster ?

11 A. What do you mean, sir?

12 139 Q. Here you are, as I understand it, you became aware of
13 the loan at some stage, presumably you understood that
14 there was going to be some requirement to furnish
15 comfort to the bank, to Lombard and Ulster, whatever it
16 was, be it guarantees, be it security, be it whatever.
17 Presumably there was going to be some rates, some
18 conditions, something.

19
20 Were you not interested at all in what obligations were
21 going to be imposed by Lombard and Ulster for the
22 purpose of advancing these monies?

23 A. Well, let me put it this way to you sir: that all of
24 the negotiations that had taken place with Lombard and
25 Ulster were done through Messrs. Brennan and McGowan.

26 140 Q. And you were a one-third - Foxtown was a one-third
27 owner?

28 A. Yes.

29 141 Q. And the question I put to you was, were you in any
30 fashion interested, remotely interested in what were

1 the terms and conditions that were being sought by
2 Lombard and Ulster, or were you going to accept the
3 loan on whatever terms?

4 A. No, sir.

5 142 Q. Therefore may we take it, therefore, at a minimum, you
6 were somewhat interested in what the bank was going to
7 look for?

8 A. Any normal person would be.

9 143 Q. If that was the case, when did you start looking for
10 the details, if you didn't get any of the draft Offer
11 Letters leading up to the final version?

12 A. The way Brennan and McGowan were operating --

13 144 Q. Mr. Finnegan, I am not asking you how Messrs. Brennan
14 and McGowan operated. I am asking you how you
15 operated. At what stage did you ask for the details of
16 what were the terms Lombard and Ulster were looking
17 for?

18 A. As far as I know, sir, that the letter to Mr. Barry was
19 those, set out what the conditions were.

20 145 Q. So that is it, the very end. That is the only time you
21 became interested. Here is the Offer Letter, end of
22 story.

23 A. Well, it was quite a while before it, they actually
24 went through, sir.

25 146 Q. 21st of November, sure you had the money?

26 A. Hmm?

27 147 Q. This is the 14th of November. The 8th November, Mr.
28 Barry writes to Mr. Wheeler enclosing the final draft
29 of the Offer Letter. The money has changed hands on
30 the - the closing took place on the 21st of November.

1 We are talking about a fairly short space of time, two
2 weeks, three weeks?

3 A. I was just looking at the screen here, the 5th of July
4 letter I was looking at.

5 148 Q. What I asked you was, that is the first of the drafts
6 of the Offer Letter. I put to you that in the first of
7 the drafts of the Offer Letter there was an obligation
8 to furnish the guarantee. What I was asking you was,
9 at what stage during this period did you start
10 inquiring as to the terms and conditions that were
11 being sought by Lombard and Ulster?

12 A. Well, now, first of all to say to you, sir, one, that
13 the only thing that I - it was brought to my attention
14 and I knew that Brennan and McGowan, that there was a
15 contract to be entered into regarding, as a guarantee,
16 that Kilnarnagh had to enter into a contract. That
17 was mentioned to me by one of the parties. I think by
18 Joe McGowan. That was discussed with me that that -
19 and then it was that that was, I think it was spelt out
20 in a letter there, that that could be withdrawn, that
21 it wasn't - that that contract would be operated. That
22 was on some 41 acres or something.

23 149 Q. That is in the very early first version of the 5th of
24 July version that is there. The precondition that
25 there is prior to the loan there is an executed
26 contract in favour of Kilnarnagh which was to close on
27 the 31st of December, 1985. That existed from the very
28 outset?

29 A. Yes.

30 150 Q. The question I am asking you is not what terms you

1 ultimately came to understand were applied. The
2 question I am asking you is when did you start asking
3 what terms were going to be applied? That has been the
4 question I have been asking you for the last ten
5 minutes.

6 A. That would have all come out at the time when Mr. Barry
7 got the Letter of Offer.

8 151 Q. Mr. Barry got the Letter of Offer at some stage prior
9 to - well, the final version of the Letter of Offer, at
10 some stage prior to --

11 .

12 MR. HANRATTY: Sorry, Sir, if I might just interrupt
13 here; I am not in any way getting involved in the
14 questioning. Just purely in the interests of accuracy.
15 It is not apparent from any of the documents we have
16 seen that the successive Letters of Offer were drafts
17 or versions leading to a final version.

18 .

19 MR. HAYDEN: Sorry.

20 .

21 MR. HAYDEN: It appears from the documents that we have
22 seen that they were successive Letters of offer, which
23 each in turn was not taken up and in which each in turn
24 the terms varied slightly.

25

26 I apologise for using the phrase "draft". I am sorry
27 for that, Sir.

28

29 What I had intended was that it was successive versions
30 of what ultimately was signed up for.

1

2 But you say that when you became aware of the terms of
3 the offer was with the final Letter of Offer, as I -
4 the finally accepted Letter of Offer, is that correct?

5 A. Yes, sir.

6 152 Q. Is that the first time you heard anything about what
7 terms were going to be imposed and what obligations or
8 rates were going to be charged, how much was going to
9 be advanced? When did you find out how much was going
10 to be advanced?

11 A. Mr. McGowan told me about that when he said, "We are
12 going to arrange a loan of - looking at the amount,
13 ú500,000-odd." I got a brief thing, and that --

14 153 Q. What was that? What was the brief thing that you got?

15 A. No, no, sir, I am going on - I knew the main hard facts
16 that came out; that we had, that there was going to be
17 money retained for interest.

18 154 Q. When did you find out about that?

19 A. As far as I, as far as I am aware, that I found out
20 about that either just when this, when the letters came
21 in that we now either have, we have now sanction of the
22 loan, when that came. We had a loan sanctioned. That
23 was in or around about the time that Mr. Barry sent
24 over, whatever that date was, sir.

25 155 Q. You see, you seem to have moved with expeditious
26 speed, if that be the case, because on the 8th of
27 November Mr. Barry writes to Mr. Wheeler enclosing the
28 version of the Offer Letter that was ultimately signed
29 up for. This is on the 8th, on the 9th, and that Offer
30 Letter contains in it an obligation to have a contract

1 executed by Kilnarnagh as a precondition --

2 A. Yes, sir.

3 156 Q. -- for 1.5 million, with a closing on the 31st of

4 December, 1985. By the 9th of November, '84 you are in

5 with Mr. Russell agreeing the text of a letter of

6 release to be signed by Kilnarnagh to be given, a

7 signed letter to be given by Kilnarnagh confirming

8 that they would release Canio from that contract at

9 Canio's request. So when did Mr. Barry contact you

10 with the text of the Offer Letter and when did you make

11 the arrangement to go into Mr. Russell to agree the

12 text of the release letter?

13 A. Well, sir, when it comes around to when, when? Around

14 - remember this is an awful long time ago, sir. All I

15 can say to you is it was around that period that action

16 was then taken. It suddenly - suddenly there was

17 action. And I was very, I was very pleased, I must

18 say, sir, to see that a loan was coming through. So I

19 was anxious naturally to have the matter expedited.

20 157 Q. Well, you see there, at page 750 there is an attendance

21 on, of Mr. Russell on you, when he states:

22

23 "Attending on John Finnegan, when I read to him the

24 letter I proposed should be written by Kilnarnagh

25 Estates to Canio Limited, and he agreed to this.

26 Subsequently attending on Mr. David Barry on the

27 telephone when he stated in addition he would like that

28 on the drawn down of the money from Lombard and Ulster

29 (Bank) Limited that there should be a solicitor's

30 undertaking to pay one-third thereof to Canio Limited,

1 and that this undertaking should be given either by
2 myself or by Bedell & Cristin Solicitors, Jersey. And
3 I stated I would take instructions to this later point
4 and let him know."

5
6 That obviously was your giving instructions to Mr.
7 Barry to make sure that you got an undertaking to take
8 one-third of the loan?

9 A. Yes, sir.

10 158 Q. That seems to have happened, that requirement for the
11 one-third, for the undertaking predates this meeting,
12 this phone call with Mr. Russell with Mr. Barry,
13 because on the 8th of November, 1984, at page 749, Mr.
14 Barry has already written to Mr. Wheeler saying:
15 "420,000 Sterling drawdown." "We require a written
16 undertaking from Bedell & Cristin."

17
18 "2. We require a written undertaking from Bedell &
19 Cristin that immediately on receipt of ú420,000 they
20 will transfer one-third thereof, i.e. ú140,000 to an
21 account in the name of Foxtown Investments Limited,
22 details of which will be supplied to you."

23
24 You obviously had a conversation with Mr. Barry on or
25 prior to the 8th of November, 1984, isn't that correct?

26 A. Yes, sir. Yes, sir.

27 159 Q. And it seems, then, that you were well up to speed with
28 what was going to be required by Lombard and Ulster,
29 even to the extent of putting in place arrangements
30 outside the terms of offer, to ensure that if Canio

1 wished Kilnarnanagh could be called upon to forego the
2 contract for the 1.5. Isn't that correct?

3 A. Yes, sir.

4 160 Q. And that's - there is a letter at 756 from Mr. Wheeler
5 to Mr. Barry, Insert 2, Insert 1: "I executed a
6 contract for the sale of 43 acres of the land belonging
7 to the company to Kilnarnanagh for 1.5 million, which
8 you confirmed to me on the telephone was approved by
9 Foxtown.

10

11 2. Receipt of a letter from Kilnarnanagh Estates
12 Limited whereby that company agrees to release Canio
13 Limited from the contract on demand. (Copy enclosed)"

14

15 That seems to be - you might be able to assist - that
16 seems to be the letter that was being referred to, you
17 having agreed to in the offices of Mr. Russell, on the
18 9th of November, the memo at page 750, that you had
19 read and agreed to the proposed letter.

20 A. Yes.

21 161 Q. So it seems that you were well aware of what was going
22 on and you knew the terms and conditions?

23 A. The terms and conditions, yes, sir.

24 162 Q. And it seems, presumably you became interested in the
25 terms and conditions before November of 1984. You were
26 aware of the conditions before November, 1984?

27 A. Well somewhere along the lines, sir, but I would say
28 that the - this was, this was what was whatever - this
29 was what was on - I don't think it was negotiable, sir,
30 this was what was on offer and what we were accepting.

1 163 Q. Sorry, Mr. Finnegan.

2 .

3 MR. HUSSEY: I am just alerting Mr. Hayden to a
4 particular letter, which I am not sure would have been
5 circulated to Mr. Hayden, although it is part of the
6 Discovery. I just want to alert him to it at this
7 stage, I don't want to take him by surprise later.

8 .

9 MR. HAYDEN: I am as surprised now as I would be later
10 on. I don't know what it is. Sorry, Sir. Sorry,
11 Mr. Finnegan, I was put off my train of thought there.

12

13 Sorry. You can't narrow - I suppose I will just move
14 off this point. There was successive, I had
15 incorrectly said "drafts", there was successive Letters
16 of Offer. You don't have any recollection of seeing
17 them, or do you?

18 A. No, sir.

19 164 Q. Even the last one that Mr. Barry had?

20 A. Whatever the final one was, sir.

21 165 Q. Do you remember seeing it? Do you remember how Mr.

22 Barry got it?

23 A. Not exactly.

24 166 Q. Do you remember ever being shown it?

25 A. Oh, sir, I was aware of it.

26 167 Q. I didn't ask you if you were aware of it. Were you
27 ever shown it? Did you ever see it?

28 A. I am sure I was. I have to say, I would say, yes, sir.

29 168 Q. If you were shown the earlier Offer Letters which

30 weren't taken up the 5th of July contains a requirement

1 of a guarantee for by Messrs. Brennan and McGowan, if
2 you were shown the earlier letter?

3 A. If I were shown it, sir.

4 169 Q. Yes.

5 A. Yes, I understand now, because what I have seen through
6 the Tribunal, sir, that there was a letter.

7 170 Q. We are then into a situation whereby Mr. Barry on the
8 8th of November, 1984, is in the throes of identifying
9 to Mr. Wheeler that whatever way these loans were
10 coming down, he was to be put in funds to one-third of
11 the value. Isn't that correct? This is the letter at
12 page 749.

13 A. Yes, sir.

14 171 Q. And at that stage do you recollect if you have had any
15 conversation with Mr. McGowan as to any deductions to
16 be made from that for - it is somebody's pacemaker?

17 A. No, sir.

18 172 Q. Did you have any discussions with Mr. McGowan --

19 A. Sorry?

20 173 Q. -- before the 8th of November, 1984, for any
21 deductions?

22 A. No, sir.

23 174 Q. Was this - this was 1985. Sorry, this was 1984. I
24 take it the property market wasn't at its best at that
25 stage?

26 A. No, sir.

27 175 Q. And I think there had been a pretty poor economic
28 period leading up to 1984, and onwards into '85 and
29 '86, in relation to property and development. I
30 suppose it is hard to see back to those days now after

1 the last ten years.

2 .

3 This had been an investment by you in '79 in relation
4 to the acquisition of these lands, which was the
5 follow-on of the earlier transactions, whereby there
6 had been a property bought, and profit made; onward
7 sale and profit made out of the transactions at a
8 reasonably fast pace?

9 A. Mm-hmm.

10 176 Q. The slowest being Stephen's Green. That sort of slowed
11 things down a bit.

12 .

13 Now, you were, in this transaction, with no profit out
14 of it for, coming up to the summer of '84 for nearly
15 five years, the monies already having been invested and
16 the property market not looking great. Would that be a
17 fair assessment?

18 A. Yes, I think that whilst the - the property market
19 wasn't looking great, but it wasn't bad.

20 177 Q. Isn't that why the loan came about, in the summer of
21 '84, that, in essence the land was worth substantial
22 monies at this stage, the lands had been bought out of
23 monies generated from the earlier transactions, so it
24 wasn't as if there was any real difficulty from your
25 prospective in relation to servicing a loan. And
26 wasn't the loan from Lombard and Ulster an exercise in
27 actually releasing some of the equity to the advantage
28 of the three investment companies?

29 A. Yes, sir.

30 178 Q. And therefore, in that regard, the approach to Lombard

1 and Ulster was - did you understand it to be the
2 purpose to release some monies to pay back to each of
3 the investment companies?

4 A. Well --

5 179 Q. Well, the three entities?

6 A. I think that this - at this time, sir, this would have
7 been - this came forward as an idea from Mr. McGowan,
8 because, sir - now as we see it too, that after -
9 leading up to this, sir, that there was - there was the
10 question about the possible lien on the property, sir.

11 180 Q. Well, there would be no difficulty with that in '84,
12 because the AIF position hadn't even come on to the
13 horizon until '85?

14 A. As to whether or not it was on the court case?

15 181 Q. Yes. Proceedings didn't issue?

16 A. As an issue --

17 182 Q. None of that happened. Mr. Hussey seems to be
18 hyperventilating.

19 .

20 I wonder if - if it is the position, or is it your
21 position that the reason why Mr. McGowan came up with
22 this idea was to get out ahead of AIF? Is that what
23 you are saying?

24 A. I am not saying --

25 183 Q. As I understand the evidence of Mr. McGowan --

26 A. I am saying this, sir: That once this came out we had
27 an absolute clearance, which was very good for every
28 one around; that we had clearance at that meeting in
29 Guernsey, and that Mr. Russell had confirmed that all
30 was well.

1 184 Q. Wasn't the idea --

2 .

3 CHAIRMAN: We will break now for twenty minutes,

4 because it is coming up to 12 o'clock.

5 .

6 MR. HAYDEN: Yes, sir.

7

8 THE TRIBUNAL THEN ADJOURNED FOR A SHORT RECESS AND

9 RESUMED AGAIN AS FOLLOWS:

10

11 185 Q. MR. HAYDEN: Thank you, Sir.

12

13 Mr. Finnegan, before the break we were just, I was just

14 talking to you about the events around the 8th and 9th

15 of November, 1984. At what stage do you recollect

16 Mr. McGowan talking to you about a deduction from the

17 loan?

18 A. About - after - there was a couple of days when we

19 received the - I can't give you the exact date, sir,

20 before the receipt of the Facility Letter and one

21 thing, when Mr. Barry said, that Mr. Barry had been

22 asked about the retention of 20,000. It was after

23 that, sir.

24 186 Q. Yes. You see, on the 9th of November you spoke to

25 Mr. Russell, and there is an attendance of that on page

26 751 which says, "Re Sandyford lands: Attending on John

27 Finnegan." This, as I understand it, is Mr. Russell's

28 file notes or memorandum, an attendance on you.

29 "Attending on John Finnegan, auctioneer, by telephone

30 when he stated that he was aware of the arrangements

1 being made with Joe McGowan, and in regard to the loan,
2 he was instructing Mr. David Barry, who is appointed a
3 director of Canio to look after his interest in the
4 matter, and the fact of the matter is that one-third of
5 whatever loan is obtained will belong to him, John
6 Finnegan."

7 A. Yes, sir.

8 187 Q. Now, Mr. Russell knew of your involvement, obviously,
9 in Canio?

10 A. Yes, sir.

11 188 Q. And he would have known of that from the outset ?

12 A. I would have thought so, yes, sir.

13 189 Q. So when it came to him telling you about the, no
14 undertaking, etc., he knew back in '81 that you were,
15 or not you, but Foxtown was involved in Canio. So he
16 would have known all the details in relation to the
17 three parties?

18 A. Yes, sir.

19 190 Q. And therefore in 1981 Mr. Russell, when he gave the
20 undertaking on foot of the instruction from
21 Mr. Wheeler, the minutes, he would have known of the
22 involvement of the three beneficial owners?

23 A. Yes, sir.

24 191 Q. And here we have, at page 751, a memo of his in
25 relation to a telephone conversation that, "you are
26 aware of the arrangements being made with Joe McGowan
27 in regard to the loan" - sorry, "he was aware of the
28 arrangements being made with Joe McGowan and in regard
29 to the loan, he has instructed David Barry."

30

1 What were the arrangements that you say you were aware
2 of at that stage, on the 9th of November, 1984?

3 A. I say the obtaining of the loan, sir.

4 192 Q. It isn't, you see the way it is disjunctive, "and in
5 regard to the loan he was instructing David Barry to
6 make sure he got his one-third share."

7

8 As best you can at this remove, can you say when, if
9 when discussing the arrangements, that those
10 arrangements did not involve any deductions at that
11 stage on the 9th of November, 1984? Had Mr. McGowan
12 spoken to you already at this stage about the
13 deductions?

14 A. No, sir.

15 193 Q. And we then have the situation whereby the monies go
16 over and, or not the monies go over, but the telex of
17 the 14th of November, 1984, at page 755, from
18 Mr. Wheeler to Mr. Owens:

19

20 "I briefly saw Mr. McGowan yesterday and he raised with
21 me his wish and that of Mr. Brennan that each of the
22 parties should reserve pounds 20,000 for possible
23 future expenses, (such as architects' fees) should the
24 present negotiations not succeed. I put this to Mr.
25 Barry of College Trustees who said that this was not
26 agreed. By the time I learned this I was not an able
27 to re-contact Mr. McGowan, but perhaps you would inform
28 him, and hopefully the three parties can agree in
29 Ireland.

30

1 In the meantime, I am writing to Mr. Barry along the
2 lines discussed with Mr. McGowan, with one proviso
3 relating to the three pounds 20,000 retentions."

4 .

5 So clearly whatever could be said about Mr. Wheeler, he
6 certainly wasn't going to make any deductions from the
7 monies when they came over without clearance from Mr.
8 Barry?

9 A. That is correct, sir.

10 194 Q. On your behalf?

11 A. Yes, sir.

12 195 Q. He was clearly away, arising out of the events you say,
13 but certainly for whatever reason, be it housekeeping
14 or be it because of your concerns arising out of the
15 meetings in June '84 and the correspondence in March
16 '84 from Mr. Owens to Mr. Wheeler and from Mr. Barry to
17 Mr. Wheeler, Mr. Wheeler knew that whatever he was to
18 do, one-third of whatever was happening was for
19 Foxtown, isn't that correct?

20 A. Yes, sir.

21 196 Q. The 6th of March letter, Mr. Owens to Mr. Wheeler; the
22 20th of March letter, Mr. Barry to Mr. Wheeler, saying
23 your one-third share and Foxtown's one-third share,
24 that Foxtown would get one-third of the proceeds?

25 A. Yes, sir.

26 197 Q. Doesn't that seem to be in keeping with Mr. Wheeler
27 operating absolutely appropriately? That he wasn't
28 going to do anything - despite whatever Mr. McGowan
29 said, he wasn't going to do anything unless he got
30 clearance on your behalf?

1 A. That's correct, sir.

2 198 Q. Yes. And he sends a fax to that effect to Mr. Owens on

3 the 14th. He sends a letter on the 14th to Mr. Barry.

4 That is at page 756.

5

6 And I have already opened the first two sections about

7 the execution of the contract and the receipt of the

8 letter. And a receipt of the letter from Reid and

9 McNabb asking for the title documents to be returned.

10

11 Then paragraph 4: "So far as the undertaking you

12 require from me has been complicated by apparent lack

13 of agreement concerning a total retention amount of

14 ú60,000 against future expenses should Dublin County

15 Council not proceed with the purchase of the land. I

16 have passed this problem on to my client's

17 representatives in Dublin, and hope that this aspect

18 can be cleared up at that end and full instructions

19 relayed to us."

20

21 So Mr. Wheeler is putting everybody on notice that,

22 whether you knew about it or not at this stage, there

23 had now been a request made by Mr. McGowan to

24 Mr. Wheeler that there be a deduction made of ú60,000,

25 to be ú20,000 each. And to make sure that everybody

26 knew, Mr. Wheeler writes to everybody, writes to

27 Mr. Owens and he writes to Mr. Barry?

28 A. Yes, sir.

29 199 Q. So he is acting in your interest there, isn't he?

30 A. Yes, sir.

1 200 Q. And he is certainly not doing anything contrary to your
2 interest?

3 A. No, sir.

4 201 Q. There we get to the situation whereby there is the
5 letter on, telex on the 16th of November, 1984, from
6 Mr. Owens to Mr. Wheeler.

7

8 "Confirm pounds 10,000 by three agreed as reserve, and
9 Barry has been advised.

10

11 Mortgage being closed 2 p.m., Monday 19th at your
12 office.

13 Regards H Owens."

14

15 Sorry 757. Sorry about that.

16

17 So as I understand your evidence so far to be, you
18 didn't know about any retention on the 9th. I take it
19 on the 16th Mr. Owens did this on instructions from
20 you?

21 A. What, sir?

22 202 Q. That you had agreed to the 10 being deducted?

23 A. Yes, sir. I think that I agreed that with Mr. McGowan.

24 203 Q. And when and where?

25 A. Well, I know we had a discussion, sir. There was a
26 suggestion, I can't remember really if it was at lunch,
27 but we had, there was a discussion regarding the
28 ú20,000, and I, I said that I was not for a retention
29 of ú20,000 for fees and whatever --

30 204 Q. I think your phrase to Mr. Hanratty was that it was

1 like a "red rag to a bull", hearing about this at the
2 last minute?

3 A. Yes, sir.

4 205 Q. Obviously it was a matter of grave concern, well, "red
5 rag to a bull". It wasn't making you particularly happy
6 that anybody was going to retain any monies?

7 A. Yes, sir.

8 206 Q. So if it was of such annoyance to you, can you remember
9 the conversation? Can you remember where it happened?

10 A. I can't remember exactly where it happened, sir. It is
11 a hell of a long time ago.

12 207 Q. I accept that. You see, Mr. McGowan says that he told
13 you that it was for Fianna Fail, that he had asked you
14 for 20, you wouldn't agree to the 20, but you
15 eventually agreed to the 10. I am not sure about the
16 "eventually" bit, but there was - you agreed to 10.

17

18 Do you remember any such conversation?

19 A. No, sir. There was no question of Mr. McGowan asking
20 me for a retention for Fianna Fail, sir.

21 208 Q. Do you remember the conversation with Mr. McGowan?

22 A. I remember the conversation as well as one would
23 remember a conversation, sir, of that time ago, but I
24 do know the content of it, that I was not prepared to
25 agree to a retention of ú20,000 for the fees. But -
26 and I would have - by the way, if he had mentioned,
27 whatever else around - you are talking about fees, I
28 would have remembered if he had mentioned a figure of,
29 a figure going to --

30 209 Q. For Fianna Fail?

1 A. For political - for Fianna Fail.

2 210 Q. You see, correct me if I am wrong, you are saying that

3 had Fianna Fail been mentioned, such would its mention

4 have been in the context of a conversation like that,

5 it would now, it would have stuck in your memory, is

6 that the way you are approaching this? You don't

7 remember the conversation, but you would have

8 remembered had Fianna Fail been mentioned?

9 A. Yes, sir.

10 211 Q. And that's - yet Mr. McGowan clearly indicates he

11 clearly remembers the discussion being in relation to

12 20 for Fianna Fail, you wouldn't agree, and you

13 eventually agreed to 10?

14 A. Can I say to you, sir, that there is no doubt in my

15 mind at all, and that it was, it was never mentioned to

16 me. And I had never, and whether it was a question of

17 Mr. McGowan, others might have been giving

18 contributions, but I would never have even in my

19 wildest moments, if I ever thought of any sort of a

20 figure, anything, any contributions I had ever given in

21 my life, sir, had been given in percentages of that,

22 sir, so I would have recollected if it was a question

23 of --

24 212 Q. Yes. But so that the Chairman knows the extent of what

25 you are saying; it is a negative recollection, in the

26 sense that, sort of by exclusion, "Had this been

27 mentioned I certainly would have remembered it."

28 Is that the way you are saying it?

29 A. No, no, sir I want to be absolutely clear about this.

30 There is no doubt in my mind that I was not asked for a

1 contribution.

2 213 Q. And I asked you did you, when was that conversation, do
3 you remember where it happened?

4 A. I can't remember where it happened, sir. There is a
5 vague recollection that we had a chat over lunch, but
6 it might have been another day. I am not quite sure of
7 that. But I can say to you, sir, I would have - that I
8 don't remember him ever mentioning that. There was a
9 question of the ú10,000 which we have been talking
10 about for fees, but that was it, sir.

11 214 Q. Yes. Just so that the, all positions are being put
12 before the Chairman. I have to put it to you that Mr.
13 McGowan's evidence is to the contrary. He says that
14 what he specifically spoke to you about was Fianna
15 Fail. You disagree?

16 A. I disagree, sir.

17 215 Q. Suffice to say that you agreed to 10 being deducted.
18 You say that it was to be deducted for, as one-third of
19 an overall contribution, an overall retention for
20 future expenses and cost that is might be incurred in
21 the context of the lands?

22 A. Yes, sir.

23 216 Q. So leaving that conversation at some stage prior to the
24 16th of November, you knew that there was to be a
25 fighting fund for future costs in the region of
26 Sterling ú30,000?

27 A. Yes, sir.

28 217 Q. And given how you say matters had gotten to this, in
29 the sense of November '84, you had been exercised and
30 concerned and surprised and shocked over the alleged

1 lien/undertaking over the contract, the earlier
2 contract for sale to Kilnamanagh. And you say, you
3 didn't know about the loan on the 26th of June, or that
4 an application had been made for a loan on the 26th, by
5 the 26th of June, even though it had gone in prior to
6 that date?

7 A. Yes, sir.

8 218 Q. And that you had been obviously concerned and annoyed,
9 I presume, to some degree if there had been the earlier
10 issues that took place, if the earlier issues had taken
11 place without your knowledge. Were you not annoyed
12 when you found out that now there was a loan being made
13 without your knowledge, a loan application put in
14 without your knowledge?

15 A. Sir, there was a - there were discussions about a, in
16 around that period before the thing came out about a
17 loan, a possible loan being arranged, sir.

18 219 Q. These were a little bit more than discussions, surely.
19 I mean, you are unclear as to when you actually, what
20 particular point in time you actually heard about the
21 loan, but certainly by November you were sure there was
22 a loan and you were going, you were making sure you got
23 your one-third of it?

24 A. Yes, sir.

25 220 Q. But this all seemed, the whole lead-up to it, the
26 application for the loan, etc., seems to have happened,
27 if your evidence is correct, without your knowledge,
28 the application itself. By the time it was sanctioned
29 you knew about it, but --

30 A. I think that, sir --

1 221 Q. -- did that not annoy you?

2 A. I think, when you go around, sir, about applications
3 for - that wouldn't have been spelt out necessarily in
4 that way. I wouldn't hold that against the boys, that
5 it was Mr. Brennan and Mr. McGowan, it was, were
6 arranging their, arranging a loan.

7

8 Now, I knew, sir, that they had quite - you know, they
9 were the sort of people who had had lots of dealings
10 with banks and had, would have had the ability to --

11 222 Q. You were hardly unknown to the financial community
12 yourself, Mr. Finnegan?

13 A. No.

14 223 Q. You are not trying to tell the Chairman that you were
15 some Johnny-come-lately, that you hadn't an idea of
16 what was going on and the two boys were out there
17 managing the affairs of State?

18 A. I am not saying arranging the loan, sir.

19 224 Q. Let's deal with reality. You were a man of business in
20 a substantial way in the town?

21 A. Yes, sir.

22 225 Q. You know as much about banking as the next fellow;
23 probably more than a lot. That being said, you have
24 told the Chairman that you were surprised, upset, over
25 the two earlier events?

26 A. Yes, sir.

27 226 Q. Which you say your concerns had been allayed as a
28 consequence of the meeting of the 26th of June, '84,
29 when you found out they had gone in to make a loan
30 application without references to you, that this was

1 advanced; were you not annoyed again?

2 A. Well, sir --

3 227 Q. Was this not more of the same according to your view of
4 what was going on?

5 A. I think at that stage that there would be relief as far
6 as I would be concerned, that one were looking now at
7 something that can be, can be done, and there - it
8 would appear that the, we had confirmation that there
9 were no claims on title or otherwise. We would be
10 ready to do anything with the land.

11 228 Q. That is not the point I am making to you, Mr. Finnegan.
12 What I am saying to you is that you were upset, it
13 seemed, because you say to the Chairman that there were
14 events occurring without your knowledge?

15 A. Yes, sir.

16 229 Q. The contract and the undertaking. Here is another
17 event within a short space of time of that supposedly
18 position being clarified, another event occurring, you
19 say occurring without your knowledge, because you
20 didn't know there was a loan application made?

21 A. Prior to this, that's correct, sir.

22 230 Q. When you found out there was a - there had been a loan
23 application made, was the 26th for nothing? Were you
24 not - here is more conduct, according to your view, if
25 it is the case that you didn't know about the loan
26 application?

27 A. It is the case that I didn't know.

28 231 Q. I am not doubting - well, I am doubting you, I suppose.
29 But that is for the Chairman ultimately.

30 A. Sorry?

1 232 Q. If it is the case, and if your testimony is the case,
2 surely you would have been annoyed, as annoyed, if not
3 more annoyed, because you had put the record straight,
4 according to what you are telling the Chairman, by the
5 26th of June, and it seems to have meant nothing,
6 according to the events that you say happened, namely
7 that despite putting the record straight, Messrs.
8 Brennan and McGowan were advancing loan applications in
9 the absence of any knowledge by you, and you only came
10 into it at the latter end of the stage?

11 A. Absolutely, sir.

12 233 Q. And did that not motivate your annoyance or did not it
13 not motivate you to take some conduct or action if it
14 was the case that you didn't know about the loan
15 application before it was made?

16 A. I didn't know about the loan application prior to that,
17 sir. I only knew about the application sometime before
18 the thing, the grant I would say. There were
19 discussions about obtaining a loan, but I didn't know
20 beforehand, sir, and I didn't, so I knew later.

21 234 Q. Is this the case then, that despite the fact that this
22 seems to have been more action and conduct, of which
23 you complained of, namely ignoring your position, it
24 didn't really bother you too much because you were now
25 going to get one-third of the benefit?

26 A. Yes, sir.

27 235 Q. And was that the way you were happy to approach how
28 Canio was operated: 'As long as I got one-third of
29 whatever it was going I would be happy enough'?

30 A. No, no, sir. There was talk about a loan sometime

1 before the, before this, the letter coming out.

2 236 Q. I accept that. It must have been the case, surely to
3 your knowledge, Mr. Finnegan, that if Mr. McGowan could
4 tell you that 'We are on for a loan', surely would you
5 have asked what the details of the application were,
6 when was it made, who was involved?

7 A. It wouldn't just come around like that.

8 237 Q. It was half a million pounds; back in 1984 it is hardly
9 a small amount of money?

10 A. Yes, I was aware that negotiations and a loan - but I,
11 I wasn't aware of the actual application. It wouldn't
12 come around that way in the talk.

13 238 Q. When the loan did unfold --

14 A. Yes, sir.

15 239 Q. -- I think it was in circumstances whereby the idea
16 behind it was that each of the investors would get some
17 money back?

18 A. Yes, sir.

19 240 Q. And I have to put it to you that the manner and fashion
20 in which the loan application was made, was made with
21 your knowledge, in that it was represented to the bank
22 that part of the idea behind the loan application was
23 for Messrs. Brennan and McGowan to buy out the third
24 shareholder?

25 A. Oh, I didn't know that, sir.

26 241 Q. Well, we have the documentation, but - isn't the net
27 effect of that to mean that the third shareholder was
28 not going to have to provide a guarantee for the loan?

29 A. Why?

30 242 Q. If it is to buy out the third shareholder, buy out the

1 third shareholder's interest, that third shareholder
2 was not going to participate in the company's assets,
3 it was only the two remaining shareholders and the
4 company who were going to guarantee the loan --

5

6 MR. HUSSEY: I am sorry, Sir, I am going to interject
7 here. The actual offer that was made here is
8 absolutely nothing to do with buying out the - there is
9 a series of facilities letters. The earlier facilities
10 letter which were superseded, expressly superseded by
11 the later ones, the earlier ones were talking about
12 buying out a shareholding. The actual offer that was
13 made and accepted and implemented is, has nothing to do
14 with buying out the shareholding of the third
15 shareholder.

16

17 243 Q. MR. HAYDEN: I think perhaps Mr. Hussey, if he read the
18 documentation, mightn't be quite so empathic. On page
19 735 you will see on the 25th of October, 1984, there
20 are two issues, two reasons proffered for the loan.
21 "To utilise the purchase of lands in the United Kingdom
22 and to effect other payments."

23

24 When one looks at the loan application itself, which I
25 think, not wishing to delay you, Sir, is at page 694:
26 "The purpose of the proposed advance: To enable
27 applicant company make a distribution to its beneficial
28 shareholders. In particular Sterling ú180,000 will be
29 utilised to enable two of the beneficial shareholders
30 acquire the interest of the remaining party (see over

1 for details)." And also, ú105,000 Sterling to be
2 placed on deposit.

3
4 Certainly what was being represented to the bank and
5 what the bank were sanctioning was, as they understood
6 the purpose for, a distribution to the beneficial
7 shareholders to buy out the existing shareholder and to
8 effect payment and purchase of property in the UK. Mr.
9 McGowan has given evidence to the fact that the UK
10 project didn't manifest itself.

11
12 Specifically in the loan offer, of the 25th of October,
13 1984, it states that the monies are to be utilised to
14 purchase lands in the UK and to effect other payments.

15
16 Now, what the bank could have meant by "other
17 payments", in my submission, Sir, couldn't be anything
18 other than what we were told on the loan application,
19 which was to effect a distribution to the beneficial
20 shareholders.

21
22 The bank were happy enough that the monies were
23 secured. And after that, I submit, it is for
24 Mr. Hussey, perhaps in submission rather than
25 interjecting in aid of the witness.

26
27 Isn't the case that, the reason why it was proffered in
28 the way it was, Mr. Finnegan, was to avoid any
29 necessity on your part to give a guarantee, or the
30 beneficial, the third owner having to give a guarantee

1 in favour of the loan?

2 A. No, sir.

3 244 Q. And isn't it the case - it appears that the bank, that
4 Ulster Bank - sorry, Lombard and Ulster Bank were aware
5 of the three shareholders, because if you look at page
6 693, there is a reply from, to the letter that, the
7 telex I have already referred you to, which was the
8 telex of Mr. Owens of the 14th of January - sorry, the
9 14th of June, '84, to Mr. Wheeler stating that you wish
10 to remain silent and identifying the beneficial
11 shareholders. In fact, there is a telex replying to
12 that at page 693 from Mr. Wheeler identifying,
13 "These are the answers to your request.

14
15 1. The total number of shares issued is 12, three each
16 to the following." And at the directors are so named.
17
18 "3. The beneficial owners are not directly as you
19 state, although ultimately your information is correct.
20 The immediate beneficial owner is Ardcarne Limited which
21 is opened as to three equal parts by Gasche Investments
22 Limited, Kalabracki Limited and Foxtown Investments
23 Limited."

24
25 That is a document of the 15th of June. And if you
26 look at the telex from Mr. Owens to Mr. Wheeler at the
27 14th, which is on page 692, you will see that the, the
28 final requirement, apart from the beneficial owners
29 which is the three identified as yourselves -
30 identified as Tom Brennan, Joe McGowan and Roger

1 Wreford's; "Wreford's name has been substituted for
2 that of Finnegan because Finnegan wants to remain
3 silent.

4
5 Confirmation that company has power to borrow and grant
6 a legal mortgage in Ireland.

7
8 The official in Lombard and Ulster dealing with this
9 application is going on holidays tomorrow and requires
10 this information before going. Sorry for rush."

11
12 The reply comes in on the 15th from Mr. Wheeler, which
13 is at page 693.

14
15 We have an internal memo of Lombard and Ulster's on the
16 15th, before Mr. Smith goes off on holidays, 696.

17 You will see on the bottom right-hand corner:
18 "Details of shareholding contained in attached copy
19 telex."

20
21 As far as the bank were aware, there were three owners,
22 two going to buy out the third, and the monies used in
23 part for the benefit of the beneficial owners,
24 shareholders, and also for the purposes of acquiring
25 land in England.

26
27 Doesn't that seem to be the situation as far as Lombard
28 and Ulster were told?

29 A. As far as I was aware, sir, there was no question of
30 the loan being obtained for the purchase of my

1 interest.

2 245 Q. I accept that that has been your position. But by
3 saying, stating that to the bank, doesn't it remove the
4 requirement for there to be three guarantees rather
5 than two? So, in fact, it gives you the benefit, you
6 the benefit, since you wished to remain silent which
7 seems to be confirmed in the bank's subsequent memo in
8 1985 that the first they heard of you was in 1985?
9 Doesn't it fit in entirely with the strategy put in
10 place to keep your name silent from the knowledge of
11 Lombard and Ulster? And that memo was at page 1072.
12 Doesn't it fit in entirely with that? To the effect
13 that here you were now not going to have to give a
14 guarantee, and therefore the only two individuals that
15 were going to have to provide guarantees were Messrs.
16 Brennan and McGowan?

17 A. Sir, the position --

18 246 Q. You wouldn't have given a guarantee, sure you wouldn't?

19 A. No, sir.

20 247 Q. You wouldn't have given a guarantee?

21 A. No, sir. This was never done at my request, sir.

22 248 Q. The monies transferred and - on the 16th of November

23 Mr. Owens tells Mr. Wheeler "10 x 3 agreed", I take it

24 or can you tell us did you tell Mr. Owens to inform

25 Mr. Wheeler of that?

26 A. I can't --

27 249 Q. That you had authorised it?

28 A. I don't remember telling. I could have, but I don't

29 remember it.

30 250 Q. Mr. Owens wouldn't have had a contact, would he, with

1 Mr. Barry?

2 A. Sorry?

3 251 Q. Mr. Owens wouldn't have had direct contact with Mr.

4 Barry, would he? Would Mr. Owens have had direct

5 contact with Mr. Barry?

6 A. I don't know, sir.

7 252 Q. Well, you see in the telex "Confirm 10 x 3 as reserve

8 and Barry has been advised". Who advised Mr. Barry?

9 A. I would have advised Barry.

10 253 Q. Yes. And then it comes to the day in question in

11 which the monies are divided, and it is agreed that 10

12 be retained from each of the three, in your evidence,

13 as a fighting fund for any future expenses?

14 A. Yes, sir.

15 254 Q. And subsequently Mr. Wheeler combines that 10 with the

16 other two 10s and the monies of Gasche and Kalabraki,

17 to send the 60 to Mr. Burke, isn't that - we know that

18 now?

19 A. We know that now, yes, sir.

20 255 Q. Have you any explanation as to why, if Mr. Wheeler was

21 being as careful as he was in the documentation leading

22 up to this, why do anything without consent and

23 clearance? Why did he then, as you say, give 10,000 to

24 an Irish politician without clearance or sanction from

25 you or Mr. Barry? What possible motivation would he

26 have?

27 A. I don't know, sir.

28 256 Q. An English solicitor putting in jeopardy his Practicing

29 Certificate, putting in jeopardy his firm, in the

30 context of liability for this, what possible motivation

1 would an English solicitor in a Channel Islands firm of
2 solicitors have for suddenly doing something, in your
3 evidence to this Tribunal, doing something without
4 clearance from you? Why would he put all of that at
5 risk for something that he didn't, he wouldn't have
6 done seven days earlier on the 14th of November he was
7 asked to retain monies, and his response to that was to
8 say "this hasn't been agreed and I won't do it, in
9 essence, until I get agreement."

10 A. I have no idea, sir --

11 257 Q. Why the change of heart in seven days, it seems?

12 A. I don't know, sir. That is over to him, sir, why he
13 did it.

14 258 Q. You say, anyway, you didn't authorise it?

15 A. No, sir.

16 259 Q. Just in time sequence to clear up, not to clear up,
17 just in relation to the issue as to the existence of a
18 loan, whether your investment, you remember Mr.
19 Hanratty putting to you the events as to whether this
20 was an investment, your sums, Foxtown's monies were
21 investments or loans, you thought or the position of
22 Mr. Naylor was that it was a loan and that is what he
23 had told Mr. O'Shea. It is out of sequence in the
24 context of what we are talking about. It is just in
25 sequence in time, rather than going back to it. You
26 remember all of that, where Mr. Naylor writes the
27 letter in 1989 to Mr. O'Shea, and Mr. O'Shea then
28 prepares his attendance on the terms of the likely
29 agreement. If you look at page 783. That is letter
30 from Mr. O'Neill, of Binchys & Partners, to Lombard and

1 Ulster, he being the solicitor acting for Lombard and
2 Ulster in relation to the transaction. You see at the
3 bottom there at page 783H "I received a certificate
4 from the company's accountant to the effect that no
5 loans have been made by the directors/shareholders by
6 Canio Limited." At the very bottom - H.

7

8 I think we may go - yes, it is the bottom of 783.

9

10 Do you see that? 'H' down the very bottom. We are
11 gone again.

12

13 Any luck? No.

14 A. Is that --

15 260 Q. It is the bottom of 783. It is the bottom of 783

16 first: You see at the bottom of H there. If you push

17 it over to the right a bit we will get the H. There

18 you go. "I received a certificate from the company's

19 accountants to the effect that --

20 A. "To the effect that" --

21 261 Q. Then, the revelation on the next page: "No loans had

22 been made by the directors/shareholders to Canio

23 Limited."

24 A. Yes, sir.

25 262 Q. Doesn't that show certainly the state of mind in 1984

26 of Canio, and - that he had received a certificate from

27 the company's accountants to the effect that there was

28 no loans? This is the same Mr. Owens that you had been

29 into in March and to say "make sure my interests are

30 looked after in case anything happens to me."

1 A. Yes, sir.

2 263 Q. Mr. Owens is the accountant, yes, he is the company's
3 accountant. He furnishes a certificate prior to the
4 22nd of November, 1984, to the bank for the purpose of
5 closing, because obviously the bank would like to make
6 sure that whatever they are doing is whatever they are
7 doing, and what security they have, and all the rest of
8 it. So in 1984 everybody seems to have thought that
9 the position was that these were investments, not
10 loans?

11 A. Yes. And I think that is the position, sir, I think
12 that they were investments, that - the investment into
13 Canio.

14 264 Q. So they were never loans?

15 A. I don't think so. I think that Naylor may have
16 understood that, sir.

17 265 Q. Yes. Well, in fairness to Mr. Naylor, I mean,
18 everybody around you seems to be misunderstanding
19 things at different times.
20 .
21 If Mr. Naylor was wrong in that information, it is the
22 case that Mr. Barry had earlier thought that you might
23 have made a loan, because if you look at page 722,
24 which is the document on the 11th of September, 1984.
25 This is a letter from Mr. Barry to Mr. Wheeler, where,
26 "I would like to have a breakdown" - it is the last
27 paragraph - "of the loans from shareholders, totalling
28 "663,743. Could you please write to Hugh Owens
29 requesting these details."

30 .

1 Mr. Owens writes back to Mr. Wheeler. Mr. Wheeler -
2 having forwarded on the request writes back to
3 Mr. Wheeler, and presumably gave on the information to
4 Mr. Barry, on the 9th of October, 1984, on page -
5 sorry, 726.

6
7 "With reference to your letter of the 17th of
8 September, the breakdown of the amount of ú663,743 is
9 as follows." And he gives the figures.

10
11 "All the money was paid equally by the three
12 shareholders. Of the original investment ú300,000 had
13 been invested in December 1978 into a company called
14 Green Trees Limited."

15 .
16 So certainly if that information had been passed on as
17 the position in relation to the certificate from
18 Mr. Owens, in, prior to the 22nd of November, 1984, it
19 seems that nobody at the time in '84 thought of this as
20 a loan?

21 A. I think the only - sir, the --

22 266 Q. And that the loan was a creation of your position in
23 1989?

24 A. I think, sir, that the only explanation I have for this
25 is that the, that Naylor - I think Mr. Barry had gone
26 at this stage, and I think that he was, this was Naylor
27 reading the file and looking for confirmation, I think,
28 of the situation.

29 267 Q. Sure, why didn't you go to Mr. Owens? You were able to
30 go to him before and ask the question, "If there was

1 any doubt?" Why is it Mr. Naylor's fault,
2 Mr. Finnegan, when you were able to talk to Mr. Owens
3 every other time that you wanted information?

4 A. Actually, I don't myself recollect that this was sorted
5 out.

6 268 Q. You don't recollect what being sorted out?

7 A. No, the question of what you are talking about there,
8 sir, the loan.

9 269 Q. Well, you see the net effect of turning it into a loan,
10 it creates - it solves one problem, although it created
11 another one, in that there was a ú6,000 overpayment.

12 .

13 In any event - well, silence is golden.

14 .

15 In any event, I think if I can ask you, then.

16 As matters stood, after November '84 the division was
17 paid out, and you understood that from the 21st of
18 November, '84, the position was that there was ú30,000
19 in retention, and that there was 10,000 of it, yours,
20 Foxtown's money. And Mr. Naylor, obviously, when
21 reading the file in 1989 had the benefit of the telex
22 from Mr. Wheeler, saying that there was ú10,000 on
23 deposit. Isn't that correct?

24 A. Sorry, just say that again, sir?

25 270 Q. You are saying that Mr. Naylor, when he came to giving
26 details to Mr. O'Shea, was able to do so on the basis
27 of only - no personal involvement, but only reading the
28 file, but, of course, reading a file would have given
29 him the telex of the 21st of November, 1984, at page
30 776, which says: "Pounds 10,000 has been deducted as

1 agreed from Foxtown's one-third share and placed on a
2 call deposit, and the net figure which is being TTd to
3 Guinness & Mahon this morning as ú126,436.16."

4 .

5 Mr. Naylor would have gotten the number from somewhere,
6 and he would have also seen that telex, that there was
7 ú10,000 on deposit. Yet Mr. Naylor doesn't make any
8 reference to the ú10,000 on deposit when he comes to
9 tell Mr. O'Shea of the position, or for that matter,
10 does Mr. O'Shea seem to have heard anything of the
11 ú10,000 from you?

12 A. Well, I think that I understood that he would have
13 known, but if he didn't he didn't. What is your
14 question, sir?

15 271 Q. You knew of the ú10,000 that was kept, didn't you?

16 A. Yes, sir.

17 272 Q. So, why didn't you tell Mr. O'Shea about it, when Mr.
18 O'Shea was telling you, "By the way, you, in fact, owe
19 money back. You owe ú6,000, ú6,436.16 back."
20 Why didn't you tell him, "Sure, there was ú10,000 that
21 was kept back in 1984, sure what about that?"

22 A. I would have excepted, sir, that in any event by then
23 that any funds that were put aside for fees to the
24 parties would have been well absorbed at that stage,
25 sir.

26 273 Q. That is fees to the tune of ú30,000, isn't that
27 correct?

28 A. Yes, sir.

29 274 Q. And if that be so, it wasn't so much that ú10,000 had
30 been used up, presumably you wished to make sure that

1 you were not the sole payer of any of these fees, and
2 that you would want confirmation that each of the
3 beneficial, that each of the shareholders would have
4 contributed one-third equally?

5

6 Are you telling the Chairman that when it came to all
7 of this, you were happy to write-off ú30,000 as
8 probably having been spent?

9 A. Can I say to you that when it came to this, that -
10 remembering now, at this stage, sir, that there is a
11 lot of, a lot of things going on, and there is - the
12 things are going on that when it came down - you are
13 talking about, sir, coming up to the, to the sale of
14 the shares.

15 275 Q. 1989?

16 A. Yes, sir. So, at that time, sir, there were lots of
17 problems on the - there was --

18 276 Q. There was no more new problems than had been in
19 existence in 1985. Mc McGowan was already bankrupt in
20 1985. Lombard and Ulster were already getting excited
21 in '85. AIF had already got excited in 1985. They had
22 even gone after Mr. Russell at that stage.

23

24 So the geography hadn't changed between '85 and '89, in
25 the sense of the difficulties in relation to Canio?

26 A. No. Realism had come into it at that stage, and that
27 the bank were at loggerheads with one another.

28 277 Q. Sure, they were at loggerheads since 1985. The banks
29 were disputing among themselves priority since 1985.

30 A. Yes.

1 278 Q. Are you saying that it took four years for realism to
2 enter into it? Let's just deal with what documentation
3 we have and what the facts seem to suggest so far.

4
5 You've told us that Mr. Naylor wrote to Mr. O'Shea in
6 1989 for the purposes of giving him the information as
7 he saw it on the file. On the file was a fax from
8 Mr. Wheeler to Mr. Barry saying, "There is $\text{ú}10,000$ of
9 Foxtown's money being retained." That one-third, that
10 $\text{ú}10,000$ was to be one-third of 30.

11
12 Are you telling the Chairman that when that happened,
13 either Mr. Naylor missed it when he read through the
14 file, or you didn't tell him about it, but that you
15 were prepared, in any event, without even looking into
16 it, to write-off, in essence, $\text{ú}30,000$? Because the
17 valuation was going to be the valuation on the, of the
18 property less any outstanding loans. This $\text{ú}30,000$ came
19 from a loan. So, therefore before one ever got to
20 value the equity, one had to see what the value of the
21 loan was.

22
23 You were - the company, Canio, was responsible for a
24 sum of money, part of which represented this $\text{ú}30,000$
25 which was going to devalue your shareholding to that
26 extent. Isn't that correct?

27 A. Sir --

28 279 Q. It is not so much $\text{ú}10,000$ that you had not sought
29 certificates for. You seem to be telling the Chairman
30 that you were happy to guess, assume, accept, have a

1 feeling in your waters, that ú30,000 had been expended
2 in the preceding four years on expenses. Is that where
3 we are going with this? And therefore you were not
4 going to now look for that 10 back?

5 A. Sir, you are speaking of a lot of things there. Let's
6 deal with them as you go along, sir.

7

8 That the position is that coming up to the time of the
9 sale of my company, the shares in, the shares that were
10 held in Canio - at this particular stage - you said, by
11 the way, that I said that Mr. Brennan was bankrupt. I
12 didn't say that, sir.

13 280 Q. No, I said that Mr. - by this stage Mr. McGowan was
14 bankrupt. Mr. Brennan was never in financial
15 difficulties. You said yesterday it was Mr. Brennan?

16 A. I thought you said Mr. Brennan.

17 281 Q. Mr. McGowan was bankrupt by 1985. In fact, Mr.
18 Brennan, as far as he was aware was okay and still, all
19 the way through the '80s and '90s it was Mr. McGowan --

20 A. I thought you said Mr. Brennan.

21 282 Q. From the point of view of realism coming into it, as
22 you say, the difficulty, the financial difficulties had
23 manifested themselves since 1985. Come 1989, Mr.
24 O'Shea is receiving information from Mr. Naylor, which
25 significantly omits reference to the ú10,000. ú10,000
26 which, being part of ú30,000 that you say you were
27 prepared to assume had been expended, not just 10.

28

29 You seem to suggest that you were happy to assume that
30 ú30,000, approximately, had been expended on the site,

1 because obviously you were, each of you were going to

2 --

3 A. No, sir, you are leading here, sir. I just wish to

4 clarify the position. That there was a position put up

5 to me by Brennan and McGowan, "You are in a horrific

6 situation here, that the debt of Lombard and Ulster is

7 being sold, is going to be sold to" --

8 283 Q. When was this? When was this horrific situation put up

9 to you?

10 A. This was put up prior to the, when the negotiations

11 were taking place for the acquisition of my

12 shareholding.

13 284 Q. When was that? Give us a year and then we will work

14 our way from the year to the month?

15 A. Just when, just when the deal was done, prior to the

16 deal being done.

17 285 Q. Yes. But was this all of a quick change of heart?

18 Was this, was this - you were all, up to some stage in

19 1989, you were progressing in reasonable comfortable

20 format in relation to having these lands, then suddenly

21 you decided "I better change." At what stage did you

22 change your mind in '89, from being happy to remain on

23 for the long-term investment, to becoming "I have got

24 to sell"?

25 A. The position was portrayed to me, sir, that - two

26 things were happening; that there was the - the loan

27 had run up to a considerable sum with Lombard and

28 Ulster. They were going to foreclose. And the

29 negotiations were taking - at an advanced stage - that

30 Mr. Noel Smith was going to take over the mortgage.

1 Of course, sir, you must remember that I didn't know at
2 this stage that the guarantees were in situ, but as far
3 as I was concerned, I had --

4 286 Q. You weren't aware that Lombard and Ulster had issued
5 proceedings against Mr. Brennan on foot of the
6 guarantee?

7 A. Oh, had they? Oh.

8 287 Q. You didn't know that?

9 A. No. Well, this was at a very - it may be why, when
10 they said to me, sir, that Mr. Brennan would be
11 getting, Mr. Brennan could become --

12 288 Q. Sure.

13 A. -- could become bankrupt.

14 289 Q. If that is the case then, if that is your recollection
15 of why Mr. Brennan might have been in trouble, as I
16 understood your answer to Mr. Hanratty, you say that
17 had you known that there were guarantees you mightn't
18 have been as quick to sell, because you declared this
19 to be a fire sale, but --

20 A. I did. It was put to me as a fire sale.

21 290 Q. If you knew that Mr. Brennan, and correct me if I am
22 wrong, if you are saying that you now do recollect that
23 you knew that Mr. Brennan was --

24 A. I didn't say that I do now recollect it, sir.

25 291 Q. You are telling the Chairperson, anyway, that one of
26 your partners in this, you didn't realise that Lombard
27 and Ulster were suing?

28 A. No, sir, I now - now that you say this, it was
29 portrayed to me that Mr. Brennan could be put in a bad
30 financial position.

1 292 Q. Because of the loan from Lombard and Ulster?

2 A. Well, sir, that's the way it was put to me, that he,
3 that - and a deal had to be done. I had one chance of
4 doing a deal on my shares, and that was now.

5 293 Q. But you had already established that whatever happened
6 in relation to this, had you not - as early as 1985 you
7 had sought clarification from Crills as to what effect,
8 if any, the undertaking to Ulster Bank, or to AIF had
9 on the impact. You had already received information.
10 You sought instruction on that, isn't that correct, on
11 the 29th of October, 1985? Mr. O'Shea received
12 correspondence from Crills. Page 1132.

13 .
14 So, I mean you had a pretty good idea of where you
15 stood, and what the position was before 1989.

16
17 What I am trying to find out, Mr. Finnegan, is, if it
18 is the case that when Mr. Naylor wrote to Mr. O'Shea
19 not mentioning the $\text{ú}10,000$, and if you didn't identify
20 it to Mr. O'Shea - to Mr. O'Shea the existence of the
21 $\text{ú}10,000$, that if it is the case that you are saying
22 this was because, "Look, I just wanted out", in 1989,
23 can you help us at all as to what stage in 1989,
24 beginning, middle or end, that your change of heart
25 took place in relation to wanting to get out?

26 A. Well, I do know this, sir, that it was somewhere around
27 - that the deal was done sometime around December.

28 294 Q. Um.

29 A. And there was considerable toing and froing prior to
30 that, sir. So I think it could have been, it could be

1 up to a couple of months afterward, sir.

2 295 Q. Yes. Because it seems that - on the 28th of - well, a
3 day or two before the 28th of September, 1989, you were
4 at a meeting, or there was a meeting in your premises.
5 And it is at page 1607. And this is a meeting of the
6 "Representatives of the shareholders of Canio Limited,
7 held at 17 Merrion Row, Dublin 2." You are in
8 attendance, as is Mr. O'Shea. It is just to
9 understand, because it is pretty soon after this the
10 events - we get the letter from Mr. Naylor, etc.. But
11 this does not - you can read down through it.

12 .
13 "1. Mr. McGowan said that he had spoken to Mr. Mike
14 Brennan of Grange Developments Limited. Grange have
15 accepted that they merely have a mortgage on the
16 property, giving them an entitlement to interest.

17
18 They might be interested in becoming involved in form
19 of partnership at a later date.

20
21 2. Mr. Brennan mentioned that the case between Grange
22 and Allied Irish Finance was due for hearing in the
23 High Court on the 5th of October, and that George
24 Brady, counsel for Grange was very confident that he
25 would succeed in winning the preliminary issue to be
26 dealt with by the Court. There was therefore a
27 possibility that Allied Irish Finance would open
28 negotiations to settle the dispute with Grange and also
29 their claim against Kilnarnagh Estates and Others.

30

1 3. Given of the complexities of the matter and the
2 various steps that were now going to be needed in
3 relation to town planning, it was necessary to have one
4 person who would be aware of the overall position and
5 to whom the various representatives would report and
6 liaise with as matters arose and who would report to
7 the representatives from time to time. It was agreed
8 that Michael O'Shea would act as this person.

9
10 4. Tom Brennan reported on the town planning situation
11 generally."

12
13 He goes through the water and all of that.

14 .
15 It is this section, "D", that I would like - maybe if
16 it is the case that this is - if your recollection and
17 evidence to the Tribunal is accurate as to the ú10,000
18 and what had happened to it.

19 .
20 "The motorway proposal is definitely going ahead, and
21 this may leave 13 acres of land landlocked. James
22 Monaghan of Monaghan O'Dea believes however, that
23 access can be provided to this 13 acres through a
24 nearby pitch and putt course. The firm of Monaghan
25 O'Dea have been instructed to advise generally on town
26 planning and they have also agreed to advise an
27 architect to prepare the necessary plans for the
28 purposes of a planning application. Mr. Brennan
29 thought that the current planning costs would be
30 approximately ú10,000 for the application itself,

1 though this may be increased lately, and approximately
2 ú30,000 for the byelaw application. The
3 representatives agreed that the shareholders would have
4 to make equal contributions to the fund to fund an
5 application for the development of the lands."

6

7 This is in September 1989. So it is all things as
8 usual, at that stage, going ahead. "We are going
9 ahead. We are going to develop it."

10

11 In 1989, Mr. Finnegan, when that was mentioned, this is
12 Mr. O'Shea in attendance with you, and these minutes
13 are sent under cover of correspondence of the 28th of
14 September, 1989, which is at page 137.

15

16 "I enclose minutes of a meeting held in John's office
17 on Monday last.

18

19 In relation to the Kilnamanagh contract, I have since
20 looked up my file and see that a decision to rescind
21 that contract was taken at a meeting in John Caldwell's
22 office on the 10th of February, 1989. The rescision of
23 this contract was necessary for the proposed sell of
24 the lands at the time to Dun Laoghaire Corporation. At
25 that time Allied Irish Finance had refused to agree to
26 a sale of the lands by Kilnamanagh Estates, and the
27 only option therefore, was to rescind the contract and
28 to enable the proposed sale to proceed by Canio, even
29 though this was going to create a greater tax
30 liability. Joe's suggestion is, however, well

1 worthwhile, and I shall consider before the next
2 meeting the possibility of reconstituting the contract,
3 assuming of course that a settlement will be worked out
4 with AIF. There are, of course, obvious difficulties
5 in establishing the credibility of the contract, such
6 as the length of time that has passed since it was
7 made, the fact that no deposit has been paid, and that
8 no action whatsoever has been taken in relation to the
9 implementation of the contract."

10 .

11 CHAIRMAN: I think we might stop at that point, because
12 we are running well over time. I didn't want to
13 intervene while you were on that point.

14 .

15 MR. HAYDEN: I accept that point. Could I just put
16 one point, then finish it?

17 .

18 CHAIRMAN: One more, certainly. Yes, no problem.

19 .

20 296 Q. MR. HAYDEN: Here you are in September of 1989,
21 Mr. Finnegan, and Kennedy McGonagle Ballagh were acting
22 for Canio since '85. It seems Mr. O'Shea is in
23 attendance with you. There is an attendance there on
24 page 1680, where people are talking about having to put
25 their hands in their pockets for planning, byelaw
26 costs. We are talking about ú40,000. Why, then, at
27 that stage, Mr. Finnegan, did you not say, "Hold on,
28 there is ú30,000 kept back for that very purpose since
29 1984."?

30 A. I would only say, sir, that it must have been at that

1 stage assumed that all of the - it doesn't refer to the
2 pot, but I can only assume that at that stage that it
3 was interpreted that there wasn't any money left, sir.

4 297 Q. Well, where do we see any of that? Have you found the
5 faith? Where is there any reference to any of the
6 ú30,000 that had been retained?

7 A. No, but I am only saying to you, sir, I see what it is
8 saying now, that this is Mr. Tom - this is --

9 298 Q. This is Mr. O'Shea's minutes?

10 A. Yes, and that it is - the company, again, who is --

11 299 Q. Canio. It is Canio, Mr. Finnegan?

12 A. No, no, no, but Mr. Brennan.

13 300 Q. "Mr. Brennan thought the current planning costs would
14 be approximately ú10,000 for the application itself,
15 but this may have increased lately, and approximately
16 30 for the byelaw. The representatives agreed that the
17 shareholders would have to make equal contributions to
18 fund an application for the development."

19 .
20 Why, if it is the case that the monies were actually
21 retained in 1984, on your evidence, for this
22 eventuality, did you not say, "Hold on, we have 30
23 already in the pot?" Or as an alternative, "Will you
24 show me where the 30 has been spent?"

25 A. Sir, at that time, then - the only thing I can say is
26 that it must have been that the monies had been, had
27 been spent at that stage.

28 301 Q. Isn't it because you had authorised Mr. Wheeler to pay
29 the monies to Mr. Burke?

30 A. No, sir.

1

CHAIRMAN: Well, we will sit again at half past two.

3

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

1 THE TRIBUNAL RESUMED AS FOLLOWS AT 2.30PM:

2

3 MS. DILLON: There was one other witness scheduled for
4 this afternoon, Mr. Stephen Treacy from the Revenue
5 Commissioners. As Mr. Hussey has not yet started, and
6 is unlikely to finish before four o'clock, is it in
7 order to stand Mr. Treacy down until tomorrow morning?

8

9 CHAIRMAN: Mr. Hussey, would that be a fair estimate?

10

11 MR. HUSSEY: Mr. Hayden, it seems will be another short
12 while. I'll be a half an hour. That will only give me
13 an hour - I think I'll leave it.

14

15 CHAIRMAN: Is tomorrow morning appropriate?

16

17 MS. DILLON: Yes, Sir. He will be the second witness
18 tomorrow after Mr. Brennan.

19

20 CHAIRMAN: Right. That's grand. That's appropriate.

21

22 MR. FINNEGAN CONTINUES TO BE CROSS-EXAMINED BY MR.

23 HAYDEN AS FOLLOWS:

24

25 MR. HAYDEN: Thank you, Sir.

26

27 Apparently I gave the wrong number for the last page I
28 was talking about. Just for the record, it was 1607
29 and 1608. Apparently I am dysfunctional when it comes
30 to the numbers.

1

2 302 Q. I was just talking to you before lunch about the state
3 of play, Mr. Finnegan, at that date in September 1989,
4 and in addition, in relation to the position in
5 September '89. It doesn't seem there that there is any
6 indication or intimation that you are wanting to leave
7 development lands in Sandyford, in that memo, at page
8 1607, 1608?

9 A. That I wanted to leave?

10 303 Q. That there was any difficulties, or that you wanted to
11 sell, or that there was anything of that nature?

12 A. Well, I think that at that meeting, it was a question
13 of getting together, looking to see what could be done,
14 sir.

15 304 Q. Yes. Well, precisely, because what seems to be very
16 clearly discussed is the various bits of litigation
17 that's going on. The fact that AIF wasn't going to
18 release its charge, that's Part 2. The complexities in
19 Section 3. And then Mr. Brennan goes through the town
20 planning situation in relation to water supply, surface
21 water, foul drainage. I mean, all of the things one
22 would have to face into if there was onward development
23 about to take place.

24

25 Then the motorway proposal at "D". I mean, there is
26 nothing there giving any intimation to anybody reading
27 this document that you were in any way or fashion
28 desirous of leaving, or that you felt there was a fire
29 sale necessary, or that you felt there was matters of
30 great import or risk. It was just, "Look, if we are

1 going to go on with this, these are the things that are
2 going to have to be done, and we are going to have to
3 come up with the money, ú40,000."

4 A. Yes. And AIF were still - what was it --

5 305 Q. AIF are mentioned that - this is Part 2, on page 1607.

6 "Mr. Brennan mentioned that the case between Grange and
7 Allied Irish Finance was due for hearing in the High
8 Court on the 5th October and that George Brady, counsel
9 for Grange was very competent he would succeed in
10 winning the preliminary issue to be dealt with by the
11 court. There was therefore a possibility that Allied
12 Irish Finance would open negotiations to settle the
13 dispute with Grange, and also their claim against
14 Kilnamanagh Estates and Others."

15

16 Which ultimately is what happened?

17 A. Yes.

18 306 Q. What I understood you to say to Mr. Hanratty, you sold

19 your - well, you entered into negotiations in 1989,
20 selling in 1990, because you felt that there was a
21 serious situation in play, and that it was, effectively
22 you were getting out?

23 A. Well, I put it this way, sir, that --

24 307 Q. Was I correct in that that was your assessment?

25 A. Yes, sir. But I go on to say that, you know,
26 in - like, from my point of view, our point of view,
27 looking at the state of play when that letter, memo,
28 there was still litigation going on between the
29 parties.

30 308 Q. Sure, that had been going on since '85?

1 A. I know, but if you were trying to do a deal, sir, with
2 a third party for a part of this --

3 309 Q. Sure, you are only talking about putting up monies for
4 by-law approval and planning?

5 A. Yes, but I just say to you, sir, that in the normal
6 course of events that you were looking - it wouldn't be
7 deemed that it was the right time to be realising on
8 a - that it wouldn't be that easy to realise, in part
9 or whole, the asset, with those claims hanging over it,
10 sir.

11 310 Q. But, it seemed that certainly from the letter of 28th
12 September, '89, which is at page 1370, that the
13 contract for the sale to Kilnarnagh had been rescinded
14 on the 10th February, 1989. Do you see that? In
15 relation to the Kilnarnagh contract.

16
17 "I have since looked up my file and see that a decision
18 to rescind that contract was taken at a meeting in John
19 Caldwell's office on the 10th February, '89. The The
20 rescission of this contract was necessary for the
21 proposed sale of the lands at the time to the Dun
22 Laoghaire Corporation."

23
24 Do you see that?

25 A. Yes.

26 311 Q. So - and then, when you go to Clause 5 of the memo,
27 which is on page 1608 you go on there:

28

29 "The taxation situation was mentioned and Mr. McGowan
30 said that an interesting possibility arises as a result

1 of the tax losses in Kilnarnanagh Estates. He
2 understood from Hugh Owens that these would be in the
3 region of ú5m and ú6m, and if this company could in
4 some way be used having been restructured it could
5 result in the shareholders receiving considerably
6 enhanced benefits from the development. It was
7 accepted that the Allied Irish Finance claim against
8 Kilnarnanagh Estates would, of course, have to be
9 resolved. Mr. McGowan referred to the contract
10 completed many years ago between the company and
11 Kilnarnanagh Estates Limited, which contract was never
12 proceeded with. Michael O'Shea stated that that
13 contract was rescinded when the company proposed to
14 sell its lands to the Dun Laoghaire Corporation, but
15 that it might be possible, if all of the parties agreed
16 to restore this contract on being satisfied that the
17 difficulties of Kilnarnanagh Estates had been resolved
18 and being satisfied on the taxation benefits."

19
20 So it seemed there, what was going on, at least in
21 September of '89, was that the sale to Kilnarnanagh
22 might go ahead. That's what you were talking about,
23 not about you getting out or selling your shareholding?

24 A. Well, I think, as I say, all people were partners at
25 the time, and here are the discussions - like, there
26 were many discussions all along the way of what might
27 or might not happen.

28 312 Q. But the fire sale issue that you said to Mr. Hanratty,
29 that doesn't seem anywhere on the horizon here?

30 A. What date is on that letter again?

1 313 Q. 28th September, 1989. So this would have been a day
2 or two before that, because what the 28th - the 28th
3 September, '89 letter is at page 1370. And that says:
4 "I enclose minutes of the meeting held in John's office
5 on Monday last," John being you. And as we can see
6 from the heading on the minutes themselves at page
7 1607, "Minutes of meeting of the representatives of the
8 shareholders of Canio Limited held at 17 Merrion Row."

9 A. Yes, sir. I think you asked me there what about the
10 fire sale situation, and the situation there was, sir,
11 that things seemingly progressed or whatever, or went
12 on after that, sir, when it was mentioned that - I
13 think a shot out of the blue came later, that Mr. Noel
14 Smith was going to buy the, take over the mortgage.

15 314 Q. Well, you had said to Mr. Hanratty that you would have
16 been less concerned about the fire sale had you known
17 that there was a guarantee in favour of the Lombard and
18 Ulster loan given by Messrs. Brennan and McGowan. And
19 the Tribunal is aware that there has been proceedings
20 out on the guarantee against Mr. Brennan commencing
21 with the initial letters of demand in 1989.

22 A. Yes, sir.

23 315 Q. So - and as I understand --

24 A. I was less concerned, but I was still concerned at this
25 stage now, the - we have another, yet another situation
26 which was kind of foreign to me at the time that - the
27 fact that I had, because I had never heard of a loan
28 being like this, the bank selling on like this. It
29 wasn't a day-to-day occurrence, and if Mr. Noel Smith,
30 who was a property man, got it, that there might be, it

1 would be more difficult to do any transactions.

2 316 Q. Well, I don't think - am I correct in this,

3 Mr. Finnegan, I don't think anybody in any of the three

4 parties ever contested Lombard's entitlement to its

5 loan and repayment of its loan, did they? The

6 facilities that Lombard been advanced?

7 A. No.

8 317 Q. So whether the mortgage had been sold by Lombard and

9 Ulster to a third party or not, the Lombard and Ulster

10 loan was always something that you knew of and agreed

11 you were bound by. So --

12 A. Yes - well, I think --

13 318 Q. Maybe this is straying off into --

14 A. I think that one thing that was sort of known over the

15 years, property people, if you have - if you have a

16 facility with a bank, or you have a relationship with a

17 bank over a number of years, that you usually have a

18 much better chance of what we would call a "work out"

19 of some kind or another.

20 319 Q. And you felt that mightn't be forthcoming if somebody

21 else got a hold of the mortgage?

22 A. I think it's a different --

23 320 Q. A different ball game?

24 A. A different ball game, sir.

25 321 Q. In any event, it seems that whatever the state of

26 affairs that unfolded subsequently, the extent of what

27 you were talking about in September of '89 was what

28 costs would be incurred to get the planning and by-laws

29 sorted and, in fact, releasing some of the monies by

30 going through with a contract for sale of some of the

1 property to Kilnamanagh Estates. That seems to be --

2 A. Yes, but I think there were a number of discussions
3 taking place of various things, various propositions
4 along the lines, sir, which ended up with what we were
5 talking about, the negotiations --

6 322 Q. For the sale?

7 A. -- for the sale.

8 323 Q. You are saying this third party was introduced at some
9 stage. When was that introduced? When was it he
10 introduced the prospect of the sale of the mortgage?

11 A. Oh, I recollect somewhere in around, I think November,
12 still a hell of a long time ago, but I think it was.
13 Not that long before we got into serious negotiations.
14 I think it's on the file somewhere, his --

15 324 Q. Whose file?

16 A. No, but I think it's here, the letter - the thing about
17 Mr. Noel Smith.

18 325 Q. Well, Mr. Hussey may be able to, in due course, bring
19 you around to that.

20 A. Right.

21 326 Q. The next event that seems, from my perusal of the
22 documents, seems to be that the discussions in relation
23 to the sale of your interest seems to have come about
24 at some date proximate to, or just prior to the 29th
25 November, 1989, because there is a handwritten memo of,
26 I understand it to be Mr. O'Shea at page 1374.

27

28 MR. HANRATTY: I think that's Mr. McGonagle, actually.

29

30 327 Q. MR. HAYDEN: Sorry, Mr. McGonagle. Your solicitor's,

1 in any event. I thought it was - you see that, up on
2 the top right-hand corner?

3 A. Yes, I do, sir.

4 328 Q. And this is a handwritten note of a discussion held
5 between Mr. McGonagle and Mr. Traynor as to how, and in
6 what fashion the sale of the shares was to take place.

7 Sale of your interest was to take place. That seems
8 to be the case. You see, "Foxtown contracts with X
9 Limited to give option to buy the one third
10 shareholding." You see all of that on the left?

11 "Option 2: Costs."

12

13 So there is just the handwritten notes as to the
14 mechanism?

15 A. Yes, sir.

16 329 Q. And obviously that seems to be an indication as to the
17 fact that there has been agreement reached between you,
18 and that there is to be a sale?

19 A. Oh, I think that there is, there is no doubt there was
20 very serious negotiations on --

21 330 Q. But this seems to be a suggestion of how a mechanism
22 can be put in place to effect a sale of your one-third
23 share to what ultimately became Rush Cliff, but this is
24 the template as to how the sale was to happen, and it's
25 been advised to Mr. McGonagle, he talks of the call to
26 Mr. Traynor.

27 A. Yes, sir.

28 331 Q. So, by the time this document comes into existence, you
29 seem to have gone a good distance toward reaching an
30 agreement with Messrs. Brennan and McGowan --

1 A. Yes, sir.

2 332 Q. -- to sell your shares. And if you can just help me:

3 At page 1371, there is a letter of the 6th October,
4 1989, from Sovereign Management Limited to Mr. O'Shea
5 in Kennedy and McGonagle, which is giving details of,
6 to Mr. O'Shea of preliminary details as to Foxtown.
7 You see that?

8 A. Yes, sir.

9 333 Q. And that's the 6th October, '89. And was that done in
10 contemplation of the sale?

11 A. It could very well be, sir.

12 334 Q. It seems, I don't wish to - I mean, Mr. Naylor is your
13 representative, but if you look at the next page,
14 "We confirm that we have no" - it gives the
15 shareholders. It gives the directors. Sorry, over the
16 page, 1371, it identifies, "The above shareholders are
17 holding the shares as nominees for Sovereign Trustees
18 Limited as Trustees of The Amber Trust."

19
20 So the structure was being identified. Foxtown is
21 held by Amber Trust. "Amber Trust is a discretionary
22 trust" and it identifies, "The current beneficiaries
23 are charitable institutions. The trustees have the
24 power to remove and appoint additional beneficiaries at
25 their discretion."

26
27 Then it goes on:

28
29 "We confirm that there has been no recent changes in
30 the Register of Beneficial Shareholders, nor have any

1 further shares been issued by the company.

2

3 "We further confirm to the best of our knowledge and
4 belief, Foxtown has no involvement of any kind with the
5 other shareholders."

6

7 So it seems to be an identification of the information
8 necessary --

9 A. Yes, sir.

10 335 Q. -- for Mr. O'Shea, in due course, to put together the
11 agreement?

12 A. Yes, sir.

13 336 Q. And that's on the 6th October, that letter.

14 So obviously that would have only happened as a
15 consequence. It says: "I refer to our telephone
16 conversation earlier today".

17

18 So what happened between the 28th September and the 6th
19 October that propelled you into now seeking details and
20 setting about the putting in place of a mechanism to
21 effect the sale of your shareholding?

22 A. I think there were certainly ongoing --

23 337 Q. Well, it didn't seem to have started at the meeting on
24 the, on or about -- before the 28th September. I am
25 not sure what day of the week the 28th September, '89,
26 was, but the notes of the meeting are referred to as
27 being a meeting on "Monday last". That's the cover
28 letter of Mr. - of Kennedy McGonagle on page 1370.

29 So, I mean, that would have been a day or two perhaps
30 before the 28th.

1
2 So it seems between the 28th September and the 6th
3 October, you have gone from, "We'll all have to put
4 some money in to get the planning right and maybe
5 reactivate the Kilnamanagh contract" to a situation
6 whereby you set in train getting the information
7 together to effect a share sale. So, can you tell us
8 at all what it was that happened or what happened in
9 between?

10 A. What?

11 338 Q. What made you change your mind?

12 A. About?

13 339 Q. Between the end of September and the 6th October to
14 tell Mr. O'Shea to get on to Sovereign Management
15 Limited to get the details of Foxtown for the sale?

16 A. Well, first of all, sir, as I said before, this did
17 happen a hell of a long, long time ago. I can't
18 remember what was the actual lead in to that, sir, but
19 it does look as though there was some proprietary work
20 being done.

21 340 Q. If this was a fire sale, as you say, and it's the
22 evidence of Mr. Brennan that you got the value for your
23 shareholding, are you saying you took less than the
24 value of your shareholding to effect the sale?

25 A. I am saying, sir, that the position at the time of
26 this, that I had no other avenue to explore for the
27 realisation of a minority interest in this. There was
28 still litigation, though people were still confident
29 that things would be sorted out. I was told that the
30 bank were foreclosing when it came up to the final

1 crunch --

2 341 Q. When were you told that?

3 A. When we got down to - when we were down at the - when

4 we were actually carrying out the negotiations, Mr.

5 Michael O'Shea was as well --

6 342 Q. This is all circular, Mr. Finnegan.

7 You are saying when it came down to the crunch you were

8 told it was foreclosed, but at a meeting at which the

9 minutes are taken by Kennedy McGonagle, there is no

10 reference to any of this. What there is reference to

11 is the costs of getting by-law approval, and planning,

12 and the costs - and the potential benefit of going

13 through the sale to Kilnarnagh that had been executed

14 previously.

15

16 MR. HUSSEY: I am sorry, Sir. We have also seen a

17 handwritten memo from Mr. McGonagle talking about the

18 banks fighting over --

19

20 MR. HAYDEN: This is giving the witness answers.

21 .

22 MR. HUSSEY: It's been up on the board two minutes ago.

23

24 MR. HAYDEN: Mr. Finnegan is being asked about a

25 sequence of events, which now Mr. Hussey has kindly, on

26 behalf of Mr. Finnegan, come in to give Mr. Finnegan,

27 presumably, the cue as to where to go next.

28 .

29 MR. HUSSEY: Absolutely not.

30

1 CHAIRMAN: Please, these are matters to be cleared up
2 in re-examination.

3

4 343 Q. MR. HAYDEN: So, Mr. Finnegan, at or on the 28th
5 September, there is events discussed. You have told us
6 a moment ago that when it came to the crunch you were
7 told the bank would foreclose. That is, presumably,
8 something that you would have discussed at the minutes
9 of the meeting, if that had happened, in September?

10 A. Yes, I don't think it had happened then, sir.

11 344 Q. So, are you saying that that event, that the threat of
12 foreclosure happened somewhere between the 28th
13 September, 1989, and the 6th October, 1989, by which
14 stage Sovereign Management were being contacted to get
15 the details for the proposed sale of shares?

16 A. I am not quite sure whether it came during the course
17 of those negotiations or at the latter end of them,
18 sir. But I certainly --

19 345 Q. But it wasn't the start - it wasn't the cause of the
20 start of the negotiations?

21 A. No, sir.

22 346 Q. All right. Sorry, that's what I thought I understood
23 you to say as to what propelled you into a new modus
24 operandi. You indicated that you thought Mr. Brennan
25 was in financial problems. You are aware, or are you,
26 of the existence of the guarantee proceedings against
27 him?

28 A. Sir, it was they told me.

29 347 Q. So that being said, the very position you had indicated
30 to Mr. Hanratty yesterday, or the day before, that had

1 you known of the guarantees, you would have been less
2 concerned, doesn't seem to bear up with what you are
3 now telling us, because you are now telling us you did
4 know that Lombard and Ulster were suing Mr. Brennan on
5 his guarantee, so therefore, where was the concern that
6 propelled you into the fire sale?

7 A. Maybe that's what they meant - just going down through
8 it --

9 348 Q. It can't be both answers, Mr. Finnegan.

10 A. Sorry?

11 349 Q. It can't be both answers. It can't be that what
12 propelled you into the fire sale would be lessened as a
13 concern if you had known about the guarantees. At the
14 same time you can't tell the Chairman that you knew the
15 proceedings had been brought against Mr. Brennan on the
16 guarantee. Both can't be right.

17

18 MR. HUSSEY: I am sorry, sir --

19

20 MR. HAYDEN: This is cross-examination.

21

22 MR. HUSSEY: Sorry, that is not the evidence that

23 Mr. Finnegan has given. Mr. Hayden had put to

24 Mr. Finnegan, "If you were aware of the proceedings" --

25

26 MR. HAYDEN: No, Sir, Mr. Finnegan said he was aware.

27 .

28 MR. HUSSEY: No, Sir, he didn't say that.

29

30 MR. HAYDEN: You will have to look at the evidence in

1 the due course. I don't mean it in that sense, you
2 will have to see the evidence and the answers this
3 witness has given.

4
5 I must say, if Mr. Hussey is intending to interject
6 every time we get to a difficult question for his
7 client, then this is going to become quite difficult.
8 He may not like the questions, but unfortunately for
9 him, the questions I submit are proper questions.

10

11 CHAIRMAN: Carry on.

12

13 350 Q. MR. HAYDEN: Thank you, Sir.

14 .

15 Mr. Finnegan, which of the two statements are correct?

16 You did know there was guarantees or you didn't?

17 A. That he did guarantee it?

18 351 Q. Yes.

19 A. As far as I recollect, what I know now and what I knew

20 then, that I knew that we heard afterwards, sir, that

21 there were two - both Mr. Brennan and Mr. McGowan had

22 guaranteed the loan.

23 352 Q. Is this a third version that you heard afterwards, that

24 they had guaranteed the loan? I asked you a

25 straightforward question, I thought.

26

27 Which of the two versions is it? Did you know of the

28 guarantees before the 6th October, 1989, or not? Did

29 you know of the proceedings brought by Lombard and

30 Ulster against Mr. Brennan before the 6th October or

1 not?

2 A. I am not quite sure, sir.

3 353 Q. I think things moved along on this - I think to use

4 your own phrase, "fire sale"?

5 A. Yes, sir.

6 354 Q. And obviously, if I understand the phrase correctly, a

7 fire sale is something that you wish to get - because

8 of events you wish to get it sorted out quickly and

9 done quickly?

10 A. It's an expression - it's a description of something

11 that has to be done urgently, sir.

12 355 Q. When did the sale close?

13 A. I think December, I think, sir.

14 356 Q. What year? 1990?

15 A. 1990, I think it was.

16 357 Q. Hardly a bush fire. This started in October '89,

17 something that you say was being - was urgent,

18 imperative, had to get out quickly. "I therefore had

19 to take whatever was on offer"?

20 A. I think the deal was done in '89, sir.

21 358 Q. Deal done or not, you hadn't your money?

22 A. No.

23 359 Q. And until you have your money, there is - I don't think

24 I need to tell an auctioneer that, until you have your

25 money, the house ain't sold, isn't that correct?

26 A. That is correct.

27 360 Q. Anything could have happened in between that that could

28 have prevented the sale of the shares to the extent of

29 the assets foreclosed and the mortgage, the events that

30 you say were exercising your - propelling you into a

1 sale could have all happened in the fifteen months that
2 elapsed between the day you say it started, some day
3 after the 28th September, '89, and the day it finished?

4 A. I think perhaps, sir, that the fact that there was
5 agreement to do a deal enabled the others, sir, to put
6 their house in order to complete the purchase, sir.

7 361 Q. Sorry, I understood you to say that on the - well, at
8 that meeting referred to in the minutes, accompanying
9 the letter of the 28th September, '89, we are talking
10 about by-law approval, planning, perhaps a mechanism
11 whereby the contract for sale to Kilnarnagh could be
12 completed. We then get to the 6th October, where
13 things have changed, because you say - because it's the
14 start, clearly, of information being sought to put
15 together the agreement, which we have the bones of in
16 the handwritten note of Mr. McGonagle on the 29th
17 April, 1989?

18 A. Yes, sir.

19 362 Q. But you do not get money. The sale of the shares do
20 not take place until December, 1990. Isn't that
21 correct?

22 A. Yes, sir.

23 363 Q. So if Lombard and Ulster, or any third party had sought
24 to foreclose on the mortgage, well that was that. The
25 land was gone. Wasn't it?

26 A. Yes, sir.

27 364 Q. Your assets, or the assets supporting your
28 shareholding, gone?

29 A. Yes, but I think when you go back to that now, it was a
30 question of Grange did buy it out, sir.

1 365 Q. Don't worry about that. Isn't the issue this: That
2 if, as you say this was a fire sale, would you not want
3 to have it done quickly?

4 A. Yes, and --

5 366 Q. Are you telling us that fifteen months is quickly?

6 A. Of course, you see they didn't perform.

7 367 Q. Sorry, who didn't perform?

8 A. They didn't complete the - the purchasers didn't
9 complete.

10 368 Q. Mr. O'Shea is the one that's putting together the
11 documentation for all of this. We have Mr. Naylor's
12 letter - you are in such a rush to get to the answer to
13 all of this that Mr. Naylor writes to Mr. O'Shea on the
14 10th September, 1990, which is at page 1385, giving the
15 details of what turned out to be the document at page
16 1403, which is the proposed sale by Foxtown of its
17 shareholding in Ardcarn?

18 A. Yes, sir.

19 369 Q. So where are Messrs. Brennan and McGowan in this
20 delaying things, when Foxtown's own individuals, own
21 representatives -- if you are correct in saying that
22 you wanted this deal done quickly, and it was a fire
23 sale and everything had to happen over a short space of
24 time, why is it that Mr. Naylor only is asked to give
25 the information on the 27th August, 1990? And the
26 reply comes back on the 10th September, 1990. And
27 that's at page 1385.

28

29 You see the start of that, "With reference to your
30 letter of the 27th August, 1990."

1 A. Yes, sir.

2 370 Q. So, where is all that - where does all that leave us?

3 A. Well, where it leaves us, sir, that the
4 purchasers - the deal was agreed, as I see, and - but
5 it wasn't completed, and I put it, sir, that the, it
6 must be at that stage that the - they weren't in a
7 position to complete.

8 371 Q. Well, you see, on the 5th October, 1990, you write to

9 Mr. Naylor -- this is a draft letter, maybe it never
10 went. Certainly it shows your frame of mind - 1384.
11 Do you see that?

12

13 "I am writing to you to confirm the arrangements for
14 the retainer of my firm to advise you and your clients
15 in connection with the development and/or sale of
16 building land at Sandyford, County Dublin, Ireland.

17

18 "I understand that your clients have a one-third
19 interest in Canio Limited." Your clients being
20 Foxtown?

21 A. Yes, sir.

22 372 Q. This is your letter to Mr. Naylor.

23 A. Mmm.

24 373 Q. "I understand your clients have a one-third interest in
25 Canio Limited, the company which is freehold owner of
26 the land. AS you know, we have done a considerable
27 amount of work in investigating the development
28 potential of the land in question."

29

30 Nothing in there suggesting any degree of urgency or

1 momentum, or a fire sale?

2 A. Well, sir, at that particular time, things didn't go
3 away. There was litigation between the parties. It
4 was far from a happy camp; that the - there is a
5 situation where we have banks fighting over the exact
6 situation or who is the - who has the charge. It was
7 hopeful that it would have been resolved, but it
8 wasn't.

9 374 Q. I accept that that is a sequence of events that
10 occurred, in the sense that the background information
11 is to that effect. Why I am asking you about this, and
12 perhaps I am unclear in it, is that you indicated to
13 Mr. Hanratty that you wanted to get out of Canio in a
14 fire sale situation. In other words, there is
15 something propelling you to leave urgently, as distinct
16 from disengaging in due course?

17 A. All right, sir, well let's just look at the situation
18 then.

19 375 Q. Let's look at the answers you have given. You did say
20 to Mr. Hanratty that it was a fire sale, and what I am
21 asking you to explain to the Tribunal, and to the
22 Chairman, is why, if it was a fire sale, starting as it
23 did at some time between the 28th September, 1989, and
24 the 6th October, 1989, we are ambling along with this
25 correspondence which doesn't suggest any of the
26 immediacy or urgency that you are now suggesting in the
27 year 2001 was what was causing you to do things the way
28 you did them?

29 A. All I can say to you, sir, is this: that coming up to -
30 you know, we all have this thing of trying to - the

1 eagerness to get up there and do a deal. These were
2 things which were put in front of me when we were
3 coming around to conclude a deal that there was this --
4 you are remembering actually what was put forward to me
5 was put forward by Messrs. Brennan and McGowan, of the
6 situation worsening, that they had the word from
7 Lombard and Ulster that they were going to sell on the
8 loan.

9 376 Q. That didn't happen, you said a few moments ago,
10 Mr. Finnegan, until into the negotiations or into
11 the - towards the end of the negotiations?

12 A. Yes, sir.

13 377 Q. So that wasn't what moved you on to the sale, is it?

14 A. Well, I think it was an unsatisfactory situation, sir,
15 having banks, having a situation arising which stemmed
16 from a charge, or a purported charge many, many years
17 ago being given without authority.

18 378 Q. Sure, the litigation in all of that was in existence
19 since 1985. Isn't it the case it was in existence
20 certainly in September 1989 when you were talking about
21 developing the site?

22 A. I think that's all going forward and hoping that things
23 would work out, sir. But I think that there is also -
24 all the time, there was this underlying situation where
25 there was litigation over the title. Now, that's not
26 a happy situation, and I'd put it to you, sir, that if
27 you were going out to try and sell to - your interest
28 to a third party, that would not be a situation where a
29 purchasing lawyer would be advising his client to go
30 ahead. So it - when I say "fire sale", sir, it would

1 mean that the restricted - you were restricted in the
2 person with whom you could do business for a sale.

3 379 Q. That's - I asked you what you meant by "fire sale"
4 before I started all this, and you said you wanted to
5 get out quickly. That's what you said you understood
6 it to mean. That's what I thought it means. Are you
7 telling us now it means you could only sell to a few
8 people?

9 A. I am telling you very definitely, where you were going
10 out to put that into the market --

11 380 Q. Mr. Finnegan, I have to put to you that there was no
12 such thing as a fire sale, as you say. You wanted to
13 realise your interests, it's as simple as that. You
14 wanted to move on. Nothing to do with fire sales.
15 Nothing to do with anything propelling you, forcing you
16 into a sale?

17 A. I say, sir, it was very definitely the state of affairs
18 brought about my doing -- There was still litigation
19 with banks over title, and you would say that would be
20 very hard to deal with anybody outside the loop.

21 381 Q. Well, you are saying this was done without your
22 knowledge or doing. As you rightly - sorry, as you
23 indicated before lunch today, you confirm that
24 Mr. Russell was aware of your involvement in this from
25 the very outset in Canio, and are you saying that in
26 1981 when he signed that undertaking, he did so without
27 taking due interest or note of your entitlements?

28 A. Yes, sir.

29 382 Q. And ignoring you?

30 A. Yes, sir.

1 383 Q. So effectively, Mr. Russell was taking - was doing that

2 without any reference to you good, bad or indifferent?

3 A. Yes, sir.

4 384 Q. And why would he do that?

5 A. I don't know, sir.

6 385 Q. So now we have a situation, Mr. Finnegan, where

7 Mr. Russell has done something without your clearance.

8 Mr. Owens has done something without your clearance.

9 You have indicated in the first days in the witness-box

10 that you are going to have words with Mr. O'Shea, and

11 obviously Mr. Brennan and Mr. McGowan are doing things

12 without your clearance, and Mr. Wheeler is doing things

13 without your clearance. It's beginning to sound a bit

14 like Shakespeare: "A man more sinned against than

15 sinning".

16 A. No, sir. I am saying to you what is the truth.

17 386 Q. There doesn't seem to be anybody in this --

18 A. What I am saying to you sir; there was the question of

19 - you asked me about the charge in the first instance.

20 I didn't know about that charge, sir, and I was not

21 informed, and even none of my - none of my people knew

22 about it. That is the position, sir. I didn't know

23 about it.

24 387 Q. And you can't offer any explanation as to why

25 Mr. Russell would do that without reference to you?

26 A. No, sir.

27 388 Q. I think Mr. O'Shea put together the memorandum on page

28 1403, which, as we know, is garnered from the

29 information furnished to him on the 10th September,

30 1990, from Sovereign Trustees, Mr. Naylor's letter.

1 And that was at page 1385. But there is no need to go
2 on to 1385. Just stick on 1403. And that goes through
3 the issues. I don't wish to delay unduly with it, but
4 it does two things in relation to what Mr. O'Shea was
5 told. And I presume you'd seen this, and you were
6 happy that that accurately reflected the position?

7 A. You know, again I'd have to say to you, sir, it's a
8 long, long time ago, but at the time I probably --

9 389 Q. But you've been coming up to this question for the last
10 three weeks, so I am sure you have read it since you
11 came up there.

12

13 Are you telling me now that this is not a document
14 which you have gone over a few times? Does it
15 accurately reflect your understanding of what the
16 position was in 1990?

17 A. Yes, sir.

18 390 Q. And you see there, where it says at paragraph 4:
19 "I am not aware of the full purchase price paid by
20 Canio for the Irish property. However, it seems that
21 Stgú300,000 sterling was injected in December 1978 into
22 a company called Greentrees which in turn lent this
23 money to Canio Limited in May 1979. In February '80
24 Foxtown lent ú50,000 to Canio and in November 1980 lent
25 a further sum of ú70,000. Both these payments were in
26 Sterling. These last two payments were matched by
27 loans by the other two shareholders in Ardcarne and it
28 is assumed that the 300,000 was contributed equally by
29 the three shareholders in Ardcarne."

30

1 Just so that I understand what your position is in
2 relation to this, because Messrs. Brennan and McGowan
3 felt that each contributed an equal contribution to the
4 Sandyford lands.

5 A. Mm-hmm.

6 391 Q. Green Trees gave the 300,000, the initial 300,000.
7 That seems to be the case, and then there was
8 additional monies furnished by the three parties. You
9 recollect Mr. Barry, in 1984, looking for a breakdown
10 of the 663, and Mr. Owens giving him the answers to
11 that? We were at it before lunch. Do you remember
12 that?

13 A. Yes, sir, that - yes, sir.

14 392 Q. And it seems, then, that if you look at page 1404, at
15 Insert 7(2), a letter from Sovereign Trustees, that it
16 has no claim against Ardcarn and no claim in respect of
17 100,000 lent to Green Trees.

18 A. Yes, sir.

19 393 Q. Doesn't this seem to be Mr. O'Shea, as is proper,
20 ensuring that there is no call on any further monies
21 from Green Trees, at least in relation to your
22 one-third share of it?

23 A. Yes, sir.

24 394 Q. So as I understand it, was it not the case that the
25 ú300,000 that was lent by Green Trees arising out of
26 the Hill Samuel loan, was going to have to be repaid
27 out of the profits of this site, so whether you had put
28 up the ú100,000 or not, the monies that were advanced
29 by way of loan were going to have to come off the top,
30 each of you to contribute one-third?

1 A. I can't follow that.

2 395 Q. Green Trees wasn't the company you had a shareholding
3 in?

4 A. Sorry?

5 396 Q. You didn't have a shareholding in Green Trees?

6 A. That's right.

7 397 Q. They provided 300, but had to be paid?

8 A. Yes, sir.

9 398 Q. The 300 had to be paid back as to one-third each to
10 Foxtown, Kalabraki and Gasche?

11 A. Right, sir.

12 399 Q. Both by combination of that and the monetary
13 contributions?

14 A. Yes, sir.

15 400 Q. Each of you put up a third?

16 A. Yes, sir.

17 401 Q. Each of the three companies?

18 A. Yes, sir.

19 402 Q. And that's in keeping with what Mr. O'Shea is saying in
20 paragraph 4 on page 1403.

21

22 "These last two payments were matched by loans by the
23 other two shareholders in Ardcar, and it is assumed
24 that the €300,000 was contributed equally by the three
25 shareholders in Ardcar."

26

27 And then we go onto the next section. And Mr. Hanratty
28 has gone, in some detail, as to the loan versus the
29 investment.

30 .

1 But the 6,426 clearly wasn't a loan. It was one of
2 the original distributions, isn't that correct?

3 A. One of the?

4 403 Q. You see, Mr. O'Shea got into quite an amount of detail,
5 in fairness, down to the extent that out of a
6 transaction involving - as I understood your position
7 to be, "Forget about the ú10,000, forget about the
8 ú30,000, forget about everything, I have to sell this
9 land. I have to sell it quickly." And you had agreed
10 the number is ú700,000, "regardless of whether I had
11 ú10,000 on deposit previously or not."

12 A. You said that fairly quickly.

13 404 Q. As I understood your position to be in reply to Mr.
14 Hanratty, the ú700,000 that you had agreed for your
15 shareholding was to take into --

16 A. It was --

17 405 Q. Doesn't matter, whatever is out there was out there?

18 A. It was a package deal.

19 406 Q. But it seems, when one looks at the memo of Mr. O'Shea,
20 that that's not the way he was approaching it. In
21 fact, he was getting down to very specific detail, that
22 when we are talking about figures of ú700,000, he was
23 exercised in ensuring that that sum of ú6,426 was going
24 to be accounted for. Isn't that correct?

25 A. I see that, sir.

26 407 Q. Isn't that entirely at variance in relation to what you
27 are now suggesting the case to be, that you took a
28 job-lot, the ú700,000, have done with it, problems and
29 all?

30 A. As far as I was concerned I was taking a job-lot, and

1 it was everything included, and these are - these are
2 things that came up. I don't quite follow it, sir, but
3 you can take it, as far as I am concerned, that it was
4 a job-lot.

5 408 Q. You weren't telling Mr. O'Shea to follow-up this ú6,246
6 - you weren't telling him that at all?

7 A. He must have felt that that was a necessary thing to
8 do.

9 409 Q. Well, he had hardly - sorry, Mr. Finnegan, let's be
10 clear: Mr. O'Shea was hardly going to come up with
11 this as a problem unless he saw it --

12 A. I am not saying --

13 410 Q. Unless he discussed it with you?

14 A. I am sure he did, I didn't remember.

15 411 Q. And you must have told him, "That's right, I got an
16 over-payment", or what did you tell him?

17 A. Well, I can't recollect, sir, what was said at that
18 particular time.

19 412 Q. Why didn't you tell them, "By the way, there was
20 ú10,000?" I mean, forget about the Minute I put to you
21 before where you seem to have forgotten completely
22 about the ú30,000 to be retained for by-law and
23 planning and architects. Here we have a second
24 scenario, a second situation a year later, back to the
25 same position, "By the way, bad luck, you owe back
26 ú6,426, what will we do?"

27

28 Why, at that stage, did you not say, "Don't worry about
29 that, there is ú10,000 that I had left on deposit back
30 in '84"?

1 A. I think, sir, one way or another, this thing and this
2 is not my forte, but it came in somewhere like, that
3 the question of whether it was a loan, or a loan to one
4 of the parties of the trust, or whether it was - that's
5 where this scenario came up, sir. And there seemed to
6 be a balancing --

7 413 Q. It could only have come up by Mr. Naylor ignoring the
8 documentation that was on the file, or not furnishing
9 the information to Mr. O'Shea, whichever - presumably,
10 did you speak to Mr. Naylor to tell him to give the
11 information to Mr. O'Shea?

12 A. I don't remember, sir.

13 414 Q. I mean, presumably Mr. Naylor would furnish all the
14 information on his file, if he was asked to do so by
15 Mr. O'Shea. And on that file there would have been the
16 memo of the - telex of the 21st from Mr. Wheeler to Mr.
17 Barry saying there is \$10,000 retained on deposit.
18 So, presumably Mr. Naylor would have given that
19 information, if he was so instructed to give that
20 information by you to Mr. O'Shea?

21 A. Well, I don't know how that quite came about --

22 415 Q. I presume you would accept that, that if Mr. Naylor was
23 told to give all of the information to Mr. O'Shea, he
24 would have done so?

25 A. Well, I'd say, sir, that Mr. O'Shea was in contact with
26 Mr. Naylor --

27 416 Q. Well, let's be honest. You can't say Mr. O'Shea could
28 have known about the \$10,000 unless you told him,
29 because the telex was as between Mr. Wheeler and Mr.
30 Barry, and the confirmation was as between Mr. Owens

1 and Mr. Wheeler. So Kennedy McGonagle and Mr. O'Shea
2 certainly, on their file, at least from the
3 documentation we have, would not have known of the
4 ú10,000 retention, your one-third retention. And
5 certainly, when it came to that meeting between you and
6 Mr. O'Shea and Mr. Brennan and Mr. McGowan in September
7 '89 where you are actually talking about what this
8 retention was supposed to be for, you make no mention
9 of any retention monies.

10

11 So how would Mr. O'Shea come to know about this
12 ú10,000, unless you told him, or unless Mr. Naylor told
13 him?

14 A. This is around the sale time, isn't it, sir?

15 417 Q. This is in 1990, September' 1990, yeah.

16 A. Yes. But as I said, the deal that I did, sir, was a
17 package deal, and in my opinion --

18 418 Q. You and I both know that's not the question I am
19 putting to you. The question I am putting to you, Mr.
20 Finnegan, is how would Mr. O'Shea have known of the
21 ú10,000, unless you told him, or Mr. Naylor told him?

22 A. How would Mr. O'Shea have known?

23 419 Q. Yes. He wouldn't have known. He couldn't have known
24 unless you told him, or Mr. Naylor told him, isn't that
25 correct?

26

27 There is no records in Kennedy McGonagle that show that
28 they ever knew there was a ú10,000 retention from that
29 money on the 21st November, 1984. The only place such
30 documentation exists is in College Trustees, Sovereign

1 Management as they now are, or in your head?

2 A. Yes, sir.

3 420 Q. They are the only two places?

4 A. Yes.

5 421 Q. Did you tell Mr. O'Shea about the €10,000?

6 A. Well, I would have - at that particular time, I would
7 have thought that --

8 422 Q. We'll make it easy, any time before this Tribunal
9 started?

10 A. Again, this, sir - I wasn't paying that much of
11 importance to this around the time, it seems to be very
12 important now, but it's a long time since the retainer,
13 sir. That's five or six years, isn't it?

14 423 Q. Can I say this to you - it certainly seemed to be of
15 major concern to Mr. O'Shea, and rightly so, because he
16 was being told the position by Mr. Naylor and you,
17 because as I asked you already, did this memo
18 accurately reflect your understanding of the position?
19 So you have certainly seen this document and it
20 accurately reflected your understanding of what it
21 meant?

22 A. Yes.

23 424 Q. So certainly both you, and as far as Mr. Naylor - Mr.
24 O'Shea was aware, you had received €6,426 too much, and
25 you were going to have to pay it back or reach an
26 agreement whereby there was going to be a forgiving of
27 this by Ardcar, which is Clause 7.

28

29 "The vendor will require a release by Ardcar the loan
30 of €6,426."

1
2 Now, that doesn't end there, because that converted
3 itself into an actual letter on the 20th March, 1991,
4 to Mr. Des Traynor, page 1131, and at page 1132, where
5 he says - where Mr. O'Shea to Mr. Traynor says the
6 following - and it's a letter dated the 20th March,
7 1991. On page 1132.

8
9 "David Naylor has set out certain of the financial
10 transactions in earlier correspondence which you have.
11 You will see from this correspondence that Foxtown has
12 been repaid the loans made earlier to Canio. This
13 repayment was made by Canio from the proceeds of
14 Canio's borrowings from Lombard and Ulster (Banking)
15 (Ireland) Limited. In fact, the net result of that
16 arrangement was that Foxtown owed Canio/Ardcarn ú6,426.
17 As part of the present transaction this small debt has
18 been forgiven."

19 .
20 So, even to the extent of what Mr. O'Shea thought on
21 the 20th March, 1991, and what he was indicating to Mr.
22 Traynor, he still laboured under the view that this was
23 a loan, and that there had been an overpayment of
24 6,426.

25
26 So why, at that stage even, did you not say, "By the
27 way, it's not a loan"?

28 A. I heard what you say, sir, and there was - there
29 appears to be a ferocious amount of fuss over the
30 ú6,000 at the time. But all I can say to you is that

1 it was a long time since the retention was over, and as
2 you can see by the magnitude, even meeting with Mr.
3 Brennan there, of what was proposed to spend on the
4 planning application. Well, the money, in my opinion,
5 would have been - well, I would have felt, was well
6 absorbed over that period --

7 425 Q. Mr. Hanratty tried in vein to try to find out from you
8 where the ú30,000 had been spent, the retention monies.

9 A. Yes. You will know from the way this whole case has
10 been going, sir, and all of this --

11 426 Q. Isn't that correct? You say that you understood, you
12 had a feeling, whatever, that that money was probably
13 gone. Mr. Hanratty tried in vein to identify where you
14 thought it had gone to, but leaving that aside, it's
15 not the ú10,000. Each of you were to contribute
16 ú10,000, which is ú30,000. Presumably you would have
17 wanted to ensure that you were only paying your one
18 share of those costs. So what you are saying -- what
19 seems to be -- what you seem to be saying is that
20 ú30,000 you assumed had gone between 1984 and 1989 when
21 we have that meeting --

22 A. And more --

23 427 Q. -- had gone and when that meeting happened in
24 September, '89, at your offices with Mr. O'Shea
25 present, and in fact what was going to happen is you
26 are going to have to put your hand in your pocket to
27 contribute another ú40,000 -- isn't that correct?

28 A. Yes, sir.

29 428 Q. And you had -- you made no mention of any of this, you
30 made no mention of any of this -- there is quite a

1 number of answers coming from my right -- if -- you
2 made no mention of it at any stage.

3 A. Mm-hmm.

4 429 Q. And you still have to explain to us why or in what
5 fashion it is that you didn't come to tell Mr. O'Shea
6 about the €10,000 and that being one third of the
7 likely costs and we have detailed documentation showing
8 discussions about €6,000, that you were going to have
9 to pay back. It seems to be entirely inconceivable
10 that you'd get into the level of detail on one side of
11 the equation and not on the other.

12 A. I understand what you are saying, sir. But all I can
13 say to you is this: that there does seem to be a hell
14 of a lot of detail about the €6,000 and going around
15 and around. What I can say to you is this: that in a
16 large track of land like this that fees are outlaid
17 sir, €30,000 wouldn't go anywhere towards the payment
18 of these sums --

19 430 Q. But nothing had happened on the site in the five years?

20 A. No, but, sir, the preparation for -- nothing had
21 happened, but, yes, well there was a lot of work still
22 being done.

23 431 Q. By who? In Sandyford?

24 A. Yes, sir.

25 432 Q. By who? Were there people out on the site working on
26 it?

27 A. No, sir. Not physical work on the site, sir, but by
28 professionals --

29 433 Q. But there is no invoices. There is nothing to show any
30 of this anywhere?

1 A. Well, you know, sir, it has come across that during all
2 of the discussions here, sir, that Messrs. Brennan and
3 McGowan were in fact running the company as if it
4 was --

5 434 Q. We are back to that then; it's theirs and they could
6 spend the 30 grand as they saw fit and you weren't
7 going to look for any details on it?

8 A. It was over a long period of time and we were partners
9 in the thing.

10 435 Q. You did say, Mr. Finnegan, as I understand it, although
11 you don't remember Mr. McGowan talking anything about
12 the contribution, you do remember the issue being
13 raised about, at the last minute, it was like a red rag
14 to a bull. That was your phrase in relation to this
15 money. And that seems to have gone from being a red
16 rag to a bull, to 'sure it doesn't matter, in not a
17 huge length of time'.

18 A. Well, sir, the position is this, as I have it: that
19 over that period of time, I would have expected that
20 would have been spent, well spent and an awful lot
21 more.

22 436 Q. Isn't the reality of it, Mr. Finnegan, that the reason
23 why you never raised it with Mr. O'Shea, or anybody
24 else for that matter, is that you knew that on the 21st
25 November, 1984, in accordance with your instructions, a
26 Mr. Wheeler had passed the monies on?

27 A. No, sir. That was not the case.

28 437 Q. And that given the circumstances as things then were
29 and particularly not seven days earlier when
30 Mr. Wheeler refused -- clearly identified that there

1 was no consent to the 20 being given, there is no
2 explanation that you can offer to say why he would,
3 seven days later do the very thing that he wouldn't
4 have done on the 14th November, namely, deduct monies
5 without your permission or consent?

6 A. Well, sir --

7 438 Q. And you never looked for those monies back again?

8 A. Sir --

9 439 Q. Isn't that correct?

10 A. The act did take place without my consent.

11 440 Q. As I have said to you a few moments ago, it seems
12 Mr. Owens did things without your knowledge; it seems
13 Mr. Russell did things without your knowledge; it seems
14 Mr. Wheeler did things without your knowledge; it's
15 taken as a given that Mr. Brennan and McGowan seem to
16 have done things without your knowledge because you
17 seem to say it all the time and you are -- it seems
18 that Mr. O'Shea, you are going to have words with as
19 you indicated the first few moments you were in the
20 witness-box. Who is left?

21 A. Sir, I wish to reiterate this: I did not -- I did not
22 give authority for any monies to be paid on my behalf
23 or otherwise to Fianna Fail or to Mr. Burke and that's
24 what's all coming out, sir. And I don't know
25 why -- not Mr. Barry, Mr. Thing did do that, paid over
26 the money but he certainly didn't do it with any -- by
27 any authorisation of mine, sir.

28 441 Q. Well, as we know, leave aside the amount, a fact of a
29 contribution isn't a matter that you'd object to. It's
30 this particular issue --

1 A. Sir, I have never made a contribution of anything of
2 that magnitude; anything that I had ever done before,
3 sir, was a very -- in the hundreds, sir, or giving
4 some, to a dinner or something like that.

5 442 Q. Sponsoring something,?

6 A. Yes, sir.

7 443 Q. Thank you.

8 .

9 MR. HUSSEY: Can I suggest, Sir, just a brief maybe
10 five minute break before we start?

11 .

12 CHAIRMAN: Certainly. I'll give you five minutes.

13 .

14 THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND

15 RESUMED AS FOLLOWS:

16 .

17 THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. HUSSEY: .

18 .

19 444 Q. MR. HUSSEY: Now, Mr. Finnegan, I'll be as brief as I

20 possibly can be and we'll try and get through this as

21 quickly as we possibly can.

22 .

23 It has been suggested to you at the very end of your

24 cross-examination by Mr. Hayden that you had

25 been -- your statement is that you had been misled by

26 both Mr. Brennan and Mr. McGowan, you had been misled

27 by Mr. Wheeler and you had been misled by Mr. Russell.

28 A. Yes, sir.

29 445 Q. Now, can I take each one of those in turn, just before

30 we proceed any further.

1

2 I think can I have document 734 please. Mr. Finnegan,
3 this is a handwritten memorandum from Messrs. Brennan
4 and McGowan to Mr. Smith of Lombard and Ulster, dated
5 24th October 1984, which you will remember was the date
6 of the Letter of Offer which finally came from Lombard
7 and Ulster. I think that's in or around the time of
8 the last Letter of Offer that came from Lombard and
9 Ulster in respect of the loan that ultimately came out.

10 This is a document, a handwritten document of the 24th
11 October 1984, "re: Canio Investments Limited".
12 "Dear Mr. Smith.

13

14 Thomas Brennan and myself have entered into a guarantee
15 in support of a proposed lending by your bank to the
16 above company.

17

18 It is our wish that Canio Investments Limited or its
19 agents be not advised of the execution of this
20 guarantee unless or until some event occurs whereby
21 this guarantee is called upon."

22

23 Now, I think both Mr. Brennan and Mr. McGowan have
24 conceded that the only other person, when they talk
25 about not to be revealed to Canio Limited, the only
26 other person was you or our agents, you or Mr. Barry,
27 say, for example, that you were not to be advised of
28 this guarantee.

29 A. Yes, sir.

30 446 Q. So that suggests to me that you were to be kept in the

1 dark as far as that guarantee was concerned. Do you
2 think that's a fair comment?

3 A. Yes, sir.

4 447 Q. Now, I think following on that, there is an actual
5 Letter of Offer of the 25th October, '84, it's 735,
6 please, it's a loan offer, dated -- it's dated the
7 following day to that particular application and it
8 says:
9 "Further to your recent application" -- I should
10 explain to you, Mr. Finnegan, this is, I think, the
11 third Letter of Offer. There was an earlier letter of
12 the 15th June, a second loan offer of the 5th July, and
13 this is the third offer of the 25th October, 1984.
14 .

15 And this letter -- sorry, I think the second page of
16 that, it would be 735 probably -- or 736
17 perhaps -- -- sorry, it's probably the next page again,
18 it's page 4 of that particular document, 738 and under
19 'Guarantees' it says:
20 "The indebtedness is further secured by the guarantee
21 of Kilnamanagh Estates Limited which is to be supported
22 by an equitable deposit with this bank of the benefit
23 of a contract to purchase c.43 acres of the land
24 mentioned under condition 7(a) above, ú1.5 million with
25 a completion date no later than the 31st December."
26

27 You will notice there that there is no mention of
28 personal guarantees.

29 A. That's right, sir.

30 448 Q. We have now a document which is -- which I think the

1 Tribunal had but wasn't in circulation, at number 5087

2 please -- Mr. Finnegan, this is a letter of the 31st

3 October, 1984 from yourself to your solicitor, Mr.

4 McGonagle. Do you see that?

5 A. Yes, sir.

6 449 Q. That's dated the 31st October, 1984.

7 "Believe it or not, Joe has produced a facility letter

8 in connection with Aikans." I think that's the

9 Sandyford lands. "I would very much appreciate if you

10 would look at it as I would be very interested to have

11 your reactions."

12 A. Yes, sir.

13 450 Q. Do you remember seeing a facility letter before that

14 time or -- I don't want to lead you, I just want to

15 know does that refresh your memory as to when you would

16 have gotten a facility letter, when you would have seen

17 a facility letter?

18 A. It could only have been a short time before that, sir.

19 451 Q. Yes. There were earlier facility letters, as we have

20 pointed out. There was an earlier letter, I think, if

21 we can look at them now. I think 694 -- sorry, 671 I

22 think is the first one. No, I am sorry -- sorry, I beg

23 your pardon, 3400 is the reference I think. That's a

24 loan offer of the 5th July, '84, Mr. Finnegan. Can you

25 see that? It's fairly blurred.

26 A. Yes.

27 452 Q. And that has as its introductory piece:

28

29 "Further to your recent application I am pleased to

30 advise that this bank is prepared to place at the

1 disposal of Canio Investments Limited a facility in the
2 amount of Stgú525,000 of which a sum of STgú105,000 is
3 to be placed on deposit account with this bank in
4 partial provision of interest charges" -- I think
5 that's the 105 -- "and the balance to be utilised to
6 make a payment to a Mr. Roger Wreford, Stgú180,000
7 with the remainder being utilised to purchase lands in
8 the United Kingdom."

9 .

10 Now, do you remember ever seeing that before this
11 Tribunal?

12 A. No, sir.

13 453 Q. Did you know of any application to the bank to make a
14 payment to Mr. Roger Wreford?

15 A. No, sir.

16 454 Q. Did you know of any application for loan to the bank to
17 make a payment to you?

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

19 455 Q. I think can we scroll through that document please and
20 to land on the 'Guarantees' section -- 3403 I think.

21 You see the 'Guarantees' section there:

22 "The indebtedness to be further secured by the joint
23 and several guarantees of Messrs. Brennan, McGowan and
24 Kilnamanagh Estates Limited." Do you see that?

25 A. Yes, sir.

26 456 Q. Now, when we see the ultimate loan facility letter, we
27 see under that heading that the joint and several
28 guarantees is removed from the 'Guarantees' section,
29 the requirement of joint and several guarantees is
30 removed?

1 A. Yes, sir.

2 457 Q. And the specific purpose of the loan to pay Mr. Roger

3 Wreford, that is also removed from the later facility

4 letter, isn't that so?

5 A. Yes, sir.

6 458 Q. As far as you are concerned, Mr. Finnegan, I think the

7 application for the loan, when you did find out about

8 it, was simply to pay, to distribute to the

9 shareholders -- distribute to the beneficial owners?

10 A. That's correct, sir.

11 459 Q. Now, I am going to ask you to have a look at another

12 document, just to go on to a slightly different topic

13 at the moment.

14

15 Document 3269. Mr. Finnegan, this is not a document

16 that the Tribunal has put into the public arena before.

17 It's a document dated 8th August, 1985 from Mr. Wheeler

18 to Mr. Barry. Now, remember, August '85 is -- you are

19 not quite ten months after the distribution of the

20 monies by Mr. Wheeler.

21 A. Yes, sir.

22 460 Q. And can I just -- "Dear Mr. Barry,

23

24 Thank you for your telex. The reason you have received

25 no message from me is that we have not been able to get

26 my telex message through to Lombard and Ulster.

27 However, a letter was sent to them yesterday and

28 herewith a copy."

29 .

30 I think this was in the context of the dispute arising

1 between the two banks?

2 A. Oh, right.

3 461 Q. This was a year later and in the context of, I think,

4 the banks were suing, claiming priority and I think

5 also Mr. Russell had taken action against Messrs.

6 Brennan and McGowan. Sorry, this is Mr. Wheeler again.

7

8 "You will see that I did not give your telephone number

9 and I shall therefore write a further letter giving

10 that additional information.

11 .

12 "I repeat that I had absolutely no knowledge of any

13 undertaking given by Russell to Allied Irish Finance.

14 I put the direct question to him in June, 1984 and

15 submitted with this message is a copy of Russell's

16 reply of the 20th July, 1984. Moreover, Russell

17 deposited with me a 'hand search' carried out by

18 Messrs. Brennan and Son Limited, Law Searchers, which

19 did not disclose any obligation to Allied Irish

20 Finance."

21 .

22 I'll just hold that a moment and just see can I have

23 document 1024, which is a document of the 9th August,

24 1985 -- this is a letter we did see from Mr. Barry to

25 Mr. Smith in Lombard and Ulster in or around the same

26 time that Mr. Wheeler is writing to Barry, Mr. Barry is

27 writing to Lombard and Ulster and Mr. Barry's

28 understanding of Mr. Wheeler's position is outlined in

29 this letter. As I understand, we are not going to hear

30 from Mr. Wheeler so we have to make the best we can of

1 these documents.

2 .

3 "Thank you for assistance yesterday in clarifying
4 recent developments in a regard to our loan facility.

5 My co-director, Mr. Wheeler, is writing to you to
6 confirm my status as a director of Canio.

7 .

8 I only became aware of the caution recorded by Allied
9 Irish Finance yesterday. Having spoken to various
10 parties I can now confirm that:-

11

12 1. The only persons empowered to represent Canio in
13 any way are the company's directors. Would you please
14 in future send me copies of all correspondence to Canio
15 so as to avoid any communication breakdown between my
16 co-director in Jersey and myself (as has happened in
17 this case.)

18 .

19 2. I have agreed with Mr. Wheeler that we must
20 immediately instruct our independent lawyers in Dublin
21 to take whatever steps are necessary to life the
22 caution. This we are doing.

23 .

24 3. I understand the caution relates to an undertaking
25 given in 1981 by a Dublin solicitor to Allied Irish
26 Finance in respect of the title deeds to Canio's lands.

27 I was not a director of Canio at that time but I am
28 advised by Mr. Wheeler that the undertaking was given
29 with neither the knowledge of, nor the authority of
30 Canio's directors.

1 .
2 4. We would hope that when the caution is lifted we
3 will able to reverse the set-off of the deposit against
4 the loan so as to restore the position."

5
6 You will see that there is an explanation Mr. Barry has
7 got from Mr. Wheeler that the -- first of all, we have
8 seen the letter, the previous letter from Mr. Wheeler
9 saying that he had no knowledge of the undertaking and
10 then Mr. Wheeler's position that neither did
11 the -- that the undertaking was given with neither the
12 knowledge nor the authority of Canio's directors.

13
14 So that was actually Mr. Wheeler's position that the
15 undertaking which was given by Mr. Russell was given
16 without the knowledge or authority of Canio's
17 directors. Do you see that?

18 A. Yes, sir.

19 462 Q. So I think when Mr. Hayden was putting to you that you
20 were blaming Mr. Russell for keeping you in the dark,
21 that was another of the litany, I think that was
22 exactly Mr. Wheeler's position as well; that he didn't
23 know and neither did the directors of Canio know of the
24 undertaking that was given by Mr. Russell, indeed
25 that's what he told Mr. Barry in any event, isn't that
26 so?

27 A. That's right, sir.

28 463 Q. Now, you see, this gets curiouuser and curiouuser,
29 because a year before Mr. Barry had written to
30 Mr. Wheeler and Mr. Wheeler wrote back, I think

1 document 663, please. We have had this already. Mr.
2 Barry, remember is writing to Wheeler to find out what
3 the position is in the Canio situation. And
4 Mr. Wheeler is writing back to him.

5
6 We have seen the earlier letter - 659. This is the
7 letter I want up -- 663. And it's a letter of the 22nd
8 March, 1984. And this is Mr. Wheeler writing to Mr.
9 Barry.

10 .
11 " Thank you for your letter of the 20th March and it is
12 becoming apparent that something will have to be done
13 urgently to sort out both these companies and their
14 ownership. There is nothing on our records" -- I want
15 to highlight this now -- "There is nothing in our
16 records to show that Canio Limited is a subsidiary of
17 Ardcarn Limited or vice versa. At the beginning of
18 your letter you say that Canio Limited is a subsidiary
19 of Ardcarn Limited but towards the end of your letter
20 you imply the opposite. My records show that Canio
21 Limited is one third owned by Foxtown Investments
22 Limited but Ardcarn Limited is owned by three
23 individuals.

24 .
25 I am disturbed by the statement in your letter that
26 Canio's investment is valuable because Canio's Minute
27 Book does not disclose that the company has purchased
28 or acquired anything."

29
30 Again I want to highlight that.

1
2 "Canio's Minute Book does not disclose that the company
3 has purchased or acquired anything. In the case of
4 both companies, all that is shown is the usual first
5 meeting of directors, the opening of a bank account,
6 the resignation of one Sark director to be replaced by
7 another. It seems therefore that the records are
8 woefully incomplete and this is another aspect which
9 will have to be looked into.

10

11 "The answer to your questions, are as follows: --

12

13 1. The shareholders of both Canio and Ardcarn are
14 myself, Howard Oke Dart, Edward Richard Morin and Mary
15 Rochelle Mourant each holding three ú1 shares.

16

17 2. In the case both of Canio and Ardcarn the Directors
18 are Mrs. H.L.G. Gibson, mr. G. King and myself.

19

20 3. No accounts have ever been prepared.

21

22 4. You will appreciate that I am not above to give
23 such a statement."

24

25 I think on the following page. "It may be that we
26 will have to meet to sort out what could prove to be a
27 disastrous muddle."

28 .

29 So here is Mr. Wheeler saying that there is nothing in
30 the Minute Book to disclose that the company purchased

1 anything, or has done anything other than simply have
2 its first meeting, open a bank account and resign one
3 of the Sark directors of the early, as the company was
4 formed.

5 .
6 We do know, Mr. Finnegan, that there was a special
7 resolution -- sorry, there is at least a record of a
8 special resolution, document 423. I think the best
9 guess we can make at a date of this is the 15th May,
10 1981, although you will notice that the date isn't
11 clear. It just simply says "the 15th day". And it
12 says:

13
14 "At a general meeting of the members of Canio Limited,
15 held on the 15th, it was resolved:-" and we go into a
16 resolution that allows Canio to give guarantees for
17 Kilnamanagh Estates Limited, and also to provide an
18 undertaking to authorise Mr. Russell to give an
19 undertaking to Allied Irish Finance in respect of a
20 borrowing of Kilnamanagh Estates Limited. All right?
21 You have seen that document before I think,
22 Mr. Finnegan?

23 A. Yes, sir.

24 464 Q. And if you scroll down to the bottom of that please.

25 And at the end of it, I think signed by Mr. Wheeler and
26 another party who I don't know.

27

28 MR. HAYDEN: Maybe in aid of, My Friend, 445 shows the
29 bottom half of that resolution.

30

1 MR. HUSSEY: I see. Sorry it is the 15/5/81. L.A.
2 Wheeler, the Chairman, that's Mr. Wheeler's autograph.
3 We have seen that before. And there is some secretary,
4 I think maybe 'McDonald'. But the point I am making
5 here, Mr. Finnegan, is that this is a certificate by
6 Mr. Wheeler that this is a true copy from the minutes.
7 Right?

8 A. Yes, sir.

9 465 Q. That's dated 15/5/1981. However, in 1984 Mr. Wheeler
10 is writing to Mr. Barry saying that there are no
11 minutes of the meeting, no minutes of anything, of any
12 significance concerning Canio Limited.

13

14 Can I go back to 663 again now, 22nd March, 1984, the
15 second sentence of that:

16

17 "There is nothing in our records to show that Canio
18 Limited is a subsidiary of Ardcarn Limited and vice
19 versa." "I am disturbed by the statement in your
20 letter that Canio's investment is valuable because
21 Canio's minute does not disclose that the company has
22 purchased or acquired anything. In the case of both
23 companies, all that is shown is the usual first meeting
24 of directors, the opening of the bank account and the
25 resignation of one Sark director to be replaced by
26 another."

27

28 So here we have --

29

30 MR. HAYDEN: I wonder could My Friend continue on in

1 that sentence.

2

3 MR. HUSSEY: "It seems therefore that the records are
4 woefully incomplete and this is another aspect of which
5 we have to look into."

6 I had read that earlier.

7

8 What I am saying is this is a statement by Mr. Wheeler
9 to Mr. Barry in 1984 which is directly contradicted by
10 the document of 1981, which says "This is an extract
11 from the minutes."

12 .

13 Can I just go back to the other document, was it 455 is
14 the -- 445 -- sorry, I think that's -- sorry, this is a
15 resolution which I think I'll read it out because again
16 Mr. Wheeler's information to Mr. Barry quite
17 contradicts the information that's on this page.

18

19 "That in consideration of Allied Irish Finance Company
20 Limited, having its registered office at Bankcentre,
21 Ballsbridge in the city of Dublin, having agreed to
22 make advances or otherwise to give monetary
23 accommodation or credit to or for the account of
24 Kilnarnagh Estates Limited, that this company Canio
25 Limited, herein after called "the company"

26

27 1. Will furnish collateral security to allied Irish
28 Finance Company Limited for any such advances monetary
29 accommodation, or credit afforded by Allied Irish
30 Finance Company Limited to Kilnarnagh Estates Limited.

1
2 2. That the company do guarantee paid to Allied Irish
3 Finance of all sums from time to time remaining unpaid
4 to Allied Irish Finance Company Limited by Kilnarnagh
5 Estates whether as principal or surety or on any
6 account whatsoever provided that the maximum liability
7 of the company under the said Guarantee shall not
8 exceed the sum of ú800,000 and interest and provided
9 further that the liability of the company shall cease
10 as soon as the indebtedness of Kilnarnagh Estates
11 Limited is reduced to ú1 million.

12
13 "That a guarantee in the form submitted to the meeting
14 be signed for and on behalf of the Company.

15
16 "That George A Russell solicitor is hereby authorised
17 to sign the said Guarantee for and on behalf of the
18 company and on its behalf to receive and acknowledge
19 receipt of a copy of said Guarantee.

20
21 "It was resolved that George A. Russell, solicitor for
22 the Company be and is hereby authorised empowered and
23 instructed to make a formal deposit of the title
24 documents of the property situate at Sandyford County
25 Dublin comprising 86 acres are Allied Irish Finance
26 Company Limited as security for the liabilities of
27 Kilnarnagh Estates Limited..."

28 .
29 Can I go back again to the letter 663. The second
30 paragraph of that:

1

2 Mr. Wheeler states "I am disturbed by the statement in
3 your letter that Canio's investment is valuable..."

4

5 Now, it's quite clear from the minutes of the 1981
6 document that Canio had 86 acres in Sandyford, isn't
7 that right, Mr. Finnegan?

8 A. Yes, sir.

9 466 Q. Can I bring you on to another document, Mr. Finnegan,
10 it's another handwritten indemnity, 436.

11

12 I am sorry, sir, just before I go on, I notice it's
13 just gone four o'clock, I had thought I'd be finished.
14 I am not going to be finish in half an hour.

15

16 CHAIRMAN: Would you not finish this particular
17 document?

18

19 MR. HUSSEY: I am only making the point that ordinarily
20 if I finished in twenty minutes I'd say we can continue
21 on. That's not going to be the case. I am just
22 letting you know that.

23

24 CHAIRMAN: That's perfectly all right.

25

26 467 Q. MR. HUSSEY: This particular document, 436 this is a
27 handwritten indemnity of the 25th February, 1981. Now,
28 this is three months before the special resolution that
29 we have just seen and this is dated February 25th,
30 1981.

1

2 "Dear Mr. Russell,

3

4 I Joseph McGowan hereby indemnity you against any loss

5 or claim arising out of your undertaking of this date

6 given to Allied Irish Finance.

7

8 Yours truly,

9 Joseph B McGowan."

10

11 Were you aware of that indemnity having been given?

12 A. No, sir.

13 468 Q. Were you aware of the special resolution that we have

14 seen --

15

16 MR. HAYDEN: I wonder, sir, if I might interject. If

17 this is a position Mr. Hussey wishes to put and he

18 entirely can so do, this wasn't -- this position that

19 is now being proffered was not put to Mr. McGowan.

20

21 CHAIRMAN: There will be every opportunity for him to

22 deal with it.

23

24 MR. HAYDEN: I am just making the point --

25

26 CHAIRMAN: I note what you are saying. There will be

27 every opportunity for him to deal with it.

28

29 MR. HAYDEN: Obviously I might be in a position to

30 revisit it -- I dealt with the things put to

1 Mr. McGowan.

2

3 CHAIRMAN: We'll cross that the at a later point in
4 time.

5

6 MR. HANRATTY: Mr. Brennan is coming back in any case
7 tomorrow. If Mr. McGowan presents himself, this
8 document could be specifically put to him as well. In
9 any case I believe it was in fact put to Mr. McGowan.
10 We can check that overnight.

11

12 MR. HAYDEN: My own recollection --

13

14 CHAIRMAN: I am not going to waste time now. You will
15 have every opportunity. If it's been put to him
16 already, that opportunity is exhausted.

17

18 MR. HANRATTY: I recall it now. It is an exhibit in the
19 affidavit which Mr. McGowan swore in the High Court and
20 I believe it was dealt with in evidence.

21

22 MR. HUSSEY: It has been on the screen before with
23 Mr. McGowan, as far as I recollect.

24

25 MR. HAYDEN: I apologise then if my recollection --

26

27 CHAIRMAN: Mistakes can be made.

28

29 MR. HUSSEY: I am finished with that document now, sir.

30

1 CHAIRMAN: Then I think we'll rise because you'll be
2 going on to a new topic. Very good. Tomorrow morning
3 at half past ten.

4

5 THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
6 FRIDAY, 26TH OCTOBER, 2001 AT 10.30 AM.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

