

1 THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY,
2 10TH FEBRUARY, 2004 AT 11.00 A.M:

3

4 MR. O'NEILL: Mr. Charlton, please, could you return to the witness-box.

5

6 CONTINUATION OF QUESTIONING OF MR. GERARD CHARLTON

7 BY MR. FINLAY:

8

9 Q 1 Chairman, just to follow up on where we left off on Friday, over the weekend I
10 have had the opportunity of taking some further instructions in relation to
11 some of the matters that, in particular, the members of the Tribunal raised and
12 some of the requests that were made. Now, and what I propose to do obviously
13 is to put to Mr. Charlton and Mr. Caldwell's account of matters in relation to
14 the issues we touched on on Friday afternoon. Just so that there's no
15 misunderstanding as to the way I'm going to do that, there are two ways in
16 which I could do it; I could either, as in the usual pattern of
17 cross-examination, introduce what Mr. Caldwell is going to say at the
18 appropriate point in the cross-examination and that, in fact, was something
19 that I had intended to do on Friday but this arose before I had got to that
20 point.

21

22 Or, alternatively, I can, before asking Mr. Charlton any more questions,
23 outline what Mr. Caldwell's evidence is going to be in relation to those
24 issues. I am entirely in the Tribunal's hands, it matters not at all to me
25 which route I pursue.

26

27 CHAIRMAN: I think the second suggestion is perfect.

28

29 Q 2 MR. FINLAY: Yes, very good, and I am perfectly happy to do that. It wouldn't
30 the way it might be done if you were in the High Court but I will do it that

1 way. So, Mr. Charlton, I am going to outline some of the evidence that
2 Mr. Caldwell is going to give when he gives evidence. When I say some,
3 obviously he is going to give evidence about a number of matters beyond what we
4 have touched on on Friday afternoon so when I say some, I mean some in that
5 context.

6 A I appreciate that.

7 Q 3 Thank you, Mr. Charlton. In relation to the figure of a million pounds,
8 Mr. Caldwell will say that he first heard of that figure in April 1988, to the
9 best of his recollection and I should perhaps say in ease of Mr. Caldwell that
10 like yourself, Mr. Charlton, given the interval of time, some of his
11 recollection depends on the contemporary documentation and you will understand
12 that, I'm sure. He first heard, to his recollection, of the million pounds in
13 April 1988 and that Mr. Kennedy told him at that time that Mr. Stanley was
14 looking for a million pounds, but that Mr. Kennedy had not agreed to give
15 Mr. Stanley a million pounds. Mr. Caldwell will say that he regarded the
16 million pounds as an unreal demand, but he will also say that at that time, and
17 we are talking here about April 1988 and the succeeding months, Mr. Charlton,
18 as you will see, at that time, that both Mr. Caldwell and Mr. Kennedy
19 recognised that Mr. Stanley was in a crucial position of power and if I might
20 just pause there, this is a matter of reasons, but it's very much directed to
21 the questions which Judge Keys asked me at the end of Friday afternoon. Why,
22 why did these discussions take place, why was there an agreement to give
23 Mr. Stanley a 20 percent shareholding?

24

25 Mr. Caldwell's evidence will be, Mr. Charlton, that Mr. Stanley at this point
26 in time, April 1988, right through to July at the earliest and sometime
27 afterwards, that Mr. Stanley was in a crucial position of power and one in
28 which he had very cleverly placed himself because at that point in time, as far
29 as the contract to purchase the land was concerned, Paisley Park had not yet
30 managed to secure any enforceable contract. And that Mr. Caldwell's and

1 Mr. Kennedy's concerns in that regard were reinforced over the coming months,
2 as will appear from the correspondence which we will come to.

3
4 Mr. Caldwell has no recollection of the million pounds being pursued during the
5 month of May 1988, though he believes that Mr. Kennedy was probably still in
6 contact with Mr. Stanley during that period. He recollects the million
7 resurfacing at or about the end of June 1988 when his recollection is that
8 Mr. Stanley raised the issue of the million again and at that stage he
9 recollects that, that's he Mr. Caldwell, recollects discussing the million
10 pounds with Mr. Kennedy. And Mr. Caldwell will say that he regarded -- that's
11 Mr. Caldwell -- regarded the million pounds as a completely unrealistic figure
12 and it's important I indicate to you why he was of that view and what he will
13 say in that regard.

14
15 In Mr. Caldwell's view at that time, the land was not worth more than the
16 purchaser was paying for the land, we are talking now about 1988 at all times,
17 Mr. Charlton, just to be clear for you.

18 A Yes.

19 Q 4 So Mr. Caldwell regarded the figure of a million as preposterous, is a word he
20 will use, completely unrealistic, having regard to his then view of the value
21 of the land and, in that regard, he will say that in his view, the land at that
22 time was being valued at a value five time its agricultural value, it was
23 agricultural land with restrictive covenant and the price being put on it at
24 540 was already a five times hope value, so it already stood at that. And his
25 view was and most firmly held that it was not worth more than that at the time.
26 And in that context, he always regarded the one million pound figure as
27 completely unrealistic.

28
29 However, also at that time as earlier, this is now at the end of June and the
30 beginning of July, both he and Mr. Kennedy were still acutely conscious of the

1 fact that Mr. Stanley was in a pivotal role in relation to the contract. He
2 will say that Mr. Kennedy at that time was concerned that there was another
3 possible purchaser for the land and that Mr. Stanley might deal with that other
4 purchaser. He will say that Mr. Kennedy was of the view that Mr. Stanley was
5 troublesome and ought to be dealt with, and I must explain what Mr. Caldwell
6 understood by that, understands by that, dealt with in a sense that a deal
7 should be done with him, I don't mean any other pejorative sense, that a deal
8 should be done with Mr. Stanley. And he will say that Mr. Kennedy was also of
9 the view in that context that Mr. Stanley could contribute in dealings with
10 owners of adjoining lands.

11
12 Mr. Caldwell will say that he attended the meeting, which we discussed on
13 Friday with you and Mr. O' Siochain, on the 4th July and that at that meeting,
14 you told him that the transaction was to proceed by way of a sub sale for 1.54
15 million. And he will say that he was surprised by that as at that stage, and I
16 think shortly before that date, though he can't remember the precise date, I
17 think, Mr. Kennedy had informed Mr. Caldwell that he had offered Mr. Stanley a
18 20 percent shareholding, and Mr. Caldwell's understanding from Mr. Kennedy was
19 that Mr. Stanley had agreed to the offer of a 20 percent shareholding.

20
21 And his recollection of that meeting is that he conveyed to you and Mr. O'
22 Siochain that there was to be a 20 percent shareholding for Mr. Stanley and
23 that that would be subject to a shareholders' agreement and that there was to
24 be no payment in relation to that 20 percent, and I think it's important that I
25 should tell you what that reference in the attendance means in relation to the
26 evidence which Mr. Caldwell is going to give. In relation to that reference,
27 Mr. Caldwell will say that the reference to no payment in relation to the 20
28 percent is a reference to the fact that the 20 percent would not be paid for by
29 the other shareholders.

30 A I'm not sure what exactly -- if I can interrupt you there -- what exactly is

1 meant by that.

2 Q 5 Yes. And I'm happy to explain to you, Mr. Charlton. What Mr. Caldwell will
3 say is this; at no time, from the beginning to the end, did Mr. Caldwell ever
4 agree or contemplate agreeing to Mr. Stanley getting a million pounds through
5 any structure, either through a sub sale or through a shareholders' agreement.
6 The reason why he was never prepared to even contemplate that was, as I have
7 already indicated to you, that it made no commercial sense at all, it was a
8 nonsense in terms of the value of the land and the company which was acquiring
9 the land. And I will come to that again in a moment. But just so that we
10 don't stray from your question to me, Mr. Caldwell will say that what was being
11 said at that meeting on the 4th July was that Mr. Stanley would not get a
12 million through any sub sale agreement; he would get a 20 percent shareholding,
13 but he was not going to be getting a million through the shareholders'
14 agreement in the sense of any guarantee that the shareholders would buy him out
15 at a million. He was simply to get 20 percent, exactly like the other
16 shareholders. He was in as a shareholder for better or for worse and that, as
17 we will see, Mr. Charlton, is what the shareholders' agreement ultimately
18 provided for and that would be Mr. Caldwell's evidence.

19
20 And just in relation to your query to me there, Mr. Caldwell's evidence will be
21 and I think it's of some importance, Mr. Charlton, that at the time at which
22 all of these discussions were taking place, which is roughly between April and,
23 perhaps, some time in July of 1988, at that period, his firm view was that the
24 land was only worth what was being paid for it. The concept of a million made
25 absolutely no commercial sense whatever. If there had been any reality to the
26 million, it would have been necessary to place a value on the lands of
27 approximately 10 million pounds rather than 540. And I'm going to tell you why
28 he will say that; he will say that the proposition of a million for Mr. Stanley
29 meant that in 1988, the time the agreement was being contemplated, the land had
30 to have a then value, net of debt and taxes, of 5 million for the 20 percent to

1 equate to a million. That's elementary mathematics, as you will see,
2 Mr. Charlton. And that to arrive at a net value of 5 million, you would have
3 had to have had a gross value in the region of 10. That would have been
4 approximately 100,000 pounds an acre for agricultural land then valued at a
5 thousand, but having had a five times hope value put on it, and that is the
6 reason and, with great respect, I think this is the reason why Mr. Caldwell
7 will say that the concept of a million never made any sense, he would have
8 needed a value of 10 million to produce a million to Mr. Stanley in 1988. Tax
9 would have been payable by the company, Mr. Charlton, at 40 percent and so if
10 you gross up from a net value of 5 million to a pre-tax sale figure and
11 expenses, you get a figure of approximately 10 million pounds. And that is the
12 reason why Mr. Caldwell was of the view then -- I don't wish to be taken as
13 saying that he has ever altered his view since -- he was of the view then the
14 million had no reality, he was never prepared to agree to it and that is the
15 basis of the reference in the memo of the 4th July and the subsequent
16 correspondence. He was prepared and did agree -- he was prepared to agree and
17 did agree to Mr. Stanley having a 20 percent shareholding in this company on
18 the same terms as all other shareholders. Subject to the restrictions, of
19 course, which we see in the shareholders' agreement and we will come to those
20 in due course.

21
22 Now there is then the correspondence which followed -- I should say, of course,
23 for completeness, as referred to in the memo, he will also say that at that
24 meeting, you said or you and Mr. O' Siochain said that you would speak to your
25 man and he would also say of course that there were discussions about the
26 restrictive covenant at that meeting, nothing turns on that, I think, at this
27 moment.

28
29 Then I should perhaps also tell you that in the period after that meeting, and
30 he can't recollect the precise date, Mr. Caldwell recollects telling

1 Mr. Kennedy sometime in July that, as Mr. Stanley was Mr. Tracey's agent,
2 Mr. Stanley couldn't make any secret profit and that therefore before any deal
3 could be concluded with Mr. Stanley, Mr. Stanley would need Mr. Tracey's
4 consent to the making of a profit.

5
6 Now, there was the correspondence in July which we have already seen, and I'm
7 not for the moment touching on all the other issues which were then current,
8 who you were acting for, the contract to close the land -- I am trying to
9 confine myself to the issue of the negotiations, the million pounds, the
10 shareholders' agreement and up to the conclusion of the --

11 A I understand.

12 Q 6 Thank you. And then Mr. Caldwell will say that he received your firm's letter
13 of the 20th July which we have seen, it's number 217, and he regarded that
14 letter as easing the tension of the situation somewhat because it showed, in
15 his view, movement from Mr. Stanley in that it acknowledged that shares were to
16 be issued to Mr. Stanley or his company, although it contended that a value of
17 a million was to be attached to the shares. And he will say that he wrote back
18 to you on the 22nd July rejecting that there was any agreement in relation to
19 shares of a value of a million pounds. And, once again, in the context of that
20 letter of his, he will say what I have indicated to you earlier, that he found
21 the notion of shares to a value of a million pounds incomprehensible and he
22 will say that he found the suggestion of shares to a value of a million pounds
23 incomprehensible, not only for the reasons that I have identified which
24 concerns the actual value of lands, but also as a lawyer, the concept of
25 issuing shares in a private company to the value of a million pounds was one
26 which he found extraordinary. He will say that in a private company with no
27 assets other than an acquired asset for which there is a corresponding
28 liability, you cannot have the consent of issuing shares with a value unless
29 someone is prepared to pay that value for those shares. It is a concept which
30 is simply impossible. I will revert to that when I come to what he is going to

1 say about the shareholders' agreement.

2

3 Now, there was then subsequent correspondence and the letter where Mr. Caldwell
4 indicated that he would take instructions, or was requested to take
5 instructions. I don't particularly want to open correspondence at this stage
6 because it will slow me down considerably. I am summarising his evidence. But
7 he will say that, in relation to that, his recollection is, but he can't be
8 precise about the date, he believes that he talked to Mr. Kennedy about that
9 before writing his second letter indicating that his position had not changed,
10 there was no agreement in relation to shares to the value of a million. He
11 doesn't recollect any specific conversation with Mr. Kennedy about the
12 arrangements with Mr. Stanley between the very end of July and the end of
13 August, but he believes that he would have discussed the negotiation with Mr.
14 Kennedy during that period, although he cannot recollect a specific
15 conversation. He does recollect that during that period there was significant
16 mistrust and suspicion on both sides. That's his recollection of the climate
17 of that period.

18

19 He recollects then that around about the 30th August, 1988, about that time,
20 that Mr. Kennedy contacted him and told him -- that's Mr. Caldwell -- that the
21 20 percent shareholding had been agreed with Mr. Stanley. And, as a result of
22 that, he telephoned your office and left a message and I understand that the
23 message reads "Matter resolved and we can move forward." That's a message
24 which was recorded, I think it may be at number 286 in the brief. He
25 recollects that he spoke to you, he believes, on the 1st September,
26 Mr. Charlton, and that stage you told him that a company called La Mira was to
27 be the company which was to take the 20 percent shareholding in Paisley Park as
28 Mr. Stanley's nominee and that he, Mr. Caldwell, was to prepare the necessary
29 document.

30

1 We then come to the document itself, Mr. Charlton, and Mr. Caldwell's evidence
2 will be that so far as he, Mr. Caldwell, was concerned, the document which he
3 was to prepare, the shareholders' agreement, was an agreement that Mr. Stanley,
4 via his nominated company, was to receive a 20 percent shareholding in Paisley
5 Park Investments. And that that agreement was being entered into in tandem
6 with the execution of the contract with Mr. Tracey. As you recollect, I don't
7 think that had happened at that date, we are talking here about late August,
8 early September. At that stage, though I may be wrong, I don't think that had
9 actually occurred. There had of course been the memorandum of March 1988 and
10 that earlier record, but the Law Society contract, I don't believe, had been
11 executed at that time. And then in relation to the drafting of the
12 shareholders' agreement, Mr. Caldwell will give evidence that he drafted it
13 based on the evidence that I have already referred to, his understanding of
14 what had been agreed and what had not been agreed and he will also say, and I
15 apologise if I am repeating something I put to you the other day but for
16 completeness I should do it now again, he will also say that, as far as he is
17 concerned, no question of how the funding of the completion of the purchase was
18 to occur was ever discussed at any time prior to the signing of the
19 shareholders' agreement by him -- that's Mr. Caldwell -- with Mr. Stanley.

20
21 And he will also say that Mr. Kennedy never reported to Mr. Caldwell that he
22 had had such a discussion with Mr. Stanley. And he will also say that he
23 believes, that's he, Mr. Caldwell, believes that if Mr. Kennedy had had such a
24 discussion with Mr. Stanley, he believes that he would have also discussed it
25 with Mr. Caldwell. He will say in relation to the drafting of the
26 shareholders' agreement that he specifically amended a precedent draft which he
27 had -- he amended a precedent draft which he had, a precedent document -- to
28 clarify that each of the shareholders -- by that I mean all parties to the
29 agreement, I don't just mean the two parties who are identified as shareholders
30 with capital 'S' -- all three parties to the agreement would be required to

1 guarantee and provide security for the obligations of the company to the
2 proportionate extent of their respective shareholders which were set out, as
3 you know, at 20 percent, 40 percent, 40 percent, to reflect the pro rata
4 agreement between the shareholders.

5
6 He will say that there was never any question of it being a term of the
7 agreement that Mr. Stanley's nominated company, La Mira, was to get a free
8 ride, I use the colloquialism but I'm sure you understand what it means, a free
9 ride on any funding needed by Paisley Park to complete the purchase and he will
10 say that if such a term had been agreed, it would have had to have been in the
11 shareholders' agreement.

12
13 He will say that he included in the draft a net profits clause to ensure that
14 each of the shareholders was entitled to a proportionate part of the net
15 profits of the company in the ratio 20 percent for La Mira and 40 percent to
16 each of the other shareholders. By the way, just for the avoidance of doubt,
17 as you know, Mr. Charlton, La Mira becomes Xenon, I am mentioning La Mira but,
18 for the purpose of the agreement, it's Xenon.

19 A Yes, correct.

20 Q 7 He provided in his drafting that La Mira or each of the other shareholders, any
21 of the three, including La Mira, Mr. Stanley's company, could call for the net
22 profits to be calculated and distributed. He placed no cap on this profit
23 distribution and, in particular, he placed no cap of a million pounds on this
24 profit distribution. Nor did he provide any mechanism in the shareholders'
25 agreement under which the La Mira shares would have a million pound profit or
26 entitlement to a million pound profit. And once again he says in the context
27 of that drafting, if there had been agreement regarding a million pounds, it
28 would have been written into the agreement by him.

29
30 He will say he did not include in the draft agreement an option to buy out the

1 La Mira shares and he will say he expressly deleted such a provision from the
2 provision which he had. And he will say that he would not have done that if
3 there had been agreement to buy out the La Mira shares at a million.

4
5 And he will say that, as far as he was concerned, prior to and when drafting
6 the shareholders' agreement, it was a commercial shareholders' agreement in
7 which all the shareholders had equal rights to profits and equal obligations to
8 support the company's funding of its business. And he will say that, if that
9 had not been the case, the agreement would have provided for, amongst other
10 matters, a dividend cap of a million, together with special rights to buy back
11 the shares, that's the La Mira shares, and also an express exemption from La
12 Mira for the funding of obligations.

13
14 Then he will say, as I think you are aware, that correspondence was exchanged
15 between your firm and himself about the contents of the draft shareholders'
16 agreement which he had prepared. You know that that happened or there was
17 correspondence about them?

18 A We have been through that umpteen times.

19 Q 8 Yes.

20 A Umpteen times.

21 Q 9 Mr. Charlton, the only reason I'm putting any of this to you is because of the
22 interruption in my cross-examination by your counsel on Friday. I am doing
23 this because your counsel insisted that I do it, so please bear with me.

24 A I will bear with you, Mr. Finlay. I am now in the fourth day in the
25 witness-box with no end in sight. And I do take exception to a situation where
26 you are repeating ad nauseam matters which have been gone over in the past and
27 Judge Keys referred at the end of last week about the length of time and cost
28 of the Tribunal and there's a cost to me also of being here day in, day out.
29 So therefore I take exception to a situation where you are being repetitive.
30 Unnecessarily repetitive.

1 Q 10 Mr. Chairman, the following is the position. On Friday I was conducting a
2 cross-examination of this witness, I was interrupted in that cross-examination
3 by his senior counsel. I was told that I could not proceed with that
4 cross-examination, told in the sense that this was Mr. O'Donnell's submission,
5 without putting to this witness my client's account of these matters. There
6 was then discussion with the members of the Tribunal and Mr. O'Neill made
7 various contributions to that discussion as well. At the end of that
8 discussion, at the request of the Tribunal initiated by the interjections of
9 Mr. Charlton's own counsel, I undertook over the course of the weekend to take
10 further instructions from my client with a view this morning to be able at
11 short notice to put in detail Mr. Caldwell's account of what he is going to
12 say. Before I even started this morning, I asked the Tribunal in which manner
13 I should proceed. I was perfectly happy to do it in another way. But the
14 Tribunal, with great respect, very wisely suggested that I should outline
15 Mr. Caldwell's account. I have been criticised on Friday for not giving that
16 account in sufficient detail. I am now being criticised by this witness for
17 giving it in too much detail and I find myself in an invidious position,
18 chairman, invidious.

19
20 CHAIRMAN: Well, Mr. Finlay, what the ideal situation is is that you would put
21 to Mr. Charlton Mr. Caldwell's case insofar as it hasn't been put to him
22 before.

23
24 MR. FINLAY: Yes.

25
26 CHAIRMAN: And, I mean, obviously repeating matters that were put to
27 Mr. Charlton last week should -- now it can't be avoided all the time -- but it
28 should be avoided as much as possible, and all the various aspects relating to
29 the shareholders' agreement are, we understand, put to Mr. Charlton on Friday
30 and possibly the previous day.

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MR. FINLAY: No, that's not entirely correct, chairman, but I can come back to that. There's one aspect, one critical aspect of the shareholders' agreement which I had never raised with Mr. Charlton because I was interrupted before I got to it on Friday.

CHAIRMAN: There's no difficulty about you dealing with that.

Q 11 MR. FINLAY: So if I can try then and conclude what I was asked to do, which is to put to Mr. Charlton what the evidence that Mr. Caldwell is going to give. Mr. Charlton, the shareholders' agreement was then concluded and Mr. Caldwell will also give evidence of the following, and in case there's a subsequent criticism that I didn't put it to you now, I am going to put it to you until I'm stopped.

In 1991 there was a dispute about the basis on which funds were to be raised to complete the purchase of the property, remember that?

A Yes.

Q 12 And I particularly want to refer to this, I haven't put it to you already, on the 30th April 1991, Mr. O' Siochain on your client, Mr. Stanley's, behalf wrote to Mr. Caldwell informing Mr. Caldwell that Mr. Stanley was in a position to organise the funds needed to complete the purchase, provided that the title to the Carrickmines lands was put in the name of Mr. Stanley's nominee. You remember that letter of the 30th April?

A Yes, I do indeed.

Q 13 And Mr. Caldwell will say he was astonished by that reply because he took it to be saying the following: 1, that Mr. Stanley had the money available. 2, that he wasn't putting up his share of the completion money. 3, that if the other shareholders put up all the money, he wanted a 20 percent stake and 4 --

1 JUDGE FAHERTY: Page 900, I believe.

2
3 CHAIRMAN: Mr. Finlay, could we have that on the screen?

4
5 MR. FINLAY: Page 900 I think it is.

6
7 CHAIRMAN: All right.

8
9 MR. O'NEILL: I think also, sir, it would be helpful if the letter immediately
10 before that was also put on record because there are apparently two issues
11 being dealt with in that letter, not only the contribution of Mr. Stanley, I
12 suggest, to the 20 percent deposit in a circumstance where Paisley Park would
13 be the purchaser, but also whether or not Mr. Stanley would himself be in the
14 position to buy the entirety of the property without reference to Paisley Park
15 but from another purchaser. I think that is clear of both letters.

16
17 JUDGE FAHERTY: Is that Mr. Caldwell's letter you are talking about?

18
19 MR. O'NEILL: It is, I think it's at 882. Page 882.

20
21 MR. FINLAY: What does Mr. O'Neill want me to do now?

22
23 CHAIRMAN: Just to put that up as well on the screen so that, they can be put
24 side by side. That letter and 900.

25
26 Q 14 MR. FINLAY: 882, Mr. Charlton. A letter from Mr. Caldwell to you of the 23rd
27 of April 1991, "Thank you for your letter of the 19th April 1991. I'm
28 surprised that the facts should have produced astonishment. The funding of the
29 activities of a company is a matter for its shareholders to arrange from their
30 own or other sources. It must be clear to Mr. Stanley that funding the

1 acquisition is and cannot merely be a matter for the other shareholders.
2 Indeed paragraph 6 of the agreement clearly demonstrates that your client
3 agreed to stand into the funding arrangements pro rata with his fellow
4 shareholders. Lest there be any doubt about Paisley's ability to complete due
5 to absence of funds, we can inform you that the other shareholders are
6 available pro rata for the completion and indeed, should Mr. Stanley choose not
7 to provide his pro rata share, the balance is available. Mr. Stanley for whom
8 Xenon Investments Limited acts as a nominee has confirmed to Mr. Kennedy,
9 Paisley Park's agent, that your Mr. Charlton has funds available in your office
10 to complete the transaction. Perhaps you would clarify the position."
11

12 And your firm then wrote on the 30th April as follows. "We refer to our letter
13 of the 19th April and your reply of the 23rd of April. We have now had a
14 further consultation with our clients in this regard. Mr. Kennedy is very well
15 aware that there was never any question of the shareholders in Paisley Park
16 Investments Limited funding the purchase or putting up any part of the purchase
17 price. There's ample evidence of this. Does your client dispute it?
18

19 Your client, Mr. Kennedy, entered into an agreement with Sam Stanley. The
20 effect of which is that in consideration of services already rendered by Sam
21 Stanley, his nominee company, Xenon Investments became the owner of 20 percent
22 of Paisley Park Investments Limited free of charge, which shares we understand
23 have been allotted.
24

25 We note your assurance that Paisley Park Investments Limited is in funds to the
26 full amount of the purchase price and that there is no doubt about Paisley
27 Park's ability to complete the transaction. There is no question of Sam
28 Stanley choosing not to provide his pro rata share as this was neither agreed
29 nor envisaged.
30

1 We do not understand the contents of the final paragraph of your letter.

2 However we are instructed to make it clear that should Paisley Park Investments
3 Ltd not be in funds to complete the transaction, our clients would not risk the
4 loss of the contract and would strictly without prejudice to the foregoing be
5 in a position to organise the funds to complete, provided the title were put in
6 the name of our client's nominee.

7
8 Finally we are instructed to inform you that should this transaction be lost
9 due to the failure of Paisley Park Investments Limited providing the necessary
10 funds your client should be in no doubt as to the extent of the loss to our
11 clients. In such an event our clients would have no alternative but to sue Mr.
12 Kennedy on the aforementioned agreement which is well evidenced."

13
14 So I'm just putting to you what Mr. Caldwell will say, that's all I'm doing at
15 the moment.

16 A I understand that.

17 Q 15 He will say that he understood this letter to be saying that Mr. Stanley had
18 the money available. 2, that Mr. Stanley was not prepared to put up his share
19 of the completion money. 3, that if the other shareholders put up all the
20 completion money, he still wanted his 20 percent stake and 4, if he put up all
21 the money, he wanted all the of the property and the other shareholders would
22 have no stake, that is how Mr. Caldwell will say he understood that letter and
23 he will say he regarded that as completely unacceptable and that he regarded
24 that as an indication which Mr. Stanley, or on his behalf, that he had the
25 money to fund his share of the funding requirement but was refusing to do so on
26 the grounds of an agreement which Mr. Caldwell will say had never been paid and
27 did not exist.

28
29 Now, that's part of the evidence Mr. Mr. Caldwell will give and it's the
30 evidence which touches on some of the issues which we were dealing with on

1 Friday, Mr. Charlton. Just one more matter before I move on to clarify
2 something I was dealing with on Friday. You will remember the references you
3 made to part performance in relation to the absence of the shareholders'
4 agreement of --

5 A Yes.

6 Q 16 -- of any reference to a funding arrangement, you remember that?

7 A Yes, I do.

8 Q 17 I just want to suggest to you, and I think it's fair that I do it now rather
9 than in my submissions at the end of the module, I want to suggest to you that
10 that is something which, as a solicitor, you could not have relied on,
11 Mr. Charlton, you could not rely on it, Mr. Charlton, because for part
12 performance to arise, the part performance on which you rely must be the
13 performance of an act by the plaintiff, by the person asserting the agreement
14 which someone else has denied. It cannot be an action by the defendant. It
15 cannot be, as in the case you described, the payment of a deposit by the other
16 shareholders. I just want, out of respect, to put that to you because that's a
17 matter of law and I am sure you were aware of that and I suggest to you that
18 that is the position.

19
20 Now, Mr. Charlton, there is one matter which I had not, despite what I said on
21 Friday, not cross-examined you on because I had cross-examined about the
22 absence of the shareholders' agreement, of the alleged agreement about funding.
23 I wish this morning, before I proceed, to clarify one matter because it will
24 determine what I need and need not ask you about another matter. I want to
25 know in the clearest way, Mr. Charlton, whether your understanding of the
26 agreement made between Mr. Kennedy and Mr. Stanley, which you have referred to,
27 the agreement you understand to have been made, whether under that agreement
28 the figure of a million pounds, on your account, was to survive the
29 shareholders' agreement or was not to survive the shareholders' agreement.

30

1 Now, it is not a trick question in any way. I want to be sure you understand
2 the question. What I really want, I can put it another way; from -- do you say
3 that from the date on which the shareholders' agreement was executed,
4 Mr. Stanley's entitlement under the shareholders' agreement was to get a
5 million pounds or do you not say that?

6 A Well --

7 Q 18 His own, his total entitlement for better or for worse. Do you say that that
8 was what he was to get out of the shareholders' agreement?

9 A Well I did hear you the first time, Mr. Finlay, and I did understand and it's
10 not necessary, I have a reasonable understanding of the English language, and
11 it is not necessary, unless I ask you to do so, to keep repeating a question to
12 me and, in particular, to repeat it when I'm considering my answer which
13 unfortunately interrupts my thought process.

14 Q 19 I'm terribly sorry.

15 A And it's not fair to me as a witness, but I don't know at this point in time
16 whether you want me to deal just with one point in isolation or whether you
17 want to deal with what you have set out in that statement. There are a lot of
18 matters that I want to comment on, not just that particular matter.

19 Q 20 It would be, I think, helpful if you could reserve your comments till later and
20 just look at the first question. Do you say that Mr. Stanley's entitlement
21 under the shareholders' agreement was to have a million pounds?

22 A I don't say that.

23 Q 21 You don't say that. And I thought you indicated to Mr. O'Neill when he was
24 asking you about the shareholders' agreement that he was to have 20 percent in
25 the company and that Mr. Stanley, you thought, hoped that he would get more
26 than a million, but presumed that he wouldn't get less. Is that a fair
27 description?

28 A You are asking me did I understand that the million pounds survived the
29 shareholders' agreement?

30 Q 22 Yes.

1 A The answer to that is quite clearly no; in other words, he was not to get the
2 20 percent shareholding plus a million pounds and it was, as I understand it
3 and recollect it and I speak all times subject to recollection, that there was
4 a suggestion that at a certain stage when the planning permission had been
5 obtained, that Mr. Kennedy would buy out Mr. Stanley's 20 percent shareholding
6 for a million pounds.

7 Q 23 I see. So that --

8 A And there's absolutely no question, shadow of doubt whatsoever, Mr. Stanley was
9 not to get 20 percent shareholding plus a million pounds. He was to get 20
10 percent shareholding on the basis, as I understood it, that that represented
11 roughly one million pounds -- 20 percent shareholding represented roughly a
12 million pounds.

13 Q 24 Just so I understand the shareholding for a moment. You say that the value of
14 his shareholding was not to be limited to a million, is that correct?

15 A He was in receipt of a 20 percent shareholding.

16 Q 25 Yes.

17 A Mr. Kennedy, the perception was that nothing would be paid until planning
18 permission would be obtained. That ultimately, the property, that when
19 planning permission was obtained, this is what I believe I said to Mr. O'Neill,
20 that the property would be either sold or that it would be developed and that
21 Mr. Stanley would get a million pounds. Mr. Kennedy, when the property was
22 sold, he would buy out Mr. Stanley for a million pounds. But I do accept that
23 it was conceivable that the million pounds might be more or might be less.

24 Q 26 But --

25 A He had a 20 percent shareholding.

26 Q 27 But, Mr. Charlton, I am sorry if I misunderstood you, if the agreement was that
27 his shareholding would be bought out for a million, the value of his
28 shareholding is irrelevant, is that correct?

29 A Well that was the perception, sort of what was being bandied around between the
30 clients in the course of the discussion relative to this.

1 Q 28 If we could leave aside for the moment what was being bandied around or the
2 perception --

3 A You can't leave that aside.

4 Q 29 I'm trying to understand what you say was the agreement, not a perception, but
5 the agreement which you say was made between Mr. Stanley and Mr. Kennedy.

6 A Yes, the agreement was Mr. Stanley was to get a 20 percent shareholding and
7 that that roughly equated at that time to a sum of about a million pounds,
8 based on the memorandum which, I don't recall where it was then estimated, I
9 think that the property was worth somewhere between five and a half and six
10 million pounds.

11 Q 30 I see.

12 A And the property, there would be other lands sold and there would be other
13 things that happened, the general perception of the shareholders was that the
14 property was going up in value, and that the 20 percent shareholding roughly
15 equated to a million pounds. But that that might improve further or might
16 disimprove.

17 Q 31 Exactly. It might improper or disimprove.

18 A Yes.

19 Q 32 And if it improved or disimproved, if at whatever was the relevant date the
20 value of that shareholding was not a million, either less or more, on your
21 account of events, Mr. Charlton --

22 A No, I don't agree with you. I believe that Mr. Stanley in agreeing to accept
23 the million pounds -- the 20 percent shareholding, believed that that was
24 roughly equating to a million pounds and I believe that your client and
25 Mr. Kennedy had a similar view.

26 Q 33 You know that Mr. Caldwell's evidence will be precisely to the opposite effect?

27 A I have heard what you said about Mr. Caldwell's evidence and I am happy to deal
28 with it but may I say this, Mr. Finlay, in relation to Mr. Caldwell's
29 evidence, there's a letter which hasn't come on the screen where I wrote to
30 Mr. Caldwell at the time this correspondence, shortly after this, and I said to

1 him in clear terms if you disagree with what we are saying about what the
2 agreement was -- you must know about this letter, but you haven't put it to
3 me -- if you are disagreeing about what we are saying about the agreement, tell
4 us what your version of events is. Now, as I recall, and I may be wrong --

5

6 CHAIRMAN: It's a letter of the 29th July.

7 A If it will be possible to see that letter.

8

9 JUDGE FAHERTY: I think it's 238. Maybe it's the 28th July. I am not sure if
10 that's the one Mr. Charlton means. Is that the 1988 letter?

11

12 MR. FINLAY: Is that the letter that you had in mind?

13 A If I can just read it through please. Perhaps I could see the next page.

14

15 MR. O'NEILL: I believe that the queries which arose in 1991 when ultimately
16 Mr. Charlton raised the question as to what, in contradistinction to the
17 account that he was offering, as to what the agreement was, what was
18 Mr. Kennedy's version and that version was never detailed in any response which
19 was received by him and I think I can find that letter now.

20

21 CHAIRMAN: Do we have a number for it?

22

23 MR. O'DONNELL: I think it may be document 900.

24

25 MR. O'NEILL: The first reference I think appears at page 900 where a letter
26 from Mr. O' Siochain to Mr. John Caldwell in the first paragraph, there's a
27 recital of an agreement and then there is a question to the end of the
28 paragraph "Does your client dispute it, that is that Mr. Kennedy is very well
29 aware that there never was any question of the shareholders in Paisley Park
30 Investments Ltd funding the purchase or putting up any part of the purchase

1 price. There's ample evidence of this. Does your client dispute it?"

2

3 And the response to that is at page 2187, in which Mr. Caldwell sets out his
4 response but he does not put forward the account that Mr. Kennedy would give
5 and I do know that there's a later letter again.

6

7 JUDGE FAHERTY: There's a letter of Mr. Charlton on the 7th May, Mr. O'Neill,
8 2184, I am not sure whether it's his -- I just have a note of it.

9 A I don't think that's the letter. I have a recollection that at a certain stage
10 that I wrote to Mr. Caldwell and said what do you say the arrangement was
11 between the parties, I think. My recollection may be at fault.

12

13 MR. O'NEILL: No, that's correct. We'll do a computer search on that and I am
14 sure we can produce it.

15

16 CHAIRMAN: Can we move on, Mr. Finlay?

17

18 MR. FINLAY: I would be delighted, I didn't want to take Mr. Charlton short.

19 A Well my answer is not complete until I see the letter.

20

21 CHAIRMAN: All right. Well can we move into a different area and come back to
22 that even at two o'clock?

23

24 Q 34 MR. FINLAY: Absolutely, I'd like to do that. Mr. Charlton, if I could just
25 take you back to earlier 1988, if we could have document 117 please. This is
26 the 20th April, I think, 1988, Mr. Charlton?

27 A Yes, I see that.

28 Q 35 And you see yourself there writing to Mr. Tracey's then solicitors, Byrne
29 Hardman & Stokes. They were the solicitors for the vendor.

30 A They were the solicitors to the vendor at that particular time, the intended

1 solicitors to the vendor, and Mr. Stokes indicated he was retiring from
2 practice and that he was asking Mr. Russell, who I think was perhaps a relation
3 of his nephew, to take on the transaction.

4 Q 36 Yes. And this correspondence is solely about the purchase of the land, it has
5 nothing to do with any agreement between Mr. Stanley and Mr. Kennedy?

6 A Absolutely nothing.

7 Q 37 So in terms of that transaction, the purchase of the lands, Mr. Charlton, on
8 behalf of which party to that transaction were you writing that letter to
9 Mr. Stokes?

10 A I think, Mr. Finlay, I have made it clear previously, that my initial
11 instructions were on behalf of Mr. Stanley.

12 Q 38 Absolutely, you have said that.

13 A And I acted exclusively for Mr. Stanley --

14 Q 39 Yes.

15 A -- and made it quite clear to your client that he was exclusively my client and
16 that changed at a situation where the parties had come to the agreement which I
17 understood in relation to the million pounds etc. I was being asked then at
18 that stage by both parties would I now then accept a retainer on behalf of
19 Paisley Park to carry through the transaction which had, the transaction for
20 the purchase of the land. I understand that the reasoning behind that was that
21 we had already done a lot of the investigative work in relation to the title,
22 if I am not mistaken, or certainly done some of the investigative work, and
23 that Paisley Park didn't want it repeated and wanted us to take over the
24 transaction, and I think that I made it clear that I would do so provided that
25 there was no conflict between the parties and that they were agreed. I was
26 assured that there was no conflict and I understood that to be the position and
27 I undertook the retainer for Paisley Park on that basis and I think I said on a
28 previous occasion, and I repeat it now, that at that stage, my function that I
29 was functus officio to far as Mr. Stanley's retainer was concerned. That's my
30 recollection.

1 Q 40 When you wrote this letter on the 20th April 1988 in the context of the
2 purchase of the land, were you writing it on behalf of the vendor, the
3 purchaser or neither?

4 A I was writing it on behalf of Mr. Stanley.

5 Q 41 Yes, was Mr. Stanley the purchaser?

6 A Mr. Stanley was going to, had asked apparently if I could purchase in trust.
7 It was contemplated, I think, that Paisley Park might well be the purchaser. I
8 think you are right in saying that there was a lot of distrust between
9 Mr. Stanley and Mr. Kennedy, though they did vacillate between trust and non
10 trust and that Mr. Stanley, that if Mr. Kennedy, Mr. Stanley was in a situation
11 where he knew the property was for sale, he knew that Mr. Kennedy was certainly
12 what might be called a runner for it or a very interested party. I think he
13 was proceeding along those lines. He had bad experiences with Mr. Kennedy. I
14 think that he was, perhaps had a fall back position, if you put it that way, a
15 failsafe position, that if Mr. Kennedy, if as he didn't perform, that he wanted
16 to keep other options open. Now I do speak and I have said this umpteen times
17 and I repeat it yet again, subject to recollection and perhaps even
18 rationalisation. It's subject to that.

19 Q 42 I entirely understand that and I take all your evidence from that basis,
20 Mr. Charlton, I am not quibbling with that at all. When you wrote that letter
21 you were acting for Mr. Stanley?

22 A Yes.

23 Q 43 And, as I understand your evidence at this point in time, Mr. Stanley was in a
24 position to nominate or identify a purchaser, is that right?

25 A Correct.

26 Q 44 Yes. But, as far as the solicitor for the vendor was concerned, as far as the
27 vendor's solicitor was concerned, were you writing to him about this purchase
28 as solicitor for the purchaser or not?

29 A I was writing to him as solicitor, as myself as solicitor in trust.

30 Q 45 I see. So the capacity in which you wrote this letter was as the solicitor in

1 trust identified on the irrevocable letter of authority, is that correct?

2 A Correct.

3 Q 46 But Mr. Stanley was your client?

4 A Mr. Stanley --

5

6 MR. O'DONNELL: I wonder if I could just interrupt my friend briefly. I think
7 the letter to which Mr. Charlton was referring may be document number 1044 and,
8 secondly, while I'm adverting to that, I don't know whether one of the answers
9 given by Mr. Charlton indicated that he wanted to reply to the case which was
10 put to him by Mr. Caldwell but, if so, I respectfully submit that now is the
11 time to permit Mr. Charlton to say what he has to say in reply to what
12 Mr. Caldwell has said, if he wishes to. Rather than moving on to another
13 topic.

14

15 CHAIRMAN: Well all right. But, I mean, we have just moved on to another topic
16 and if we could just finish that topic and then come back to those matters, but
17 we can deal with them in any event before Mr. Finlay finishes.

18

19 MR. O'DONNELL: Thank you, sir.

20

21 Q 47 MR. FINLAY: So, Mr. Charlton, Mr. Stanley therefore was in the position to
22 nominate the purchaser, you were acting for Mr. Stanley

23 A Yes.

24 Q 48 As far as you were concerned, did you believe or not believe that the vendor's
25 solicitor understood you to be acting for the purchaser?

26 A I understood that the vendor's solicitor understood what was contained in that
27 memorandum.

28 Q 49 I see.

29 A That I was acting in trust.

30 Q 50 I see. And then if we could go to number 126. That's a letter of the 5th May

1 to you from Mr. Bullock, Mr. Charlton, do you see that?

2 A I see that.

3 Q 51 "We hereby confirm that you are instructed to act for us in the purchase of
4 lands at Carrickmines/Cabinteely belonging to Mr Tracey, for which a contract
5 exists. A deposit of 5,000 pounds has been paid to the agents acting for Mr.
6 Tracey, Siteland Management Ltd. We look forward to hearing from you in due
7 course." Do you see that letter?

8 A I just said I saw it, Mr. Finlay. Yes.

9 Q 52 Did you understand that letter to be an instruction for you to act on the
10 purchase of the Carrickmines lands on behalf of Paisley Park Investments
11 limited?

12 A I think, Mr. Finlay, what I understood in relation to that letter was set out
13 in the reply which we sent to Mr. Bullock and I would like to see that up on
14 the screen.

15 Q 53 Certainly. I'm just trying to find that now.

16 A It must be a day or two after that. A few days afterward.

17 Q 54 Yes. I think that in terms of contact between you and Mr. Bullock,
18 Mr. Charlton, my understanding is that the next document relating to contact
19 between you and Mr. Bullock is on page 127, if we could have that please. The
20 chronology is I think important here. It's on the 6th May 1988, Mr. Bullock's
21 file note. It's follows "Friday, 6th May '88. Spoke to Mr. Charlton.
22 Introduced myself as director of Paisley Park Investments Ltd. Told him that
23 written confirmation of his instructions to act on our behalf in connection
24 with the purchase of the lands at Cabinteely/Carrickmines from Mr. Tracey was
25 on the way to him. Told me that Mr. Tracey's solicitor had acknowledged that a
26 contract already existed. He was not concerned about the absence of the Law
27 Society form of agreement."

28 A Yes.

29 Q 55 And then 17th May, Tuesday, "Rang Mr. Charlton. He was still awaiting the Law
30 Society form of contracts. There was a delay with Mr. Tracey's solicitor

1 because the solicitor's nephew had taken over the practice and was trying to
2 familiarise himself with all the cases that he was handling."

3 A Yes.

4 Q 56 And then the next page, 128, the 9th May, Mr. Caldwell's attendance, "Spoke to
5 Gerry Charlton, he said that matters were progressing satisfactorily. He said
6 that as far as he was concerned there was already a contract. He said he was
7 awaiting the Law Society form but that a contract was in existence. He said he
8 had just received an acknowledgment of his latest letter to the solicitor for
9 Mr. Tracey. I said he would receive formal instructions from Paisley Park. He
10 said he was dealing with it in the name of Paisley Park." Do you see that last
11 sentence?

12 A Yes.

13 Q 57 Do those attendances record the response by you to Mr. Bullock's letter of the
14 5th May?

15 A I believe they do.

16 Q 58 I see. Where in those attendances, Mr. Charlton, does one find any indication
17 that you either were refusing to act for Paisley Park in accepting instructions
18 or were not acting for Paisley Park?

19 A But I think we should go to the letter where we wrote back to Mr. Bullock in
20 relation to, perhaps for completeness we could go to that letter.

21 Q 59 Certainly, that letter is approximately, I think, two months later. So we'll
22 certainly go to it now if you wish, but I was hoping to do this
23 chronologically, it's a matter for the Tribunal perhaps, but I was hoping to go
24 through the sequence rather than --

25

26 MR. O'NEILL: I think if we, sir, were to move to the document at page 184,
27 it's the 8th July of 1988, which is where the issue is joined for the first
28 time as between Mr. Charlton and Mr. Caldwell, as to whether or not
29 Mr. Charlton is the solicitor acting for Paisley Park Investments in this
30 issue. It is raised by Mr. Charlton and -- sorry, I beg your pardon, it's

1 raised by Mr. Caldwell and it's responded to by Mr. Charlton rejecting the
2 suggestion at page 192 on the 14th of July 1988.

3
4 MR. FINLAY: Chairman, the position is I was of course planning and my plan had
5 been, until stopped, to arrive at all of this correspondence in its sequence
6 and the sequence is absolutely crucial. So I just want the Tribunal to bear
7 that in mind.

8
9 CHAIRMAN: Mr. Charlton, in order to answer your earlier question in relation
10 to the attendance, he said he wished to consider them in the context of the
11 attendances together with this and possibly other correspondence as indicating
12 what his position was.

13
14 Q 60 MR. FINLAY: Very good. Well let's then go to 184. This is a letter to your
15 firm from Mr. Caldwell on the 8th July, approximately two months after the last
16 document we looked at and he writes as follows "I refer to our telephone
17 conversation of even date. Our mutual client is very concerned at how this
18 matter is progressing. The background is as set out below.

19
20 I met Mr. Stanley, Mr. Robert Tracey's agent, and received from him a copy of
21 the contract of the 9th March 1988. We confirmed that our client agreed to its
22 terms and at his request a 5,000 pounds deposit was paid to his company,
23 Siteland Management Ltd as stakeholder. He said that he would forward a letter
24 issued as Mr. Tracey's agent confirming the terms of the agreement as set out
25 in the contract of the 9th March 1988. To date he has not done so. As stated
26 in our letter of the 9th May 1988, we forwarded the 5,000 pounds requested. It
27 was received and cashed.

28
29 Your firm received formal instructions from Paisley Park Investments Limited in
30 this matter and a director of Paisley Park has continued contact with you. I

1 forwarded a copy of the copy papers you gave me to our mutual client and it is
2 extremely concerned that its contractual status might be prejudiced.

3
4 This letter is not nor should it be taken as a criticism of your firm's
5 progressing of this matter. It appears to us however there is a contract
6 between our client (which is also your client) and Mr. Robert Tracey, and that
7 any title information furnished should be accepted merely to assist you in
8 confirming that Mr. Tracey has title and in preparing the deed of transfer in
9 due course. No additional clauses should be added or should there be
10 modifications.

11
12 It is my view that Mr. Tracey's solicitor should be informed that a contract
13 exists and that the balance of the deposit paid to your firm by our mutual
14 client should be forwarded to Mr. Tracey's solicitor. No variation of the
15 contract terms should be permitted.

16
17 Mr. Stanley's position is clear. He is Mr. Tracey's agent. He has not
18 discussed any variation of the terms of the contract with our mutual client,
19 which wishes merely to proceed with the matter as agreed."

20
21 Then we turn to your reply at page 192. The 14th July 1988. "We refer to your
22 letter of the 8th July. We are very surprised at some of the contents of the
23 letter.

24
25 In the first place, we have no instructions whatsoever to act on behalf of your
26 clients and we are most surprised at the reference in your letter to 'our
27 mutual client'. Such is quite definitely not the case and we wish to make it
28 quite clear that we do not so act. The fact that a gentleman identifying
29 himself as a Mr. Bullock, whom we do not know and whom we have never met,
30 purporting to be a director of your client company has made contact with us and

1 has sent a cheque to us in the expectation of a draft contract, does not nor
2 should it be construed as meaning that we are formally acting on behalf of, or
3 as agents, for your clients.

4
5 As you well know, there's a way to instruct solicitors and we would like to
6 know how this firm and your firm could be acting for the same principal or
7 client in precisely the same transaction.

8
9 We have, in fact, have been retained by and are solely acting for Mr. Stanley
10 in relation to his agreement with Mr. Jim Kennedy and his company Paisley Park
11 Investments Ltd, your client.

12
13 Secondly, having spoken to Mr. Stanley, we would suggest that there is no
14 formal contract between your client and Mr. Robert Tracey, as you state in the
15 fourth paragraph of your letter. In fact the opposite would appear to be the
16 case, as stated by you at our meeting at this office on the 6th July." I don't
17 believe it's necessary to open the next paragraph in full.

18
19 "For the foregoing and other reasons we are satisfied that your clients do not
20 have a contract with Mr. Robert Tracey. It seems to us that your clients
21 wished to claim the existence of a contract if it suits them and be in a
22 position to disclaim a contract if it does not. We refer to our discussion
23 about how our client, Mr. Stanley, is to be secured in this agreement for the
24 future with your clients, Mr. Jim Kennedy and/or his companies".

25
26 I had of course intended to come to that letter but we have skipped a period of
27 two months and what I'm going to ask you to do now, as we go back to where we
28 started, is to ask you to point out where in the intervening period in the
29 correspondence between you and Mr. Caldwell and Paisley Park you had ever
30 indicated prior to this letter that you were not acting for Paisley Park and

1 that's what I wanted to do.

2 A Mr. Finlay, that letter sets out contemporaneously and in the clearest terms
3 what our position was.

4 Q 61 I have read the letter.

5 A Well I can only repeat what's in the letter, that it sets out in the clearest
6 terms what our position was. There was a lot going on in the background
7 between Mr. Kennedy and, between Mr. Kennedy and Mr. Stanley. And of course
8 between ourselves and perhaps, maybe not so much between ourselves and
9 Mr. Caldwell, and of course at that stage we were labouring under the delusion
10 induced by your client that he was acting in a purely professional capacity and
11 was not then an equity participator. Even though apparently he was an equity
12 participator ab initio, to use your expression, but failed, not only did he
13 fail to disclose it, but he grossly misrepresented his position and induced us
14 and Mr. Stanley to act on that basis. So a letter coming from Mr. Bullock to
15 say that we had instructions when we hadn't comes as no surprise.

16 Q 62 If we can just go back to the 9th May, page 128. As this attendance indicates,
17 Mr. Charlton, Mr. Caldwell will give evidence that you told him on that date
18 that you were dealing with the matter in the name of Paisley Park. You see
19 that last --

20 A Excuse me, is that something different from what's in this memorandum?

21 Q 63 I'm sorry?

22 A Is what you are putting to me, Mr. Caldwell will swear to, is that something
23 different to what's contained in this memorandum?

24 Q 64 I don't believe so, Mr. Charlton. I am merely saying that Mr. Caldwell will
25 give evidence in accordance with his contemporaneous attendance of his
26 conversation with you on that date.

27

28 CHAIRMAN: Yes, Mr. Finlay, that attendance seems to suggest to me that
29 Mr. Caldwell was saying to Mr. Charlton that he would at some stage in the
30 future receive instructions from Paisley Park. If we look at the second last

1 sentence he says, and this is Mr. Caldwell speaking "I said he would receive
2 formal instructions from Paisley Park."

3

4 MR. FINLAY: Yes, it is the last sentence I was referring to.

5

6 CHAIRMAN: Sorry?

7

8 MR. FINLAY: It is the last sentence I was referring to.

9

10 CHAIRMAN: He said he was dealing with it in the name of Paisley Park.

11

12 Q 65 MR. FINLAY: Exactly. That's all I wanted to draw Mr. Charlton's attention to.

13

14 Then if we could go to page 130, Mr. Charlton, 9th May 1988. I think it's the
15 same date as the last attendance. Mr. Caldwell will say that he wrote this
16 letter to you. You see the heading to that letter, Mr. Charlton?

17 A Yes.

18 Q 66 "Attention Gerry Charlton, Esquire".

19 A Yes.

20 Q 67 "Re: Folio 4940F County Dublin. Your client Paisley Park Investments Limited
21 and Robert Tracey."

22 A Yes.

23 Q 68 "Dear Gerry, I refer to our telephone conversation and note that you are
24 progressing the contract in this matter. I confirm that we received 5,000
25 sterling from Paisley Park and, as requested we paid 5,000 on its behalf to
26 Siteland Management Limited the agents for the vendor, Mr. Robert Tracey. If
27 we can be of any assistance to you, please do not hesitate to contact us."

28

29 Now, Mr. Caldwell will give evidence as indicated by this letter that he wrote
30 this letter to you believing that you were acting for Paisley Park Investments

1 Limited and that in that belief at the top of the letter, he referred to your
2 client as Paisley Park Investments Limited and, in that context, also wrote the
3 balance of the letter on the basis solely -- solely -- that you were acting for
4 Paisley Park in relation to the purchase of the lands. Do you understand my
5 question?

6 A Yes. I understand the question.

7 Q 69 And that's what he will say, I just want you to be aware of that.

8 A Well the position, my position, and I'm repeating myself now, but unfortunately
9 I have to, is set out on the basis that my client was solely and entirely
10 Mr. Stanley from the word go. There were other things going on in the
11 background unquestionably between himself and Mr. Kennedy and also everything
12 that I say, Mr. Finlay, predicated on the proposition that it was accepted by
13 Mr. Caldwell and Mr. Kennedy that Mr. Kennedy was the beneficial owner or was
14 to be the beneficial owner, the beneficial purchaser of this property and
15 ultimately that when the contract was signed with Paisley Park that
16 Mr. Caldwell knew, and well knew, and Mr. Kennedy knew, that Mr. Kennedy was
17 then the beneficial purchaser of the property.

18 Q 70 Now the next letter in that sequence is 134, Mr. Charlton, at 19th May 1988.
19 You write a letter to Mr. Caldwell in response to the letter which we have just
20 seen and it's in the following terms. First of all the heading to that letter,
21 Mr. Charlton, "Re: Paisley Park Investments Limited and Robert Tracey." So in
22 that letter of reply, Mr. Charlton, you expressly adopt, I suggest to you, the
23 reference to the parties which appears at the heading of Mr. Caldwell's letter
24 to you. And then you go on as follows, "Dear John, many thanks for your lever
25 of the 10th inst. I am still awaiting documentation and as soon as this is to
26 hand I will be in touch with you." That's what you wrote on that day.
27 Mr. Caldwell's evidence will be when he received that letter he regarded it as
28 entirely consistent with the letter he had written to you on the 9th and he
29 understood you in the purchase matter to be acting for Paisley Park Investments
30 Limited and for no other party.

1 A Well my response remains the same, Mr. Finlay, that it was in the context of
2 the agreement between discussions that were taking place and the ultimate
3 agreement that was ultimately reached between were Kennedy and Mr. Stanley.

4
5 MR. O'NEILL: Again I think for completeness, sir, it would be appropriate if
6 Mr. Finlay was to put to the witness the document which was the intermediate
7 document between the two references that he has made and, in particular, the
8 document at page 131, which is a letter from Mr. Charlton to his own client
9 following upon Mr. Bullock's letter to him, you will remember Mr. Bullock's is
10 the one which is first contact for Mr. Bullock to Mr. Charlton. It indicates
11 effect and that he wishes him to act and, following on that, we see what
12 Mr. Charlton does on receipt of that at page 131.

13
14 MR. FINLAY: I would be delighted to. I'd be delighted to.

15
16 MR. O'NEILL: It's now on screen.

17
18 MR. FINLAY: 131, 11th May 1988. You wrote to Mr. Stanley on that date, it
19 seems, Mr. Charlton, in the following terms, "Dear Sam, please find enclosed
20 copy of a letter we have this day received from Martin Bullock. His reply is
21 dated the 5th inst. -- sorry -- his letter is dated 5th inst. You can let me
22 know if you wish me to reply thereto. I'm writing again to Mr. Stokes,
23 solicitor for Mr. Treacy, in stronger terms, I will advise you of the
24 consequential developments"

25 A Precisely, and I was looking for instructions from Mr. --

26 Q 71 Yes.

27 A Allow me to finish. I was looking for instructions from Mr. Stanley who was my
28 client exclusively at that point in time, whether or not I was to reply to
29 Mr. Bullock or in what terms I was to reply to Mr. Bullock.

30 Q 72 Did you ever get such instructions?

1 A Well the documentation will show that.

2 Q 73 The documentation will show that?

3 A Yes, the documentation which we are going through.

4 Q 74 Exactly. Thank you.

5 A But I think Mr. Stanley, when you say did I ever get a response to it, I knew
6 what my instructions were and it was made clear over and over again that I was
7 acting at this stage purely and simply for Mr. Stanley.

8 Q 75 Very good. If you knew at this stage, Mr. Charlton, that those were your
9 instructions, why before the 14th July, two months later, why did you never say
10 either to Mr. Caldwell or to Mr. Bullock that you were not acting for Paisley
11 Park, that you had not acted for Paisley Park and that you were exclusively in
12 the purchase acting solely for Mr. Stanley? Why did you never intimate that
13 until the 14th July?

14 A But I couldn't have made it -- we couldn't have made it any clearer than we did
15 in our letter to Mr. Bullock.

16 Q 76 On the 14th July?

17 A The letter which set out, I have forgotten what the date of it was, but we set
18 out clearly what our position was and I think we set it out in more than one
19 correspondence and I think it's set out in the memoranda and may I say,
20 Mr. Finlay, in relation to all of this, I may have not seen the totality of it
21 but there is a marked dearth of attendances from Mr. Caldwell during this
22 period and may I also say, that it is clear to me that Mr. Bullock was a
23 nominee director and he was getting instructions from someone and the question
24 is who was giving him the instructions.

25 Q 77 Yes. At the moment what I'm trying to do, Mr. Charlton, is to discover where,
26 if at all, between this point of time, early May and the 14th July, you ever
27 indicated to either Mr. Caldwell, my client, or to Mr. Bullock.

28 A I think it that they make it quite clear they knew what the position was.

29 Q 78 I see. So your evidence was to the Tribunal that Mr. Caldwell knew from May
30 onwards that you were not acting for Paisley Park?

1 A My evidence, Mr. Finlay, and I repeat it, that Mr. Caldwell and Mr. Kennedy at
2 all times knew what the position was.

3 Q 79 When you say what the position was, the only position I'm concerned with is
4 whether or not you were acting for Paisley Park?

5 A I thought that I had dealt with that. I dealt for Mr. Caldwell up to a
6 particular point which is set out in the documentation and correspondence.
7 Up to the point where they had agreed to what Mr. Stanley was to get, that they
8 were satisfied that all parties were ad idem, that there was no conflict
9 between the parties and I was being then asked by my client, Mr. Caldwell, by
10 Mr. Caldwell to act for Paisley Park and, as I recall it, before I accepted the
11 retainer, I went to Mr. Stanley and asked for his authorisation to act in this
12 situation and I believe there's a document signed by him, I actually got a
13 document signed by him to that effect and if he had said no, I wouldn't have
14 acted. It would have been sad in the sense that I would have not had the
15 opportunity of completing what was obviously, what I thought a very simple and
16 lucrative position. But my position was clear, my client was Mr. Stanley.

17 Q 80 What may have been your position vis-a-vis Mr. Stanley, but you must be aware
18 because it's only fair that Mr. Caldwell's evidence will be he had no inkling
19 of that position before the correspondence.

20 A But it was set out in the correspondence to him.

21 Q 81 Very good. That's what we are trying to discover, which part of the
22 correspondence before July sets that out.

23

24 The next document we might look at, Mr. Charlton, is at 150. These would
25 appear to be three file notes of Mr. Bullock; first one, "Rang Mr. Charlton,
26 1st June. He would tell me as soon as he had the papers. 17th June, rang
27 Mr. Charlton again, he told me that Mr. Tracey's solicitor was now sending the
28 contracts and would have them shortly. He reassured me everything was in order
29 and contracts already existed and this had confirmed with Mr. Tracey's
30 solicitor.

1

2 7th July, Mr. Charlton told me when I rang him at a meeting with Mr. Caldwell,
3 Mr. Charlton announced that there was a problem over the covenant placed over
4 the land which he said meant building could only take place with the agreement
5 of the neighbour who was a solicitor who knew his rights. Mr. Charlton
6 suggested that Mr. Caldwell would be able to confirm the existence of the
7 covenant. Mr. Charlton was reviewing the papers he had received to clarify the
8 position. I did not say we would not proceed because of the covenant, nor did
9 he raise with me the possibility of not proceeding with the contracts."

10

11 And then 152, Mr. Charlton, which seems perhaps to refer back to those
12 conversations. It's a telex, I think from you to Mr. Bullock, 20th June re:
13 Lands at Cabinteely. Sorry, they are in reverse order. Start at 153. In
14 reverse order in the brief. That seems to be the 20th June, '88, a telex to
15 you from Mr. Bullock, Paisley Park Limited limited, "I was pleased to hear from
16 you that Mr. Tracey, solicitor, has confirmed that there is a contract between
17 me, Mr. Tracey and this company and that he is sending papers to you. Perhaps
18 in the meantime you would send us a copy of the correspondence between
19 yourself". Then you reply, the earlier numbered document 152, "To be more
20 accurate, we have advised that contracts are on the way to us but have not
21 reached us as yet. When they do we will advise and as to their content. At
22 this stage we have to reserve our position whether or not contracts are
23 necessary or appropriate."

24 A Yes, that's a reference to the fact that the document that Mr. Stanley had
25 signed --

26 Q 82 Absolutely.

27 A -- was in itself self-sustaining to satisfy the statute.

28 Q 83 Absolutely. And so at that time one of the issues was, it's perfectly fair and
29 correct to say, one of the issues was whether a purchaser could rely on that
30 document or the other documents from Mr. Stanley of March or, alternatively,

1 whether it be necessary to enter into a formal Law Society contract?

2 A The only conceivable person who could have relied upon it was Mr. Stanley.

3 There was no question of Mr. Bullock or Paisley Park being able to reply on it.

4 Q 84 We can come back to that. And then the 163, 23rd June, Mr. Bullock to you,

5 "Dear Mr. Charlton, Cabinteely lands, further to our recent exchanges of

6 telexes, I am now enclosing our draft for 10,000 pounds in respect of the

7 balance of the deposit monies."

8 A Yes, I see that. The same comment applies to it. This is all subject to the

9 agreement that is reached between Mr. Stanley and Mr. Kennedy.

10 Q 85 Which agreement are you referring to now?

11 A The agreement which Mr. Stanley was to get, as I understood it, initially a

12 million pounds from Mr. Kennedy.

13 Q 86 Oh yes, sorry, I just wasn't sure which one you were referring to. Very good.

14 That agreement. The point is this: For present purposes, Mr. Charlton, Mr.

15 Caldwell will give evidence to the effect that all of these exchanges of

16 correspondence and the remittance to your firm of the 10,000 pounds, all of

17 that was done by Paisley Park in the unqualified belief that you were acting as

18 Paisley Park's solicitor in relation to the purchase of the Cabinteely lands.

19 A Well, there's clear disagreement between us on that point.

20 Q 87 We'll come to that in just a moment. Just for completeness, I think at 154 we

21 see that draft, perhaps, expressed in sterling at the time. The draft for the

22 10,000 pounds which came to you, you see that?

23 A Yes.

24 Q 88 There's no dispute but that you got that draft?

25 A No dispute.

26 Q 89 And if we go to 179, Mr. Charlton, we there find a letter of the 6th July 1988

27 from you to Paisley Park Investments Limited. "Dear Mr. Bullock, many thanks

28 for your letter of the 23rd of June 1988, enclosing draft for 10,000 pounds

29 which we have placed to credit here.

30

1 We are presently investigating documentation. We have had a meeting with
2 Mr. John Caldwell yesterday and have furnished him with title. We will advise
3 you of developments."

4
5 And Mr. Caldwell will give evidence to the effect that that meeting to which
6 you referred did take place and you did furnish him with documents and that at
7 that point in time also he believed, in an unqualified way, that all of that
8 was taking place because you were acting in the purchase on behalf of Paisley
9 Park.

10 A I don't agree with that. It was taking place in anticipation of the
11 arrangement with Mr. Kennedy, a million pounds be put into effect and then, and
12 only then would Mr. Stanley have agreed to Paisley Park taking over as being
13 the purchaser, taking over as purchaser of the company.

14 Q 90 And then we go to 182. It's slightly difficult to read and it's a copy of an
15 attendance on Mr. Caldwell "I called Mr. O' Siochain. He said that they were
16 arranging a meeting with Mr. Sam Stanley for Monday next. He said he had not
17 come back to me on the request on the original contract documents and papers,
18 as he had been unable to get instruction. He said he was getting concerned
19 about the matter. I said that I was very concerned that the contract that was
20 in place would be prejudiced. He said that the view that should be taken is
21 that the contract was there. I said I had a copy of the contract of the 9th
22 March 1988. He expressed surprise at this. I said that I had met with
23 Mr. Stanley and that his views were that the party that had purchased the
24 property was Paisley Park. He said that the matter was very confused from
25 their perspective and that they wanted to have a detailed discussion with
26 Mr. Stanley on Monday, and then come back to me".

27
28 So that's Mr. Caldwell's record of a telephone conversation with you on the 8th
29 July. He records that he told you he had met with Mr. Stanley and
30 Mr. Stanley's views were that the party that had purchased the property was

1 Paisley Park.

2 A Of course he shouldn't have been meeting Mr. Stanley. Mr. Stanley was my
3 client.

4 Q 91 And you said, he records that the matter was very confused from their
5 perspective, I take that to be your perspective.

6

7 MR. O'NEILL: I think it has to be Mr. O' Siochain, I'm sorry to interrupt.

8

9 Q 92 MR. FINLAY: I mean the firm. This is not intended to be specific to Mr.
10 Charlton. Sorry. By the way, Mr. Charlton, please understand in my references
11 to all of this, I have repeatedly, perhaps, and we have all in discussion
12 perhaps referred to you when it may mean your firm. I do not intend to draw
13 any distinction, please do not take it that way.

14 A I understand.

15 Q 93 Otherwise throughout this exchange I will refer to Reddy Charlton & McKnight.
16 Wherever I have referred to you, I have meant the firm.

17 A Whichever is more convenient for you. But, to all intents, we are one and the
18 same.

19 Q 94 Absolutely, and because I have been talking with you, I found it more
20 convenient to refer to you, that's not intended to be in any distinctly
21 personal way.

22 A I think it's an appropriate way to deal with it.

23 Q 95 Very good. Thank you, Mr. Charlton. So what I want to suggest to you, and
24 this will be Mr. Caldwell's evidence, Mr. Charlton, is that this telephone
25 attendance of the 8th July 1988 was the first occasion on which any indication
26 arose, as far as Mr. Caldwell was concerned, that there might be any problem in
27 relation to this matter.

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29 MR. O'DONNELL: Could my friend put that more precisely, what problem in
30 relation to this matter?

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MR. FINLAY: Before this attendance at the 8th July at the earliest, Mr. Caldwell had no intimation of any kind, no belief or suspicion of any kind that you were acting in the purchase for any party other than Paisley Park Investments Limited.

MR. O'DONNELL: How can that be consistent with what I understood to be Mr. Caldwell's case which was partly based on the memorandum of the 4th July 1988, which the witness should see?

CHAIRMAN: I think that --

MR. O'DONNELL: The first paragraph of that attendance of the 4th July.

MR. O'NEILL: Page 172.

MR. FINLAY: It seems to me that that is a question which in due course, if he wishes and thinks is appropriate, Mr. O'Donnell can put to Mr. Caldwell. I have gone through a series of interparte correspondence, I have given Mr. Charlton every opportunity to comment on it and he has done so and he has given his evidence very fairly.

CHAIRMAN: Yes, Mr. O'Donnell can raise the matters as he wishes.

MR. FINLAY: And then --

A I think it would have been fair to have brought up the memorandum in the context of what we were discussing. It's highly relevant to it.

Q 96 Would you like to elaborate on that, Mr. Charlton?

A Pardon?

Q 97 Would you like to elaborate on that answer because I don't quite follow it at

1 the moment?

2 A The memorandum of the 4th July 1988.

3 Q 98 Is it the 8th July? Oh, the 4th July. I was reading from my brief.

4 A Yes.

5

6 CHAIRMAN: We will put that up on screen. Please.

7

8 Q 99 MR. FINLAY: Yes. Mr. Charlton, please, would you like to continue with what
9 you were saying?

10 A Yes. That was on the basis of a sub sale for a million pounds but it clearly
11 contemplated a million pounds to Mr. Stanley for Mr. Kennedy, as we then
12 believed. And that was something which had to be resolved and dealt with and
13 where there were variations in it, but ultimately was encapsulated in the
14 shareholders' agreement. But that theme ran through the entire transaction and
15 it would be wrong to consider the documents that you have been putting me,
16 Mr. Finlay, without considering this one and I think it would have been
17 appropriate. I can't recall all these documents from memory?

18 Q 100 Of course not.

19 A I am not a computer.

20

21 Q 101 MR. FINLAY: No no, I have no wish to deal with anything in isolation,
22 Mr. Charlton. First of all, I fully accept and I have never suggested
23 otherwise to you, that at all times from day one, from the first moment you
24 were acting for Mr. Stanley in relation to his negotiations with, dealings with
25 Mr. Kennedy in relation to Mr. Stanley's interest, you do understand that?

26 A Yes.

27 Q 102 I fully accept and I never suggested to you otherwise.

28 A Yes, but clearly on the basis of that memorandum of the 4th July --

29 Q 103 Yes?

30 A -- there was a major unresolved issue.

1 Q 104 Absolutely.

2 A And all the correspondence, as you say, the two things were going forward in
3 tandem.

4 Q 105 That's correct.

5 A But they were mutually interdependent.

6 Q 106 That would also appear to be the case. I accept that.

7 A And that if Mr. Kennedy hadn't signed or the question of the million pounds
8 hasn't been resolved to Mr. Stanley's satisfaction, then Mr. Kennedy or Paisley
9 Park would not ever have been the purchaser.

10 Q 107 And you will recall in that regard what I said to you this morning what Mr.
11 Caldwell will say that the reason into these negotiations took place with
12 Mr. Stanley and the reason why he got 20 percent was precisely because of the
13 crucial role he played that you just described. He held the key to this. He
14 could nominate another purchaser if Mr. Kennedy didn't deal with him on terms
15 acceptable to Mr. Stanley, isn't that correct?

16 A That is correct.

17 Q 108 Now, I'm talking about something different. I don't dispute any of that. And
18 I am fully conscious of it. I was merely asking you about the contract for the
19 purchase of the lands and the dealings between you and Paisley Park and
20 Mr. Caldwell in relation to that matter which was happening in parallel.

21 A Yes, I understand.

22 Q 109 And I merely have been putting to you or trying to put to you, I thought it was
23 clear, that until July of 1988 --

24

25 MR. O'DONNELL: Until what date in July? This is quite important in the
26 context of the attendances and correspondence.

27

28 MR. FINLAY: I don't accept that it's important for the purpose of attendance
29 and correspondence and I don't think that it's appropriate for my
30 cross-examination to be constantly stopped on this base. I have taken this

1 witness through two months of correspondence and asked him in each case where
2 there's any indication to Mr. Caldwell and Mr. Bullock that during that period
3 that Mr. Charlton was not acting for Paisley Park and I am sure that will have
4 been clear to anyone following the correspondence.

5

6 CHAIRMAN: It's just that, Mr. Finlay, you said you put it to Mr. Charlton that
7 it was clear until July of 1998 without specifying any date or --

8

9 MR. FINLAY: I will come to that.

10

11 CHAIRMAN: All right. We can leave it until two o'clock.

12

13 MR. FINLAY: Of course. Thank you.

14

15 THE TRIBUNAL THEN ADJOURNED FOR LUNCH

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THE TRIBUNAL RESUMED AS FOLLOWS AT 2.00 P.M.

MR. O'NEILL: Mr. Charlton, please.

CONTINUATION OF QUESTIONING OF MR. CHARLTON BY MR. FINLAY:

Q 110 Mr. Charlton, before lunch, we had gone through a sequence of correspondence starting at the beginning of May 1988 and coming then to July. And I went through that correspondence with you in the following context and merely for that, that Mr. Caldwell will say that he believed and believed up to July 1988 that you were, your firm, of course, was acting for Paisley Park Investments Limited. I know you take a different view and that's not a matter for resolution here today, I merely went through it in order to indicate to you out of fairness why Mr. Caldwell will say that he had that belief. I know you have a different view and I just merely wanted to indicate that.

A I understand that, Mr. Finlay. I understand that perfectly and all I'm saying, I don't agree and I don't believe that there is a basis for what you are putting to me on behalf of Mr. Caldwell.

Q 111 Very good. That's not perhaps a matter for now but all I have been doing, as I am obliged to do and will probably be criticised yet again if I didn't do it, was to indicate to you what Mr. Caldwell will say and why.

A Yes. I understand.

Q 112 And that's what he will do. If I could move to a slightly different topic and move as quickly as I can and I'll tell you in advance what it deals with so that you can, it can make more sense to you. It concerns the agency of Mr. Stanley.

A Yes.

Q 113 I want to explain what I mean by that. You know that I fully accept that at

1 all times from March '88, that in his dealings with Mr. Kennedy looking after
2 his personal interest, you were acting for Mr. Stanley and Mr. Stanley alone
3 and you know I accept that and I have never disputed that at any stage.

4 A Yes.

5 Q 114But you also I think accept, Mr. Charlton, that there was of course another
6 transaction and a transaction without which nothing else would happen, which
7 was the purchase of the lands, if there was never to be a purchase of the
8 lands, everything that was going on was irrelevant?

9 A I certainly wouldn't be here today.

10 Q 115You wouldn't be here today and neither would I, I can assure you.

11 A We have something in common.

12 Q 116Yes. So if we can just look, and I know it's sometimes difficult to separate
13 everything, if we can just look exclusively at the purchase of the lands.

14 A Yes.

15 Q 117Can I take it that at all times as an experienced solicitor and possibly
16 dealing with conveyancing, you knew that whatever else was to happen and
17 whoever was to be the purchaser, the crucial thing was to have a vendor
18 committed -- to have a vendor committed -- is that correct?

19 A Absolutely.

20 Q 118And isn't it also correct, Mr. Charlton, that until Mr. Russell finally
21 provided the Law Society contract and that got executed in November 1988 --

22 A Yes.

23 Q 119-- the only documents, the only material that any purchaser and I use the term
24 advisedly, any purchaser, it doesn't matter who the purchaser is -- the only
25 material that any purchaser could rely on was the documentation created by
26 Mr. Stanley, it was critical, wasn't it?

27 A Correct.

28 Q 120And the way I read it and please tell me if I got it wrong, it seems to be as
29 follows: Mr. Stanley had obtained the document on the 9th March which I, at
30 the very outset of my talking to, described it as a very clever document

1 because on its face, signed by Mr. Tracey, gave irrevocable authority to
2 Mr. Stanley to sell.

3 A Yes.

4 Q 121Now, first of all, from the point of view of committing a vendor, I suggest to
5 you that that document had the effect of, at the minimum, appointing
6 Mr. Stanley as the vendor's agent in that context.

7 A Yes.

8 Q 122In that context.

9 A Yes.

10 Q 123And then it's --

11 A There were two documents.

12 Q 124Absolutely and I am coming to the second. It then seemed to me and -- I'm
13 trying to look at this just as a lawyer for the moment -- it then seemed to me,
14 Mr. Charlton, that the next critical document, if you are hoping to commit a
15 vendor, was the letter from Mr. Stanley to you where, having been appointed
16 irrevocably as the agent, he, the agent for this purpose, then writes to you
17 setting out the terms of the sale.

18 A Correct.

19 Q 125And I had always understood, trying to look at it objectively now, not from my
20 client's point of view but as a lawyer, it seems to me it was very arguable --
21 very arguable -- that taking those two together, the irrevocable appointment of
22 an agent and then the appointed agent identifying the necessary terms for a
23 note or memorandum for the contract for the sale of land, that you then had a
24 very arguable case to commit the vendor, Mr. Tracey.

25 A I agree.

26 Q 126Would you agree with all of that?

27 A I agree.

28 Q 127And irrespective of who was to buy this land, whether it was Mr. Stanley or
29 Paisley Park or somebody else, up until November of 1988, the crucial documents
30 were those documents -- the authority to Mr. Stanley which was an authority to

1 sell, plus that confirmation from him to you, I'll just give you the date of it
2 now, 104, the 25th March he writes to you, that confirms the details of a sale,
3 of an agreement for sale.

4 A Yes.

5 Q 128And there he writes to you, Mr. Charlton, just to remind ourselves, "Further to
6 our recent conversations, we wish to confirm our Mr. Tracey's agreement -- our
7 Mr. Tracey's agreement -- to sell the lands at Carrickmines to you in trust."
8 Full details are provided herein and then there's the vendor, there's the
9 property, the lands identified by folio, there's the vendor's solicitor and
10 then there's the price.

11 A Yes.

12 Q 129And then it goes "Please forward a stakehold deposit, we have written to
13 Mr. Stokes to forward contract documents to you, we hereby enclose copy of our
14 instructions. We trust the foregoing meets with your approval." Now, trying
15 to construct an enforceable contract against a vendor, that was a critical
16 document, wasn't it, because that coupled with the letter of authority from
17 Mr. Tracey to Mr. Stanley of the 9th March enabled you, any purchaser to argue
18 that Mr. Tracey was committed, isn't that the position?

19 A Well just to be clear, Mr. Finlay, two documents that I thought would have
20 produced the result that --

21 Q 130Of a memorandum?

22 A Was A, the document of authority giving irrevocable authority given by
23 Mr. Tracey to Mr. Stanley to find him a purchaser at a certain price. That was
24 document number one. That was an important document. I mean it was a document
25 which is not that terribly unusual for estate agents. There was a period in
26 time when the English language got a new word called 'gazumping'.

27 Q 131I remember it.

28 A And Where people fought about a transaction and the next thing they were
29 gazumped and this was, people found it very frustrating, estate agents in
30 particular whose work depended on having a transaction and they were

1 encountering this all the time. And many estate agents, the biggest of them
2 sometimes resorted to their own protection, for their own protection to getting
3 a document signed, such as Mr. Stanley, that would not have been so unusual.

4 Q 132 Yes.

5 A The second document, the document I would regard as of importance so far as
6 binding the vendor was concerned, was the document signed by Mr. Tracey where
7 there was a reference, isn't there another document signed by Mr. Tracey where
8 I was appointed solicitor in trust for the purchaser?

9 Q 133 Yes, I can't -- we'll find it, I'm sure, in a moment. Nothing may turn on
10 this, but the key to the first document, in any event, you will agree, is the
11 document appointing Mr. Stanley as his agent?

12 A Absolutely.

13 Q 134 We'll try and find the other one, I can't presently recollect at this point --

14 A I have to say I'm getting addled by the documentation, but I thought there was
15 another document but I don't think this document would have been of assistance,
16 the document we are referring to, the 25th March 1988, from Siteland to me
17 would have been of any assistance to commit the vendor to a purchase.

18 Q 135 I see.

19 A That's a document which is addressed to me from Mr. Stanley.

20 Q 136 Yes, but what I was understanding, the sequence that I had seen was,
21 Mr. Charlton, I may have been wrong, was that at the time he wrote this
22 document, he had already been irrevocably appointed the vendor's agent so, my
23 understanding was that in signing this document, anything that he wrote was
24 binding his principal, do you follow? Do you follow what I'm saying? In
25 writing this letter, having been appointed Mr. Tracey's agent, anything that
26 Mr. Stanley wrote in that letter would bind his principal on the ordinary
27 principles of agency. Do you --

28 A I am not sure that that's the case.

29 Q 137 Very good. Nothing may turn on that at the moment. And then what I'm trying
30 to demonstrate or ask you about is this, Mr. Charlton; is that at all times

1 through that summer of 1988 and, in particular, up to and including the month
2 of July when that rather heated correspondence was exchanged between yourselves
3 and Mr. Caldwell, at all that period, Mr. Stanley's status as Mr. Tracey's
4 agent for the purpose of binding the vendor was still a critical event?

5 A I would accept that.

6 Q 138Excellent. Excellent. And that's of course entirely without prejudice to the
7 issues as between Mr. Stanley and Mr. Kennedy.

8 A I understand, yes.

9 Q 139Very good, that's all I was coming to. That may shorten this very much
10 because -- this I think may shorten what I was proposing to do, I am asking you
11 these questions for the following reason so that you'll understand. You were
12 asked by Mr. O'Neill, when he was taking you through your evidence, about some
13 correspondence in July with Mr. Caldwell?

14 A Yes.

15 Q 140I'll come to the correspondence in a moment. And there was reference in that
16 correspondence to the role of Mr. Tracey, sorry, so sorry, to the role of
17 Mr. Stanley, in relation to the purchase. Now not in relation to Mr. Kennedy
18 but in relation to the purchase of the land, do you follow?

19 A Yes.

20 Q 141And in that correspondence --

21 A Yes.

22 Q 142Mr. Caldwell was contending that Mr. Stanley had acted as Mr. Tracey's agent.

23 A Correct.

24 Q 143And correspondence was exchanged in relation to that. And Mr. O'Neill
25 suggested to you that the purpose of Mr. Caldwell's contention that Mr. Stanley
26 was Mr. Tracey's agent in the sale --

27 A Yes.

28 Q 144-- was to relegate Mr. Stanley to being merely the vendor's agent and therefore
29 he would have to look to Mr. Tracey only for his reward.

30 A Correct, I think that is fair. That's fair.

1 Q 145And Mr. O'Neill suggested that to you and at the time -- and this was early in
2 your evidence -- you appeared to agree with that suggestion.

3 A Yes, I think it's correct.

4 Q 146Yes. That's why I'm asking you these questions, because Mr. Caldwell will say,
5 categorically say, that at that time when he wrote to you in July, he was
6 insisting that Mr. Stanley had been Mr. Tracey's agent, not for any purpose --
7 not for any purpose -- of defeating Mr. Stanley's claims or demands from
8 Mr. Kennedy, but for the sole purpose of ensuring that there was a binding
9 contract in being as against the vendor because, if Mr. Stanley had not been
10 the agent of Mr. Tracey at the material time, there would have been nothing to
11 commit Tracey. Nothing. Nothing in being. At that time there was still not a
12 shred of paper committing Tracey because the contract wasn't signed till
13 November of 1988. That's a very long statement, I apologise.

14 A This is the new Law Society contract?

15 Q 147Yes, exactly. The date of that, Mr. Charlton, I believe was November of 1988
16 and in July, which was a critical period --

17 A Yes.

18 Q 148-- there still was no Law Society contract signed. The only thing that a
19 purchaser had to go on --

20 A Yes.

21 Q 149-- was the documentation created by Mr. Stanley.

22 A Yes.

23 Q 150You have agreed with me and, with great respect, I believe correctly, that in
24 creating that documentation, Mr. Stanley appears as Mr. Tracey's agent.

25 A Correct.

26 Q 151All I'm trying to put to you is this: That Mr. Caldwell will give evidence
27 that in insisting that or contending, if you like, in contending in that
28 correspondence that Mr. Stanley, for the purpose of the sale of the land, had
29 acted as Mr. Tracey's agent, he was doing so not for the purpose of defeating
30 Mr. Stanley, but for the purpose of securing a contract as against the vendor.

1 Do you understand the distinction?

2 A Yes, I do understand that. That Mr. Stanley was Mr. Tracey's agent --

3 Q 152Yes, and because of that, the vendor was committed, there was a contract.

4 A Yes, I agree, I accept that.

5 Q 153But what I'm trying to say to you is in the light of what Mr. O'Neill suggested
6 to you and what you indicated in your evidence a couple of days ago, that the
7 reason why Mr. Caldwell was insisting on characterising Mr. Stanley as the
8 agent of Tracey, was with a view to securing a contract against the vendor,
9 otherwise there would have been, there could have been no contract against the
10 vendor because there was no other documentation binding the vendor, do you
11 follow what I'm saying?

12 A Yes, it was the fact that Mr. Stanley was Mr. Tracey's agent in the -- I don't
13 think there's any dispute, we were on all fours, Mr. Caldwell. In relation
14 to --

15 Q 154Good.

16 A -- in relation to the next part of your question that he was insisting, could
17 you just give me --

18 Q 155It's my fault because it's a long-winded explanation and I'll go through it as,
19 I'll try to do it clearly.

20

21 We're all agreed, I am not sure that this was clear before, it certainly wasn't
22 entirely clear to me, but we are now both agreed that in relation to the sale
23 of the Carrickmines lands, Mr. Stanley acted as the agent of Tracey.

24 A Yes.

25 Q 156Very good. In order to secure a sale of the Carrickmines lands --

26 A Yes.

27 Q 157-- in July 1988 or at any time up until the Law Society contract --

28 A Yes.

29 Q 158-- that fact that Stanley was Tracey's agent was critical because there was
30 nothing else to bind Tracey, is that correct?

1 A That's correct, yes.

2 Q 159 In July, you had correspondence with Mr. Caldwell in which he insisted that
3 Mr. Stanley was the agent of Tracey in relation to the sale of the land.

4 A Yes.

5 Q 160 All I'm putting to you is this, Mr. Charlton: That the reason why -- it's to
6 do with reason -- the reason why Mr. Caldwell took that position was not for
7 any purpose of defeating whatever demand or claim Mr. Stanley might have
8 against Mr. Kennedy, but was for the purpose of holding a contract as against
9 the vendor. That's what I am trying to put.

10 A I think that's fair.

11 Q 161 Very good. Then that, if you accept that that was his reasoning in taking that
12 position, it won't be necessary to go through a lot of the correspondence that
13 I was going to go through. And I think, just to mention much fewer documents
14 than I had thought might be necessary, I think, Mr. Charlton, that your own
15 view as to Mr. Tracey's role in this was set out in a document at 445 in clear
16 terms. If we just look at 445. Because this is the next issue that I'd like
17 to briefly touch on with you and I want to try and put this in context, if I
18 may. We have moved on in time, we have moved out of 1988.

19 A Yes.

20 Q 162 We have now had the Law Society contract executed, it was November, or round
21 about November and at this stage, what has happened is that the part of the
22 deposit which was meant to have been released by Mr. Stanley in accordance with
23 that contract had not been honoured, this is the 5,000, you remember that?

24 A Yes.

25 Q 163 What has happened here is that after that event, but before you have spoken to
26 Mr. Stanley, you have written to Binchys in the following terms: It's to John
27 Caldwell. "Dear John, further to our recent telephone communication, we have
28 now this morning received a letter from Phillip J Russell, a copy of which is
29 enclosed. The contents of this letter are in stark contrast to our recent
30 telephone communication with Phillip J Russell in relation to you." This is

1 the paragraph I want to draw attention to: "We have not yet managed to speak
2 to Sam Stanley but we fail to understand how he could have allowed this
3 situation to arise. In any event, it is clear to us that Siteland Management
4 Limited were acting as agent for Robert Tracey and not for Paisley Park
5 Investments Ltd as suggested in the sixth paragraph of the enclosed letter. As
6 you know, this has already been clearly set out in our letter of the 12th
7 January to Phillip Russell." I hope that merely to demonstrate that that
8 accords precisely with the evidence that you have just now given that you
9 always regarded for the purpose of the sale and for the purpose of Mr. Tracey's
10 position that Mr. Stanley was the agent of Mr. Tracey, isn't that correct?

11 A Yes.

12 Q 164 And then I think we could move quickly on to page 513 and if I could just put
13 this document in context. It's an attendance, possibly of yours, Mr. Charlton,
14 it seems to be, your firm's, in any event, with your initials of the 20th April
15 1989. You are meeting with both Mr. O' Siochain and Mr. Caldwell at a stage
16 where proceedings are, I think, perhaps already in being for specific
17 performance against the vendor, Mr. Tracey. Do you recollect that?

18 A Yes.

19 Q 165 And there's a discussion about the -- perhaps I should open a little more of
20 it. I'll start at the third paragraph. "John Caldwell took the view we should
21 plead not only the contract but also the final appointment of agent and the
22 subsequent acknowledgment by Robert Tracey that he had sold the property and
23 that he did not mind Sam Stanley earning a commission or profit thereon. John
24 Caldwell thought that these two documents constituted a contract. They were
25 given effect to in the subsequent contract prepared by the parties.

26
27 He was concerned that Stanley's agency might have been in some terminated in
28 some conversation which had taken place between Stanley and Tracey which we did
29 not know about. He was afraid of this notwithstanding the original appointment
30 was declared irrevocable.

1

2 His concern was that Stanley had not paid over the 5,000 deposit and he was
3 afraid of the general condition of the contract in this regard." You will
4 remember in accordance with the standard conditions at that time, Mr. Charlton,
5 there was a condition in the contract, I think 32, which provided for what
6 would happen if the deposit wasn't paid.

7 A Yes.

8 Q 166"John Caldwell said that he understood that Stanley had stopped payment on the
9 cheque as there was a dispute between himself and Tracey over payment of fees
10 to him, Stanley. The question would arise as to whether or not Stanley was
11 the agent of Tracey. That seems the only possible escape for the vendors.
12 Once they hadn't that escape, then it was pointless for them even to go to
13 court."

14

15 Just pause again there if I may, Mr. Charlton. I think what Mr. Caldwell is
16 indicating there is that if, as you and he both believed, Mr. Tracey had been,
17 Mr. Stanley had been the agent of Tracey certainly originally and had continued
18 to be, if that were the case, there was no basis on which Tracey could get out
19 of the contract arising out of the 5,000 deposit because his own agent had
20 received the money.

21 A Yes.

22 Q 167Isn't that the point?

23 A Yes.

24 Q 168And then the next paragraph is as follows "I said" -- that's you I think --

25 "That I thought that the dispute over fees was between Stanley and Kennedy. He
26 said that there was also a dispute between Stanley and Tracey over fees." I
27 think the 'he' there is a reference to Mr. Caldwell.

28

29 And then the next sentence, "I passed the comment how could they possibly have
30 allowed this to have happened on a matter so important and John Caldwell made

1 the comment that it bordered on lunacy." Now just to put that in context.
2 What I suggest I understand that you were talking about was both the fact that
3 the deposit had not been paid over and also the possible consequences of that,
4 because I think in your evidence earlier you referred to the, you characterised
5 it as the torpedoing by Mr. Stanley of that contract and that contract of
6 November '88 at 540,000 pounds was torpedoed by what happened in relation to
7 the deposit, isn't that correct?

8 A Yes, that is correct.

9 Q 169 And I think you will recall that if Mr. Stanley's 5,000 or rather the 5,000
10 that he sent by cheque to the vendors had been honoured, then that would have
11 been the end of it and that contract would have closed for Paisley Park at 540,
12 isn't that correct?

13 A Correct.

14 Q 170 And there was no doubt but at this point in time when the deposit wasn't
15 honoured, the only purchaser, the only purchaser was Paisley Park because since
16 November 1988, they were named on the Law Society contract as the purchaser.

17 A That was the signed contract?

18 Q 171 Yeah, absolutely.

19 A At that stage.

20 Q 172 I'm talking only about this stage now, I have had moved on to early 1989. We
21 have the Law Society contract in which Paisley Park appears for the first time
22 as the named purchaser.

23 A I accept that, Mr. Finlay.

24 Q 173 So at this stage what happened was, do you agree, that the event, and I put it
25 neutrally for the moment, the event of the non honouring or the dishonouring of
26 the deposit cheque had given Mr. Tracey a possible way out of a contract which
27 otherwise would have closed for Paisley Park at 540,000?

28 A I accept that absolutely.

29 Q 174 Very good. Yes. And you then acted or your firm, you know what I mean by
30 that, acted in the specific performance proceedings which Paisley Park had to

1 institute in order to try and specifically enforce that November 1988 agreement
2 at 540,000?

3 A Correct.

4 Q 175And that in that litigation, Mr. Tracey defended the proceedings exclusively on
5 the basis that Mr. Stanley was not his agent --

6 A Correct.

7 Q 176-- and that therefore neither he nor his agent had got the deposit?

8 A Correct.

9 Q 177Or rather they had got it, but it had been dishonoured, nothing turns on that.

10 A Correct.

11 Q 178Very good. And because of those events you advised Paisley Park that the legal
12 opinion that you received was pessimistic, you recollect that?

13 A Yes, it was pessimistic.

14 Q 179And as a consequence of that, I think you indicated to Mr. O'Neill or agreed
15 with Mr. O'Neill, as a consequence of that term, Mr. Kennedy or Paisley Park
16 had little option but to try and negotiate a compromise?

17 A Correct.

18 Q 180And the consequence of all of that for Paisley Park was that the compromise
19 which they had to negotiate and which was negotiated resulted in a contract,
20 another contract at a higher price.

21 A Correct.

22 Q 181At 700,000 plus the consequent increase in stamp duty?

23 A And fees.

24 Q 182Plus the cost of the litigation because they were borne by Paisley Park, their
25 own costs and plus, in addition to all of that, a commitment by Paisley Park
26 that if Mr. Stanley wouldn't waive his claim against Mr. Tracey for his fees,
27 Paisley Park would have to pay them?

28 A Pick up the tab, yes, for the 8,000.

29 Q 183And Mr. Stanley, as we know, didn't waive that claim and Paisley Park paid
30 those Tracey fees owed to Stanley over to Mr. Tracey who, in turn, passed them

1 on I think --

2 A I accept all that.

3 Q 184Very good, very good. I just want to come back quite briefly to something we
4 touched on this morning, a slightly different aspect of it and it's to do,
5 Mr. Charlton, with the 20 percent shareholding.

6 A Yes.

7 Q 185I'm conscious, and I haven't forgotten, that you have made a reference to a
8 view which was expressed possibly by Mr. Stanley or Mr. Kennedy -- Mr. Stanley
9 perhaps -- in relation to the value of lands?

10 A Yes.

11 Q 186And you have made some reference to that.

12 A Yes.

13 Q 187But if I could, if you wouldn't mind, if I could ask you just for the moment to
14 leave aside that view on valuation, just leave that view on valuation aside and
15 bear with me for a moment.

16 A Yes.

17 Q 188If, Mr. Charlton, if the value of the land in 1988 --

18 A Yes.

19 Q 189-- were of the order of half a million pounds or three quarters of a million
20 pounds, something of that order, if that were the value of the land at that
21 time --

22 A Yes.

23 Q 190-- and if one were to acquire 20 percent of the shares of the company which
24 was acquiring that land --

25 A Yes.

26 Q 191-- at that value --

27 A Yes.

28 Q 192Do you follow me so far?

29 A I do.

30 Q 193Would you agree that the following would be the position in relation to the

1 value in 1988 of that shareholding? That the shareholder acquiring 20 percent
2 in the purchasing company would own 20 percent of the shares in a company which
3 had an asset worth, it doesn't matter for the illustration.

4 A 700 --

5 Q 194Let's say 700. It's easier with 700, but it was actually 540 all the time in
6 the agreement.

7 A Yes.

8 Q 195What you have then is a shareholder owning 20 percent of the shares in a
9 company with an asset worth 700,000 on my illustration?

10 A Yes, for which he would have had to make any capital contribution.

11 Q 196I am not talking about capital contribution just for the moment, just take my
12 illustration. Let's assume that he didn't make a capital contribution?

13 A Yes. That's right, the shareholding, the 20 percent shareholding, give or
14 take, would be worth 140,000.

15 Q 197Yes. But subject perhaps to this though, Mr. Charlton, the company would have
16 an asset worth 700, but the company in question is a company with no other
17 assets. This is its only asset?

18 A So far as I knew, yes.

19 Q 198And it's not a trading company?

20 A No, this was a sole asset.

21 Q 199So in order to acquire the asset, the company has to pay for the asset.

22 A Correct.

23 Q 200So the company in its school book balance sheet has on the asset side 700.

24 A Yes.

25 Q 201And on the liability side 700, because the company owes the money which it has
26 had to acquire in order to fund the purchase?

27 A Unless the shareholders contributed.

28 Q 202Unless the shareholders contributed.

29 A Yes. And there would be nothing then on the debit side.

30 Q 203If it was contributed in what form? A gift?

1 A In the form of either -- there are two ways it could have been contributed as I
2 perceive it. One was that it was borrowed.

3 Q 204 Yes indeed?

4 A The scenario which you -- the other is that Mr. Kennedy would have put up the
5 money.

6 Q 205 When you say 'put up'?

7 A That he would have put it up in the form of capital. Share capital.

8 Q 206 Share capital, very good, we'll come to that in a moment. Can we just take the
9 scenario that you first mentioned and that you have referred to before in your
10 evidence, the concept that the purchase price would have been borrowed, stick
11 with that for the purpose of this illustration.

12 A Yes.

13 Q 207 So what we have then in 1988 is a company with, on the asset side of the
14 balance sheet an asset worth 700,000?

15 A Yes.

16 Q 208 And on the liability side of its balance sheet, a liability of 700 --

17 A It's a line ball.

18 Q 209 Yes, it's a line ball. Yes, indeed it is. And therefore at that point, at
19 the point in which this acquisition is completed, the value of the
20 shareholding --

21 A Yes.

22 Q 210 -- is really line ball also at that point on that illustration?

23 A Yes, and on the premise that --

24 Q 211 That the money is borrowed?

25 A On the premises of the valuation.

26 Q 212 Oh absolutely. I mean, with great respect --

27 A Absolutely, I accept all of that.

28 Q 213 I'm only asking you to accept for the purpose of what I'm saying that that is a
29 scenario.

30 A Yes, the only other consideration, I suppose, at that stage was the hope value.

1 Q 214 Oh, yes indeed. Absolutely. If, that goes to value, if the value of the land
2 was not what I asked you to assume.

3 A That goes to value, but the fundamental basis of the whole transaction was
4 future hope value. Mr. Kennedy wasn't buying it as a bird sanctuary and so the
5 whole contemplation was that it was going to have, that it had hope of getting
6 zoning and planning and that ultimately it would be -- it was known in the
7 business as 'hope value'.

8 Q 215 Indeed. And I think we have already seen, and I think Mr. O'Neill indicated
9 this in some of his questioning, that the land which was unzoned agricultural
10 land with other aspects to it had a value of about a thousand an acre and that
11 the price that we have talked about, in fact the 700 in our illustration is
12 hope value of about seven times its then zoned value, can I put it that way?

13 A Yes.

14 Q 216 So already in our illustration we have built in a hope value of some seven
15 times its then value?

16 A But clearly, Mr. Kennedy and Mr. Stanley, and as we now know, Mr. Coughlan,
17 weren't buying it on the basis that the hope value had then ceased. They were
18 buying it in the expectation that there was going to be a further rapid
19 escalation in the hope value.

20 Q 217 What I'm just seeking to do, just to take one through, I fully accept on the
21 basis of an assumption, take you through an assumed basis where at that time
22 the value of the land -- I'm looking at the value of the shareholding -- the
23 value of the asset in the company is not more or not materially more, if it's
24 800 it doesn't matter for this example, if it's 800 or 900,000, it's not
25 material to what I'm saying. The point is that if the value is approximately
26 the purchase price or close to it, then the value of the shareholding on the
27 illustration that we have looked at is either line ball or extremely small,
28 would you accept that?

29 A I had reservations about that and I'll tell you why. A factor which would
30 have -- factors which would have to be taken into consideration would be, first

1 of all, Mr. Stanley was saying that he had worked on this for a very long time.
2 There was a perceived expertise in Mr. Kennedy from the point of view of
3 obtaining zoning and planning, that was a huge factor. That would be a huge
4 factor. If Michael O'Leary was to go under a bus tomorrow, the value of his
5 shares would plummet. Absolutely go through the floor. There would be a
6 significant fall in the shares so many, many an important factor is the
7 personnel within the company and their capacity to deliver. If the situation
8 was that there was no hope of planning, but it was believed that Mr. Kennedy
9 had the expertise --

10 Q 2180h yes, all that goes to the actual value of the lands. But just for the
11 purpose of this illustration, I had asked you to assume a particular value and
12 I'm not asking you to agree it was the correct value, but merely to assume that
13 if it were, those would be the consequences in terms of the value of the 20
14 percent shareholding, do you follow what I'm saying?

15 A I do.

16 Q 219An the reason that I have asked you to bear with me in that illustration is,
17 the reason is that, as I indicated this morning, Mr. Caldwell's evidence will
18 be to that effect. It will be to that effect. That his view was that the
19 value of the land at the time of the conclusion of the agreement between
20 Mr. Kennedy and Mr. Stanley, was at or very close to the purchase price of the
21 land, that that was the value of the land and that it was because of that, that
22 the suggestion that a 20 percent shareholding might be worth a million or be
23 referable to a million was utterly fantastic and that is why he was of that
24 view. Just so that you understand why he will say that. You don't have to
25 agree with it of course.

26 A I don't think there's a basis for that. And it meant that if what we were
27 given to understand, I take your point and I accept it and I think I described
28 the premium, if one can call it that, the million pounds as mind boggling, to
29 me it was.

30 Q 220That was the word you used, yes.

1 A But lawyers are not necessarily meant to understand the ways of business
2 people.

3 Q 221Mmm?

4 A And I was in receipt of instructions that this was the transaction and there
5 seemed to be a basis for it and, in fact, from Mr. Caldwell himself and
6 Mr. Kennedy, and we needn't go through it all again, there was a question
7 whether he was going to take cash or cash and shares or a mixture and then
8 ultimately that he was going to get the 20 percent shareholding and he would, I
9 have no doubt, related that in his mind -- I know you have asked me to
10 disregard these things, but if we are staying in the realms of reality, I have
11 no doubt that Mr. Kennedy would not have offered Mr. Stanley a million pounds
12 unless he thought it was justifiable. And Mr. Stanley, who was, as I said, has
13 also been around the block a good few times, it's inconceivable, would not have
14 been abandoning his entitlement to the million pounds and take a shareholding
15 which, on your construction on that scenario, really wasn't worthwhile at all.

16

17 Q 222In my scenario by the way, Mr. Charlton, I think you will have seen it related
18 to 1988. I'm talking about the value of the land at the time at which the
19 parties made the agreement to which you have referred, do you follow me?

20 A Yes.

21 Q 223And I think you have agreed with me that if the figures were correct, if the
22 value at that time were, as I have described --

23 A Yes.

24 Q 224-- that would be the consequence of taking a shareholding of 20 percent at that
25 time, that's all I'm asking you. But the thing -- it also bears on this,
26 Mr. Charlton. At the same time as we are talking about, the late summer of
27 1988, when the discussions about the shareholding were approaching their
28 conclusion --

29 A Yes.

30 Q 225It would appear that you had a meeting with Mr. Stanley, or rather a telephone

1 conversation with -- it's referred to at page 272 of the brief. I want to draw
2 your attention to two paragraphs of this, feel free to refer to anything else
3 you think is relevant. If you see, Mr. Charlton, the sixth paragraph down
4 starting with the words "Sam Stanley?"

5 A Yes.

6 Q 226"Sam Stanley discussed with him "-- that's a reference to Mr. Kennedy -- "the
7 agreement for the million. Stanley stated to Kennedy that he knew that Kennedy
8 was not going to pay him, that he had never paid anyone, Kennedy laughed at
9 that time and Kennedy stated he would pay him, there was honour amongst thieves
10 he suggested to Stanley. He could get a charge for his million. He was
11 prepared to give the 20 percent shares."

12

13 The next paragraph that I want you to particularly look at "Mr. Stanley
14 indicated that he did not feel that he would get paid by Kennedy and he
15 surprised me by saying that he was not unduly concerned. He -- that's
16 Mr. Stanley -- felt that he would, in any event, get his commission from
17 Tracey." If I just might pause there. I think you had been aware from earlier
18 on in all of this, Mr. Charlton, that he had agreed with one and a half percent
19 fee with Mr. Tracey?

20 A Yes.

21 Q 227He, that's Mr. Stanley, felt that the 20 percent shareholding would be
22 worthless and I indicated that I thought that would be the case, that would be
23 worthless in a private company to all intents and purposes, although again he
24 would have a nuisance value.

25

26 "Stanley indicated that Stanley conveyed to him", that may be intended to be a
27 reference to Kennedy, "Stanley indicated that Kennedy had conveyed to him that
28 he would be prepared to enter into a shareholders' agreement with Stanley.
29 Mr. Stanley indicated he was not confident that Kennedy would honour any
30 commitment." I don't think any of the rest of it is relevant to what I was

1 going to ask you about.

2

3 All I was going to say to you or ask you about, rather, is this, Mr. Charlton,
4 the view which seems to be expressed in that attendance which coincides with
5 the period I was talking about, i.e. the time when the shareholders' agreement
6 was being concluded, if I can put it that way, the view that seems to be
7 recorded there, both the view of Mr. Stanley and your own view as his solicitor
8 advising him in this transaction, was that the 20 percent shareholding would be
9 worthless. That seems to be the discussion that you had at that time, although
10 you did go on to qualify -- you went on to qualify it by saying he would have a
11 nuisance value, you see that there?

12 A Yes.

13 Q 228All I'm suggesting to you is that view as you record it contemporaneously would
14 accord, I respectfully suggest to you, would accord with the analysis that I
15 went through with you in the illustration I described some little time ago.

16 A Yes.

17 Q 229Remember the example of --

18 A I follow all that.

19 Q 230-- the purchase at 700, borrowing to buy at 700 and a line ball situation in
20 the company.

21 A I take the point exactly.

22 Q 231That's all I wanted to suggest to you.

23 A If I can comment on it.

24 Q 232Please do.

25 A I don't agree with it for this reason. The discussion about the shareholding
26 being worthless. First of all, an 80 percent shareholding in a private
27 company, any private company, is of doubtful value.

28 Q 233An 80 or a 20?

29 A I beg your pardon, the minority shareholding. I am very sorry. The minority
30 shareholding is of very limited value and that's accepted, a 20 percent

1 shareholder is in a poor position.

2 Q 234Yes. That's correct.

3 A I was always concerned that Mr. Stanley had -- he was first of all concerned
4 about enforceability with Mr. Kennedy. He had taken the company offshore and
5 to some extent, he had, from a jurisdiction point of view and from a
6 jurisdiction point of view and from a logistic point of view, he had to a large
7 extent circumscribed himself when it came to enforceability and that, in the
8 end of the day, was unfortunate from his point of view, very material. I say
9 circumscribed in the sense they had gone offshore to this company Xenon and he
10 was going to -- which was in the British Virgin Islands, suing in respect of a
11 company in the Isle of Man, a man who had clearly limited resources and he was
12 putting himself in a very difficult position, given his apprehensions on the
13 question of enforceability. He took the view --

14 Q 235Yes.

15 A -- that no matter who the agreement was with and it was impossible to
16 reassemble the ingenious of the entire legal profession.

17 Q 236That's a reference to you, Mr. Charlton?

18 A No, I'm talking about the entire legal profession, solicitor and barrister,
19 into the RDS. My perception was that he felt that no agreement, their
20 collective genius couldn't have produced an agreement that Mr. Kennedy and/or
21 Mr. Caldwell as it now transpires would not have resiled from. I think that
22 was his pessimistic view and it was borne out by the fact that there was no
23 agreement. We had in this case, Mr. Finlay -- we had in this case -- I believe
24 I'm correct -- six counsel, nothing to do with tribunals or anything of that
25 nature, we have four senior counsel and two junior counsel in various aspects
26 of this case.

27 Q 237Yes?

28 A -- and I think if we had had, as I say, the entire solicitors' profession, we
29 wouldn't have been able to produce agreement because Mr. Kennedy, as
30 Mr. Stanley said in his evidence and I agree with him, would litigate him into

1 oblivion. It was the air he breathed. He had the resources to do it.
2 Mr. Stanley was in a situation of financial stringency and I think he was
3 really depending that Mr. Kennedy would see it through.

4
5 But might I also say that I really think in relation to it that the man who
6 played the biggest part in the annihilation of Mr. Kennedy's shareholding was
7 Mr. Caldwell.

8

9 CHAIRMAN: Mr. Stanley's shareholding.

10 A Yes, I beg your pardon, Mr. Stanley's shareholding, was Mr. Caldwell.

11

12 Q 238MR. FINLAY: So much of what you have just said, Mr. Charlton, is I think new
13 to me and I'd just like to try and understand what you have been saying.
14 Because it may or may not be of relevance to the Tribunal. I obviously don't
15 know what's in the mind of the members of the Tribunal at this point in time.
16 Did I understand you in that commentary to say or to say, in effect, that it
17 was beyond the collective ability of the lawyers who were involved and by that
18 you seemed to include not only solicitors but also a number of counsel --

19 A Yes.

20 Q 239-- it was beyond the collective ability of the lawyers involved on behalf of
21 Mr. Stanley to produce an agreement which would be enforceable. Because the
22 words I wrote down -- couldn't produce an agreement, that's what you said.

23 A Just if I can adapt the words I used. By agreement from which Mr. Kennedy
24 would not resale. That there would be a dispute about an interpretation of a
25 clause in the agreement and that there was an ambiguity and if that had been
26 dealt with, there would have been another ambiguity and so on and so forth in
27 perpetuity.

28 Q 240Goodness. So, Mr. Charlton, you, to completely understand what you are saying,
29 you are saying, in your view, it was beyond the collective ability of both
30 solicitors and numerous counsel to draft an agreement from which Mr. Kennedy

1 would not resile, is that correct?

2 A Yes. That is my perception -- that is --

3 Q 241This is your view?

4 A That was Mr. Stanley's perception and I think that --

5 Q 242But, Mr. Charlton, critically you are the lawyer and not Mr. Stanley. Was that
6 your view?

7 A If you allow me to answer, Mr. Finlay. It was Mr. Stanley's view but, let it
8 be said, that it's a view that is fully vindicated by events.

9 Q 243If we can go back to the time in question when all of this was being developed.
10 Are you telling the Tribunal that in the summer and late summer in 1988 when
11 these matters were being discussed, your view that it was beyond the ability of
12 both solicitors and counsel to draft an agreement on Mr. Stanley's behalf from
13 which Mr. Kennedy --

14 A Would not resile.

15 Q 244Would not resile?

16 A Yes.

17 Q 245But by 'would not resile', do you mean not attempt to resile or could not
18 resile, which do you mean? They are fundamentally different to a lawyer.

19 A I mean he wouldn't, from which he would not resile.

20 Q 246But surely, Mr. Charlton, there's a fundamental difference between an agreement
21 from which someone attempts to resile and an agreement from which someone is
22 entitled as a matter of law to resile?

23 A You see this is the --

24 Q 247Do you accept the distinction?

25 A Yes.

26 Q 248You do accept it, very good.

27 A The entitlement meant and I think it's what was in contemplation is that could
28 necessitate an action by Xenon Limited, a British Virgin Islands company, again
29 Paisley Park in the Isle of Man, a company owned by two other companies and
30 Mr. Stanley, who was in the position -- who was not in the financial position

1 to undertake that sort of battle whereas Mr. Kennedy had, he had unlimited
2 resources apparently.

3 Q 249I readily understand your geographic and jurisdictional problems which might
4 have arisen in the context of pursuing any litigation but my question wasn't
5 directed to that issue, it was directed to something I understood you to say
6 earlier. I hadn't heard you earlier to say before in your evidence, and it
7 strikes me as surprising, it is this: The suggestion that it was beyond the
8 capability of Mr. Stanley's lawyers to produce an agreement, to draft an
9 agreement, to produce an agreement -- it's the same thing -- which would be --

10 A From which Mr. Kennedy would not resile.

11 Q 250Would not attempt to resile?

12 A Would not resile.

13 Q 251Would not resile.

14 A Entitlement was the entitlement and the enforcement wouldn't have affected the
15 resiling.

16 Q 252No, but the issue's a slightly different one, I think, Mr. Charlton. The issue
17 is whether you are suggesting that it was not possible to frame an agreement
18 which would -- are you suggesting that -- do you mean by your evidence that it
19 was not possible, that you believed that it was not possible to prepare a
20 written agreement which, from a legal point of view -- from a legal point of
21 view -- would adequately enshrine the agreement which you believed Mr. Stanley
22 had made with Mr. Kennedy? I phrased it in that way, I hope you understand my
23 question.

24 A I course I believe it was possible to draw up such an agreement.

25 Q 253Which would adequately enshrine the terms agreed, what you believe had been
26 agreed between Mr. Stanley and Mr. Kennedy.

27 A Of course it was possible.

28 Q 254I see.

29 A And I believe we did it. And I believe that no matter who did it or what did
30 it or what directive legal genius, it could not stop Mr. Kennedy ever resiling

1 from it. He might not be justified, there might be a lot of litigation from
2 the High Court to the Supreme Court, back to the High Court, back to the
3 Supreme. Motions. In this case we had what was, as I said before, a simple
4 contract. We had a vendor and purchaser summons. We had specific performance
5 action. If business was conducted, Mr. Finlay, if the property transaction
6 business was conducted in the way this transaction was, conducted by
7 Mr. Caldwell and Mr. Kennedy, commerce would not be viable. That's my view.

8 Q 255 Yes. Just in relation to that, you referred to the specific performance
9 action, that's the action which was necessitated by the actions of your client,
10 Mr. Stanley, isn't that correct?

11 A Yes, yes correct.

12 Q 256 And just in relation to the suggestions that you make about an agreement to
13 enshrine the terms which you believe had been agreed between Mr. Stanley and
14 Mr. Kennedy --

15 A Yes.

16 Q 257 I may not have put it to you adequately already, but I may have hinted at it, I
17 slightly stopped this morning when I was putting to you what Mr. Caldwell's
18 evidence will be, but just so that you are aware that when the time comes, that
19 Mr. Caldwell's evidence will be that the terms to which you have referred as
20 representing your understanding of the agreement which you believe had been
21 made between Mr. Stanley and Mr. Kennedy, that all of those terms are terms
22 which it would have been elementary, elementary to have included in the
23 shareholders' agreement, that will be Mr. Caldwell's evidence and he will give
24 evidence as to how those terms would have been simply and effectively included
25 in the shareholders' agreement and his evidence will be that they are not in
26 any way unusual terms. That the concept of, Mr. O'Neill's concept of sweat
27 equity or free carry in a shareholders' agreement is a not uncommon phenomenon
28 in company law context. He will give that evidence and he will say if there
29 had been any agreement in relation to sweat equity or a free carry, that the
30 precedence and language to incorporate such an agreement into the shareholders'

1 agreement were readily available and known to any company lawyer and were in
2 the shareholders' agreement. That will be his evidence. I only mentioned that
3 because of the remarks you made in the last 15 minutes.

4 A Can I comment on that, Mr. Finlay. If I take -- we are hopefully not going to
5 parse the agreement, to use that expression that I've used before, but if one
6 takes the single statement contained in the shareholders' agreement at clause
7 10, "Xenon's shareholding shall not be diluted without Xenon's consent."

8 That's a simple statement which anyone who understands the rudiments of the
9 English language could follow. You cross-examined me extensively and pressed
10 me on the basis of your client's instructions that there was no dilution of
11 Xenon's equity. Mr. Caldwell, in his own statement to his own solicitor for
12 the purpose of this Tribunal obviously prepared in cool, calm and collected
13 circumstances, described the reduction in Mr. Kennedy's, Mr. Stanley's
14 shareholding as a dilution and he went further and gave the reason for the
15 dilution, that they were annoyed, exactly what you are putting to me, by what
16 he described as Mr. Stanley's antics, that the price had gone up from 540,000
17 to 700,000 and he gave that as the reason why they had made up their minds and
18 he, in particular, is described as Mr. Miley's client, had decided, made up
19 their minds at that point in time that they were going to get rid of
20 Mr. Stanley and the method by which they were going to do it was by diluting
21 his shareholding to nothing, virtually and moreover, if one views that
22 situation in juxta consideration to what Mr. Bullock set out in his resolution
23 for the purpose of the call, namely that there was a commercial transaction or
24 commercial interest, I think what Mr. Caldwell and Mr. Kennedy had in mind for
25 Mr. Stanley's shareholding is put in true perspective as is Mr. Bullock's
26 resolution that it was commercial. Clearly it was nothing of the kind.

27 Q 258 Just so there's been no unnecessary misunderstanding, Mr. Charlton, perhaps you
28 forgot and thought I had suggested to you before, I apologise if I didn't, that
29 there's a fundamental distinction between a dilution of shares without the
30 consent of a shareholder and an allotment of shares, in accordance with the

1 terms of a shareholders' agreement and the articles of association of a
2 company, where the allotment in accordance with the pre-emption rights is made
3 pro rata to all shareholders, do you understand that I assumption?

4 A Yes, I do, and it's very interesting and I think you are putting it to me that
5 there was an ambiguity, you put it in clause 4.2, whatever it was, but let's
6 put it this way, Mr. Finlay: Whatever about the nuances and the ambiguities,
7 Mr. Caldwell and Mr. Kennedy were in no doubt as to what it was. Whatever the
8 nomenclature, we were going to get rid of Mr. Kennedy. Mr. Caldwell spelled it
9 out in stark terms to his own solicitor, Mr. Miley, and that they were going
10 to -- that they had achieved that by a solution in its shareholding. And then
11 used what I would call the pretext in Mr. Bullock's resolution, that they were
12 doing it because, for commercial reasons.

13 Q 259As I say, I just want you to be aware of the distinction that I put to you and
14 I want to make it clear the distinction of a consequence of a failure to take
15 up a pro rata allotment and the dilution against the consent of a shareholder.
16 I just wanted to -- I think you do understand that distinction.

17 A I do understand.

18 Q 260Perfectly well.

19 A We have been down that road and the sine qua non of any such would be that it
20 would be bona fide. Which I contend it was not in this case.

21 Q 261Yes. You mentioned something there, Mr. Charlton, about resolution, do you
22 remember that?

23 A Yes.

24 Q 262And I think you have made some suggestion in relation to that on Friday in
25 relation to a document, do you recollect? Saying something about a document
26 which I and I quoted from answer 15 on the 6th February, "To me it was the
27 document which your client has refused, as I understand it, to produce to the
28 Tribunal." Do you remember that?

29 A Yes.

30 Q 263And we had a discussion --

1 A Was this the loan document?

2 Q 264 It was a document to which you referred and we had a discussion and I agreed
3 with the chairman that that was a matter we would return to.

4 A Yes.

5 Q 265 And I would like to do that now. I believe, I understood you to be, in making
6 that allegation, to be referring to a loan agreement?

7 A Yes.

8 Q 266 Is that correct?

9 A Well the expression used in the resolution was a loan facility, as I recall.
10 Correct me if I am wrong.

11 Q 267 The language, in a moment, unfortunately I don't have the page number of the
12 resolution in front of me at the moment, but it's well known to the Tribunal
13 but --

14

15 JUDGE FAHERTY: 952 I think was the minutes of a meeting, it's around that
16 area. And 953 I think is the resolution, Mr. Finlay.

17

18 MR. FINLAY: Yes, that's most helpful, 952. So you see there that at the
19 second paragraph, I think this is what you are referring to perhaps,
20 Mr. Charlton, "The chairman stated that loan facilities were available at a
21 commercial rate of interest of enable the company to complete the purchase of
22 Mr. Tracey's land."

23 A Yes.

24 Q 268 Is that the reference --

25 A Yes, that's the reference.

26 Q 269 And arising out of that document, sorry, arising out of the document on screen,
27 I think you said that there was the document which your client, that's
28 Mr. Caldwell, has refused, as I understand, to produce to the Tribunal, do you
29 remember saying that?

30 A Well, you can remind me precisely what I said, Mr. Finlay.

1 Q 270 I'm reading from the transcript, answer 15 on that day, the 6th February. I'll
2 read the whole sentence, "As part of what I said yesterday and I said in
3 relation to it that in addition to that, that there was the agreement between
4 Mr. Kennedy and Mr. Stanley and that there was the document which your client
5 has refused, as I understand it, to produce to the Tribunal and which I haven't
6 seen and which I would have seen which was an affirmation of the agreement
7 between Mr. Kennedy and would help me immensely to answer your questions now if
8 I could see that loan agreement and then the ground application for it."

9 A Yes, that's correct.

10 Q 271 That's what the transcript records you as having said.

11 A That's absolutely correct, and that's a reference the chairman stated that the
12 loan facilities were available at a commercial rate.

13 Q 272 Yes.

14 A The name of the company.

15 Q 273 Yes.

16 A And that, I have never seen in my lifetime as a solicitor, and I have dealt
17 with many loans, that a loan of this magnitude, 600,000 or 700,000 pounds
18 transaction, it would be such a loan facility without a facility letter. That
19 to me is not a possibility. There has to be some explanation.

20 Q 274 And you are absolutely right, no doubt, Mr. Charlton. But before I come to
21 that, could I just get back to the statement that you made, are you still
22 maintaining the position that Mr. Caldwell has refused to give the document
23 which you have referred to the Tribunal?

24 A I have answered that, Mr. Finlay, when I know what the position is in relation
25 to that loan facility and also in relation to the grounding application,
26 assuming this loan facility and also, because I read in the documentation,
27 Mr. Caldwell in respect of his contribution and Mr. Kennedy in relation to his
28 contribution, if I have read your client's statement to Mr. Miley correctly,
29 that they couldn't say where the funds came from, total of, something of the
30 order of 600,000 --

1 Q 275I'll tell you what Mr. Caldwell will say and then you can answer the question.

2 Are you still maintaining that he has refused to produce a document to the
3 Tribunal. Mr. Caldwell will say that there was never any facility agreement
4 with any bank and that moreover, no bank would have touched this transaction --
5 would have touched this transaction -- a company buying covenanted lands with
6 the track record of Mr. Kennedy in relation to financing difficulties which he
7 had had over the previous years and that it was an entirely unbankable
8 proposition. That would be his evidence. He would also say that no bank
9 facility letter was ever sought, let alone issued.

10

11 CHAIRMAN: Mr. Finlay, the resolution document which is still on the screen
12 contemplates the raising of loan facilities --

13

14 MR. FINLAY: Yes, I am going to come to that.

15

16 CHAIRMAN: -- at a commercial rate of interest. Are you in a position to say
17 what Mr. Caldwell will say as to how the purchase was in fact financed? Was it
18 by loan?

19

20 MR. FINLAY: I hadn't completed what I was saying so if I just may finish,
21 chairman. So Mr. Caldwell will say the question of going to a bank with this
22 proposition was never an option and he will say that if that had been pursued,
23 if there had been any question of approaching a bank with the proposition which
24 he will say was unbankable, both Mr. Stanley and his company would have been
25 required to stand in pro rata with guarantees and support and security under
26 the terms of the shareholders' agreement. He will say what was considered as
27 an alternative was a loan from non banking sources under which funds would be
28 made available to the shareholders to enable them to fund the company. To fund
29 the completion of the contract. And that was something which was under
30 consideration and that is the basis of the reference made about Mr. Bullock in

1 that document.

2 A So let me see if I understand, Mr. Finlay, what's now being said; is that there
3 wasn't a facility letter to the company but that there were facility letters to
4 the shareholders to put up the money to invest in the company?

5 Q 276No, that's not what I said. And so if I could just complete what his evidence
6 will be. An alternative being considered at the time was a loan from a non
7 banking source, coming from shareholders. If that had been considered, if that
8 had been pursued, it would have been at commercial rates of interest but that
9 ultimately the decision that was taken was it out to be done by way of equity?

10 A But surely if a facility was available, whether it be from a banking company or
11 a non banking company, there would have had to be documentary evidence in
12 relation to it. Normally in the form of a facility letter. I have never seen
13 in my entire life a loan of this nature which there was not a facility letter
14 which set out who the borrowers were, the term of the loan, the rate of
15 interest, the security, the purpose for which it was intended, these are
16 standard things and it's inconceivable to me, Mr. Finlay, that there could have
17 been loans, whether it be from a banking or unbanking source where there would
18 not have been a facility letter or similar documentation.

19 Q 277As I indicated to you, there was no loan.

20 A Pardon?

21 Q 278My instructions are there was no loan.

22 A It must not be said there wasn't a loan but we do know, we do know according to
23 this there was a loan facility, loan facilities were available.

24

25 CHAIRMAN: Page 956.

26

27 JUDGE FAHERTY: Yes.

28 A You see, Mr. Finlay, on the strength of that statement, on the strength of that
29 representation by Mr. Bullock and, quite frankly, from reading the
30 documentation, there's a lot of documentation, although again, the instructions

1 to Mr. Bullock, who ought to have been an independent director, and his
2 co-director, Mr. Harker, appears to have been coming from Mr. Caldwell, but let
3 it be said what Mr. Stanley was confronted with, what we were confronted with
4 as his lawyers, was the statement that there was a loan facility and on the
5 basis of that statement ultimately, Mr. Stanley's shareholding was, whether you
6 call it diluted, sequestrated, confiscated or whatever, but it wound up in the
7 hands of your beneficial ownership of your client and his friend and business
8 partner, Mr. Kennedy. That's the reality. And that's what happened, all on
9 the basis of a statement contained there that there was a loan facility.

10 Q 279I see. I absolutely have no understanding of the logic of what you have just
11 articulated, Mr. Charlton, I personally do not even begin to understand what
12 you have just said.

13 A If you follow on from there, Mr. Finlay, I have read the statement which your
14 client made to Mr. Miley and the money that they did produce to pay for the
15 purchase price that, if I read them rightly and I read and re-read in
16 disbelief, that the money was raised by Mr. Bullock, I think, and that they
17 don't know the source of it. I think we are moving from the Isle of Man to
18 Disneyland.

19
20 CHAIRMAN: I assume, Mr. Finlay, that your client, Mr. Caldwell, knows how the
21 purchase was funded, given that he was a 40 percent beneficial shareholder at
22 the time and ultimately became a 50 percent beneficial owner. I assume that he
23 knows where the funds came from? And the question also has to be asked, given
24 the fact that this resolution of the company allowed the shareholders to be
25 called upon to produce the funds, was he called upon to produce the funds and
26 did he produce his share of the fund.

27
28 MR. FINLAY: But that is not the issue I'm dealing with just now.

29
30 CHAIRMAN: Well it's an issue, I think, after three or four days of

1 cross-examination, we are entitled to know the answer to.

2

3 MR. FINLAY: Chairman, with great respect, that's one aspect. I'm dealing
4 solely at the moment or was trying to deal with the suggestion that there was a
5 document which Mr. Caldwell had refused to produce to the Tribunal. That's the
6 only reason I have raised this. Mr. Caldwell's evidence is there is no such
7 document, he never had such a document and that's just all that arises, with
8 the greatest of respect, just now.

9

10 Now, I have no other issue to raise with Mr. Charlton on this other than the
11 suggestion that my client had refused --

12

13 CHAIRMAN: Well separate to that, we have an issue to raise with you and we
14 would like to know where Mr. Caldwell or how the purchase of the lands were
15 financed, if Mr. Caldwell was called upon, as was Xenon, Mr. Stanley's company,
16 was he called upon to produce 40 percent of the purchase price. If he was
17 called upon, who called upon him to pay that? Did he pay it? When did he pay
18 it? Where he got the funds? And equally, if he didn't produce the money
19 himself from his own sources, where did the money come from to purchase the
20 lands? Was there a loan raised? Who provided the loan? Has the loan been
21 repaid? There's about 20 or 30 questions that could be asked and that we don't
22 know and which is crucial to our inquiry and we would like to know that
23 information.

24

25 MR. FINLAY: I would have expected that when Mr. Caldwell comes to give
26 evidence, those may be questions the Tribunal may wish to ask Mr. Caldwell.

27

28 CHAIRMAN: But Mr. Charlton has been cross-examined at length about the
29 shareholders' agreement, how it came about, what it means --

30

1 MR. FINLAY: Yes.

2

3 CHAIRMAN: It's been put to him that the dilution or whatever word is to be
4 used was just to be used on Mr. Stanley's shareholding, it was all above board
5 and correct and that it could have been prevented had a particular type of
6 shareholders' agreement been entered into or a particular clause been inserted
7 into it, but we are in the dark how the money was in fact raised to pay the
8 money for the lands and who provided the money. We can't understand why that
9 information has not been furnished by Mr. Caldwell or at least disclosed in the
10 cross-examination of Mr. Charlton.

11

12 MR. FINLAY: With great respect, chairman, I am not aware that there's any
13 outstanding request to my client or through Mr. Miley to my client in relation
14 to that information. I am simply not aware of any such request. I came here
15 to this module to deal with issues which appeared on the documentation
16 furnished to me in relation to matters which I might have to deal with to
17 represent my client.

18

19 I, as I have indicated on numerous occasions, would have had no questions for
20 this witness if he had, if he had not mounted the attack on my client.

21

22 MR. O'DONNELL: That's an offensive remark.

23

24 MR. FINLAY: If he had not made against my client the allegations which he has
25 made. He has made a range of allegations against Mr. Caldwell. None of which
26 appear in his statement.

27

28 CHAIRMAN: But --

29

30 MR. FINLAY: And one of them was made for the first time ever last Friday and

1 that allegation is, and it's very simple, the only allegation, and it's all I'm
2 here to deal with on this matter, nothing else, I am dealing solely with an
3 allegation that there is a document which Mr. Caldwell has or had and which he
4 hasn't produce to the Tribunal. That is all that I'm doing and I am merely
5 saying to Mr. Charlton that there's no such document and it's not for me to be
6 cross-examined about that.

7
8 I'm saying to Mr. Charlton that -- putting it to him and he needn't accept
9 it -- but all I'm saying to Mr. Charlton in response to his allegation, and
10 it's a serious allegation to make against my client, there is a document he
11 refused to give to the Tribunal and by the way, if I might interject, it's
12 disturbing to think that I have to deal with this at all because it's an
13 allegation the knowledge of which is uniquely in the Tribunal, if the Tribunal
14 was aware of any refusal by Mr. Caldwell, I have no doubt that that would have
15 been brought to the attention of the members already in order to shorten this.

16
17 Instead of that, I have had to check with Mr. Caldwell whether he is aware of
18 either having or having had such a document and I have done that and done no
19 more and merely for completeness today at the very end of my cross-examination
20 indicated to Mr. Charlton that the suggestion that Mr. Caldwell has refused to
21 produce a document is not correct. That's all I have done and that's all I
22 have sought to do given the specific reference made by Mr. Charlton on Friday.

23
24 CHAIRMAN: Mr. Charlton, is there a document which you say that Mr. Caldwell
25 has refused or neglected to give to the Tribunal that you are aware of?

26 A No, what I'm saying, chairman, in relation to it, that suggests to me that
27 there is a loan -- when one talks about a loan facility, that can only mean one
28 thing and that is that there is a facility letter. I have never in my lifetime
29 and I don't believe that there could be a loan of this magnitude, we are
30 talking here about 500,000 or 600,000 in 1988.

1

2 CHAIRMAN: Well you are referring to a document dealing with the loan which
3 clearly was available to the company, according to Mr. Bullock

4 A That's what the loan facility, chairman, suggests to me and then if what's
5 being said -- it is -- as I understand it -- the obligation of a person
6 providing documentation, not just in respect of documentation that's in his
7 possession, but in his power or procurement. And I also think that if there's
8 talk about loan facilities, according to what I have read in the brief, the
9 600,000 pounds, I'm talking about round figures, was produced by Mr. Kennedy
10 and Mr. Caldwell's companies and if I read the brief correctly and recollect
11 correctly, they said in essence they were saying that they didn't know where
12 the money had come from. I think they said it was arranged by Mr. Bullock, but
13 once again you have a situation where there's two substantial sums of money
14 raised for the purpose of the transaction. It's inconceivable in this day and
15 age that there would not be documentation. There's evidence also that at a
16 certain stage Mr. Kennedy almost drowned and that they found it necessary to
17 provide some type of documentation because of that and, of course, it's for
18 that very reason that there has to be documentation in relation to it.

19

20 CHAIRMAN: All right. Well, Mr. Finlay, Mr. Charlton has identified
21 documentation which he believes Mr. Caldwell must have or should have. That
22 hasn't been made available. Now, if it's Mr. Caldwell's case that he has made
23 available all the relevant documentation, then that can simply be put to Mr.
24 Charlton. But it's going to be impossible to resolve that issue at this stage.
25 Mr. Charlton believes that there is documentation not provided. Mr. Caldwell,
26 as I understand your case, Mr. Caldwell's position is that all documentation
27 was provided. It seems pointless to pursue the point much more than to make
28 the case that --

29

30 MR. FINLAY: Absolutely, chairman, with the greatest of respect and all that I

1 was doing, rather than leaving that allegation lying in the transcript, was
2 merely putting, doing no more than putting to Mr. Charlton that Mr. Caldwell,
3 when he comes here, will say that he doesn't have the document. The only
4 reason it became extended is because Mr. Charlton chose to explore other
5 matters. I had no other purpose other than that.

6

7 CHAIRMAN: All right.

8

9 JUDGE KEYS: Mr. Finlay, I hope when he does come that he will have some
10 explanation where the monies came from and will be able to answer all of the
11 questions which Judge Mahon has already put to you in relation to explaining
12 where all the money came from to pay the purchase price.

13

14 MR. FINLAY: I'm sure he will but, judge, with the very greatest of respect, I
15 am the only person here today and my position is as follows: I was requested
16 last Friday to see if over the weekend I could obtain instructions, not
17 everything to do with the lifetime of this transaction, but on a specific area
18 of issues and up to a specific point of view, namely, the conclusion of the
19 shareholders' agreement and that related to two areas of issue and I did that
20 and I put all of that this morning and when I was trying to do that, I was
21 stopped on the basis that I was saying too much remember, because I was
22 interrupted by the witness who was saying I was going into too great detail or
23 being repetitive. I was never asked by anybody on Friday to take further
24 instructions which would have taken much more time than was available, given
25 what had to be done over the weekend in relation to these issues, and I say in
26 my personal defence as much as anything else. In other words, if it's being
27 suggested that I have failed to do what I was asked to do --

28

29 JUDGE KEYS: Nobody has said that and nobody has implied that.

30

1 MR. FINLAY: I would be most concerned if that was being suggested.

2

3 JUDGE KEYS: What concerns me now is that the documentation is in his
4 possession and it has not been produced to date, I would take a very dim view
5 of that.

6

7 MR. FINLAY: Of course you would, judge, and it's entirely the issue. But the
8 point is this, my instructions are from Mr. Miley, who is sitting beside me,
9 that he's not aware of any -- first of all, he is not aware of any refusal by
10 Mr. Caldwell to produce any document or outstanding request. Secondly, my
11 instructions are that he did not have and does not have any such document, it
12 goes no further than that and if it requires further research, it will of
13 course be carried out and those are my instructions for today and that's my
14 cross-examination of Mr. Charlton.

15

16 CHAIRMAN: Thank you. Do you wish to ask any questions Mr. Christle?

17

18 MR. CHRISTLE: I have no requests to ask this witness.

19

20 CHAIRMAN: Mr. O'Donnell.

21

22 MR. O'DONNELL: I have no questions, sir.

23

24 CHAIRMAN: All right.

25

26 MR. O'NEILL: I have nothing arising. I have no re-examination of Mr. Charlton
27 to make on behalf of the Tribunal at this point.

28

29 CHAIRMAN: Just one question, Mr. Charlton, if Mr. Caldwell, you have
30 criticised Mr. Caldwell about the fact that although he was an equity

1 participator in this whole transaction, he didn't disclose that to you or to
2 Mr. Stanley.

3 A No.

4

5 CHAIRMAN: And had he done so --

6 A Yes.

7

8 CHAIRMAN: -- either formally or informally told you that he had a stake or a
9 share in the purchase, what difference would that have made to you in your
10 approach to dealings with him? Or what difference do you believe that might
11 have made to Mr. Stanley had he been informed of this?

12 A Well I think, chairman, that as a minimum, that there would have to be an
13 independent solicitor for Paisley Park. Paisley -- Mr. Caldwell, in his
14 various capacities that he had, as an equity participator and as a solicitor to
15 the company and I believe that he owed a fiduciary obligation to his
16 co-shareholder, Mr. Stanley, and that I believe that certainly there should
17 have been an independent solicitor and I think that he should have disclosed to
18 Mr. Stanley his interest as an equity participator and also, from my point of
19 view, as a solicitor, if I'm dealing with somebody who is purely a
20 professional, like I was in the transaction, that's one perspective. If one's
21 into a situation where you are dealing with a professional who is also an
22 equity participator, part of my problem was that Mr. Caldwell was saying to us,
23 well I was saying I'll go back to my man and he was saying I will go back to my
24 man i.e. Mr. Kennedy. Two professionals. In fact, he was his own man in the
25 sense that he was taking instructions, not only for Mr. Kennedy but for
26 Mr. Kennedy and himself and there was, from time to time, meetings, for
27 example, there was a famous meeting at which Mr. Caldwell was present,
28 Mr. Kennedy was present, I was present, Mr. O' Siochain was present and
29 Mr. Kennedy was saying well I'm only an agent, in Mr. Caldwell's presence, I am
30 only an agent and I will -- I haven't authority to make that sort of a

1 decision. I have to go back to Paisley Park Investments Limited.

2

3 CHAIRMAN: I can understand that, but would it have made, had this fact been
4 disclosed to you by Mr. Caldwell, would it have in practical terms resulted in
5 you dealing differently with Mr. Caldwell, firstly and, secondly, with the
6 transaction and the --

7 A And my advice to Mr. Stanley, yes, I think it would have made a material
8 difference in the sense that one would be concerned that a person was both an
9 equity participator and a professional and holding these fiduciary -- it makes
10 a bit of a nonsense if one sitting at the meeting where all the shareholders of
11 the company are present and Mr. Kennedy is saying in his client's position, we
12 have to go back and discuss that with the company. The company was present
13 there. It is, in a sense -- it doesn't help.

14

15 JUDGE FAHERTY: Mr. Charlton, can I ask you about the events of May 1992, this
16 was a time you had an attendance on Mr. Stanley, I think perhaps with Mr. Senan
17 Allen, and this was the time, as I understand it, Mr. Stanley had come to you
18 saying he had heard about a possible liquidation of Paisley Park. Now I think
19 that matter was already in hand, though you didn't know it at the time.

20 A Yes, doesn't seem to be well advanced.

21

22 JUDGE FAHERTY: Yes, but on the 13th May, Mr. Stanley was considering options
23 etc etc and he had mentioned a document which he had given to you six months
24 previously or seven months previously, that was the memo.

25 A The famous memo, yes.

26

27 JUDGE FAHERTY: I think in attendance, Mr. Stanley had, it was suggested by
28 him, I think, that Mr. Caldwell and Mr. Kennedy would be written to.

29 A Yes.

30

1 JUDGE FAHERTY: I don't recall any reference to any letter written to either
2 Mr. Kennedy or Mr. Caldwell.

3 A Arising --

4 Q 280 Around this time of May 1992.

5 A Arising out of that memo?

6

7 JUDGE FAHERTY: Not necessarily the memo, but just arising out of Mr. Stanley's
8 concerns because he was telling you two things; one, that liquidation was
9 imminent or going to happen. He also mentioned in fact that at this point in
10 time, it was a crucial time for Paisley Park regarding the lands because I
11 think a motion was up the next month indeed and it was already set down to zone
12 Paisley Park.

13 A Yes.

14

15 JUDGE FAHERTY: And it would appear to me, judging from your evidence and the
16 contents of that attendance that Mr. Stanley, it would appear to be all the
17 more reason that Mr. Stanley should try contact Caldwell and Kennedy.

18

19 A Yes.

20

21 JUDGE FAHERTY: There doesn't seem to be communication from your firm to either
22 Mr. Caldwell or Mr. Kennedy. Now I may be wrong in that, if I am fair enough.
23 But I don't recall any further correspondence following on that attendance of
24 1992 and I was wondering why that was so, Mr. Charlton.

25 A It doesn't immediately jump to my mind I'm afraid.

26

27 JUDGE FAHERTY: Because Mr. Stanley had given you a memo containing quite a lot
28 of material.

29 A This is the redacted memo?

30

1 JUDGE FAHERTY: Yes, which you had and he referred to, I think.

2 A Yes.

3

4 JUDGE FAHERTY: And it would appear the he appeared to hold it like the sword
5 of Damocles.

6 A We took a certain view in relation to the memorandum. Our business is about
7 people who want to go down legal routes.

8

9 JUDGE FAHERTY: Exactly, that's what I'm asking you. What was your reaction to
10 that memo?

11 A We neither consulted or discussed it with Mr. Stanley. He had asked us to --
12 he sent it in the form of a draft. We didn't deal with it in any shape or
13 form. We didn't -- he asked for a meeting with Mr. Caldwell. We didn't
14 arrange any meeting with Mr. Caldwell. We didn't write to Mr. Caldwell. We
15 took no action in correspondence, in the voluminous correspondence. I think we
16 didn't particularly like the memo.

17

18 JUDGE FAHERTY: I can understand that.

19

20 A And we took the view, our business is about people who want to go down legal
21 routes; if somebody wants to go down another route, that's their affair. As
22 they say in modern parlance, it wasn't our gig. We weren't going down.

23

24 JUDGE FAHERTY: I can understand from that and I understood that from your
25 responses to Mr. O'Neill but my question is different, Mr. Stanley had concerns
26 in May 1992.

27 A Yes.

28

29 JUDGE FAHERTY: Concerns about the liquidation.

30 A Absolutely.

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JUDGE FAHERTY: Bone fides concerns and he wasn't to know what was going to happen to his shareholding.

A That's correct.

JUDGE FAHERTY: And I am wondering why there wasn't communication?

A Well I think that we did write at that time, as far as I can recall, that we wrote to Mr. Bullock and said that, as the independent director pointing out the obligations that there was on him in relation to that and generally pointing out that this was a contravention of what had been agreed, that the shareholders weren't to put up any capital. There is a letter in respect of that, judge, as far as I can remember, and again about the same time we wrote to Mr. Caldwell and said this is not on and there was a lot of letters in relation to that, as far as I can remember. I wonder am I talking about the same thing?

JUDGE FAHERTY: These would be events post-May 1992, I think Mr. O'Neill.

MR. O'NEILL: I think your query, judge, relates to what took place following upon an attendance of the 13th May 1992. We know that document was opened to Mr. Charlton at page 2108 in the course of his direct evidence.

That was some years after the final positions had been adopted by the parties, that is by Mr. Bullock on the one hand and Mr. Charlton on behalf of his client. They concluded on the 17th June of 1991 where Mr. Bullock's final exchange at page 1048 was to write to Mr. Charlton in response to Mr. Charlton's request that Mr. Bullock should now indicate what Mr. Kennedy says the agreement was, and that was one of the points that was raised earlier this morning as to what that document was. We were unfortunately looking for it under the heading of being a document that had been a communication between

1 Mr. Caldwell and Mr. Charlton and vice versa. In fact it had moved on to be
2 direct communications with Mr. Martin Bollock and Mr. Charlton and
3 Mr. Charlton's letter was page 1044 where -- 1044, where he raised the query in
4 the second paragraph of the letter "Since Mr. Kennedy disputes Mr. Stanley's
5 version of the agreement, is Mr. Kennedy prepared to state precisely who he
6 contends or the arrangements with Mr. Stanley concerning the above lands."

7
8 And then the response insofar as it responds to that at page 1048 of Mr. Martin
9 Bullock's response by letter of the 17th June 1991 is, "I cannot comment upon
10 your comments on Mr. Kennedy's allegations. Disputes between estates agents
11 are not matters for my co-director and myself to become involved in. We do not
12 agree that the assets are substantial, etc." But at that point, and that's the
13 17th June 1991, communications between Mr. Bullock and Mr. Charlton and vice
14 versa cease and your query arises from matters which occurred then 11 months
15 later and I think Mr. Charlton's evidence had been that after the initial
16 rejection and refusal, which is contained in Mr. Bullock's letter on the 17th
17 June, there was a meeting with counsel in which it was decided to adopt a wait
18 and see policy and to allow Mr. Kennedy to proceed with his project in the hope
19 that if he was successful, the 20 percent claim would be revitalised.

20
21 And it was only in 1992 when the threat of liquidation arose that the second
22 meeting took place on the 13th May and out of that, you will see from page
23 2108, the proposition from Mr. Stanley was we, that is Reddy Charlton &
24 McKnight, should set up a meeting with Mr. Kennedy and John Caldwell. And in
25 the final paragraph of that attendance, it was seen that was not a course which
26 Reddy Charlton were prepared to go down. It was suggested that it would be
27 unwise to get involved in any meetings with Jim Kennedy or setting up any such
28 meetings, particularly if the matter was going to become another public
29 scandal, so they identified their role at that point in time.

1 I think that is a summary, Mr. Charlton, of the documentation which supports
2 the events and it may assist you in allowing you to respond to the query being
3 put by the judge if you feel it has to be elaborated on.

4
5 JUDGE FAHERTY: That was my question, whether or not you considered a response,
6 reigniting communication with Mr. Kennedy in the first instance, as far as your
7 instructions were concerned, he was the 80 percent shareholder.

8 A That's correct.

9
10 JUDGE FAHERTY: You chose not to go down that route at that point.

11 A No.

12
13 CHAIRMAN: Very well. That's fine, thank you very much.

14
15 CHAIRMAN: Do you want to ask anything arising?

16
17 MR. FINLAY: If you were going to rise, chairman, there was just a personal
18 matter that I wanted to mention to the members, if I may.

19
20 CHAIRMAN: Certainly.

21
22 MR. FINLAY: I am assuming that Mr. Charlton's evidence is effectively over. I
23 just want to say this from a personal perspective. I, as I think you know, was
24 under the view, perhaps wrongly, that this was not going to take as long as it
25 has. I have indicated that on a number of occasions. As a result of that,
26 chairman, I have made certain calculations and I find myself in a position
27 where I'm personally irretrievably in difficulty tomorrow. I have talked to
28 Mr. Charlton on the basis that he effectively was -- he has very fairly dealt
29 with all the issues qua the firm and not attempted to distinguish as I
30 understand between his role and the firm's.

1

2 Insofar as other members of the firm may or may not be due to give evidence
3 imminently, I just want to say that if I am not here to put anything to them on
4 behalf of Mr. Caldwell, first of all, that is because of my personal difficulty
5 and I would ask it not to be taken as any reflection on my client and,
6 secondly, for the reason I have identified, I don't believe it should be
7 necessary because I believe I have covered, because of the way that Mr.
8 Charlton very fairly dealt with it.

9

10 CHAIRMAN: I understand Mr. O' Siochain is giving evidence tomorrow.

11

12 MR. O'NEILL: He will be the next witness and he will be followed by
13 Mr. Russell who was the solicitor acting for Mr. Stanley and he in turn will be
14 followed by Mr. Friel, who was the solicitor engaged to effect the registration
15 of the lands for Paisley Park and the transfer to Jackson Way Properties so
16 those witnesses will follow their -- they may well have evidence which is
17 pertinent to the interests of Mr. Caldwell and obviously that's a matter for
18 Mr. Caldwell and his legal team to deal with. The Tribunal can only say that
19 we have given notice of these witnesses for quite sometime now and I sympathize
20 of course with Mr. Finlay's position.

21

22 MR. FINLAY: I don't know what this is intended to signal to the members of the
23 Tribunal. Certainly if it's intended to impact on what I said just now, I
24 would be most concerned.

25

26 MR. O'NEILL: I don't understand that but it's not intended to be any ...

27

28 CHAIRMAN: I think Mr. O'Neill is saying that witnesses will follow in their
29 turn, Mr. Siochain tomorrow and we may get through more than one in the day
30 while you are not here.

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MR. FINLAY: Absolutely.

CHAIRMAN: So you will have access obviously to a transcript and certainly we would sympathetically consider any application that you might make to recall a particular witness to deal with a specific point, not for obviously a full cross-examination.

MR. FINLAY: First of all I greatly appreciate that. My personal hope is that might never arise. All I wanted to do was, not because of my personal absence to create any impression that my --

CHAIRMAN: That's, there's no difficulty there. Thank you very much. Thank you very much, Mr. Charlton.

THE WITNESS THEN WITHDREW

CHAIRMAN: Half ten tomorrow.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
WEDNESDAY, 11TH FEBRUARY 2004 AT 10.30 A.M.

