

09:58:26 1 **THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY,**

2 **30TH APRIL 2008, AT 10:30 A.M:**

3
4 MR. QUINN: Good morning, Sir.

10:35:32 5
6 CHAIRMAN: Good morning.

7
8 MR. QUINN: Mr. Richard Forman, please.

9
10:35:39 10 **MR. RICHARD FORMAN, PREVIOUSLY SWORN, WAS QUESTIONED BY**

11 **MR. QUINN AS FOLLOWS:**

12
13 MR. QUINN: Thank you, Mr. Forman. You are previously sworn.

14
10:36:04 15 CHAIRMAN: Good morning, Mr. Forman.

16 A. Good morning.

17 Q. 1 MR. QUINN: Mr. Forman, you are already sworn in that you gave evidence I think
18 in the Quarryvale I aspect of this module on the 5th of May 2004, and your
19 evidence I think is to be found on day 481, isn't that correct?

10:36:19 20 A. I'm sure it is, yes.

21 Q. 2 And at that time I think a statement provided by you to the Tribunal and dated
22 the 29th of January 2004, had been circulated in a redacted form as part of the
23 brief in Quarryvale I. And I think in the Quarryvale I brief, it had brief
24 page reference 3483 to 3488. And the entire of that statement is now
10:36:45 25 circulated as part of this module and is to be found at brief page reference
26 2063 to 2068. And I can, and with your permission, I will just review very
27 briefly the evidence that I understand you to have already given in relation to
28 your involvement in, with Mr. Gilmartin in the Quarryvale Module.

29
10:37:08 30 I think first of all that you are a property consultant, a commercial property

- 10:37:13 1 consultant and you were employed with Lambert Smith Hamilton at one stage and
2 subsequently with Wilson and partners and Connell Wilson & Co, is that correct?
- 3 A. That's correct, yes.
- 4 Q. 3 And I think you have been with them for over 25 years and you were eventually
10:37:29 5 on the main Board of Directors of all three companies, is that correct?
- 6 A. That's correct, yes.
- 7 Q. 4 And I think you have advised the Tribunal that you came to know Mr. Gilmartin
8 and you worked with him in relation to certain developments in Northampton then
9 in Milton Keynes and thereafter in Bangor in County Down?
- 10:37:48 10 A. That's correct, yes.
- 11 Q. 5 And at some stage I think you got involved with Mr. Gilmartin in relation to
12 the Bachelor's Walk project as it was known, is that correct?
- 13 A. That's correct, yeah.
- 14 Q. 6 And was it in that capacity that I think that you met with Pdraig Flynn
10:38:02 15 Minister for the Environment, sometime in 1987 with Mr. Gilmartin?
- 16 A. That's correct, yes.
- 17 Q. 7 And I think you negotiated on Mr. Gilmartin's behalf, his involvement or the
18 involvement of Arlington in that development, is that correct?
- 19 A. Yes, yeah.
- 10:38:15 20 Q. 8 And I think you would have advised Mr. Gilmartin and would have been well known
21 to Mr. Gilmartin and he to you in the period '87, '88, '89, is that correct?
- 22 A. That's correct, yes.
- 23 Q. 9 And I think at some stage Mr. Gilmartin got involved or expressed an interest
24 in the Westpark site as it was originally known and as more currently described
10:38:38 25 the Quarryvale project, is that correct?
- 26 A. Yes.
- 27 Q. 10 And I think in that regard you would have visited the Quarryvale site and I
28 think in evidence you accepted that it was a very worth while site and a very
29 valuable site from the point of view of development and particularly commercial
10:38:55 30 development, is that correct?

- 10:38:56 1 A. Yes indeed, yeah.
- 2 Q. 11 And I think you advised the Tribunal that it was a site that was brought to the
3 attention of Marks & Spencers by I think a Mr. McCammon on behalf of Mr.
4 Gilmartin and they had expressed an interest in the site going back to 1988, is
10:39:10 5 that correct?
- 6 A. That's true, yes.
- 7 Q. 12 Now, as part of the assembly of that site I think, Mr. Gilmartin had to
8 negotiate the purchase of corporation and County Council lands which went to
9 make up the site, isn't that correct?
- 10:39:21 10 A. Yes, yeah.
- 11 Q. 13 And I think you have advised the Tribunal that Mr. Gilmartin initially thought
12 that he had acquired the lands from the corporation and the County Council
13 through Mr. McLoone and his offices for a sum of 40,000 per acre and that this
14 may have happened in late '88, early '89. But that eventually Mr. Corcoran on
10:39:42 15 behalf of Green Properties, a rival shopping centre development company,
16 expressed an interest in the sites. And the site was advertised for sale in
17 April 1989 for sale by tender, isn't that correct?
- 18 A. Yes, I was involved in those negotiations with him on behalf of Mr. Gilmartin,
19 yes.
- 10:39:59 20 Q. 14 I think those culminated in an offer of approximately over 70,000 an acre being
21 offered in relation to the corporation lands, isn't that correct?
- 22 A. Yes.
- 23 Q. 15 Making a total of 5.1 million. And I think those lands were eventually, that
24 tender was accepted by the corporation, and again, you are familiar with that?
- 10:40:18 25 A. Yes, indeed.
- 26 Q. 16 I think you gave evidence on your previous visit to the Tribunal of a meeting
27 with Mr. Lawlor, at Mr. Lawlor's house in the company of Mr. Gilmartin, isn't
28 that correct?
- 29 A. Yes.
- 10:40:34 30 Q. 17 And I think you advised the Tribunal at that stage that at some stage towards

10:40:34 1 the end of the meeting Mr. Lawlor asked to speak privately with Mr. Gilmartin,
2 isn't that correct?

3 A. Yes.

4 Q. 18 Now, if we take up your statement therefore at 2066. Paragraph four. Under
10:40:50 5 the heading paragraph four meeting with Mr. Lawlor. The first. Sorry -- the
6 following three paragraphs down to "as the project progressed" had been left
7 in, in the statement circulated as part of the Quarryvale I brief and the
8 paragraph commencing "as the project progressed" to the end had been redacted
9 out, isn't that correct? And what I propose to do is to read the entire of
10:41:16 10 paragraph four to the end to you and ask you one or two questions?

11 A. Okay.

12 Q. 19 And it's headed as I say meeting with Mr. Liam Lawlor you say that "Towards the
13 early stages of our work on Bachelor's Walk I was aware that Mr. Lawlor had
14 offered his services to Tom Gilmartin as someone who could help with political
10:41:33 15 lobbying. During this early stage of our work in Dublin, I recall that Tom and
16 I were invited to meet with Mr. Lawlor at his house. While we were there
17 through the conversation I was left in no doubt how important Mr. Lawlor felt
18 that he was and there was a clear implication that he was the key to securing
19 support and approval to our plans.

10:41:51 20

21 I recall also that Mr. Gilmartin and Mr. Lawlor spoke privately for a while
22 leaving me in one of the reception rooms. For a while following this from my
23 perspective it appeared to that Mr. Lawlor was being supportive and his name
24 cropped up in connection with both the city centre and out of town projects and
10:42:06 25 he even appeared in London at Arlington office at a meeting arranged for
26 perspective retailers. However, if the Quarryvale project progressed it
27 appeared that while superficially he was giving the appearance of being
28 supportive he seemed in fact to have an alternative agenda. As the project
29 progressed we were having serious discussions with a number of UK based
10:42:23 30 institutional investors who were keenly interested in funding the development.

10:42:27 1 These discussions were progressing very positively and we were confident of
2 success subject to a smooth passage on zoning/planning. Following meetings in
3 London with one particular investor with met in Dublin for the day on the 21st
4 of September 1990, in order to show them the site in its context in relation to
10:42:44 5 the city as a whole. Having looked at the site, Tom suggested that we go on to
6 Finnstown House for lunch. On arrival, Tom had to make a call to AIB regarding
7 a proposed meeting with them. Not long after this while we were sitting having
8 positive and detailed discussions with the investor, Mr. Lawlor turned up and
9 immediately joined our table as though he had been invited. I was puzzled by
10:43:07 10 this but assumed that Tom must have invited him. Although I learned later that
11 he had not and moreover that the only people who knew where we were was the
12 bank as a result of Tom's call. As the restaurant had not been pre-booked.
13
14 Mr. Lawlor proceeded to involve himself intrusively in the discussions and went
10:43:22 15 on to make a number of comments that were extremely unhelpful, even making
16 reference to "mad dogs" and referring Quarryvale area as "bandit country".
17 This negative intervention in my view played a major part in the investor
18 concerned withdrawing from negotiations."
19
10:43:39 20 Then at paragraph five under headings "meetings with Allied Irish Bank" you say
21 "When we first started working in Ireland, Tom Gilmartin needed to decide which
22 bank to use. He had previously worked with the Bank of Ireland. However, he
23 also had contacts with the AIB and they appeared to be particularly positive
24 and enthusiastic about supporting him in property development in Ireland.
10:43:57 25
26 The positive approach of AIB was confirmed during the early stages of Tom's
27 work in Dublin and the manager dealing with, then Mr. Eddie Kay, appeared
28 straight forward and supportive.
29
10:44:10 30 During the site assembly process at Quarryvale Tom through his company Barkhill

10:44:11 1 had short-term borrowings from AIB. While the bank appeared to understand the
2 nature of the project, when as is usual with schemes of this nature,
3 discussions took place regarding the need for additional funding and extended
4 time periods. The bank appeared to deal with the situation in what in my
10:44:26 5 experience was an unconventional manner, particularly given the level of direct
6 equity investment by Tom Gilmartin personally. In such circumstances I would
7 expect the bank to make their point but having done so to then work with the
8 company in sorting out a constructive course of action to benefit both the
9 developer and the bank. Instead some of the bank's officers appeared to take
10:44:47 10 an aggressive attitude and started to dictate how matters should proceed as
11 though they -- not Tom were the shareholders of Barkhill. I was aware also of
12 Tom's getting demands to attend meetings at the bank at a moment's notice. The
13 sole purpose of which appeared to be to abuse him.
14

10:45:05 15 The whole of the thrust bank's attitude appeared to be designed to force Mr.
16 Gilmartin to pass over equity and control of his company to Mr. Owen
17 O'Callaghan. It appeared that the bank were discussing Barkhill's business
18 with Mr. O'Callaghan, even though that he had no involvement with the company.
19 I recall as an example of this, attending the bank with Tom to find that Mr.
10:45:20 20 O'Callaghan was also present although neither Tom nor I had invited him.
21

22 This drive by the bank to try and get Mr. Gilmartin to hand over a share in his
23 company to another customer appeared most irregular. It was clear that the
24 funding pressures were short-term and that given the amount of equity invested
10:45:35 25 by Mr. Gilmartin the bank would always have an exit route through the sale of
26 the site which by that time was clearly going to be delivered by development of
27 sufficient value to recover the investment made.
28

29 It was difficult for me to see what the bank thought that Mr. O'Callaghan could
10:45:49 30 deliver that Mr. Gilmartin couldn't, except that he was clearly a longer

10:45:53 1 standing customer."
2
3 At 2068 you go on to say "had the bank really been concerned about the project
4 then one would have expected them to force a sale of the underlying assets in
10:46:05 5 order to recover their loans. The fact that they didn't follow this route
6 makes it clear that they believed that the proposals would succeed. This view
7 is further supported by their continuing investment in the project and their
8 keenness to support their retail developers client, Mr. O'Callaghan to some how
9 engineer a take over of the project".

10:46:23 10
11 And that concludes I think your statement in relation to the matter, is that
12 correct?
13 A. Yes, indeed.

14 Q. 20 Now, just to return to the matter referred to there, namely, a visit by
10:46:38 15 Mr. Lawlor to a luncheon being held at Finnstown House in September 1990. I
16 think by September 1990, Mr. Gilmartin found himself in a situation where he
17 owed Mr. O'Callaghan 1.35 million pounds. Were you aware of that?
18 A. Yes, I was, yeah.

19 Q. 21 He owed the bank I think almost 9 million pounds on foot of the February 1990
10:47:01 20 borrowings, isn't that correct?
21 A. I don't know the exact number but that sounds appropriate.

22 Q. 22 He had no zonings on the propose the site, isn't that correct, or no correct
23 zoning?
24 A. He didn't have zoning for retail, yes.

10:47:15 25 Q. 23 And he certainly didn't have planning permission?
26 A. No.

27 Q. 24 Now, Mr. Gilmartin I think was heavily involved in trying to introduce other
28 investors to the site other development partners, isn't that correct?
29 A. That's correct.

10:47:26 30 Q. 25 I think he had originally envisaged Arlington becoming involved in the site but

- 10:47:31 1 by September 1990, I think Arlington had more or less indicated that they were
2 no longer interested?
- 3 A. Arlington were one of a number of investors who expressed interest.
- 4 Q. 26 And there was, Mr. Gilmartin phoned the bank on the 19th of September 1990. If
10:47:46 5 I could have 4367 please. This is an attendance taken by Mr. Donagh who was
6 involved for Allied Irish Bank in the Barkhill loan in September 1990. And
7 during the course of that discussion Mr. Gilmartin had dealt with what was
8 described there as the O'Callaghan option. And Mr. Donagh records the
9 following:
- 10:48:08 10
- 11 "1.35 million is due to O'Callaghan and this was to be either paid or agreement
12 reached with O'Callaghan as it is vital to have a chance to secure planning and
13 to proceed with shopping centre development."
14
- 10:48:18 15 And you were aware of the significance of the Neilstown site on the Quarryvale
16 project?
- 17 A. Yes indeed.
- 18 Q. 27 And the zoning know on the Neilstown site. Were you involved in September
19 1990, in assisting Mr. Gilmartin in introducing new development partners to the
10:48:32 20 site?
- 21 A. Yes.
- 22 Q. 28 And was it in that context that you found yourselves showing the site to
23 potential investors?
- 24 A. Yes, it was, yeah.
- 10:48:41 25 Q. 29 You see there towards the end the third last paragraph it says "planning
26 discussions progressing. Then it says "Heron" that's Harvey Conning and Ian
27 McGregor are in Dublin on Friday at the site". I think the Friday would be the
28 21st September 1990.
- 29 A. Harvey Conning & Ian McGregor, I think it was.
- 10:49:03 30 Q. 30 Yes. Now, can you tell the Tribunal were you in Dublin on Friday the 21st?

- 10:49:08 1 A. I believe I was if that was the date of the luncheon, yes, yes.
- 2 Q. 31 As described by you in your statement?
- 3 A. Yes.
- 4 Q. 32 And were these potential investors people who might get involved in the project
- 10:49:22 5 with Mr. Gilmartin?
- 6 A. Yes, they were.
- 7 Q. 33 And was it in that context that you met with them and Mr. Gilmartin met with
- 8 them?
- 9 A. Yes, it was, yeah.
- 10:49:29 10 Q. 34 And is it your evidence to the Tribunal that you visited the site with these
- 11 gentlemen?
- 12 A. Yes, it is, yeah.
- 13 Q. 35 And can I ask you to outline to the Tribunal what you say occurred on that
- 14 occasion after you had viewed the site?
- 10:49:47 15 A. Yes, I mean, as I say, we were involved with Tom in identifying investment
- 16 partners. As a practice we were heavily involved in development advice,
- 17 particularly on the retail side. And identified a number of parties whom we
- 18 met and discussed the Quarryvale development with. This particular visit, as I
- 19 say, Ian McGregor was well known to us as was his agent Harvey Conning. We'd
- 10:50:27 20 had discussions before viewing the site. There was positive interest. Herron
- 21 had already invested in Ireland so they were quite comfortable with the
- 22 principal. And they were clearly very positive having viewed the site.
- 23
- 24 The site was always perceived by us to be a very strong location and identified
- 10:50:48 25 by us and our colleagues for that reason. In terms of the luncheon, as I said
- 26 in my response to the various questions previously, we had an intervention by
- 27 Mr. Lawlor at that stage ...
- 28 Q. 36 You would have known Mr. Lawlor?
- 29 A. I had met Mr. Lawlor before with Mr. Gilmartin.
- 10:51:16 30 Q. 37 Yes.

- 10:51:17 1 A. I wasn't expecting to see him at the lunch.
- 2 Q. 38 Had there been any arrangement between, that you were aware of, that he would
3 attend the luncheon?
- 4 A. No. As far as I was concerned we were actually spending the day with these
10:51:28 5 investors looking at the site.
- 6 Q. 39 This would have been a crucial investment at this stage --
- 7 A. Absolutely.
- 8 Q. 40 -- as far as Mr. Gilmartin was concerned?
- 9 A. Absolutely. As I say, we had been involved in discussions with both Ian and
10:51:43 10 Harvey, his agent, prior to that in London. So this was actually moving the
11 project forward.
- 12 Q. 41 And were these people and was this a firm that was in a position to make a
13 substantial investment?
- 14 A. Absolutely.
- 10:52:00 15 Q. 42 To --
- 16 A. As I say, they were well known to us as very credible investors and keenly
17 interested in retail development. And at that time, were looking at a number
18 of other similar sites in the UK for this sort of out of town type retail
19 development. So it was very much up their street.
- 10:52:22 20 Q. 43 I think LET were also, London & Edinburgh Trust, had also been expressing an
21 interest?
- 22 A. We had several visits with LET. Again, as a practice we had worked with LET
23 extensively, very, very well funded property development investment company.
24 At that point in the marketplace and again, we had meetings with them with both
10:52:50 25 in the UK and in Dublin.
- 26 Q. 44 And there was also I think an express of interest by Mr. Saunders and a
27 Mr. Kearns, were you aware of that?
- 28 A. Yes, indeed. I think that got to heads of terms stage at one point in the
29 proceedings.
- 10:53:07 30 Q. 45 Yes.

10:53:07 1 A. And we had under taken the development with Mr. Kearns actually in Milton
2 Keynes. So again, he was well known to us.

3 Q. 46 So you viewed the site and you refereed to I think the Finnstown House?
4 A. Yeah.

10:53:27 5 Q. 47 I think the local restaurant. And you having continuing your discussions
6 there, is that correct?
7 A. Absolutely. It was really just carrying on discussions having met on-site.
8 Really to progress the clear interest in the project.

9 Q. 48 And I think at some stage you say that Mr. Lawlor entered the restaurant or
10:53:51 10 joined.

11 A. Yes indeed, yeah.

12 Q. 49 And he came to your table.
13 A. Absolutely, yeah, yeah.

14 Q. 50 Now, could it be that Mr. Lawlor had other business in the restaurant and
10:54:03 15 perhaps saw the people he knew, namely, yourself and Mr. Gilmartin and joined
16 you in that context?
17 A. It didn't appear so. It didn't appear so.

18 Q. 51 Did he, for example, join anybody else's table or did you see him in anyone
19 else's company while you were there?
10:54:18 20 A. Not that I recall.

21 Q. 52 And when he joined you, did he -- was he introduced or how was he introduced or
22 who introduced him to those present?
23 A. He introduced himself, as I recall he came across to speak to Tom and pretty
24 much introduced himself to the guys we were there. As I say, it wasn't
10:54:42 25 something that was stage managed on our part so it was, the introduction was
26 slightly stilted I think.

27 Q. 53 And were the others introduced to him and was he advised, you know, why you
28 were, why they were there?
29 A. Yes. Once, once he joined us clearly he was made aware of why they were there
10:55:06 30 and the introductions took place and he sort of started at that point to talk

- 10:55:16 1 to our two guests.
- 2 Q. 54 And did he advise them that he was the local representative for the area?
- 3 A. Yes, he -- yes. I think he advised them one, that he was a TD and that yes, he
- 4 was a local representative and yes made it very clear that he was the local MP,
- 10:55:44 5 the local TD.
- 6 Q. 55 Now, I think in your statement you say that he involved himself intrusively in
- 7 the discussions and went on to make a number of comments which you say were
- 8 extremely unhelpful.
- 9 A. Yes, I think in the context of the marketplace at that time, we were trying to
- 10 attract UK investors to this new development. The UK press at that stage was
- 11 probably slightly nervous or the UK property press was probably slightly
- 12 nervous of the Irish property market, largely as a result of on going issues in
- 13 the North. So there was a certain element of prejudice that we actually had to
- 14 overcome anyway in terms of actually attracting an interest at that stage.
- 10:56:40 15
- 16 We had overcome that, as I say, Heron had, were actually familiar with
- 17 investment in the south anyway and to be honest it was a very different
- 18 marketplace. But Mr. Lawlor's intervention effectively sowed the seeds of
- 19 doubt in terms of the marketplace generally and the locality specifically.
- 10:57:09 20 With effectively some references to it not being a very sound market,
- 21 references I think I was quoted him as saying referred to it as "bandit
- 22 country". Some of this was said quite flippantly but, as I say, it served to
- 23 sew the seeds of doubt in terms of those particular investors.
- 24 Q. 56 Well perhaps Mr. Lawlor was being frank and open with the, with those present
- 10:57:38 25 and outlining the situation as he saw it in that area?
- 26 A. I wouldn't have said so. Not -- particularly not in respect of the Quarryvale
- 27 site which, you know, was a good greenfield site in a prime location. Had we
- 28 been talking about the site identified previously for Clondalkin town centre I
- 29 could perhaps have understood that.
- 10:58:11 30 Q. 57 Yes. And did you take issue with Mr. Lawlor at that?

10:58:17 1 A. I have to say we tried to make light of his comments and tried not to dwell on
2 his comments and tried to treat them as being comments made lightly, flippantly
3 or whatever. There seemed to be no value in entering into any detailed
4 discussion there because that was only going to take things the wrong way.

10:58:36 5 Q. 58 And what happened concerning those investors, did they go back and visit the
6 site or did they continue to express interest in the site?

7 A. As I recall, we had visited the site prior to the lunch anyway. We did have
8 further discussions with them following return to the UK but they decided not
9 to proceed.

10:58:58 10 Q. 59 And did they indicate to you why they had decided not to proceed?

11 A. The indication was that they felt that perhaps the market wasn't ready for that
12 sort of scheme and expressed concerns about further investment in Ireland at
13 that stage.

14 Q. 60 Yes. Their excuses for not getting involved which don't relate to anything
10:59:20 15 said by Mr. Lawlor at that dinner, isn't that correct?

16 A. They didn't relate to that specifically.

17 Q. 61 Yes. To what extent do you think Mr. Lawlor's intervention was instrumental in
18 --

19 A. As I say, I think it just sewed the seeds of doubt and really undid the work
10:59:45 20 that we'd done already in terms of actually explaining the positive investment
21 opportunity that existed.

22 Q. 62 Now, it is fair to say that neither Mr. Saunders, Mr. Kearns or indeed LET took
23 up Mr. Gilmartin's interest in the Quarryvale site, isn't that correct?

24 A. I think with Mr. Kearns, as I say, we did reach Heads of Terms agreement much
11:00:16 25 later in the proceedings and I think there was actually a keen willingness on
26 his part to actually progress. LET, we did again get a long way down the Heads
27 of Terms stage that. That particular situation didn't progress. And I think
28 it's fair to say that they decided looking at their total investment strategy
29 at that point that they didn't wish to progress. I think in the case of
11:00:40 30 Mr. Kearns there was a willingness to take that further.

11:00:43 1 Q. 63 Yes. But as it happened, Mr. Gilmartin was unable to get an outside investor,
2 isn't that right?
3 A. Well --
4 Q. 64 At this time?
11:00:51 5 A. At that particular time, that would be correct.
6 Q. 65 And of course Arlington who had expressed an interest, didn't follow through on
7 it, isn't that right?
8 A. That's correct.
9 Q. 66 And I think you are critical of Allied Irish Bank in your statement for the way
11:01:08 10 they managed the account, isn't that right?
11 A. Yes, we found that but it's slightly unusual, yeah.
12 Q. 67 But in fairness to Allied Irish Bank, their original short-term facility was
13 due from August, the end of August 1990, isn't that right?
14 A. That's correct, yeah.
11:01:33 15 Q. 68 And they had allowed the matter to roll on into September and October while
16 these discussions were taking place with a potential investor?
17 A. Yes but those discussions hadn't -- those discussions hadn't run their course.
18 Q. 69 Yes.
19 A. So, you know, we certainly weren't at a stage where we were saying there was no
11:01:40 20 investor interest.
21 Q. 70 Well I think that matters seemed to crystalise in November 1990, after
22 Mr. Saunders had indicated that he was no longer interested, isn't that right?
23 A. I wouldn't, I wouldn't say that was the case.
24 Q. 71 Well, are you --
11:02:01 25 A. I think it was ongoing. There was continuing interest from certainly Mr.
26 Kearns. I think Mr. Saunders may have been approaching Mr. Kearns.
27 Q. 72 But even after Mr. Gilmartin had entered into a Heads of Terms with the bank
28 and Mr. O'Callaghan. He still had an opportunity up to mid and indeed by
29 extension late January 1991, to take out both the bank and Mr. O'Callaghan,
11:02:24 30 isn't that right?

- 11:02:26 1 A. That's, I guess that it correct, yes.
- 2 Q. 73 And he didn't follow through on that, isn't that right?
- 3 A. He didn't follow through with that. The circumstances of trying to negotiate
- 4 with external investors when your bank isn't supportive in that approach was
- 11:02:45 5 particularly tricky.
- 6 Q. 74 But when you say the bank weren't supportive. What do you mean? I mean, the
- 7 bank were owed the 9 million pounds, isn't that right? The site appears to
- 8 have been reducing in value and their debt was at risk?
- 9 A. I don't think the site was reducing in value. Quite the contrary. I think the
- 11:03:05 10 work would have been done to that point, had underpinned the value of the site.
- 11 Clearly, it wasn't presented as retail at that stage but it had very much been
- 12 brought to the market's attention. So I think there was a realisation that it
- 13 was a valuable site. It was clearly a strategic location at a great motorway
- 14 intersection or planned motorway intersection.
- 11:03:32 15 Q. 75 Now, I think you got involved again then in 1993 in the project, isn't that
- 16 correct? I think by 1993, there was some monies owed to Connell Wilson, isn't
- 17 that correct?
- 18 A. We had a continuous involvement on behalf of Tom Gilmartin throughout the
- 19 project, it's fair to say.
- 11:03:50 20 Q. 76 Yes. But I think by 1993 there was -- Connell Wilson were claiming that there
- 21 was 150,000 pounds sterling professional fee due to them from the site and
- 22 from --
- 23 A. That's correct, yes.
- 24 Q. 77 And I think you wrote to Barkhill in relation to that. And it was a matter I
- 11:04:10 25 think that was brought to the attention of a board of Barkhill on the 16th of
- 26 June 1993. If we look at 9739 this is an extract from the minutes of the
- 27 meeting of the 16th of June 1993. And having dealt with company matters it
- 28 appears that the following was discussed as set out here namely: "Concern was
- 29 expressed about a demand from UK solicitors on behalf of Connell Wilson for a
- 11:04:34 30 some of 150,000 pounds. It was agreed that this would be have to be

11:04:39 1 investigated."

2

3 And I think eventually if we could have 9845 proceedings were instituted by you

4 against Barkhill in the high courts of justice, Queens Bench Division, isn't

11:04:50 5 that correct?

6 A. That's correct, yes.

7 Q. 78 And if we look at 9846. We look at the Statement of Claim accompanying that

8 writ and I think it provided that there was a claim being made in respect of

9 150,000 pounds in respect of agreed fees payable to the Plaintiffs by the

11:05:06 10 Defendants pursuant to the terms of agreement. I think you were relying on an

11 invoice dated the 16th of October 1991. Were you aware in October 1991 that

12 Mr. O'Callaghan the banks and Mr. Gilmartin had entered into a formal agreement

13 whereby Mr. Gilmartin held only 40 per cent interest in Barkhill and Mr.

14 O'Callaghan and the banks between them held 40 and 60 (sic) per cent interest?

11:05:34 15 A. As in whether the agreement had been entered into, I'd have to check my notes

16 in terms of the precise dates on that.

17 Q. 79 And I think that as part of that demand and those proceedings I think

18 negotiations were entered into in relation to the claim, isn't that right?

19 A. That's correct.

11:05:51 20 Q. 80 And if we look at 10398. This is a note made by Ms. Basquille on a meeting

21 held in Bank Centre on the 16th of November 1993, between Mr. O'Callaghan

22 Mr. Deane, Mr. Seamus Maguire, who is the solicitor and secretary of Barkhill

23 Limited, Michael O'Farrell of Allied Irish Bank, and the purpose of the meeting

24 was to discuss the UK judgement proceedings being taken against the company by

11:06:24 25 Connell Wilson. And the note records that "a copy affidavit of Connell Wilson

26 had recently been received setting out in very clear terms that the basis on

27 which their claim for 150,000 was based. In view of this, there seemed to be

28 little doubt but that judgement would be awarded against the company on the 1st

29 of December next, which would have been the 1ings of December 1993. In the

11:06:36 30 circumstances, we suggested an approach to Connell Wilson should now be made on

11:06:40 1 behalf of Barkhill to investigate whether they would be amenable to a
2 settlement. Whether it is felt that an offer of an immediate payment is likely
3 to be necessary in order to have an out of court settlement before the hearing
4 date."

11:06:52 5
6 And the note records that "John Deane had advised that failing a settlement
7 once Connell Wilson obtained judgement they could then apply to the Irish
8 courts to have their judgement recognised in Ireland, following which they
9 could register the judgement as a mortgage against a Quarryvale site and make
11:07:06 10 an application to have the company wound down. A six to eight week timescale
11 was envisaged for the foregoing."
12

13 Then it went on to record that "The question of who should make an approach to
14 Connell Wilson was then discussed and the general view was that this should be
11:07:19 15 handled either by Arthurs & Co. Solicitors in the UK appointed by Seamus
16 Maguire or Tom Gilmartin. In this regard it was agreed that Michael O'Farrell
17 would try and make contact with Tom Gilmartin and see if matters could be
18 progressed."
19

11:07:35 20 And I think you wrote to those solicitors mentioned in the UK at 14 -- sorry
21 10428, on the 25th of November 1993. Referring to terms of settlement
22 following on a recent telephone conversation, is that correct?

23 A. That's correct, yes.

24 Q. 81 And I think at that stage it was envisaged that Mr. O'Callaghan as a director
11:08:02 25 of Barkhill would pay a total sum of 125,000 pounds three instalments as 75,000
26 on or before 1st December 1993 and as to 25,000 on or before the 1st of March
27 '94 and the balance of 25,000 on or before the 1st of June 1994. And those
28 latter sums would be secured by way of a deed of guarantee. But I think
29 matters progressed and eventually I think on the 29th of November 1993, at
11:08:31 30 10444, an affidavit was sworn by Mr. Gilmartin in support of Connell Wilson's

- 11:08:38 1 claim against his company, Barkhill Limited?
- 2 A. Yes.
- 3 Q. 82 Can you, what can you tell the Tribunal about the circumstances under which Mr.
- 4 Gilmartin came to swear that affidavit?
- 11:08:50 5 A. He was basically supporting our claim for, our claim for unpaid fees.
- 6 Q. 83 And ultimately, I think agreement was reached whereby monies would be paid to
- 7 you by way of installments over a period, isn't that correct?
- 8 A. That's correct.
- 9 Q. 84 And if we for example look at 10500. This is a memo made by Mr. O'Farrell on
- 11:09:12 10 the 9th of December 1993. And it appears to follow on a conversation with Mr.
- 11 O'Callaghan concerning the Connell Wilson monies. He says "I spoke to Owen
- 12 O'Callaghan and they have gone back to Connell Wilson via Tom Gilmartin
- 13 offering 25,000 now and 25,000 in three months, six months time, and nine
- 14 months time, making a total of 100,000 pounds. I asked him where the amount
- 11:09:36 15 was coming from and he indicated that he would be taking it from the Ambrose
- 16 Kelly fees but ultimately the Kelly fees would have to be paid." And then he
- 17 goes on to record. A conversation which he says he had with you at this time.
- 18 That's Mr. O'Farrell of Allied Irish Bank. Do you recall speaking to
- 19 Mr. O'Farrell at this time?
- 11:09:54 20 A. If -- I don't recall that particular conversation. I do recall there was some
- 21 discussions about settling the fees.
- 22 Q. 85 And I think you were to receive 25,000 pounds in December 1993. If we look at
- 23 10577 we see 25,000 being forwarded to Mr. Seamus Maguire in respect of your
- 24 fees. And at 22395, we see a cheque made payable or demand -- sterling demand
- 11:10:25 25 draft made payable to Connell Wilson Limited for 25,000 pounds dated 20th of
- 26 December 1993. I take it that you received or observed this?
- 27 A. Yes, we did.
- 28 Q. 86 And I think we see a letter or an invoice dated the 5th of January '94 at
- 29 10629, for 25,000 pounds. And I think that the invoice correctly records the
- 11:10:52 30 VAT wasn't payable due to the fact that work had been undertaken in Ireland for

- 11:10:56 1 an Irish company, is that correct?
- 2 A. That's correct.
- 3 Q. 87 Now, I think that further discussions did take place with you and Mr. Deane and
4 indeed Mr. Gilmartin. This time in relation to finding a suitable equity
11:11:11 5 partner or developer to co-fund the project in '93/'94, is that correct?
- 6 A. Yes, we were instructed to continue to act for Barkhill in finding, as you say,
7 other development partner or an investor and we had meetings with Mr. Deane to
8 discuss and agree our appointment.
- 9 Q. 88 Yes. In fact I think at 10805, we see Mr. O'Farrell recording on the 2nd of
11:11:46 10 March 1994, that Mr. O'Callaghan had confirmed in a phone conversation to him
11 that he had been in touch with Tom Gilmartin and that John Deane had been over
12 in the UK on three occasions meeting with Tom Gilmartin and Richard Forman.
13 And he says that "the next stage is to finds out the level of Marks and
14 Spencer's interest tomorrow at that stage on the basis of Marks & Spencer had
11:12:11 15 interest. Forman believe that is he can put a package together". Does that
16 accord with your recollection?
- 17 A. That's correct, yes. We had meetings, Tom myself and John Deane on several
18 occasions and I was discussing the project with my other colleagues at Connell
19 Wilson, Connell Shearer Harris and certainly the anchor stall letting the M&S
11:12:40 20 proposal was a key to that investor progress.
- 21 Q. 89 And if we look at 10827 I think, Mr. Deane wrote to you with a copy to Mr.
22 Gilmartin and Mr. O'Callaghan on the 10th of March 1994, following on your
23 meetings in London and advising you that Tom was, had stated that he was very
24 adamant that he wished to achieve a situation where he could get out of
11:13:02 25 Quarryvale as quickly as possible. Was that Mr. Gilmartin's position as at
26 that stage, that's early '94?
- 27 A. I think he was certainly keen to achieve a formal investor interest position
28 there to bring the thing to a head really.
- 29 Q. 90 And I think going forward in '94 and into '95, a UK company Hammersons
11:13:26 30 expressed an interest in the site, is that correct?

- 11:13:28 1 A. That's correct.
- 2 Q. 91 And I think it may even have progressed to a situation where Heads of Terms
3 were agreed with Hammersons, isn't that correct?
- 4 A. Yes, we had numerous meetings with them and visits to Dublin. Meetings both in
11:13:42 5 Dublin and in London. And it did reach a detailed Heads of Terms agreement.
- 6 Q. 92 For example at a board meeting on the 19th of May 1994. If I could have 11005.
7 This is an extract from the minute of the 19th of May 1994 board meeting
8 attended by Mr. O'Callaghan Mr. Pitcher. It records that you and Mr. Dave
9 McGrath, who is senior banker with Allied Irish Bank, were in attendance for
11:14:14 10 part of that meeting also. And you appeared to have presented or made a
11 presentation to the meeting in relation to Connell Wilson and potential
12 investors in the site. And we see that at 11007, do you recall making that
13 presentation?
- 14 A. I do.
- 11:14:28 15 Q. 93 And advising the meeting?
- 16 A. Yes.
- 17 Q. 94 Now, the discussions and I think with Hammersons fell through and I think at
18 some stage further investors were interested in the site and eventually I think
19 agreement was reached with Grovenor Estates, is that correct?
- 11:14:51 20 A. Yes. Hammersons as I recall, it was progressing to detailed head of terms,
21 actually progressed to solicitors being instructed and went some way down that
22 line. Hammersons decided however not to proceed. And effectively the agents
23 acting for Hammersons, Eddie Parker also advised Grosvenor and effectively the
24 Hammersons detailed deal became translated into a deal for Grovenor Estates.
- 11:15:29 25 Q. 95 And were you involved in negotiating both the Hammerson involvement and the
26 Grovenor involvement in this matter?
- 27 A. We were involved in a detail on the Hammersons side and involved in further
28 discussions with Eddie Parker on behalf of Grovenor but we weren't involved in
29 the final detail with Grovenor.
- 11:15:54 30 Q. 96 Is there any particular reason why you weren't involved in the final

- 11:15:57 1 negotiations?
- 2 A. Effectively the Heads of Terms had effectively been sorted at that stage. So
- 3 an awful lot of work had been done on the Hammersons deal and which didn't need
- 4 to be re-done.
- 11:16:14 5 Q. 97 With the Grovenor?
- 6 A. For the Grovenor deal, yeah, yeah.
- 7 Q. 98 And was Mr. Gilmartin involved with you throughout that period?
- 8 A. Yes, he was, why yes.
- 9 Q. 99 In locating those?
- 11:16:23 10 A. Yes, he was.
- 11 Q. 100 What was Mr. Gilmartin's standing within the property market in the UK at that
- 12 stage?
- 13 A. As I mentioned at the outset, and we had undertaken or he had undertaken
- 14 several developments in the UK where we had acted as consultants, so, you know,
- 11:16:45 15 he had reasonable credibility, we had undertaken I think two office
- 16 developments in Milton Keynes, industrial developments in Northampton and also
- 17 retail in Bangor.
- 18 Q. 101 Yes. Now, I think by November 1995, Mr. Gilmartin had expressed an interest in
- 19 leaving Barkhill. And if we could have 12022 please, Mary Basquille who is an
- 11:17:15 20 employee of Allied Irish Bank records a telephone conversation which she had
- 21 with Mr. Gilmartin on the 15th of November 1995, where he advised her that
- 22 decided to dispose of his shareholding in the company. And that note also
- 23 records that he had advised her that you would be acting and handling matters
- 24 for him. Did Mr. Gilmartin appoint you to assist him in exiting Barkhill in
- 11:17:37 25 late '95?
- 26 A. As I say, we provided advice on a continuous basis to Tom Gilmartin throughout
- 27 the project.
- 28 Q. 102 Thank you very much, Mr. Forman. If you just answer any questions.
- 29
- 11:17:53 30 CHAIRMAN: Mr. Ryan, do you want to ask?

11:17:55 1 MR. RYAN: Yes, Chairman, just a few questions.

2

3 **THE WITNESS WAS QUESTIONED BY MR. RYAN AS FOLLOWS:**

4

11:17:58 5 Q. 103 Mr. Forman, my name is Jarlath Ryan, I'm a barrister and I am counsel to Tom
6 Gilmartin at this Tribunal.

7 A. Yes.

8 Q. 104 Just a few questions to ask on your evidence today. You have described the
9 approach of AIB to my client's transactions and projects as irregular. I think

11:18:19 10 you have described that today. AIB's approach towards my client's projects as
11 irregular?

12 A. It certainly didn't follow the approach that I'd been used to in terms of
13 dealing with other banks and other projects at that time in the UK.

14 Q. 105 Yeah. And what were the main differences or what did you see or characterise
11:18:40 15 as irregular?

16 A. I think we were surprised by the --

17 Q. 106 Who is "we", Mr. Forman?

18 A. Sorry, myself and my colleagues. Sorry, within, I was the principal partner
19 involved or the principal director involved in Connell Wilson on the project.

11:19:05 20 But within Connell plc my company, there was several partners involved
21 including a guy called Roy Harris, who was one of our retail experts a guy
22 called Paul Cayward and Adam Markwell, so there was a number of us involved
23 with the project as it progressed.

24 Q. 107 And what was the alternative route that the bank could have taken, Mr. Forman?

11:19:30 25 A. Well I think sorry say one we actually felt at that stage that the potential
26 for the site was becoming clearly recognised. We'd identified the retailer
27 interest at the outset. We'd also identified the overall potential for the
28 site. It was clearly a strategic location almost in a worst case situation
29 there was in our view a very good fall-back. I think the area that probably
11:20:07 30 surprised me most was the sort of pressure to drive the project and drive Tom

11:20:19 1 into a joint venture arrangement with another party. So actively the
2 introduction of another developer. Where from our perspective actually if one
3 was adding another party into the equation, then actually what we should be
4 looking for is an investor partner or an institution partner.

11:20:40 5 Q. 108 And you are referring to Mr. O'Callaghan being the other equity partner?
6 A. Absolutely, yeah.

7 Q. 109 In fairness to Mr. O'Callaghan of course he had control over the Neilstown site
8 and effectively you are aware of that?
9 A. Yes, yes.

11:20:51 10 Q. 110 And from your own perspective, let's say from a high grade international
11 standard it would be -- was it unusual or would it have been unusual for
12 planning, in exchange of planning from one site to another to be an essential
13 component of a transaction or a deal?
14 A. I think as we saw it at the time, that was clearly quite important given the
11:21:17 15 sort of new town plans for Clondalkin, Tallaght and Blanchardstown. So
16 actually being able to make use of some existing retail zonings was perceived
17 to be helpful.

18 Q. 111 I see. And just it's your experience that the -- is it your evidence then that
19 the, it would not have been your experience for a bank to put pressure on a
11:21:46 20 developer to take an equity partner on board in the way that AIB did, is that
21 right?
22 A. I think that would be right. I think, you know, had the equity partner been,
23 say, a clear institutional investor coming in, putting fresh equity in that
24 might have been rather different.

11:22:11 25 Q. 112 I see. From your own statement at 2067. If that can be brought up on screen.
26 It's the paragraph starting "instead some of the banks' officers appeared to
27 take an aggressive attitude and started to dictate how matters should proceed
28 as if they, not Tom, were the shareholders of Barkhill. I am also aware of Tom
29 getting demands to attend meeting at the bank at a moment's notice. The sole
11:22:47 30 purpose of which appeared to be abuse".

- 11:22:47 1 The bank's evidence as given by the officers of the bank, is that this was a
2 short-terming finance. Now, I don't want to trespass over my role here and I
3 am sure Mr. Nesbitt can adequately defend the interests of the bank. But I
4 think it's fair to paraphrase the evidence of the bank. That they were merely
11:23:02 5 providing short-term financing to Mr. Gilmartin. It was always to be
6 short-term financing. And that the weren't interested in proceeding that they
7 weren't interested in proceeding beyond short-term interest I think that's a
8 fair praisey of what the bank's interest was. What, in your view, from a
9 standard business or conventional perspective was the bank's reluctance to
11:23:33 10 provide further finance, how did that strike you or to extend the terms of the
11 finance, Mr. Forman?
- 12 A. I think sort of slightly contradictory on the basis that whilst, as you
13 referred to Mr. O'Callaghan, that had -- the offer of the key of the
14 neighbouring site it wasn't as though he was coming in taking the bank out. So
11:24:06 15 the bank weren't by bringing in another party, actually taking out their
16 short-term finance position.
- 17 Q. 113 But their short-term finance wasn't taken out on the basis of Mr. O'Callaghan
18 coming in?
- 19 A. Not to my knowledge, as I understand it the bank carried on financing,
11:24:23 20 financing the project in the short-term. They clearly weren't looking to
21 finance that, full development. I think it's always a moot point as to what's
22 short-term in that situation.
- 23 Q. 114 So that what actually occurred was the bank brought in Mr. O'Callaghan as an
24 equity partner and its own debt remained outstanding?
- 11:24:46 25 A. To my knowledge, yes.
- 26 Q. 115 And how commercially explicable is that in a commercial context or in a
27 business context, in your own experience, Mr. Forman?
- 28 A. Well the reason for bringing in a fresh party was to prima facie to take out a
29 short-term debt position, then ...
- 11:25:09 30 Q. 116 That didn't happen?

- 11:25:11 1 A. Didn't happen. And it doesn't really -- it wouldn't really appear consistent.
2 So, you know, in that sense it wouldn't have appeared to have added anything to
3 the equation. And that was one of the issues that we had. It didn't really
4 appear to add to the overall delivery of a project.
- 11:25:30 5 Q. 117 In fairness to Mr. O'Callaghan, and again, I am sure Mr. Keating will
6 adequately defend his interests. But Mr. O'Callaghan's position, I would
7 gather, and the bank's position, was that the value that Mr. O'Callaghan
8 provided to the transaction was the unlocking of the value of the planning
9 position between Neilstown and Quarryvale. Was that a commercially valuable
11:25:55 10 thing in your view?
- 11 A. Yes. But in fairness a price had been identified on that. So a deal had
12 been -- it wasn't necessarily.
- 13 Q. 118 The price was in the option agreement.
- 14 A. Absolutely. So there wasn't actually a, as I recall, there was a financial
11:26:09 15 agreement with Mr. O'Callaghan in terms of acquiring his options over the
16 Clondalkin site. So it wasn't necessarily essential for him to be a partner in
17 Barkhill to achieve that.
- 18 Q. 119 And so what, in your view, was the net commercial gain to the bank by their
19 actions as you saw it?
- 11:26:34 20 A. As I saw it, they were swapping one developer partner with another. So it was
21 actually, I guess their preference for one client over another client.
- 22 Q. 120 Can you see these transactions against the backdrop of the worsening financial
23 and property markets at the time, Mr. Forman. That at that time do you
24 remember were property prices decreasing or was there a tightening in the
11:27:06 25 market in any respect? I don't want to put you under too much pressure.
- 26 A. There are certainly been ups and downs in the intervening period haven't we. I
27 think as regards this particular project and the location of this project,
28 there was a lot of positivity. So yeah, I mean, the market conditions were
29 entirely certain at that point. And there would have been work done on the
11:27:33 30 site and the accumulation of other sites as well. And the aggregate of those

11:27:38 1 together, the aggregate of the accumulation of the site and the site building
2 let's say of the locking together of the sites and the purchasing of the sites.
3 Would that in your view have had a positive overall effect.

4 A. Absolutely. I mean I think one, the fact that the site had effectively been
11:27:57 5 brought to the attention of the market through the actions of Tom and the
6 professional team as a whole as item one. And then the assembling of the site
7 because really it was a site that relied upon a number of land holdings being
8 brought together, so that any form of commercial development, whether that was
9 retail or other, could be delivered there.

11:28:21 10 Q. 121 It was Mr. Michael O'Farrell's evidence at the Tribunal. Did you know
11 Mr. O'Farrell?

12 A. I think I did meet him, yes.

13 Q. 122 I put it to him in cross-examination that the worth of the site in question was
14 quite substantial. And I believe that I put it to him that Riga's, which is
11:28:41 15 Mr. O'Callaghan and Mr. Deane's companies, their shareholding and their
16 proprietary interest in the lands at Quarryvale were quite substantial. And it
17 was Mr. O'Farrell's evidence that they were not worth anything really. Is that
18 sustainable, Mr. Forman?

19 A. Not in my opinion.

11:29:05 20 Q. 123 Can I just bring you to the next paragraph of your statement. "The whole
21 thrust of the bank's attitude appeared to be designed to force Mr. Gilmartin to
22 a pass over equity and control of his company to Mr. Owen O'Callaghan. It
23 appeared that the bank were discussing Barkhill's business with Mr. O'Callaghan
24 even though he had no involvement with the company. The company is Barkhill.
11:29:30 25 I recall an example of this attending the bank with Tom to find that Mr.
26 O'Callaghan was also present although neither Tom nor I had invited him.
27
28 This drive by the bank to try to get Mr. Gilmartin to hand over a share of his
29 company to another customer appeared most irregular. It was clear that the
11:29:47 30 funding pressures were short-term and that given the amount of equity invested

11:29:51 1 by Mr. Gilmartin, the bank would always have an exit route through the sale of
2 the site which by that time was clearly going to be delivered for development
3 of sufficient value to recover the investment made."
4

11:30:06 5 The exit route of the bank, Mr. Forman, what do you mean by that?

6 A. In our opinion at that point the works that had been undertaken in terms of
7 assembling the site, identifying issues of access and so on so forth meant that
8 we'd already established a base value for the land.

9 Q. 124 So is it your evidence, Mr. Forman, that it's not just a block of land but the
11:30:33 10 work that went into it, such as identifying exit routes would have
11 significantly enhanced the value of the land?

12 A. Yeah, the process of assembly and this sort of planning work that went into
13 that, yes.

14 Q. 125 So this is a valuable asset?

11:30:52 15 A. Yes.

16 Q. 126 It was difficult. This is the bottom of page 2067, last paragraph.

17
18 "It was difficult for me to see what the bank thought that Mr. O'Callaghan
19 could deliver that Mr. Gilmartin couldn't, except that he was clearly a longer
11:31:09 20 standing customer".

21
22 Could it be, Mr. Forman, that Mr. O'Callaghan could deliver something that Mr.
23 Gilmartin couldn't in the form of effectively planning and zoning for the site
24 in question?

11:31:31 25 A. That wasn't evident to us at the time. I mean, clearly, that was a political
26 and a planning process in terms of achieving zoning.

27 Q. 127 But in terms of delivery. When you say that Mr. Gilmartin couldn't. I am just
28 curious as to your wording there, Mr. Forman. It's "it's difficult for me to
29 see what the bank thought that Mr. O'Callaghan could deliver that Mr. Gilmartin
11:32:01 30 couldn't".

11:32:01 1 Was there any commercial reasons as a long-standing and experienced property
2 developer? Were there any commercial reasons why you think that Mr.
3 O'Callaghan could be involved or should be involved in the development in
4 question?

11:32:19 5 A. I think there's always an opportunity to involve other developers in projects,
6 joint ventures are, you know, are relatively common. But usually it's adding
7 parties with different skill sets or different financial attributes to deliver
8 that sort of mix. I mean, this particular case really, the next elements to
9 delivering this scheme were actually delivering on the planning and delivering
11:32:56 10 a development partner with the funds to actually undertake the development.

11 Q. 128 And you mentioned skill sets. And you've had, I believe you had significant
12 experience of Mr. Gilmartin in the past. In your view, would Mr. Gilmartin's
13 skill sets have been capable of developing the site to its full potential?

14 A. Yes.

11:33:21 15 Q. 129 Can I ask you, Mr. Forman, in your expert opinion, dare I say, as a property
16 expert. Was there any commercially explicable reason why AIB took the view
17 they did in terms of not extending the short-term financing, in your view?

18 A. From a property perspective in my view, no.

19 Q. 130 And was there any commercially explicable reason or was it commercially
11:33:59 20 explicable for Mr. O'Callaghan to have become involved in the development at
21 Quarryvale?

22 A. Not in the form that it took. I mean we have already discussed the need to
23 actually, the benefits in terms of undertaking a deal on the Clondalkin site.
24 But that had been achieved outside of equity.

11:34:21 25 Q. 131 There was a price on that already?

26 A. Absolutely, absolutely.

27 Q. 132 Thank you, Mr. Forman.

28 A. Thank you.

29

11:34:26 30 CHAIRMAN: Mr. Forman, were you aware at that time. I am just referring to,

11:34:30 1 yes, to your comment that you didn't see any reason why the bank would have
2 favoured Mr. O'Callaghan?

3 A. Other than the fact that he was, as I noted, that he was a long-standing
4 customer.

11:34:48 5
6 CHAIRMAN: But would you have been aware, as the bank would have been there
7 then, that he had an established reputation for successfully developing retail
8 sites elsewhere?

9 A. I was aware that he was an established developer, yes.

11:35:05 10
11 CHAIRMAN: In Arlington?

12 A. Yes, indeed, yeah.

13
14 CHAIRMAN: All right. Sorry. Mr. Keating, do you want to ask any questions?

11:35:12 15
16 MR. KEATING: As it stands, Chairman, no. I think I should let Mr. Nesbitt
17 proceed and I can take it up then. Thank you.

18
19 CHAIRMAN: All right.

11:35:19 20
21 **THE WITNESS WAS QUESTIONED BY MR. NESBITT AS FOLLOWS:**

22
23 Q. 133 Good morning, Mr. Forman. I appear for Allied Irish Bank. I just wanted to
24 ask you a short number of questions.

11:35:29 25
26 Firstly, I think before you made your statement to the Tribunal you met with
27 Mr. Hanratty, one of the counsel acting for the Tribunal?

28 A. That's correct, yes.

29 Q. 134 And I think I just note at the end of the note that he made to himself
11:35:42 30 concerning that meeting. He indicates that you had diaries that would assist

- 11:35:50 1 you and would help you providing dates for events you spoke to him about. Did
2 you ever produce any diaries to the Tribunal?
- 3 A. No. I think we did research some dates for Mr. Hanratty when he asked on
4 specific dates, just to check appointments.
- 11:36:07 5 Q. 135 You were working in London, is that right?
- 6 A. I was actually base in the Milton Keynes but working in Milton Keynes and
7 London, yes.
- 8 Q. 136 But you met Mr. Gilmartin in relation to business that was taking place other
9 than in Ireland, is that right?
- 11:36:21 10 A. That's correct.
- 11 Q. 137 And had you worked in Ireland before having an involvement with this particular
12 Quarryvale site?
- 13 A. No.
- 14 Q. 138 No.
- 11:36:31 15 A. Well, yes, I had because we'd been looking at working in a city centre with Tom
16 Gilmartin and Arlington and we had explored another couple of developments
17 opportunities prior to that.
- 18 Q. 139 But I think you have said in your statements that the Arlington transaction was
19 effectively one run by them, not Mr. Gilmartin?
- 11:36:55 20 A. No. The site assembly and initial development process was very much driven by,
21 driven by Tom in terms of detailed design work and so on so forth. Then yes,
22 Arlington took a lead on that.
- 23 Q. 140 So if he didn't bring it to fruition, he didn't attempt to bring it to
24 fruition, somebody else had to come in and try and deal with it?
- 11:37:19 25 A. He was working very closely with Arlington in terms of progressing it.
- 26 Q. 141 That didn't work out, did it?
- 27 A. It didn't work out. You know, that wasn't to say it wasn't a good site. It
28 was a very good site and very good project.
- 29 Q. 142 So being a good site doesn't necessarily mean something will work out?
- 11:37:45 30 A. It doesn't necessarily.

- 11:37:48 1 Q. 143 Now, how many times did you come to Ireland in the course of assisting Mr.
2 Gilmartin, can you remember?
3 A. Numerous times. I couldn't give you a number but ...
- 4 Q. 144 Okay. Now, in relation to something you've been asked about. I just want to
11:38:04 5 try and tease it out a little bit. When you were employed by Mr. Gilmartin and
6 on your trips to Ireland. You seem to have developed a view that you've told
7 the Tribunal about; that you were surprised by the standing in which Allied
8 Irish Banks held Mr. O'Callaghan.
9 A. Yes.
- 11:38:30 10 Q. 145 Are you seriously suggesting that to this Tribunal?
11 A. I've not said that, no.
- 12 Q. 146 Okay. So you don't want to tell this Tribunal that you are surprised that the
13 bank would have found Mr. O'Callaghan a good partner and somebody who might
14 have the expertise to bring this project forward?
11:38:47 15 A. I think my surprise was more the lack of support for Mr. Gilmartin.
- 16 Q. 147 Okay. Now, I think we are accepting or you are accepting that Mr. O'Callaghan
17 as the Chairman of the Tribunal asked you, was somebody with a good track
18 record of finding developments and doing everything necessary to bring them
19 home, build them and pay back the banks?
11:39:11 20 A. Sorry, say that again, please.
- 21 Q. 148 I think you accept that Mr. O'Callaghan was a developer of reputation who had a
22 good track record so far as the bank's were concerned finding development
23 prospects, working on them and building on them and repaying the banks?
24 A. I'm sure that's the case.
- 11:39:27 25 Q. 149 Okay. So why are you surprised the bank wouldn't find him a good partner if a
26 partner was needed?
27 A. I think it was the manner of the process that this was a development being
28 promoted by Tom Gilmartin as Barkhill. I would expect the developer to be the
29 driving force in terms of what partner is, was brought in rather than the bank
11:39:59 30 to be honest.

11:40:01 1 Q. 150 Well you see, in this particular case one of the things we're aware of is that
2 in fact the introduction of Owen O'Callaghan and his keen interest was
3 something that was written about by Mr. Gilmartin himself. Did you know that?
4 A. Yes, yeah.

11:40:19 5 Q. 151 So Mr. Gilmartin as far as you know was the person who introduced Mr.
6 O'Callaghan to this prospect?
7 A. The ongoing discussions, I am aware of that.

8 Q. 152 Okay. Well let's keep it simple. Do you accept that Mr. Gilmartin introduced
9 Mr. O'Callaghan to the possibility of being involved in this project?
11:40:42 10 A. I would suggest that's probably correct.

11 Q. 153 Good.
12 A. I don't have the sequencing of notes that you may have the benefit of.

13 Q. 154 So on the basis that we accept that Mr. Gilmartin introduced Mr. O'Callaghan
14 and you seem to accept that some sort of partner was needed to finish the
11:40:59 15 project. Is it surprising that the bank took a view about Mr. O'Callaghan.
16
17 MR. RYAN: Chairman, I don't want to interrupt. But if Mr. Nesbitt has
18 documentation referring to this. I believe he should bring it up on screen.
19

11:41:14 20 MR. NESBITT: It's page No. 2369 of the Tribunal documentation letter -- sorry,
21 3269. I think a letter of the 5th of September 1990 written to the bank by Mr.
22 Gilmartin. And it says among other things when talking about --
23
24 CHAIRMAN: I don't think that's the correct page number.

11:41:35 25
26 JUDGE KEYS: Is that Quarryvale I?
27
28 MR. QUINN: Perhaps 4345 might be the ...
29

11:41:46 30 MR. NESBITT: Sorry.

11:41:47 1 JUDGE KEYS: Is that it?
2
3 MR. NESBITT: The copy I'm working on has a different page number. It must
4 have come from a different brief. ARL/Q 97/87/90. There are other names as
11:42:03 5 well.
6 Q. 155 But this is a letter, Mr. Forman, written to the bank on the 5th of September
7 1990, and in it Mr. Gilmartin says that's writing to the bank "further to
8 recent telephone conversations I am writing to bring you it up to date on the
9 progress of our various negotiations with interested parties in the proposed
11:42:20 10 developments of the lands at Palmerstown". And then he talks about a number of
11 things. In the fourth paragraph he says "Owen O'Callaghan has also expressed a
12 keen interest in negotiations regarding a joint venture or some involvement in
13 the project but of course he wants a final payment on my contract with him
14 first".
11:42:35 15
16 So that's Mr. O'Callaghan or Mr. Gilmartin telling the bank that Mr.
17 O'Callaghan was interested. Now, are you surprised given his name was
18 mentioned to the bank, given he had a interest already in other ways, that the
19 bank should not look at him as somebody who might be able to help Mr.
11:42:55 20 Gilmartin?
21 A. No.
22 Q. 156 Good. So what's strange about the bank doing it? I still don't understand why
23 you find it strange that they would be interested in Mr. O'Callaghan, given the
24 circumstances I have outlined?
11:43:10 25 A. I think it was the leverage the bank sought to apply to deliver equity from one
26 client to another client.
27 Q. 157 Have you ever been in a situation when you've been giving advice on
28 developments where the people who are trying to drive the development can't get
29 things done, can't finally get things over the line, have a view that you don't
11:43:35 30 necessarily agree with where sometimes somebody has to try and move them on

- 11:43:39 1 from the position they are in?
- 2 A. I'm sorry, what's the question?
- 3 Q. 158 The question is; as somebody who has been involved in developments, giving
4 advice. I want to understand have you never -- is it not the case that in
11:43:53 5 developments sometimes things can stall, things don't move ahead properly,
6 individuals involved have points of view that don't really match what needs to
7 be thought about or done to get the thing done --
- 8 A. There is always a process of discussion --
- 9 Q. 159 Yeah.
- 11:44:06 10 A. -- and in any development situation.
- 11 Q. 160 And have you never had a situation where one particular individual may have a
12 point of view that other people don't agree with?
- 13 A. Absolutely.
- 14 Q. 161 And have you never been in a situation where sometimes it's necessary to
11:44:20 15 attempt to get that person to see sense so the thing can move forward?
- 16 A. There is always discussion in these situations I'm sure you appreciate.
- 17 Q. 162 So do you know the explanation and the evidence that's been given to this
18 Tribunal as to why the bank were anxious to have Mr. Gilmartin move forward and
19 do something to break the log jam in relation to the development of his
11:44:49 20 proposal?
- 21 A. I think Mr. Gilmartin was moving forward ahead, as is clear from the letter you
22 put up there in terms of his report at that stage.
- 23 Q. 163 I think that's a report. I think you will find the evidence and have you
24 checked the evidence, have you been paying attention to the evidence? Have you
11:45:05 25 any idea what's been said over the past few weeks about this issue?
- 26 A. I've not been reading all of the evidence, no.
- 27 Q. 164 Okay. So as far as you know you don't understand exactly where Mr. Gilmartin
28 was and why the bank might be anxious that he needed to move forward in some
29 way?
- 11:45:21 30 A. I was aware of the level of equity investment that Mr. Gilmartin had made in

- 11:45:24 1 the project at that stage.
- 2 Q. 165 What has that got to do with it?
- 3 A. Well, it has quite a lot in my opinion.
- 4 Q. 166 If your equity has been spent and has no value, how does it help moving the
- 11:45:35 5 project forward?
- 6 A. As we've already indicated. I think to suggest there was no value there would
- 7 be incorrect.
- 8 Q. 167 If you bought some land and you can't sell it for what you owe people and you
- 9 can't get any more money, where is the value?
- 11:45:51 10 A. I don't think there's any suggestion that it couldn't have been sold for what
- 11 was owed.
- 12 Q. 168 Well the evidence has been the bank's took the point of view that appointing a
- 13 receiver was the wrong thing to do. Mr. Gilmartin had what we believe was an
- 14 inflated view of what the land might have been worth but the banks had to make
- 11:46:10 15 their own decision. Do you disagree with that?
- 16 A. I disagree, if they felt that they couldn't have recovered their value of the
- 17 equity from the land, yes indeed.
- 18 Q. 169 So that's just a point of view, its an opinion. You don't share that opinion
- 19 as Mr. Gilmartin's advisor coming in from in from England but the bank's you
- 11:46:23 20 accept could have held that view?
- 21 A. They could have held a view, yes.
- 22 Q. 170 Yes. It wasn't irrational.
- 23 A. I think what was unusual was, as I say, with a developer client who had
- 24 invested substantial sums of money in a project not to be working with that
- 11:46:47 25 development, developer client to secure either an exit or indeed a development
- 26 that was proposed.
- 27 Q. 171 Now, up to the time Mr. O'Callaghan became involved, did you find anybody to be
- 28 an equity partner for Mr. Gilmartin?
- 29 A. As the note says, there were a number of discussions ongoing at that stage.
- 11:47:08 30 Q. 172 Had you found anybody who would be an equity partner not would discuss being an

- 11:47:12 1 equity partner for Mr. Gilmartin?
- 2 A. We had identified a number of parties who had expressed interest in becoming an
- 3 equity partner. There was no deal done, as you are aware.
- 4 Q. 173 So you hadn't found anybody who was prepared to become an equity partner for
- 11:47:25 5 before Mr. O'Callaghan arrived on the scene?
- 6 A. Yes we had.
- 7 Q. 174 Who?
- 8 A. A number of parties. As I say, there was no deal done. If your question is
- 9 had we found any party who was prepared to be, yes.
- 11:47:37 10 Q. 175 But they weren't. Did you find anybody who translated into being an equity
- 11 partner?
- 12 A. No.
- 13 Q. 176 And did you find anybody who even indicated we will sign the agreement. Where
- 14 is it?
- 11:47:48 15 A. Sorry?
- 16 Q. 177 Did you find anybody who even got to the point of saying we want to sign an
- 17 agreement, please give it to us?
- 18 A. Matters never got to that stage given that, given the bank's control of the
- 19 position.
- 11:48:05 20 Q. 178 But the banks didn't control the position, Mr. Forman. They lent money and
- 21 they wanted to get it back. Why do you have such a difficulty with these
- 22 questions?
- 23 A. I don't have any difficulty at all.
- 24 Q. 179 Why can you not see where Mr. Gilmartin had got to? He had put a lot of money
- 11:48:21 25 into a project. I think everybody agrees was far sited. But he had run out of
- 26 roadway. He didn't have any more money to put in. Do you agree with that?
- 27 A. Which is why we were looking for equity partners to put money in.
- 28 Q. 180 Precisely. You hadn't actually found anybody to send a cheque over. They
- 29 liked talking but they weren't sending any money, is that correct?
- 11:48:49 30 A. That's correct.

- 11:48:50 1 Q. 181 And Mr. O'Callaghan had come on the scene at the introduction of Mr. Gilmartin,
2 isn't that right?
- 3 A. Yes.
- 4 Q. 182 And Mr. O'Callaghan was interested in doing something but he had terms which he
11:49:02 5 wanted to adhere to, isn't that right?
- 6 A. As far as I'm aware he wasn't actually coming on board in terms of putting
7 equity into the position.
- 8 Q. 183 And the banks wanted their money back. But Mr. Gilmartin didn't have it. Do
9 you remember that bit of it?
- 11:49:25 10 A. Yeah.
- 11 Q. 184 And the banks rightly or wrongly believed that getting Mr. O'Callaghan further
12 involved would be the right thing to do. Do you remember that?
- 13 A. Clearly, they believed that as what was strange and puzzled us was that here
14 was a party that wasn't actually bringing equity to the position.
- 11:49:41 15 Q. 185 He was bringing a lot of things. We'll leave equity to one side for the moment
16 and come back to it. He was bringing -- track record and expertise delivery of
17 projects in Ireland. Did Mr. Gilmartin bring any of those things?
- 18 A. Given the bank's motivation appeared to be trying to secure its equity back out
19 again. Then it wasn't achieving that.
- 11:50:06 20 Q. 186 The bank had to do what it felt best. Mr. Kay, who I think you consider to be
21 "straight forward and supportive" has explained what the bank felt it had to
22 do. Do you disagree with anything that he used to say to you?
- 23 A. With who sorry?
- 24 Q. 187 Mr. Kay. You have expressly mentioned you knew Mr. Eddie Kay to be straight
11:50:28 25 forward --
- 26 A. I think I recall having discussions with him, yeah.
- 27 Q. 188 His opinion was that Mr. O'Callaghan -- Mr. Gilmartin sorry couldn't come to
28 grips with the difficulty that the project was in?
- 29 A. Sorry, is there a question there?
- 11:50:43 30 Q. 189 Yes. Do you disagree with that?

- 11:50:47 1 A. If -- what's the question?
- 2 Q. 190 You see, I will come at it another way.
- 3 A. Sorry.
- 4 Q. 191 I get the impression what that what you want to say this Tribunal is. You
- 11:50:59 5 thought it was a bit unfair on Mr. Gilmartin who had the idea, put a lot of
- 6 money in. That at the end of the day it wasn't possible to give him everything
- 7 he dreamed of.
- 8 A. No, I think I don't have any issue at all with the bank having a view in terms
- 9 of development partners. I think it's actually the manner in terms of which
- 11:51:22 10 the leverage was applied. That's what we expressed surprise at in terms of how
- 11 that evolved.
- 12 Q. 192 You see, I don't understand that with respect. It seems to be sort of with
- 13 respect a mantra that you keep repeating. But I don't understand what are the
- 14 factual circumstances other than Mr. Gilmartin had run out of money, the bank
- 11:51:43 15 wanted to be repaid and they believed the future involving Mr. O'Callaghan was
- 16 the best way to get that. That's all that happened. Not unusual I would
- 17 suggest in a development project?
- 18 A. As I said in my evidence, in my view at that time the manner of, in which that
- 19 was prosecuted by the bank was unusual.
- 11:52:10 20 Q. 193 Why?
- 21 A. As I said, it was the manner in which it was dealt with in terms of seeking to
- 22 force the transfer of equity from one client from one customer to another
- 23 customer.
- 24 Q. 194 But the bank -- this project was being run on people having an interest and
- 11:52:30 25 being involved in it. And the bank simply wanted that to happen, isn't that
- 26 right?
- 27 A. I'm sure that's correct.
- 28 Q. 195 So what's wrong with it? What's unusual?
- 29 A. In my opinion it was unusual, the manner of that pressure and transfer of
- 11:52:50 30 equity as I say from one party to the other without the full agreement of the

11:52:55 1 first party.

2 Q. 196 But he did agree. He signed the agreement. He didn't have to do that.

3 A. Well as I say, I've stated in my opinion the manner in which matters were dealt

4 with was, in my experience at that stage, somewhat unusual.

11:53:20 5 Q. 197 You see, I am sorry to labour this, Mr. Forman. Saying it's unusual tells us

6 nothing unless you describe what the unusual nature is. There must be some

7 factual things that you want to tell us about that shows it to be unusual. All

8 you keep saying I'm surprised the bank wanted Mr. Gilmartin to do something to

9 save their money.

11:53:44 10 A. I think it was the way, as I say, it was the way that pressure was put on to

11 transfer equity from Barkhill, to transfer Tom's equity into another party.

12 Q. 198 Well can we try and agree on it this that. What you are expressing is not a

13 disagreement that it's something that the bank thought was the way to go. You

14 just were surprised that's the way they went, is that what you want to say?

11:54:14 15 A. No, the surprise was the manner in which it was dealt with.

16 Q. 199 It was just the manner rather than the fact that it happened?

17 A. I can understand the bank having views as to who they would like to have in a

18 position. I can't understand them not supporting their prima facie customer.

19 Q. 200 So it's just simply down to an issue of support, is that right?

11:54:37 20 A. I don't think the issue is simple.

21 Q. 201 That's why I'm asking you questions. I have to say I don't understand exactly

22 what you want to say in relation to this issue.

23 A. Well I think I've made my point quite clearly.

24 Q. 202 So it's unusual but not something you think is irrational and not something you

11:54:58 25 think was a route that the bank could have considered as appropriate?

26 A. As I said already, it's quite, it's quite common -- I am not arguing with the

27 point that it's commonplace to involve other development partners. And I am

28 not arguing that it's quite reasonable for the bank to have their own view on

29 it. We felt or the impression we got at the time was that Mr. Gilmartin was

11:55:24 30 being placed under undue pressure to pass equity in his company, which he

- 11:55:34 1 didn't wish to do so and to no obvious benefit to the bank at that stage, given
2 that if the bank really wanted to exit from the project and get the money back
3 then actually a sale of the underlying assets might have been a much simpler --
- 4 Q. 203 So your whole theory is premised on your opinion that selling the assets was a
11:55:58 5 much better way to go than the bank did?
- 6 A. It would have been more consistent with their concern about short-term, you
7 know, the issue of short-term debt because the way they went didn't solve that
8 issue of short-term debt.
- 9 Q. 204 This is really a question of opinion because the bank's evidence has been
11:56:14 10 having looked at everything they decided a receiver was the wrong way to go and
11 to try to move forward that they did was the way that they felt best. You are
12 not disagreeing that that was their opinion?
- 13 A. I can't disagree with what their opinion is.
- 14 Q. 205 Okay. So I am concerned that you are trying, might be giving the impression to
11:56:34 15 the Tribunal that there was something wrong in what they did, something
16 dishonest, something under hand. But you are just saying you think it should
17 have been done a different way?
- 18 A. I think the manner in which they applied pressure to my client at that time,
19 Mr. Gilmartin, did seem to me very unusual and certainly wasn't what I'd been
11:56:56 20 used to in terms of dealings with other UK and international banks that I had
21 dealt with in development projects elsewhere.
- 22 Q. 206 And had you ever had a situation exactly like this?
- 23 A. No two situations are exactly alike.
- 24 Q. 207 I see. So you don't actually have any base to test this unusual theory
11:57:15 25 against?
- 26 A. Well --
- 27 Q. 208 This is what happened here and the banks have explained how it happened.
- 28 A. I think the manner in which it was dealt with, as I say, in my opinion, was
29 very unusual.
- 11:57:27 30 Q. 209 You see, I still don't understand what the manner was. Were they rude to him?

- 11:57:33 1 A. I think they probably were, yes. But that wasn't the key point, I think it was
2 actually the pressure that was applied. As I say, for one customer to transfer
3 their interests to another customer.
- 4 Q. 210 This is to save the project so far as the banks were concerned to move it
11:57:49 5 forward so there would be a return at some time in the future. Is that a bad
6 motivation for a bank to have?
- 7 A. Not a bad motivation but it may have been slightly mild picket at that stage.
- 8 Q. 211 It might have been what, sorry, I missed the answer?
- 9 A. Sorry, slightly. I said my off, might be slightly disregarding the other
11:58:12 10 options available.
- 11 Q. 212 Okay. So it's just that you disagree with their analysis of what the options
12 were, in which the best option to go was?
- 13 A. I think the point I was making was they actually seemed to be focussing ongoing
14 one particular direction rather than actually looking at the options available.
- 11:58:35 15 Q. 213 The evidence has been that they looked at options this is one they chose. You
16 don't disagree with the option one of the ones on the table to be looked at?
- 17 A. As I say, it's one of the options they chose and how they went about delivering
18 that option.
- 19 Q. 214 I think when that happened you still hadn't produced any equity partner at that
11:58:57 20 stage, had you? Where the arrangements was signed, the shareholders agreement
21 was signed?
- 22 A. No.
- 23 Q. 215 And how long did you have to take after that had occurred to I think the best
24 you got was to make an introduction to another estate agent who happened to
11:59:11 25 work for the Grovenor Estate, isn't that right? I don't want to be too unfair
26 to you but I think that was probably it.
- 27 A. I think you were being very unfair, actually yes. So, no, we took matters a
28 lot further than that and in a lot more detail than that.
- 29 Q. 216 So when was an equity partner on the scene?
- 11:59:30 30 A. In terms of the Hammersons deal, I don't have the dates in front of me. You

11:59:36 1 may have them.

2 Q. 217 The Hammersons deal didn't come to anything, did it?

3 A. It didn't finally complete, no.

4 Q. 218 So it's not the deal, it just didn't happen. Sow didn't have anybody when

11:59:57 5 Hammersons was around. It was after they gave up that somebody turned up,

6 isn't that right?

7 A. It was as a result of the Hammersons deal that the Grovenor deal happened.

8 Q. 219 So that was the first time a deal was when Grosvenor came on board?

9 A. That was the first time a deal was consummated, yes.

12:00:00 10 Q. 220 I suggest to you that most of the heavy lifting if I can put it that way, that

11 Grosvenor interested and prepared to move across the line was done by Mr.

12 O'Callaghan?

13 A. I wouldn't want to belittle the amount of work that Mr. O'Callaghan and his

14 colleagues did in that respect. I think we had done a lot of the heavy lifting

12:00:21 15 in terms of delivering the funding mechanism at that point.

16 Q. 221 So if we just go back over it unemotionally. Mr. Gilmartin had an idea.

17 Attempted to bring it to fruition. Ran out of funding. Owed money to his

18 banks, which he couldn't pay. The banks took the opinion that working with Mr.

19 O'Callaghan would be beneficial. And indeed, after Mr. O'Callaghan came on

12:00:49 20 board you found somebody prepared to be the equity investor; Grovenor. Would

21 you agree with that as a fair chronology of what occurred?

22 A. I mean the ongoing work in terms of delivering an investor was very much down

23 to ourselves and Tom and Mr. O'Callaghan and fairness, and Mr. Deane, because

24 we were working for them all at that stage. You know, it was a process that we

12:01:16 25 followed through that in terms of as I say the Hammersons negotiations leading

26 into the Grovenor deal.

27 Q. 222 I understand that you helped in negotiations but Hammersons and then Grovenor

28 were effectively at the time that Mr. O'Callaghan was and Mr. Deane were

29 effectively doing most of the work in relation to making sure an equity

12:01:37 30 investor had come in, isn't that right?

- 12:01:40 1 A. I think that was as a result of the fact that at that stage Mr. Gilmartin had
2 actually been eased out of the position I think.
- 3 Q. 223 So when Mr. Gilmartin was there you couldn't get an equity investor and when
4 Mr. O'Callaghan was given a go, he did?
- 12:01:54 5 A. I can see the conclusions that you are trying to draw and they are
6 inappropriate conclusions.
- 7 Q. 224 I suggest that they are inescapable, not inappropriate. Why are they
8 inappropriate?
- 9 A. It was the scheme that attracted the investor rather than the personalities
10 behind that scheme.
- 11 Q. 225 Yes.
- 12 A. You know, the value is in the property project.
- 13 Q. 226 Yes but you can think up the scheme but it doesn't mean that you eventually
14 bring it to fruition. I think you may have heard the expression fools build
15 houses for wise men to live in.
- 12:02:33 16 A. That one has passed me by.
- 17 Q. 227 So to suggest to you that what happened here was not unusual and one can see
18 that the bank having taken an opinion which I suggest to you was within the
19 envelope of possibility seemed to have chosen the right route?
- 12:02:58 20 A. I don't think. Well, I'm not going to argue with the fact that the bank are
21 entitled to take their own opinion. I say our issue is with the manner of that
22 delivery.
- 23 Q. 228 Thank you.
- 24
- 12:03:12 25 CHAIRMAN: Do you want to ask any?
26
- 27 MR. KEATING: Chairman, I have no questions for this witness.
28
- 29 JUDGE FAHERTY: Yeah, Mr. Forman.
- 12:03:20 30 A. Yes.

12:03:20 1 JUDGE FAHERTY: Just on one matter. You can have Mr. Forman's statement at
2 2067, please. I just want to ask you about something you referred to in your
3 statement, Mr. Forman. It's before you there, it's the third last paragraph.
4 Beginning "the whole thrust of the bank's attitude". Do you see that?

12:03:41 5 A. Yes.

6
7 JUDGE FAHERTY: And I beg your pardon, yes there it is. And you said that it
8 appeared to you that the bank were discussing Barkhill's business with Mr.
9 O'Callaghan even though he had no involvement with the company.

12:03:59 10 A. That's correct, yes.

11
12 JUDGE FAHERTY: And I just wanted to ask you. How did you come to that view,
13 how did you come to that view so expressed in your statement?

14 A. Well I think I mention well I think I mentioned in terms of my own direct
15 involvement. There was one meeting I attended with the bank where, with Tom to
16 discuss Barkhill business where Mr. O'Callaghan was present, which wasn't at
17 our invitation or at Tom Gilmartin's invitation.

18
19 JUDGE FAHERTY: Well can you give the -- When you say "present". Are you
20 saying that Mr. O'Callaghan was present at the meeting or present in the bank?

12:04:40 21 A. He appeared to be invited by the bank at that stage, yes.

22
23 JUDGE FAHERTY: And do you know when this occurred?

24 A. I don't have the date.

12:04:56 25
26 JUDGE FAHERTY: Yes.

27 A. That I, I imagine the date could be checked.

28
29 JUDGE FAHERTY: Yes.

12:05:12 30 A. I was also aware --

12:05:12 1 JUDGE FAHERTY: What I really want to ascertain. We know that Mr. O'Callaghan
2 was at many meetings with Mr. Gilmartin and yourself after a certain point
3 because he had an involvement with Barkhill, isn't that correct?

4 A. I'm sorry.

12:05:17 5
6 JUDGE FAHERTY: Sorry. We know as a matter of fact that Mr. O'Callaghan would
7 have attended many meetings with Mr. Gilmartin and Allied Irish Bank personnel
8 and indeed perhaps with yourself on occasions at some point.

9 A. Yes, indeed.

12:05:29 10
11 JUDGE FAHERTY: Once the -- after the shareholders agreement.

12 A. Yes. I think it was ...

13
14 JUDGE FAHERTY: I want to know because you haven't set out any time line in
12:05:35 15 your statement that's really what I'm asking you. At what point do you say?

16 A. This was prior to it being an agreement. Prior to there being a joint venture
17 agreement or an equity transfer to Mr. O'Callaghan. So that was, as I say, I
18 was aware specifically from that meeting. I was aware from other discussions
19 with Tom Gilmartin, his reports back from the bank I wasn't present at a lot of
12:06:01 20 those meetings with the bank.

21
22 JUDGE FAHERTY: Yes, I understand.

23 A. But Tom would report back to me in terms of those. And as I say, there was
24 this apparent pressure to transfer equity from his equity in Barkhill to Mr.
12:06:18 25 O'Callaghan.

26
27 JUDGE FAHERTY: And the example you give when you say that you recall Mr.
28 O'Callaghan being present at a meeting. Was any objection voiced on that
29 occasion by yourself or Mr. Gilmartin to the fact that Mr. O'Callaghan was in
12:06:33 30 attendance?

12:06:36 1 A. I think -- I don't recall whether it was objected to. I think there was some
2 surprise expressed. I think we just sort of were taken aback with having an
3 extra bod there. It wasn't, at the end of the day, we were meeting at the
4 bank's offices so to some extent they had a call as to who was going to be
12:07:04 5 there.

6

7

JUDGE FAHERTY: I see. Thank you, Mr. Forman.

8

9

JUDGE KEYS: Mr. Forman, just one question.

12:07:09 10 During your involvement with the Quarryvale project as such. Did you ever
11 reach a stage where you would have thought that the security of the bank was
12 ever at risk vis-a-vis the value of the site and the monies which had been paid
13 for the property?

14 A. I think probably, I mean, during the early stages there was probably a greater
12:07:38 15 risk once the scheme actually started to progress.

16

17 JUDGE KEYS: Yes. But at the stage when new equity partners were coming into
18 the scene, which was AIB and which was Mr. O'Callaghan.

19 A. Yeah. We felt that, certainly in our opinion, at that stage either additional
12:08:03 20 equity wasn't at risk. Mr. Gilmartin had actually put quite significant sums
21 of his own in there.

22

23 JUDGE KEYS: Yes.

24 A. So in terms of the equity over and above Mr. Gilmartin's, we always felt that
12:08:14 25 was very well secured. I can think of a lot of property projects where
26 developers bringing forward schemes such as that they are relying on the banks
27 totally and actually not putting significant sums of money up directly
28 themselves. So the sheer fact that he put several million pounds into the
29 project, meant that the bank were better secured than they would otherwise have
12:08:39 30 been.

12:08:40 1
2 JUDGE KEYS: Well do I take it from that, you never felt at any stage that the
3 bank's security was at risk?
4 A. There is always a risk, which is associated with a final value.
12:08:52 5
6 JUDGE KEYS: Yes.
7 A. But in our opinion as valuers, we felt that risk was well secured.
8
9 JUDGE KEYS: Well that's what I mean.
12:08:59 10 A. Yeah.
11
12 JUDGE KEYS: That suggests then that the bank's monies were secured?
13 A. Yes, in our opinion.
14
12:09:06 15 JUDGE KEYS: Thank you.
16
17 JUDGE FAHERTY: Just one final thing, Mr. Forman, I just wanted to ask you.
18 When you, you embarked on a series of negotiations I think in 1994 with Mr.
19 Gilmartin and indeed Mr. Deane I think in the UK and a number of potential
12:09:19 20 investors?
21 A. Yes.
22
23 JUDGE FAHERTY: Were you aware by 1994 of the status of the lands?
24 A. I --
12:09:26 25
26 JUDGE FAHERTY: You had started. I just want to put this in context. You had
27 started out, if you go back, if you like to the Herrons in 1990?
28 A. Yeah.
29
12:09:36 30 JUDGE FAHERTY: You were meeting Herrons and you've given evidence as to that

12:09:42 1 and obviously others LET, there was Saunders and Kearns and that was going on
2 from sometime post 1990?

3 A. Yeah.

12:09:50 5 JUDGE FAHERTY: You then proceed in 1994. Were you aware of the status of the
6 lands in early 1994 when you embarked on this new round of ...

7 A. Yes, we were brought back in then again by Mr. O'Callaghan and Mr. Gilmartin to
8 secure funding at that stage. Clearly, the fact that the planning zoning had
9 progress at that point.

12:10:29 10
11 JUDGE FAHERTY: Yes. I'm not sure. Certainly the zoning had been clarified?

12 A. Yes.

13
14 JUDGE FAHERTY: By December.

12:10:29 15 A. Which was obviously a key in terms of delivering confidence in the scheme.
16 Also I think as you referred to in some of those notes, the position in terms
17 of the key anchor retail was Marks & Spencers names being mentioned, had become
18 well established. So I think quite a few of the boxes had been ticked, being
19 ticked off were being ticked off. So planning one, anchor retailers. So that
12:10:55 20 was clearly a key factor in securing one, the detailed agreement with
21 Hammersons which it would be easy to make light of. But that ran right through
22 to detailed legal drafting, which then made the subsequent agreement with
23 Grovenors relatively easy to prosecute.

12:11:19 25 JUDGE FAHERTY: All right. That's all I have. Thank you, Mr. Forman.

26
27 MR. NESBITT: Just one matter arising if I may on a question Judge Keys asked.

28

29

30

THE WITNESS WAS QUESTIONED FURTHER BY MR. NESBITT AS FOLLOWS:

- 12:11:27 1
- 2
- 3 Q. 229 Mr. Forman, when you suggest to the Tribunal that you didn't believe that the
- 4 banks' lending was at risk because of the sale value of the site. Can you tell
- 12:11:38 5 us for the purposes of assisting the Tribunal, when did you ever have that
- 6 consideration and can you tell us what the level of the bank's lending was at
- 7 the time that it occurred?
- 8 A. I think the question I was asking was a general view. Did I ever think that
- 9 the bank was at risk, so it wasn't actually saying at that at any particular
- 12:12:06 10 point in time.
- 11 Q. 230 Okay.
- 12 A. So he we didn't sit down and do a valuation on any particular date. We had a
- 13 position where Mr. Gilmartin had invested directly sums of money in the
- 14 project. So his, he stood to loose before the bank did. So we always felt
- 12:12:31 15 that that level of equity there, that the bank was relatively well secured.
- 16 Q. 231 But you see, Mr. Forman, with the greatest of respect, it doesn't matter how
- 17 much you put into a project, you can spend it on many thing. But once it's
- 18 spent it's spent. The bank are looking at a piece of property that can be sold
- 19 to try and payoff the debts. As I understand it, you are now saying, you never
- 12:12:52 20 did that -- you never sat down looked at all the debts to a particular point in
- 21 time and then took a view about value. You simply had this overriding belief
- 22 that there was sufficient value in the property to pay everybody off if it was
- 23 sold at any time?
- 24 A. We did. We reviewed it from time to time. We didn't undertake any formal
- 12:13:07 25 valuations. But we were always confident that it was equity position there.
- 26 Q. 232 You see. The evidence of the bank is that at a time when they were wondering
- 27 what they should do including appointing a receiver. They did take advice and
- 28 the advice they got was that there wasn't sufficient from the proceeds of sale
- 29 to pay them off.
- 12:13:28 30 A. I haven't seen that report.

- 12:13:29 1 Q. 233 Well assuming that exists. That helps you understand why they did what they
2 did, doesn't it?
- 3 A. Well --
- 4 Q. 234 Not to appoint a receiver?
- 12:13:38 5 A. It would depend on the nature of that report, which I haven't seen. So it
6 would be wrong of me to comment.
- 7 Q. 235 Okay. So you don't know the answer to that. You have to accept what they say?
- 8 A. I haven't seen the report. So I am not going to comment on a report I haven't
9 seen.
- 12:13:52 10 Q. 236 You never approached it in that way, you said it was a general view, a lot of
11 money has gone into this, the bank should be happy about that, there is a
12 general equity there that should pay everything back?
- 13 A. You are trying to put, you are trying to make it a lesser consideration than it
14 was. I am a professional valuer, we are a firm of professional valuers and we
15 looked at it professionally throughout.
- 12:14:15 16 Q. 237 That's why I'm asking you these questions. I would have felt as a professional
17 valuer. If you are being asked a particular question by the Tribunal in
18 relation to whether or not the bank are being going to be repaid at any time.
19 You would want to know when that time was, what the market conditions were and
12:14:31 20 you would have wanted to do a valuation to give a straight forward answer to
21 that question but you have never done that.
- 22 A. We were involved in a continuous appraisal of the site.
- 23 Q. 238 And what I am saying to you is. The bank when they were worrying about their
24 money took advice on value and then made their decision as to what to do. The
12:14:50 25 advice they got was that it was unlikely that they would be paid on a sale?
- 26 A. So you say.
- 27 Q. 239 Well if that's the situation as a professional valuer, wouldn't that help you
28 understand why it might make a decision not to appoint a receiver?
- 29 A. Yes, indeed.
- 12:15:07 30 Q. 240 Thank you.

12:15:09 1
2 CHAIRMAN: All right. That concludes your questions?
3
4 MR. NESBITT: Yes, Sir.
12:15:26 5
6 CHAIRMAN: All right. Thank you very much, Mr. Forman.
7
8 **THE WITNESS THEN WITHDREW.**
9
12:15:26 10 CHAIRMAN: That concludes or evidence for today. We are sitting tomorrow at
11 half past ten.
12
13 MR. QUINN: Half past ten, yes.
14
12:16:37 15 **THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,**
16 **THURSDAY, 1ST MAY 2008, AT 10:30 A.M:**
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