

10:22:54 1 **THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY, 1ST FEBRUARY**  
2 **2005, AT 10:30 A.M.:**

3

4

CHAIRMAN: Good morning, Mr. O'Neill.

10:37:38 5

6

MR. O'NEILL: Good morning, Mr. Chairman, members of the Tribunal. The next witness to be called is Mr. John O'Connor. Mr. O'Connor, could you come forward to the witness box, please.

7

8

9

10:37:49 10 **MR. JOHN O'CONNOR HAVING BEEN SWORN, WAS QUESTIONED BY MR. O'NEILL**  
11 **AS FOLLOWS:**

12

13 Q. 1 MR. O'NEILL: Good morning, Mr. O'Connor

14 A. Good morning.

10:38:22 15 Q. 2 You are an architect by profession; isn't that correct?

16 A. Correct.

17 Q. 3 I think in that capacity you submitted all of the planning applications in  
18 respect of the lands which are known to the Tribunal as the Coolamber lands.

19 And I think may well have been described as the lands at Finnstown, Lucan,

10:38:42 20 County Dublin in your applications; is that correct?

21 A. That's correct.

22 Q. 4 I think you did so in a name of a number of corporate entities, including  
23 Tiernan Homes Limited, Southfield Property Limited and Ricciland Limited; isn't  
24 that so?

10:38:57 25 A. That's correct.

26 Q. 5 And as the architect who was involved in these applications, you were written  
27 to by the Tribunal and your assistance was sought in 2004 with regard to the  
28 provision of a statement or narrative in the course of the Coolamber inquiry;  
29 isn't that so?

10:39:17 30 A. That's correct.

10:39:17 1 Q. 6 We'll see at page 2670 of the brief of documents circulated, a letter which you  
2 provided to the Tribunal on the 9th of March 2004. Which I think indicated  
3 your response to this request; isn't that so?

4 A. That's correct.

10:39:35 5 Q. 7 And we'll just read it in to the record. You may follow it on screen in front  
6 of you, does it appear on the screen in front of you?

7 A. It does, yeah.

8 Q. 8 This reads as follows: "Re the lands at Coolamber Finnstown Lucan. Dear Miss  
9 Howard, I refer to your letter dated the 27th of February in connection with  
10:39:53 10 the above and would respond as follows.

11  
12 I confirm that I provided planning and architectural services in respect of the  
13 Finnstown lands, approximately 55 acres that surround Coolamber House. You  
14 correctly assess that I acted for three clients, namely, Tiernan Home Builders,  
10:40:11 15 Southfield Property Company Limited and Ricciland Limited in relation to these  
16 lands.

17  
18 I note your request for documents and records in respect of the lands and would  
19 advise that these have already been furnished to the Tribunal. In this regard  
10:40:23 20 I refer you to copies of the attached correspondence, wherein you will note  
21 that on the 7th of September 2001 Tiernan Home Builders requested that I  
22 furnish them with copies of all documents in my possession for remittal to the  
23 Tribunal relating to the lands.

24  
10:40:40 25 You will further note my response to this request dated the 11th of September  
26 2001. On the 18th of September 2001 all documentation in my possession was  
27 handed to Tiernan Home Builders and attached herewith is a copy of  
28 acknowledgement of receipt of the documents as set out in the inventory that  
29 accompanied the documents furnished. I did not retain copies of any of the  
10:41:05 30 documentation furnished.

10:41:06 1  
2 In the light of the foregoing and in the absence of my file, I am unable to  
3 give a comprehensive narrative relating to my involvement with the lands,  
4 notwithstanding this I will make myself available to the Tribunal to answer any  
10:41:19 5 questions that the Tribunal may have. I have set out below to the best of my  
6 recollection, a narrative of my involvement with the lands.  
7  
8 Preliminary.  
9  
10:41:29 10 From 1976 to 1987 I was in the employ as an architect of Belgrave Estates  
11 Limited, 15 Clyde Road, Ballsbridge. Tiernan Homes Limited inter alia was a  
12 construction company that operated under the same management team and in the  
13 same premises as Belgrave Estates Limited.  
14  
10:41:51 15 My function in Belgrave Estates Limited was to look after all of the  
16 architectural, planning and mapping requirements of inter alia Tiernan Homes  
17 Limited. Tiernan Homes Limited decided to cease trading circa 1987. In  
18 November 1987 I set up my own architectural practice, John F O'Connor and  
19 Associates. Initially I worked from my home I purchased an office in Harolds  
10:42:21 20 Cross from which I continue to operate my practice.  
21  
22 Joe Tiernan, who had been a director of Tiernan Homes Limited, set up his own  
23 company, Tiernan Home Builders and he engaged my practice to carry out the  
24 majority of his architectural and planning requirements.  
10:42:36 25  
26 Circa 1988/1989 Joe Tiernan engaged my practice with regard to his purchase of  
27 the Coolamber lands and in due course instructed me to apply for planning  
28 permission for a residential development for 472 houses. While the County  
29 Council approved this application, it was refused permission on appeal to An  
10:43:02 30 Bord Pleanala. The planning permission granted by the County Council was also

10:43:02 1 struck down by the High Court judicial review of planning procedures.  
2  
3 Around the time the lands were zoned for residential development circa 1992/93  
4 I was again instructed by Joe Tiernan to apply for planning permission for a  
10:43:19 5 residential development of approximately 500 houses. This application was  
6 approved by the County Council and also approved by An Bord Pleanala. The  
7 application included a commercial site, which provided for a small number of  
8 shops, apartments, a pub and a medical centre. Around the same time as the  
9 above application was being processed I was instructed by Southfield Property  
10:43:44 10 Company Limited to apply for planning permission for a petrol filling station  
11 on a small site on the northwest corner of the Finnstown lands.  
12  
13 My instructions in relation to this matter came from John Caldwell solicitor.  
14 I advised against this as I was certain that planning permission would be  
10:44:01 15 refused. The advice was taken and the land was subsequently sold to Tiernan  
16 Home Builders. I received further instructions from Joe Tiernan to apply for  
17 housing development on these lands and in due course permission was granted.  
18  
19 I confirm that I received instructions from solicitors Miley & Miley and  
10:44:19 20 Partners in relation to the preparation of Land Registry maps in respect of the  
21 conveyance of the commercial lands to Ricciland Limited. I further received  
22 instructions from Ricciland Limited at E Behan and C Chalk to apply for  
23 modification to the pub for which permission had already been granted. I  
24 continued planning and architectural services for Tiernan Home Builders,  
10:44:43 25 including up to 15 further planning applications until the site was finished  
26 and taken in charge by the County Council in recent times I have provided  
27 follow-up services in relation to boundary agreements on the southern boundary  
28 of the lands.  
29  
10:45:00 30 I do hope you find the foregoing helpful and regret that due to the absence of

10:45:07 1 my file which is which the Tribunal, I am unable to give a more comprehensive  
2 account. However, I do believe that the main points are covered.

3  
4 In summary, I would the estimate that 99% of my instructions related to the  
10:45:20 5 lands came from Joe Tiernan. As stated earlier, I am well disposed of  
6 facilitating the Tribunal with any queries it may have regarding the following.

7  
8 Yours faithfully, John O'Connor". And that was the statement you provided,  
9 Mr. O'Connor; isn't that right?

10:45:36 10 A. That's correct.

11 Q. 9 And just a number of matters arising out of what you say there.  
12 Firstly, in relation to the documentation which you had in relation to the  
13 Coolamber lands. That was documentation which was generated not only for  
14 Mr. Tiernan and his company but also for Southfield Property Company Limited  
10:45:58 15 and for Ricciland Limited; isn't that right?

16 A. That's correct.

17 Q. 10 I do understand that all of the documentation which was generated, that is  
18 including the Southfield Property Company documentation and the Ricciland  
19 documentation, was given by you to Mr. Tiernan at his request?

10:46:17 20 A. Absolutely.

21 Q. 11 Right. Although, he would appear on the face of it to be the instructing  
22 client only in respect of the Tiernan Home Builders aspect of the work you did  
23 on this site; is that so?

24 A. There was a tie in, the whole project was, to my mind, was dealt with almost in  
10:46:38 25 one. And I had no reason to with withhold anything that I had on my file and I  
26 have nothing further and hope that all the document --

27 Q. 12 I just wanted to be sure that it all went to Mr. Tiernan, rather than it might  
28 have gone back to the three companies which were involved, only one of which is  
29 apparently connected with Mr. Tiernan?

10:47:01 30 A. I know that Mr. Caldwell certainly at some time over the last number of years

- 10:47:08 1 did inspect my files. But I can't remember, it may have been the Baldoyle  
2 lands he inspected he certainly came up to my office and inspected files.
- 3 Q. 13 I see.
- 4 A. All of the information I had was already gone to the Tribunal. But I think  
10:47:25 5 that all of that was the Finnstown lands.
- 6 Q. 14 Right. Do I take it then that you didn't provide any of the documentation to  
7 Mr. Caldwell in recent, in the recent past, obviously --
- 8 A. No. he wouldn't have. The only file I would have had was the Baldoyle files.
- 9 Q. 15 Sure. We will be referring in the course of your examination to an amount of  
10:47:46 10 documentation which has actually passed between Mr. Caldwell and yourself in  
11 relation to this transaction at the time that it was then current?
- 12 A. Yes.
- 13 Q. 16 But you indicate that initially you were in effect an in-house architect to a  
14 firm; is that right?
- 10:48:02 15 A. Correct.
- 16 Q. 17 And that was a development firm; is that right?
- 17 A. That's right.
- 18 Q. 18 And whilst you name Belgrave Estates Limited as one of the companies, there  
19 were a whole series of companies operating out of there; is that right?
- 10:48:14 20 A. Absolutely.
- 21 Q. 19 Was that known as the Woods Group?
- 22 A. There are two Woods. There was a Woods from Wicklow and there was another  
23 Woods, which was Frank and Tom Woods.
- 24 Q. 20 Yes. Well was this?
- 10:48:26 25 A. It was the Frank and Tom Woods.
- 26 Q. 21 Yes. We have heard from Mr. Luke Mooney, an accountant, I think you may have  
27 been in court when his evidence -- sorry, in the Tribunal when his evidence was  
28 given last week. That the Woods Group was wound up in and around 1987/88.
- 29 A. That would be correct.
- 10:48:47 30 Q. 22 Right. And he attributed that to being a revenue driven winding up of that

10:48:53 1 enterprise.

2 A. I missed his evidence.

3 Q. 23 I see. He so described it.

4 A. Okay.

10:48:57 5 Q. 24 You were an employee?

6 A. Correct.

7 Q. 25 Rather than a partner?

8 A. Yes.

9 Q. 26 But the effect of this revenue decision was that the company no longer ceased

10:49:09 10 to operate under the umbrella of the Woods Group?

11 A. Correct.

12 Q. 27 And the participants who had formerly been operating in that enterprise, which

13 included Mr. Tiernan, reformed in other components; is that right?

14 A. Yes, that's right.

10:49:26 15 Q. 28 And whilst you had been employed initially by the umbrella group, you in fact

16 were not re employed but rather were consulted by former members of that group

17 subsequently in your own practice; is that?

18 A. You say insulted --

19 Q. 29 Consulted.

10:49:47 20 A. Sorry.

21 Q. 30 I hope I didn't say insulted.

22 A. Yes, that's correct.

23 Q. 31 So that you weren't being paid a wage or a retainer. You were being paid a

24 fee per item basis for individual work?

10:49:58 25 A. Yes. That's correct.

26 Q. 32 And you say you started to work initially from home. But subsequently you

27 were contacted by Mr. Tiernan and you started to work on what we know as the

28 Coolamber project; isn't that right?

29 A. Initially my engagement was in relation to the Mount Argus lands, which was a

10:50:20 30 scheme.

10:50:20 1 Q. 33 Yes.

2 A. That was the first scheme that was actually engaged in, which would have been

3 about 1988.

4 Q. 34 Yes. Mount Argus goes was a scheme which was being conducted by Tiernan Home

10:50:33 5 Builders Limited.

6 A. Yes. In fact, the -- there was another name on the company before it became

7 Tiernan Home Builders. I just can't recall it offhand, it'll come to me.

8 Q. 35 Keybury, is that the name?

9 A. No.

10:50:54 10 Q. 36 Certainly it raised finance under that name?

11 A. Right. Okay.

12 Q. 37 And it presumably was owned.

13 A. I think it was Ronstead. I'm not a hundred percent. Yes.

14 Q. 38 But as regards its planning applications which were put in. They were put in

10:51:12 15 in the name of Tiernan Home Builders Limited as far as you're aware?

16 A. I think it may have been Rowanstead Limited that the application in Mount Argus

17 goes was first entered in.

18 Q. 39 You think you were working on that project from 1988 --

19 A. Almost certainly was, yes.

10:51:38 20 Q. 40 And certainly when it came then to the Coolamber lands project, that was in

21 1989; isn't that right?

22 A. Correct, yes.

23 Q. 41 And when you learnt first of the Coolamber project, is it possible that it was

24 through Mr. Tiernan furnishing you with the map of the lands and seeking your

10:51:58 25 commentary?

26 A. Correct.

27 Q. 42 On it. Because we do have documentation which was created on the 15th of

28 October of 1989 which was a fax from Mr. Tiernan to you of a map.

29 And we'll see that at page 709 on the screen on the 14th of October 1989.

10:52:24 30

10:52:24 1 "John, enclosed map of 51 acres at Lucan. If you have time you might give me  
2 a call about it, Joe".

3 A. Yes.

4 Q. 43 Do you think that was probably the first contact you had in relation to it?

10:52:36 5 A. I'd say that's it, yep.

6 Q. 44 At this point in time, Mr. Tiernan has indicated that he received from the  
7 vendors agent, Mr. Synnott, some documents which included a plan or a drawing  
8 which had been prepared by Mr. David Galbraith, a consulting engineer.

9 A. Yes.

10:53:03 10 Q. 45 And that he had that and he also had a map that was probably an OS map. And we  
11 will see copies of, firstly, the drawing at page 787.  
12  
13 Sorry, that's the calculations at page 878. If we could turn it to the side,  
14 please. And this is showing a means of drainage down to the Griffeen River.

10:53:39 15 A. Yes.

16 Q. 46 The various levels.

17 A. Uh-huh.

18 Q. 47 And then on the next page, 788, again by the same author, we see a proposed  
19 route for a foul sewer from the eastern boundary of the Coolamber lands running  
20 to connect with the council's existing foul sewer system on the opposite side  
21 of the Griffeen River in the Griffeen Valley. And its route follows a course  
22 through publicly owned lands, including amenities lands, football pitches,  
23 which are shown hatched out on the matter plan; isn't that right?

24 A. Yes, I'm familiar with those.

10:54:17 25 Q. 48 You are familiar with this documentation? And it was apparent to you therefore  
26 that there had been an engineer certainly engaged by somebody prior to your  
27 involvement?

28 A. Yes, there was, yes.

29 Q. 49 And they had prepared this particular drawing. In addition, I'm not sure if  
10:54:30 30 you had the OS, which is at 643, which shows a number of measurements written

10:54:40 1 in, in manuscript in the northwest corner there you'll see a line?

2 A. I see that. I'm not that familiar with that one.

3 Q. 50 Right.

4 A. I see a note here it's taken from Jim Kennedy at the bottom. That's not

10:55:00 5 familiar with me at all.

6 Q. 51 Yes. "Lands to be taken from Jim Kennedy".

7 A. Okay.

8 Q. 52 Was written on this document. It was created obviously by somebody other than

9 the interests of Mr. James Kennedy and it was created at a time prior to any

10:55:17 10 acquisition by Mr. Tiernan. Sorry. I'm told it should read levels to be

11 taken by -- sorry, "levels to be taken for Jim Kennedy".

12 A. Right.

13 Q. 53 In any event, you're not sure as to whether you received this particular

14 drawing?

10:55:33 15 A. No, I would not have received that.

16 Q. 54 Obviously, the interest of the Tiernan Property Group Limited as expressed in

17 forwarding you the map was to take your opinion on the development potential, I

18 take it, of the lands; isn't that so?

19 A. Yeah, I think initially to see how feasible it was to drain it.

10:55:59 20 Q. 55 Fine. And I think within a relatively short period from this date the lands

21 were acquired by Mr. Tiernan through Finbar Cahill & Co. in trust, signed a

22 contract on the 20th -- 24th of November, about five and a half weeks after the

23 date of this.

24 A. Uh-huh.

10:56:20 25 Q. 56 So in the interim did you carry out investigations to establish what the

26 potential development of the lands would be in its capacity to drain, in

27 particular, have you a recollection of visiting the sanitary services

28 department in the presence of Mr. Tiernan to discuss the matter with them?

29 A. I actually don't have a recollection of it. But I'm quite certain that

10:56:45 30 that's, would have been the first port of call in relation to establishing the

- 10:56:51 1 feasibility of servicing the land.
- 2 Q. 57 Sure. I take it that as a matter of course and being an experienced architect
- 3 for many years prior to this date you would have ascertained what the zoning
- 4 status of the lands was so as to see whether or not it did have zoning status
- 10:57:11 5 upon which to make a planning application; isn't that correct?
- 6 A. It may not have been part of my brief at the time. It may have been just to
- 7 establish the feasibility of draining. Clearly, the lands weren't zoned at
- 8 the time. So that wasn't an issue. The issue really for me initially was to
- 9 establish the feasibility of the, of draining the property.
- 10:57:34 10 Q. 58 Yes. Certainly we've had varying opinions from engineers and architects who
- 11 have given evidence to the Tribunal on other issues and not particularly this
- 12 module. That in some instances where they had made their initial inquiry of
- 13 the council to establish the zoning status of lands and where they had found
- 14 that the lands were zoned agricultural, their advice to the client was not to
- 10:57:57 15 go any further and to incur any expense whatsoever, because until such time as
- 16 the lands were rezoned it was a pointless exercise in carrying out plans and
- 17 detailed drawings of a development because one would have to await the rezoning
- 18 of those lands in the next Development Plan?
- 19 A. Yes.
- 10:58:16 20 Q. 59 Was that a commonly held view to your recollection, was it one held by you
- 21 particularly?
- 22 A. Well obviously the land was not zoned and Mr. Tiernan would have known that
- 23 also. There was no point in saying that the lands are unzoned when he knew it
- 24 already. As I say, my initial brief was to establish whether it was feasible
- 10:58:41 25 or not. He obviously could clearly see that the proximity of the lands to all
- 26 of the on coming infrastructure was that it was a site that was certainly ripe
- 27 for development within I think about 800 meters of the new Lucan bypass and
- 28 there was a top class third level college -- sorry, second level college had
- 29 only been recently constructed, it was half empty. Superquinn were starting
- 10:59:18 30 on the far side of the road. There was 100 acre regional park beside the

- 10:59:23 1 lands. All of the signals were saying that this land was going to be zoned.
- 2 Q. 60 Or certainly could be zoned but that would in the normal course have to await
- 3 the revision of the Dublin County Development Plan?
- 4 A. Correct, yes.
- 10:59:41 5 Q. 61 Which I think was starting around that time; isn't that right?
- 6 A. That's right.
- 7 Q. 62 And in the normal course you would not expect that the council would entertain
- 8 an application to rezone lands other than through that process?
- 9 A. That's right.
- 10:59:57 10 Q. 63 Having gone to the sanitary services department. And I take it having had the
- 11 maps or the plans rather which had been prepared by Mr. Galbraith, you would
- 12 have discussed whether or not the proposal contained within those plans was one
- 13 which met with the approval of the sanitary services department because if they
- 14 did approve that it would make your task a lot easier to receive confirmation
- 11:00:32 15 that that was a means of draining the lands; isn't that right?
- 16 A. Well we just had to establish facts.
- 17 Q. 64 Yes.
- 18 A. Fact one, was there a sewer available to facilitate the development. And
- 19 clearly, there was one in the Grifeen Park. There was a five two five as I
- 11:00:54 20 remember, millimeter diameter. It's an 18 size pipe with no sewage going
- 21 through it was a dry pipe and obviously put in with the intention of servicing
- 22 a huge area.
- 23 Q. 65 Yes.
- 24 A. So all we had to do was to try and establish whether it was physically possible
- 11:01:12 25 to drain the Coolamber lands down to this pipe.
- 26 Q. 66 Yes. In endeavouring to do that you had in your possession drawings which had
- 27 been prepared by somebody acting on the vendor's side; isn't that correct?
- 28 A. I may have taken levels.
- 29 Q. 67 You did take levels subsequently?
- 11:01:29 30 A. Yes, I may have taken levels.

11:01:31 1 Q. 68 I want to deal with the information which you had in hand initially. And that  
2 was following upon the fax to you of the 14th of October, I suggest to you that  
3 you had Mr. Galbraith's measurements and drawings, you had the two documents  
4 which I had referred to earlier on screen, that is the levels down to the  
11:01:53 5 Griffeen River.  
6 A. Yes.  
7 Q. 69 And the projected line of the foul sewer which would run from those lands  
8 directly to the council's public sewer on the opposite side of the Griffeen  
9 Valley; isn't that right?  
11:02:06 10 A. It's possible. I'm not quite sure what documents I had with me.  
11 Q. 70 I want to try and establish that if I can?  
12 A. What I did want to establish was that the Coolamber lands lay to the west of  
13 the regional park immediately adjacent to it, that was all in public ownership.  
14 Q. 71 Yes.  
11:02:21 15 A. And the foul sewer that was already there was also in the public ownership.  
16 Q. 72 Yes.  
17 A. So it was a very simple exercise to establish as to whether one didn't need  
18 anybody else's drawings to try and establish that.  
19 Q. 73 Whilst you didn't need and equally you didn't rely on them because you did your  
11:02:41 20 own drawings, you nonetheless had them in your possession?  
21 A. Yes.  
22 Q. 74 And I suggest that you had them in your possession prior to going to a meeting  
23 with the sanitary services people which you attended with Mr. Tiernan?  
24 A. Yes, yes, it's quite possible, yes.  
11:02:56 25 Q. 75 I mean, if you did have somebody else's drawing there it would be extraordinary  
26 to not make reference to them in the course of that meeting to see if they had  
27 been agreed already. Because if the council had agreed those, that resolved  
28 the issue upon which you had been engaged; isn't that right?  
29 A. I wouldn't say. Well I didn't assume that anything had been agreed because  
11:03:17 30 there was no evidence of a wayleave for example from the Coolamber Lands down

11:03:20 1 to the sewer which ran through the Grifteen Park. And we entered, I know I  
2 entered correspondence with the then deputy county manager, Dan O'Sullivan,  
3 with a view to securing a wayleave through the council lands in order to access  
4 the pipe.

11:03:43 5 Q. 76 Do you remember when you met with the council officials in the sanitary  
6 services department, there being any reference to Mr. Jim Kennedy having  
7 already been to their office and having agreed with John McDaid the details of  
8 the sewage outfall from the lands?

9 A. I absolutely have no recollection of that whatsoever.

11:04:18 10 Q. 77 Right. If we look to document 642 we'll see that about ten months, nine or  
11 ten months prior to your visit, which was in November of 1989 a meeting took  
12 place. These are the minutes of David Galbraith, the engineer who prepared  
13 the levels and drawings that I've just mentioned to you a little earlier?

14 A. Yes.

11:04:28 15 Q. 78 And he records there being a meeting on the project of the Finnstown Housing at  
16 Dublin County Council Planning Office on the 24th of January of 1989. And  
17 present were Mr. Jim Kennedy, Mr. David Galbraith, Mr. Peter Byrne, who I think  
18 you know is an official at Dublin County Council?

19 A. Yes.

11:04:49 20 Q. 79 If we look to point 3 of that memo, you'll see that the sewage outlay already  
21 agreed with sanitary services John McDaid was given to Peter Byrne at that  
22 meeting.

23 A. Yes.

24 Q. 80 And if that is accurate, we may take it that Mr. Kennedy and Mr. Galbraith had  
11:05:10 25 already agreed with Mr. McDaid the sewage outfall which was going to run from  
26 the lands. And which is, I suggest, what is shown on the plans which were  
27 given by the vendor to the intending purchaser, presumably to assure him that  
28 these lands were capable of development. Because in the absence of sewage of  
29 course, we know that it is simply dead land until such time as available  
11:05:38 30 sewage; isn't that correct?

- 11:05:39 1 A. That's correct.
- 2 Q. 81 So do you think that the probabilities were that if you went to a meeting to  
3 discuss the potential drainage outfall with the sanitary services people and in  
4 particular Mr. John McDaid, that he would have mentioned to you the fact that  
11:05:53 5 this was already the subject of some discussion only eight or nine months  
6 beforehand with Mr. Galbraith and that there has been agreement in principle to  
7 the development being drained in the manner shown in his drawing?
- 8 A. I honestly don't know if Mr. McDaid, even if that's the gentleman that we met.  
9 I have no idea. There was a chap in sanitary services Billy Fitzpatrick.
- 11:06:25 10 Q. 82 And Barry Morris.
- 11 A. I knew extremely well. And most of my communications would have been with  
12 those. That's not to say that I wouldn't have spoken to John McDaid. I  
13 don't have any clear recollection of a meeting with Mr. McDaid.
- 14 Q. 83 In any event, this would have been a pre contractual meeting unless it had  
11:06:50 15 taken place?
- 16 A. Yes.
- 17 Q. 84 Between the 24th and the 31st. Your belief is that your initial engagement  
18 was solely to establish whether or not there was a capacity to drain the lands;  
19 isn't that right?
- 11:07:02 20 A. Correct.
- 21 Q. 85 And I think you may have ascertained from your inquiries that the drainage  
22 which was on the opposite side of the Griffeen River was provided so as to  
23 drain the Balgaddy area, which had been zoned for development but which had not  
24 been built to that point in time; isn't that right?
- 11:07:21 25 A. That's correct.
- 26 Q. 86 And in the event that the lands in Coolamber were to drain into this, it would  
27 mean that the already zoned lands would not be developed or might not be  
28 developed. And certainly that was a concern of the planners when it came to  
29 reviewing the application to drain the lands through that source; isn't that  
11:07:44 30 so?

- 11:07:47 1 A. The existing pipe that was there was at the tail end, in other words, the last  
2 section of the pipe was a very large pipe, it was a 525 diameter pipe, and  
3 would have had the capacity to serve thousands and thousands of houses. And  
4 the impact of the Coolamber development would have been negligible in terms of  
11:08:10 5 its proportion of drainage to that pipe. An argument was made that it would  
6 interfere with the proposed capacity for other lands.
- 7 Q. 87 Sure. And I think you know that that is an argument which was made by the  
8 sanitary services when they came to --
- 9 A. There wouldn't have been much merit in it.
- 11:08:32 10 Q. 88 It's the domino effect. If you build the pipe to a certain area then there's  
11 pressure to zone the next area and then it moves on?
- 12 A. Of course.
- 13 Q. 89 In dealing with Mr. Tiernan this time, of course, he was very familiar to you.  
14 You'd worked with him for years. Did he seek your advice on contractual  
11:08:52 15 matters at this time or was it solely in respect of the drainage?
- 16 A. He would have engaged me somewhat in the contractual arrangement but really  
17 only in a peripheral manner.
- 18 Q. 90 Sure.
- 19 A. I would have been familiar with the contract and some of the conditions that he  
11:09:13 20 had to comply with regarding for example the construction of pipes.
- 21 Q. 91 Yes.
- 22 A. Pipe sizes etc.
- 23 Q. 92 Yes. We'll see a document at page 794, which is a fax with compliments slip  
24 to John. And I just want to establish whether that went to you or to another  
11:09:33 25 John. It's at on Sunday night at 11:45 p.m, which suggests a close connection  
26 with whoever he was faxing.
- 27
- 28 "Please ring me, John if bylaw conditions were to be removed altogether would  
29 it be safe for us to close the sale without it. Please advise, Joe".
- 11:09:51 30 A. I think that was probably to me.

- 11:09:53 1 Q. 93 You think that was probably to you. We'll see at page 814 that there is a  
2 contract entered into, as I say, on the 24th of November 1989. The copy of it  
3 here, we see is signed by John Caldwell as director. On behalf of the vendor  
4 company and by Andy Madden, another solicitor.
- 11:10:15 5 A. Yes.
- 6 Q. 94 In the capacity of purchaser for Finbar Cahill & Co. in trust and we know that  
7 Finbar Cahill & Co. are a firm of solicitors. And in the body of that lengthy  
8 contract there are a number of references to bylaw and bylaw approval?
- 9 A. Yes.
- 11:10:38 10 Q. 95 And I think you are familiar in a general way. And I don't know that it's  
11 necessary for us to read each of the bylaw conditions that pertained to the  
12 contract. But they involved an arrangement whereby the purchaser of the  
13 lands, not only was obliged to pay the contract price of some 2.2 million  
14 pounds. But that he was also obliged at his own expense to put in the pipe  
11:11:05 15 work infrastructure beneath the property itself; isn't that so?
- 16 A. Correct.
- 17 Q. 96 And that pipe work infrastructure was to be built to a standard which was a  
18 bylaw approved standard to the satisfaction of the local authority; isn't that  
19 right?
- 11:11:20 20 A. Uh-huh.
- 21 Q. 97 And until one knew what the local authority wanted it was somewhat an unknown  
22 quantity?
- 23 A. Yes.
- 24 Q. 98 As to what would satisfy them. And more particularly perhaps from a  
11:11:33 25 purchaser's point of view, how much it would cost to put in a system which  
26 would be satisfactory to their needs; isn't that right?
- 27 A. Yes, correct.
- 28 Q. 99 So that it was the assumption of rather large capital expenditure on the part  
29 of the developer?
- 11:11:50 30 A. It was a significant amount, yes.

- 11:11:53 1 Q. 100 Do you have any particular recollection of discussing the detail or analysing  
2 the detail of the bylaw obligations or requirements at that point in time?
- 3 A. Well bylaws, the only bylaws that were in operation at the time were bylaws  
4 with regard to the construction of buildings. there were no bylaws in force  
11:12:18 5 in relation to development works. Anything that went under the ground was  
6 not, anything that went outside the curtalige of dwelling houses was not  
7 covered by bylaws. There had been bylaws back in 1948 but they were  
8 withdrawn.
- 9 Q. 101 Right. One still, I take it it needed the approval however?
- 11:12:41 10 A. You needed the approval and you needed the sanction of the local authority.  
11 Obviously, the pipelines had to be built to a certain standard.
- 12 Q. 102 Sure. So whilst the reference might have been to bylaws it also referred to  
13 planning permission.
- 14 A. Correct, yes.
- 11:12:55 15 Q. 103 And if you weren't caught by bylaws you were caught by a standard?
- 16 A. There was a requirement to do it, yes.
- 17 Q. 104 And that didn't present any undue difficulties at that point in time from your  
18 point of view in advising Mr. Tiernan that you didn't see any architectural or  
19 engineering reason why he shouldn't commit himself to such a contract?
- 11:13:18 20 A. No, because we would have had discussions with sanitary services.
- 21 Q. 105 Yes.
- 22 A. Regarding the drainage of the site. And once there were no difficulties being  
23 flagged on that site, I couldn't see any reason why he shouldn't proceed.
- 24 Q. 106 Yes. The reference on the front page of the document to Mr. John Caldwell  
11:13:41 25 indicates that in the particular contract, he was entering this contract on  
26 behalf of the vendor as a director of that company. And we know from the  
27 evidence already given by Mr. Tiernan that Mr. Tiernan was very familiar with  
28 Mr. Caldwell and had been for some years.
- 29 A. Yes.
- 11:14:00 30 Q. 107 He had been his financial or taxation advisor to some extent and had acted as a

11:14:06 1 solicitor for him over time. Did you know Mr. Caldwell at this point in time  
2 from your prior dealings?  
3 A. Yes, I did. I had very many meetings with his office initially it was  
4 Fitzpatrick's and there was a solicitor Brian Gartland with whom I had a lot of  
11:14:26 5 meetings with in relation to various transactions under the Woods umbrella and  
6 at some stage there was a parting of companies and Binchys were in office, as  
7 it were, in Fitzwilliam Square.  
8 Q. 108 Yes.  
9 A. And I would have had a number of meetings with Mr. Caldwell. I would have  
11:14:57 10 known Joe Tiernan for 29 years now at this stage. And Mr. Caldwell would have  
11 come to my attention probably mid '80s.  
12 Q. 109 Mid '80s. I think Binchys started in '85. Probably if you knew him in  
13 Fitzpatricks it was sometime before the mid '80s?  
14 A. That's right.  
11:15:14 15 Q. 110 And we'll see that as of the 24th of November of 1989 certainly there's a  
16 record of yourself and Mr. Caldwell discussing the Coolamber lands.  
17 A. Yes.  
18 Q. 111 Can you remember that? We'll see it at page 803 a telephone attendance upon  
19 you at 9:15 that morning where Mr. Caldwell records:  
11:15:42 20  
21 "1. The map was wrong, please redo it." And then the second point there  
22 might be a query made of you, "act as architect for pubs and shops" and there  
23 seems to be a response on the opposite side of the hyphen which reads "very  
24 busy will if no other way".  
11:16:04 25 A. Uh-huh.  
26 Q. 112 Does that assist you in establishing?  
27 A. It could be, yes Dublin whether there was a discussion at that time by  
28 Mr. Caldwell and yourself concerning the Coolamber lands. Uh-huh.  
29 Q. 113 The first matter raised was that the map was wrong, please redo. I can't  
11:16:20 30 quite decipher what the words on the opposite side are. It might be being

- 11:16:26 1 commenced by something at a particular time. But in any event, you did you  
2 understand --
- 3 A. That seems to be. That's news to me now. It looks like the first discussion  
4 that there was in relation to the pub site.
- 11:16:42 5 Q. 114 Right. And did you understand that Mr. Caldwell was acting for the vendor  
6 company, you were being instructed by the purchaser company. So that in effect  
7 he was the other side solicitor and you had your own. Or did you understand  
8 that he was acting on behalf of both or did you understand that he was  
9 Mr. Tiernan's solicitor?
- 11:17:04 10 A. I had no idea. Well clearly he wasn't acting as Mr. Tiernan's solicitor.  
11 Because all of Joe Tiernan's, I think, transactions were handled with Finbar  
12 Cahill's office. Certainly the majority of Joe Tiernan's legal requirements  
13 were fulfilled by Finbar Cahill's office.
- 14 Q. 115 Do you mean solely in relation to this transaction or are you talking about  
11:17:30 15 this situation pre 1989 on other lands?
- 16 A. Pre 1989 a substantial. I would say most of Joe Tiernan's work was carried  
17 out by Finbar Cahill's office.
- 18 Q. 116 He has told us that he also used Binchys for his work; isn't that right?
- 19 A. He would have, yes.
- 11:17:49 20 Q. 117 So it could have been either. But you believe that in this instance that he  
21 was acting solely on behalf of the vendors and not on behalf of Mr. Tiernan, is  
22 that your view?
- 23 A. Correct, yes.
- 24 Q. 118 Right. The second point here appears then to be an invitation to you to act  
11:18:11 25 in relation to the pub and the shopping centre.
- 26 A. Uh-huh.
- 27 Q. 119 You may be familiar or you certainly were familiar at the time I think from the  
28 contract, that the sale of the lands expressly reserved to the vendor two  
29 parcels of land, one which we've called the filling station site, which was in  
11:18:31 30 the top northwest corner.

11:18:32 1 A. Uh-huh.

2 Q. 120 And the other which was the shopping centre commercial site which was

3 immediately above the existing Coolamber House and its retained lands; isn't

4 that right?

11:18:43 5 A. I'm quite certain I prepared all of those, all of the mapping requirements.

6 Q. 121 Yes.

7 A. In relation to those transactions.

8 Q. 122 Right. But they were not matters which you were carrying out on behalf of

9 Mr. Tiernan.

11:18:57 10 A. No, no, correct.

11 Q. 123 Because Mr. Tiernan wasn't the purchaser under the contract for those; isn't

12 that right?

13 A. That's right.

14 Q. 124 So as of this date in November, 24th of November 1989 Mr. Caldwell in effect

11:19:09 15 wanted to bring you in to act for his other clients, whoever they may be?

16 A. Yeah, I would have seen my role almost as a facilitator because he was

17 obviously -- and Mr. Tiernan would have liked me to operate in that capacity

18 also to ensure a smooth completion of the deal, as it were. I don't recall

19 specific instructions from John Caldwell but I'm quite sure I would have got

11:19:45 20 them to prepare maps. And they would have been done in consultation with both

21 parties, both Joe Tiernan and with John Caldwell.

22 Q. 125 Can we turn to a page 862 on screen now which is the 30th of November. This

23 is six days after the contract is signed and you'll see that there is a

24 memorandum with reference to you. I think you are 10 Boden Wood, was your

11:20:14 25 address at the time?

26 A. That's correct.

27 Q. 126 From John Caldwell by courier sending you an advice that says:

28

29 "Please put on the Land Registry map a one acre site adjoining Coolamber. It

11:20:23 30 should be slightly more than one acre to allow them for the road reservation,

- 11:20:26 1 also put on the map the boundaries of the one and a half acre site that is to  
2 the shops and offices. Many thanks, yours sincerely John Caldwell".  
3 That's clearly an instruction from John Caldwell.
- 4 A. Yes. Absolutely, yes.
- 11:20:39 5 Q. 127 And not an instruction that necessarily touches upon your having to consult  
6 with Mr. Tiernan?  
7 A. Correct, yes.
- 8 Q. 128 So may we take it as that of this time in November you were prepared to act for  
9 Mr. Caldwell in respect of his requirements; isn't that right?
- 11:20:56 10 A. That's right.
- 11 Q. 129 And this instance is referring to the Coolamber lands. And we'll see that more  
12 detail is given then at page 878. Where on the 11th of December in relation  
13 to the site at Finnstown there are four particular planning matters referred to  
14 there.
- 11:21:18 15 A. Yes.
- 16 Q. 130 A, the application for a petrol filling station B, a public house C, local  
17 shops D, medical centre with residential accommodation overhead; isn't that so?  
18 A. That's right.
- 19 Q. 131 And in respect of these of those matters I suggest you were taking Mr. John  
11:21:36 20 Caldwell's instructions?  
21 A. Correct.
- 22 Q. 132 "I refer to your instructions to proceed with the preparation of plans in  
23 respect of the above and I confirm the design of same is progressing  
24 satisfactorily."
- 11:21:50 25  
26 As you point out here, "I would appreciate if you would confirm by return the  
27 agreed fees in the sum of 10,000 pounds, plus VAT will be paid at the time of  
28 the lodgement of the application. I expect to lodge the application in mid  
29 January 1990."
- 11:22:10 30

- 11:22:10 1 The issue here was that the intending purchaser of those lands, Mr. Bowen,  
2 wasn't prepared to advance the funds.
- 3 A. That's correct.
- 4 Q. 133 And it was a matter for the vendor, as far as he was concerned, to deal with  
11:22:23 5 it. And you equally didn't intend to do the work unless you had a commitment  
6 from somebody to pay you?
- 7 A. Correct.
- 8 Q. 134 And you requested that from Mr. Caldwell; isn't that right?
- 9 A. Correct.
- 11:22:34 10 Q. 135 At this time did Mr. Caldwell indicate to you who his clients were in respect  
11 of A, the petrol filling station site at the top or B, the commercial sites  
12 which are encompassed by references to B, C, and D in this memorandum here?
- 13 A. I'm not quite sure at what time he advised as to who the intended purchaser  
14 was.
- 11:23:02 15 Q. 136 Right. I think you came to learn of --
- 16 A. I'm sorry. Maybe because I think shortly afterwards I think Mr. Caldwell did  
17 send me a note saying that this was prior to or around the time I was lodging  
18 the planning application, he made reference to the fact that by that time I  
19 should have received fees in relation to the commercial site.
- 11:23:27 20 Q. 137 Yes.
- 21 A. So I just can't recall specifically when I knew who the purchaser of the  
22 commercial site was.
- 23 Q. 138 Sure. But you believe that you didn't at the time understand that it was  
24 Mr. Tiernan or any company associated with him?
- 11:23:46 25 A. Absolutely not.
- 26 Q. 139 It was a separate entity as far as you were concerned?
- 27 A. Yeah. Correct.
- 28 Q. 140 And of course you'd have to know who that separate entity was in order to bill  
29 it or charge it for services; isn't that right?
- 11:24:00 30 A. Yes, yes.

- 11:24:01 1 Q. 141 And it was therefore I suggest probably one of the matters that you discussed  
2 with Mr. Caldwell as opposed to discussing with Mr. Tiernan; isn't that right?  
3 A. Yes, yes.
- 4 Q. 142 At that time did Mr. Caldwell identify to you, can you recollect, a company  
11:24:18 5 called Southfield Limited or Southfield Property Company Limited?  
6 A. It doesn't jump out at me.
- 7 Q. 143 Fine. In any event, in the course of this application for Mr. Caldwell's  
8 clients was that the first occasion upon which you had acted for a client of  
9 Mr. Caldwell's as opposed to working for somebody within the Woods Group who  
11:24:42 10 would be having dealings with Mr. Caldwell?  
11 A. My client obviously was Mr. Caldwell in relation to the preparation of all of  
12 these plans for the commercial site. He was the one I considered not a third  
13 party he was going to sell on to.
- 14 Q. 144 I see. We know that Mr. Caldwell is a solicitor by profession.
- 11:25:07 15 A. Yes.
- 16 Q. 145 I do understand from your last answer that you understood that he was the  
17 principal behind the intended development of these two portions of lands which  
18 had been retained?  
19 A. Yes.
- 11:25:20 20 Q. 146 And he might incorporate a limited liability company to give effect to his  
21 plans but you understood him to be the principal; is that right?  
22 A. Yes, there was no normal situation is that the solicitor would bring a client  
23 in. If they want to talk a project the client was always there. There was  
24 never a client, it was always Mr. Caldwell.
- 11:25:44 25 Q. 147 Right. The -- was that an assumption that you made by reason of the fact that  
26 he didn't introduce you to another individual in the course of this or was  
27 it --  
28 A. Really I'd love to be able to say, you know, what my thinking was at the time.  
29 But it probably didn't concern me too much as to who were the principals so  
11:26:15 30 long as I was being paid for what I was doing.

11:26:17 1 Q. 148 Right.

2 A. It was matterless to me really as to --

3 Q. 149 I see. Well at this time do you have a recollection of Mr. Caldwell

4 indicating to you that he was no longer using the services of Mr. David

11:26:32 5 Galbraith who had had an accident some time previously and had been working for

6 him some time before that, and that he was looking for a new architect for a

7 number of projects, including two projects at Baldoyle?

8 A. Yes.

9 Q. 150 And other work in relation to Cruck House and the pipeline infrastructure

11:26:52 10 beneath it which required to be addressed?

11 A. I do vaguely recall a conversation with him as to where Mr. Galbraith was.

12 Like, obviously he'd done a considerable amount of work for him. And I do

13 believe he said, you know, that he was unwell, had an accident or whatever.

14 And I just can't recall now, Mr. Galbraith was no longer available to do the

11:27:18 15 work for him.

16 Q. 151 Sure. You were to find in the course of your taking up the work for

17 Mr. Caldwell that you were in a sense standing in the footsteps that had

18 already been put in the sand by Mr. Galbraith's inquiries both --

19 A. I didn't see myself standing in for anybody.

11:27:39 20 Q. 152 You identified that there had already been an engineer engaged?

21 A. Oh, there was, yes.

22 Q. 153 In all of these projects.

23 A. Uh-huh.

24 Q. 154 And that engineer was Mr. Galbraith. And he was no longer available and you

11:27:51 25 were now engaged to act.

26 A. Yes.

27 Q. 155 And could I suggest that when you received the instructions on the 11th of

28 December 1989 in relation to the two lots of land that I've just referred to at

29 Coolamber, you also were in communication with Mr. Caldwell in relation to an

11:28:12 30 industrial site at Baldoyle.

- 11:28:15 1 A. That's correct.
- 2 Q. 156 Which I think we will know possibly know as the Bauval lands?
- 3 A. They are both industrial and residential lands, there were two tracks of lands
- 4 there.
- 11:28:29 5 Q. 157 The residential ultimately became known as Sabre?
- 6 A. Correct.
- 7 Q. 158 You may not have been aware of any of these names at this particular time.
- 8 But they were matters before you to be dealt with, and they came to you through
- 9 Mr. Caldwell; isn't that right?
- 11:28:46 10 A. Absolutely.
- 11 Q. 159 We see at page 3284 that on the 11th of December, the date upon which you
- 12 received or you wrote in relation to Coolamber you also wrote in relation to
- 13 the industrial site at Baldoyle and you said:
- 14
- 11:29:03 15 "Dear John, I wish to advise that I have received no instructions or
- 16 confirmation of fee arrangement in respect of the above and accordingly no
- 17 design work has yet been undertaken."
- 18 A. Uh-huh.
- 19 Q. 160 Can we take it at some stage prior to it this letter you had been in discussion
- 11:29:21 20 with Mr. Caldwell about carrying out design work for industrial lands in
- 21 Baldoyle?
- 22 A. Correct.
- 23 Q. 161 On his behalf.
- 24 A. Correct.
- 11:29:27 25 Q. 162 And again in that instance did you believe that you were acting for
- 26 Mr. Caldwell, Mr. Caldwell being the principal or did you believe that you were
- 27 acting for --
- 28 A. I honestly don't know what my thinking was at the time. He would have
- 29 mentioned different clients. There was a company called Endcamp.
- 11:29:53 30 Q. 163 Yes. Well Endcamp was the landowner rather than a company for whom

- 11:29:59 1 Mr. Caldwell ever acted. So he wasn't acting for Endcamp.
- 2 A. Okay. I think I may have prepared the planning application.
- 3 Q. 164 Yes.
- 4 A. With that company name as the applicant.
- 11:30:14 5 Q. 165 Yes. Does Edington ring a bell?
- 6 A. Yes.
- 7 Q. 166 Edington is the company that would have had the planning application?
- 8 A. Uh-huh.
- 9 Q. 167 Now, in -- as we see from the documentation so far you wished to formalise
- 11:30:30 10 whatever arrangements you were to have with Mr. Caldwell because of course you
- 11 wanted to ensure that you would be paid?
- 12 A. Correct.
- 13 Q. 168 You were now.
- 14 A. It was my only.
- 11:30:41 15 Q. 169 You were out on your own. You weren't receiving a salary cheque. And I think
- 16 your initial request was to be paid by means of a bank draft rather than
- 17 cheques; isn't that right?
- 18 A. Yes.
- 19 Q. 170 A and we see at page 915 that on the 10th of January 1990 I think this was just
- 11:31:01 20 in advance of the lodgement of the petrol station application?
- 21 A. Yes.
- 22 Q. 171 You will see that the Bank of Ireland was written to by Miss Cahill, who was a
- 23 secretary of John Caldwell's his signature at the bottom of the document. On
- 24 behalf of a company called Southfield Property Company Limited, there was a
- 11:31:26 25 request to transfer the sum of two and a half thousand pounds from the deposit
- 26 account of Southfield to the current account of Southfield and also to issue a
- 27 bank draft in the sum of 2,500 pounds made payable to Mr. John O'Connor. The
- 28 bank draft would be collected on the following morning?
- 29 A. Uh-huh. I would not have requested a bank draft.
- 11:31:52 30 Q. 172 Right. This is a company which had a chequing account. It had both a

11:31:58 1 savings account and a current account. It could have written a cheque to you  
2 had it wished. And it would have been met, as we'll see, because of the funds  
3 which were in the account.

4 A. Yes.

11:32:11 5 Q. 173 Do you believe that it was the payer of the company that decided to pay you by  
6 way of bank draft rather than your --

7 A. Absolutely.

8 Q. 174 Very good.

9 A. I don't recall ever requesting a bank draft from anybody.

11:32:27 10 Q. 175 We'll see that page 916, there is the savings account of Southfield Property  
11 Company Limited. Southfield Property Company Limited, as you will recollect  
12 from the contract which you saw was obliged to pay a deposit of 110,000 pounds  
13 which was releasable to the vendors of the property on signing the contract, on  
14 the 24th of November.

11:32:52 15  
16 And we'll see that on the 30th of November when this account starts for this  
17 particular page there's 100,000 pounds on deposit. And the relevant extract  
18 from your point of view is that on the 10th of January 2,500 pounds is  
19 transferred out of that account. And we'll see that at page 917 that transfer  
11:33:23 20 is reflected in the current account at the item for the 10th of January where  
21 there's a credit of 2,500 pounds coming in by way of a transfer, that's the  
22 deposit from the transfer account and it leaves by way of a draft from the 11th  
23 2,500 pounds.

24 A. Yes.

11:33:43 25 Q. 176 And that payment is a payment which was made to you and it was made to you on  
26 foot of an invoice which bore the invoice No. V 127. We'll see that at page  
27 920.

28 A. Yes.

29 Q. 177 Here on the 11th of January under the heading Southfield Property Company plans  
11:34:07 30 for petrol filling station.

- 11:34:10 1 A. Yes.
- 2 Q. 178 Mr. Caldwell writes to you as a director of Southfield saying "herewith bank  
3 draft in the amount of 2,500 in discharge of your invoice No. V 127."
- 4 A. Yes.
- 11:34:23 5 Q. 179 We may take it certainly as of this date on the 11th of January you were aware  
6 of the vehicle with which Mr. Caldwell was using for his development?
- 7 A. Was Southfield.
- 8 Q. 180 At Coolamber was Southfield Property Company Limited; isn't that correct?
- 9 A. That's correct.
- 11:34:39 10 Q. 181 Did Mr. Caldwell at any time indicate to you why it was that he wanted to hive  
11 off a small site in the northwest corner for the purpose of a petrol filling  
12 station when selling effectively a much larger area of some 55 acres  
13 potentially?
- 14 A. Well a petrol filling station would have only required a small portion of the  
11:35:09 15 lands.
- 16 Q. 182 Sure. Well about an acre or more was being taken off. You remember the  
17 instruction given to you to measure off an area which certainly was a much  
18 larger land than a petrol station; wasn't it?
- 19 A. Weren't those lands beside Coolamber House, the commercial site?
- 11:35:32 20 Q. 183 That was the commercial site not the filling station site?
- 21 A. Yes.
- 22 Q. 184 I think if we look to the contract map we'll see at page 831. In the top  
23 northwest corner there?
- 24 A. Oh, yes.
- 11:35:52 25 Q. 185 I think that is what is called the petrol station site?
- 26 A. It's a very large site, I have no idea why it was that size. I just can't  
27 recall. But that went nowhere.
- 28 Q. 186 Right. Did you have any discussion why it was that a petrol station site was  
29 an attractive proposition apparently to him or to those behind his venture at  
11:36:20 30 this time?

- 11:36:21 1 A. Well the initiative came from him to apply for permission, to use that site as  
2 a petrol filling station. Obviously it was on a very busy road, the Newcastle  
3 Road it attracted a lot of passing vehicles. But it was a wholly unsuitable  
4 site in terms of traffic hazard. I advised against applying for permission  
11:36:44 5 because I was certain we would get refusal on it. In fact I hadn't remembered  
6 until looking at your document that in actual fact I had made a planning  
7 application. In any event, it resulted in a planning refusal. It wasn't  
8 appealed to the Board. The land was then ultimately sold to Joe Tiernan.
- 9 Q. 187 Uh-huh. Well we'll see at page 922 that the application for the planning  
11:37:18 10 permission for the petrol filling station was to be put in and was put in in  
11 the name of Tiernan Home Builders Limited?
- 12 A. Yeah.
- 13 Q. 188 Do you see that. And I think that was it your belief that Tiernan Home  
14 Builders Limited was the party who had contracted to acquire the Coolamber  
11:37:37 15 lands from south -- from the vendor, Southfield?
- 16 A. Yes.
- 17 Q. 189 Did you ever receive any documentation which satisfied you before you lodged  
18 your planning application that that in fact was a company which had a legal  
19 interest in these lands?
- 11:37:55 20 A. Joe Tiernan was the purchaser of the lands for the residential development.
- 21 Q. 190 Uh-huh.
- 22 A. And we put in I think the application there obviously for the petrol filling  
23 station to give continuity. And these agreed of the entire proposal.
- 24 Q. 191 Sure. But there was an assumption then made by you that because Mr. Tiernan  
11:38:21 25 was the person who would be involved in the acquiring company?
- 26 A. Yes.
- 27 Q. 192 That Tiernan Home Builders Limited would be the appropriate person to apply for  
28 planning permission.
- 29 A. Correct.
- 11:38:36 30 Q. 193 Fine. We'll see that at page 907 Tiernan Home Builders Limited was

- 11:38:42 1 incorporated on the 8th of January 1990. Which is just a number of days prior  
2 to the planning application being lodged; isn't that right?
- 3 A. Uh-huh.
- 4 Q. 194 Now, the contract to acquire the lands was a contract which, as you may know,  
11:39:01 5 was signed by Mr. Madden?
- 6 A. Yes.
- 7 Q. 195 A solicitor in Finbar Cahill & Co. in trust. And the party for whom the  
8 acquisition was being made is not named in that document?
- 9 A. Yes.
- 11:39:15 10 Q. 196 But the Tribunal has been informed that Mr. Joe Tiernan intended to set up a  
11 limited liability company which would take these lands. He intended to do so.  
12 And that in that company there would be a interest of a Mr. Rennicks and a Mr.  
13 Mooney, as shareholders?
- 14 A. Yes.
- 11:39:37 15 Q. 197 In varying degrees, 5% initially for Mr. Luke Mooney, subsequently 10%, and 25  
16 or 30% for Mr. Rennicks. But the company Tiernan Home Builders Limited is in  
17 fact the company that was involved in the Mount Argus goes lands?
- 18 A. Yes.
- 19 Q. 198 And is not the company whichever took an interest in the Coolamber lands  
11:40:05 20 because there was never any Declaration of Trust by Mr. Madden or anybody else?
- 21 A. Yes.
- 22 Q. 199 That Tiernan Home Builders would be the owner of the land. In fact, as we  
23 know, the contract was never completed. And consequently, the company which  
24 was to be incorporated for the purpose of the acquisition was never  
11:40:27 25 incorporated?
- 26 A. Right.
- 27 Q. 200 You understand that? But you were led to believe in any event by somebody that  
28 Tiernan Home Builders Limited was the company which owned the lands?
- 29 A. Yes.
- 11:40:37 30 Q. 201 And on that basis you lodged the documentation, including the public

- 11:40:43 1 advertisement in the newspapers, as we see at page 923 indicating that the  
2 application was being made for Tiernan Home Builders Limited; isn't that so?
- 3 A. That's correct.
- 4 Q. 202 This now was the housing development application for 472 houses on the portion  
11:41:04 5 which had been sold to Mr. Finbar Cahill's company in trust; isn't that right?
- 6 A. To Mr. Tiernan's?
- 7 Q. 203 Well the contract was to Finbar Cahill in trust for whoever it was that might  
8 be for?
- 9 A. Yes.
- 11:41:19 10 Q. 204 Connected with Mr. Tiernan; isn't that right?
- 11 A. Yes.
- 12 Q. 205 I think you know that by reason of the fact that this land was zoned  
13 agricultural the only way in which it could be altered in its planning status  
14 within the period that was envisaged at the time that you lodged the planning  
11:41:43 15 application on the 12th of January 1990 was if there was a successful Section 4  
16 application?
- 17 A. Correct.
- 18 Q. 206 By the elected members of the council to rezone the lands by way of a material  
19 contravention of the then existing Development Plan; isn't that correct?
- 11:42:01 20 A. Correct.
- 21 Q. 207 And you set out here what was required. And you set out under the heading  
22 planning on page 924 your view that the site is imminently suitable for housing  
23 and ancillary developments having existing road frontage on three sides.  
24 Substantial infrastructural development already exists in the immediate  
11:42:33 25 vicinity etc.. You set out all the plus points here.
- 26 A. Yes.
- 27 Q. 208 But of course, no matter how meritorious the scheme is, you still couldn't get  
28 planning permission unless there was this material contravention; isn't that  
29 right?
- 11:42:41 30 A. Correct.

- 11:42:42 1 Q. 209 And is that a matter which you discussed either with Mr. Caldwell, who had an  
2 interest insofar as you knew, in the two sites. That is the filling station  
3 and the commercial site. And Mr. Tiernan who had the interest in the  
4 residential site. Each one of those would require, I take it, a Section 4  
11:43:03 5 material contravention to alter the scheme; isn't that right?  
6 A. Yes, uh-huh.  
7 Q. 210 Did you discuss that with either of them and if so did they indicate to you how  
8 they intended to achieve the Section 4, hopefully successful result?  
9 A. Well it was like rising tide would lift all boats if the planning approval was  
11:43:27 10 granted for the residential it was automatic the commercial site would follow  
11 or would be, would come with it.  
12 Q. 211 Yes.  
13 A. All of my instructions would have come from Joe Tiernan in relation to the  
14 residential development. The commercial was a tag on that was going to  
11:43:49 15 benefit from whatever happened with the larger scheme. I would have had quite  
16 a few discussions obviously with Joe Tiernan with regard to, you know, the way  
17 the planning would evolve.  
18  
19 We were all acutely aware that this would require a Section 4 motion in order  
11:44:12 20 to have it passed. Notwithstanding that, there were very compelling reasons.  
21 And I think that was the, gave the thrust to recruiting, as it were, all of the  
22 support for the rezoning.  
23 Q. 212 Whilst it was your view as expressed in this letter that the planning was  
24 something which would be beneficial, I think it is not a view that was shared  
11:44:42 25 by the professional staff of the Dublin County Council who delivered various  
26 reports which were read, I think you were aware of them?  
27 A. Yes.  
28 Q. 213 At et meetings where the Section 4 motion was considered between February and  
29 June of 1990; isn't that right?  
11:44:59 30 A. That's right.

- 11:44:59 1 Q. 214 And notwithstanding those reservations, the matter was voted upon, the vote  
2 went in favour of the application and a planning permission was granted in June  
3 for the development as conceived by yourself?
- 4 A. Yes.
- 11:45:15 5 Q. 215 Though that resulted almost immediately in firstly an appeal to An Bord  
6 Pleanala and secondly, to a judicial review of the decision of the councillors;  
7 isn't that correct?
- 8 A. Correct.
- 9 Q. 216 And we know that the processes took quite some time to reach their final  
11:45:33 10 conclusion, but by July of 1991 about 13 months after the permission had been  
11 granted, there was a reversal of both the Section 4 and the planning; isn't  
12 that correct?
- 13 A. Yes.
- 14 Q. 217 But to that point of course your proceeding from the time you lodged these  
11:45:53 15 plans on the 12th of January to the time that you received the planning  
16 permission initially in June of 1990 on the basis that it would be successful  
17 and you were working as you would to advance the project; isn't that right?
- 18 A. Correct.
- 19 Q. 218 But in addition to advancing that project, you were also advancing the projects  
11:46:13 20 at Baldoyle?
- 21 A. Correct.
- 22 Q. 219 And you were also dealing with the queries which were being raised of you by  
23 Mr. Caldwell in connection the Cruck House infrastructure; isn't that right?
- 24 A. That's correct.
- 11:46:28 25 Q. 220 We see on the 15th of January some three days after you lodged the planning  
26 permission for Cruck House -- for Finnstown -- you sent an invoice, at page  
27 3285, to Binchy and Partners. Invoice No. V 127. The second of the invoices  
28 that you had sent in time.
- 29 A. Yes.
- 11:46:51 30 Q. 221 For the pipeline at Cruck House Lucan. You billed Binchy and Partners in this

11:46:58 1 instance for receiving instructions, meeting with County Council officials,  
2 inspection of the planning files, inspection of the pipelines, provision of the  
3 certificate. And we see the certificate at page 3286, where you certify that  
4 as an architect you were retained by Binchy and Partners solicitors in relation  
11:47:19 5 to the above matter and that was the foul sewer and water surface covert at the  
6 lands on Cruck House Newcastle.

7  
8 You've examined the files pertaining to construction. You discussed the  
9 construction with Mr. Mulerky of building control section and Mr. McInerney of  
11:47:37 10 planning depart. You had inspected the pipelines, you were satisfied  
11 following your inspection of the planning files discussions with Dublin County  
12 Council officials and inspecting the completed works that the pipelines as  
13 delineated on the plan to which you have penned your signature between points  
14 A, B, C, D good building practice and in accordance with the requirements of  
11:48:03 15 the local authority.

16 Again, did Mr. Caldwell indicate to you who the persons owning this pipeline  
17 were or who you were acting for in relation to it?

18 A. No, you see there from my correspondence that it was all directed to Binchy and  
19 Partners, John Caldwell.

11:48:35 20 Q. 222 This wasn't a certificate that they were constructed in accordance with any  
21 particular bylaw or planning approval; isn't that right?

22 A. I had to satisfy myself that the construction of the pipeline was done in  
23 accordance with requirements of the local authority and I brought the  
24 inspectors out and we inspected every manhole and received confirmation from  
11:49:00 25 them that they were satisfied that the pipe -- because I hadn't been involved  
26 during the construction of the pipelines. I wanted to be sure. I think my  
27 request. By request from Mr. Caldwell was to receive confirmation that had  
28 been, all of the work had been executed in the accordance with the requirements  
29 of the County Council.

11:49:31 30 Q. 223 Do you have any recollection of there being enforcement proceedings by the

- 11:49:36 1 council to remove a section of the pipe?
- 2 A. I do because Mr. McInerney there was actually the enforcement officer of the
- 3 local authority. And it was with him whom I engaged in order to establish what
- 4 the problems were, if any, relating to the pipeline.
- 11:49:53 5 Q. 224 Right.
- 6 A. And I think the only problem that there was in fact that the pipeline had been
- 7 extended by a couple of meters too far into adjoining lands, if I could call it
- 8 Stassen's land.
- 9 Q. 225 Yes, exactly. They had been extended into the Stassen lands which were not
- 11:50:13 10 zoned for any form of residential development?
- 11 A. Correct. And that was the only problem.
- 12 Q. 226 Sure.
- 13 A. That the local authority had with it, was that it had gone too far.
- 14 Q. 227 Right. Did Mr. Caldwell indicate to you at that time any particular reason
- 11:50:28 15 why he wanted you to certify this as being now complete in accordance with the
- 16 requirement of the council?
- 17 A. You will first of all note from my cert there that I don't certify it in
- 18 relation to planning because of my concern about it having been extended too
- 19 far. The reason for the request for the certificate emanated from the fact
- 11:50:59 20 that the sale of the lands was in progress or was about to be completed with
- 21 Superquinn.
- 22 Q. 228 Yes. That's the sale of the land which was above the pipe?
- 23 A. Yes.
- 24 Q. 229 But did you know whether or not Mr. Caldwell or his clients had an option to
- 11:51:18 25 purchase the Stassen lands and that the --
- 26 A. I have no idea. No, I didn't.
- 27 Q. 230 And that the pipeline was to serve those lines for development?
- 28 A. It was clear that there was an intention to put it further.
- 29 Q. 231 Have you a recollection that the County Council brought enforcement proceedings
- 11:51:33 30 in 1991 so as to have these pipes removed?

- 11:51:37 1 A. Yes.
- 2 Q. 232 This obviously is after your certificate of January 1990, which indicated that
- 3 as far as you were concerned all the matters had been constructed with a good
- 4 building practice and in accordance with the standards and requirements of the
- 11:51:52 5 local authority.
- 6 A. Yes.
- 7 Q. 233 So you obviously didn't intend to address the planning permission situation in
- 8 this certificate?
- 9 A. Correct.
- 11:51:59 10 Q. 234 This is not a planning certificate from an architect, it was limited to the
- 11 quality of the work which was done from an engineering point of view rather
- 12 than legitimising its entitlement to be there in the first instance; isn't that
- 13 right?
- 14 A. Correct, yes.
- 11:52:27 15 Q. 235 You were in a position I think relatively speedily to lodge a planning
- 16 application for Mr. Tiernan's company, Tiernan Home Builders Limited, in
- 17 respect of these lands, given that the contract to acquire the lands had only
- 18 been signed on the 24th of November and the intervention of Christmas and what
- 19 have you left you at very --
- 11:52:51 20 A. It was --
- 21 Q. 236 It was a rather tight schedule.
- 22 A. I had worked hard.
- 23 Q. 237 And you were also working on the Baldoyle lands at the same time; isn't that
- 24 right?
- 11:53:02 25 A. Yes.
- 26 Q. 238 If we look to page 950 we'll see that in February 1990 you wrote to Mr. McDaid.
- 27 And I mentioned Mr. McDaid to you a little earlier in the context of the
- 28 discussions which took place regarding the feasibility of draining the
- 29 Coolamber lands. And we see that you wrote to him on what may be either the
- 11:53:28 30 9th or 10th. I think it might have been typed on the 9th and then super

11:53:34 1 imposed with the 10th.  
2  
3 But in any event, "Dear John, I refer to the meeting with your good self, Barry  
4 Morris, Joe Tiernan and myself in November last in connection with the proposed  
11:53:46 5 development of the above lands by Joe Tiernan. As you are probably now aware  
6 Joe Tiernan has since purchased the lands and I lodged a planning application  
7 on his behalf on the 12th January for inter alia of 472 houses on Friday last.  
8  
9 I lodged the bylaw application. As the application is rather large and  
11:54:05 10 contains a substantial amount of documentation, I am taking the liberty of  
11 forwarding you a copy of same so that you will be familiar with the details  
12 when the formal application reaches you in due course.  
13  
14 Once again, I wish to convey my thanks for the courteous and informative  
11:54:21 15 discussion in relation to the drainage of the areas. Yours sincerely, John  
16 O'Connor".  
17  
18 As an aid to your recollection, Mr. O'Connor, that might allow you to confirm  
19 that when you did go to the sanitary services department in November of 1989  
11:54:39 20 that you met with Mr. John McDaid.  
21 A. Yes.  
22 Q. 239 And given that Mr. McDaid had already seen the plans of Mr. David Galbraith and  
23 had approved those plans at a meeting with Mr. Kennedy and Mr. Galbraith, do  
24 you think it's probable that at the meeting there was a discussion in which it  
11:55:03 25 was indicated to you that your plans, such plans as you might have, would,  
26 should probably take into account the fact that he, Mr. McDaid, had already  
27 agreed that these lands could be drained to the Dublin sewer on the opposite  
28 side of the Griffeen Valley and that he'd agreed that with Mr. Kennedy and with  
29 Mr. Galbraith?  
11:55:26 30 A. You could assume that but I have no recollection of.

- 11:55:31 1 Q. 240 Right.
- 2 A. Him saying that. In fact, I don't even recall the meeting with Mr. McDaid.
- 3 And obviously from the correspondence I did meet with him.
- 4 Q. 241 Yes. It would be surprising, however, if he wasn't to say once you opened
- 11:55:46 5 your mouth and said look, what I want to do is to drain these lands from this
- 6 point to this point that he wouldn't say to you look, I've already discussed
- 7 this in detail.
- 8 A. He may or may not have said it. He may have said sure Kennedy was in here six
- 9 months ago has he gone out of the situation or he may not have said it.
- 11:56:05 10 Q. 242 Sure.
- 11 A. No, I'm afraid I have no recollection at all of the meeting.
- 12 Q. 243 I take it your reference here to bylaw application and to the bulk and volume
- 13 of documentation here was in anticipation, as we know, of a bylaw application
- 14 being lodged by you for the project; isn't that right?
- 11:56:28 15 A. Yes, correct.
- 16 Q. 244 And we know that local authorities charge for considering such applications,
- 17 one simply can't lodge the plan and have the council staff deliberate on it,
- 18 pronounce upon its merits or otherwise and then decide not to progress it.
- 19 A. Yes.
- 11:56:47 20 Q. 245 And there is fairly standards rates of charge.
- 21 A. Yes.
- 22 Q. 246 Relatively substantial. But they're borne obviously by the party who is
- 23 making the application.
- 24 A. Yes.
- 11:56:57 25 Q. 247 And accordingly, you would have to put yourself in funds through your client to
- 26 fund the bylaw application here; isn't that right?
- 27 A. No. The funding would come directly from the client. I mean, they would pay
- 28 the cheque, whatever the amount was, payable to the local authority.
- 29 Q. 248 Yes. But would you not send that in with your bylaw?
- 11:57:19 30 A. Oh, yes, absolutely. I thought you were suggesting.

- 11:57:22 1 Q. 249 No, I'm not suggesting that you would fund it yourself. Although in one  
2 instance I think you did yourself?
- 3 A. I did, foolishly.
- 4 Q. 250 Particularly you wouldn't do in a large development such as this. Because the  
11:57:36 5 level of charge is dictated by the size of the proposed development and the  
6 engineering works that would be required to give effect to that development;  
7 isn't that right?
- 8 A. That's correct.
- 9 Q. 251 And in this instance we'll see that the bylaw charges were 20,000 pounds; isn't  
11:57:57 10 this so?
- 11 A. That's right.
- 12 Q. 252 Have you a recollection of contacting your client with a view to putting  
13 yourself in funds so as to lodge the bylaw approval with the appropriate  
14 charge?
- 11:58:13 15 A. I don't recall. But if I had an application ready and there was a fee to go  
16 with it, it's still my, to this day, I would say send me over the cheque.
- 17 Q. 253 I'm sorry, could I just?
- 18 A. Sorry. What I would have requested the client to do is to send over the  
19 appropriate cheque.
- 11:58:32 20 Q. 254 Yes.
- 21 A. Made payable to the local authority.
- 22 Q. 255 Right. And that could be, I mean, the local authority doesn't insist on  
23 receiving a bank draft.
- 24 A. Absolutely not.
- 11:58:45 25 Q. 256 It would take your cheque or my cheque or anybody's cheque?
- 26 A. Yes.
- 27 Q. 257 In relation to it as long as it was for the appropriate amount; isn't that so?
- 28 A. Correct.
- 29 Q. 258 Given that there were 472 houses here, had you any difficulty in calculating  
11:59:00 30 what the appropriate amount would be for the levy or charge for the bylaw

- 11:59:06 1 approval?
- 2 A. No, no.
- 3 Q. 259 How is it done? Do you ring up the council and say?
- 4 A. No, there's a standard charge, it would have been a standard charge per unit.
- 11:59:17 5 Q. 260 Right. Over a certain figure is so much?
- 6 A. Over a certain figure there's -- I can't recall what the limits at that time
- 7 were.
- 8 Q. 261 There's probably a maximum?
- 9 A. Yeah, there was. It may have been 10,000 or something like that.
- 11:59:31 10 Q. 262 There's a planning charge independent of the bylaw charge; isn't that right?
- 11 A. Correct.
- 12 Q. 263 You pay both. There is a maximum of 10,000 for the planning charge.
- 13 A. Yes.
- 14 Q. 264 But if the developed area is greater than a certain square metreage one has to
- 11:59:48 15 pay an additional charge over and above the 10,000; isn't that so?
- 16 A. That is probably correct, I just can't --
- 17 Q. 265 It appear that is way certainly from the documentation?
- 18 A. Yes.
- 19 Q. 266 In early February it was apparent to you that the bylaw documentation, you'd
- 12:00:05 20 need 20,000 pounds from your client?
- 21 A. If that's what was required, yes.
- 22 Q. 267 And certainly the Tribunal has not been provided with any documentation from
- 23 Mr. Tiernan which indicates that Mr. Tiernan gave you 20,000 pounds.
- 24 A. Yes.
- 12:00:20 25 Q. 268 Or gave you a cheque for 20,000 pounds.
- 26 A. Yes.
- 27 Q. 269 Or that a cheque for 20,000 pounds passed through his account in relation to
- 28 this.
- 29 A. Yes.
- 12:00:29 30 Q. 270 But we'll see that the --

12:00:34 1 A. But the local authority received the 20,000.

2 Q. 271 Well initially they didn't and they wrote to you to complain I think.

3 A. Right.

4 Q. 272 At page 95 --

12:00:45 5

6 CHAIRMAN: It's just gone. It's time to give the stenographer a break to  
7 stop for ten minutes.

8

9 MR. O'NEILL: A ten minute break.

12:01:07 10

11 **THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK**

12 **AND RESUMED AS FOLLOWS:**

13

14 Q. 273 MR. O'NEILL: Mr. O'Connor, we'll see on screen at page 954 a letter to you

12:16:53 15

16 from the County Council. It's a standard form letter with the exception of  
17 some typed in information which includes both your name, the register  
18 reference, the amount of the fee due. And it's a form, a no fee with bylaw  
19 application form generated within the council addressed to you. It's under  
the reference No. 90A 61 which you might remember was the planning application.

12:17:26 20

21 Number attributed to the 472 houses. It describes it as 472 houses at  
Finnstown, Lucan for Tiernan Home Builders.

22

23 "I refer to your application for bylaw approval in respect of the above  
24 proposal. I wish to inform you that the planning authority will not commence

12:17:39 25

26 to consider the application until the appropriate fee is paid. If no fee or a  
27 fee less than the appropriate fee has been received by the council on the  
28 expiration of two months commencing on the day the application was received,  
the application will be regarded as having been withdrawn.

29

12:17:53 30

The correct fee for the above-mentioned application is 20,000 pounds. Please

12:17:57 1 quote the register reference number as stated above when submitting the fee".  
2  
3 They did in fact go on to consider your bylaw approval. We may take it  
4 therefore that they were paid the amount of 20,000, although your file does not  
12:18:12 5 indicate the source from which the 20,000 pounds came.  
6 A. There was a decision on the application.  
7 Q. 274 Yes.  
8 A. Right.  
9 Q. 275 As we know, the application a was submitted by Tiernan Homes Limited. The  
12:18:32 10 company which was selling the lands to Tiernan Homes Limited was Southfield  
11 Property Company Limited. And we'll see at an internal document of  
12 Southfield's at page 987. In which it records certain expenditure. This is  
13 a reconciliation account of Southfield's current account. There are four  
14 cheques mentioned here. The second cheque is of the 18th of February 1990 in  
12:19:09 15 the sum of 20,000 pounds. That is the date upon which the cheque was drawn.  
16  
17 We will see at page 970 the cheque reference number 2652, which is the cheque  
18 for 20,000 pounds, was made payable to Binchy and Partners on the 18th of  
19 February. The funds to meet that we'll see at page 969 on the 21st of  
12:19:58 20 February the cheque 2652 was presented. And a debit on the current account of  
21 22,000 pounds -- sorry 20,000 pounds for cheque 2652. It put the account into  
22 overdraft and there was an account transfer of 20,000 to bring it back into  
23 credit. That transfer coming from the deposit account of Southfield.  
24  
12:20:31 25 So that at the time that the demand was being made by the County Council for  
26 20,000 pounds, there is an expenditure of Southfield in precisely that sum made  
27 payable to Binchys by way of a cheque. And you have no record of --  
28 A. No, unfortunately.  
29 Q. 276 How it was that you came to pay the 20,000 pounds to the council?  
12:20:54 30 A. I just can't recall, I'm afraid.

- 12:21:05 1 Q. 277 In addition to the cheque payment for that amount which we saw at page 987, if  
2 we could have that back on screen, please. We see cheque No. 2654 made  
3 payable to you on the 21st of March of 1990. In the sum of 16,250 pounds.  
4 And do you have a recollection of receiving that amount of money at that time?
- 12:21:47 5 A. Oh, I do.
- 6 Q. 278 In March? And in respect of what work was it that you were paid 16,250 pounds  
7 on the 21st of March 1990?
- 8 A. That was a fee in relation to a planning application which I'd lodged on behalf  
9 of John Caldwell for industrial development at Baldoyle. The agreed fee was  
10 13,000. And the amount there includes the VAT element as 13,000 plus.
- 12:22:07 10 Q. 279 Do you know of any reason why Southfield the company which was the owner of the  
11 Coolamber lands was paying you in respect of planning fees which were incurred  
12 to you in respect of property at Baldoyle?
- 13 A. It really didn't matter to me once it was paid for.
- 14 12:22:31 15 Q. 280 I appreciate it didn't matter to you but I'm enquiring as to why --
- 16 A. It didn't strike me as to why there were a number of different company names  
17 emerging from Fitzwilliam Square and they really meant nothing to me.
- 18 Q. 281 Not only did they mean anything to you and I can put that to you on the basis  
19 that as long as --
- 12:22:54 20 A. Nothing turned on it as far as I was concerned.
- 21 Q. 282 But I think we'll see that not only were you billing one company but you were  
22 being paid by another; isn't that right?
- 23 A. Correct.
- 24 Q. 283 The name Bauval I think had been given to you as the company involved in the  
12:23:15 25 lands which were the industrial lands?
- 26 A. Yes in Baldoyle.
- 27 Q. 284 Isn't that right?
- 28 A. Uh-huh.
- 29 Q. 285 On that basis, you raised an invoice on the 23rd of February 1990 which we see  
12:23:26 30 at page 2816. You addressed your invoice to Bauval Limited at 29/31 Duke

- 12:23:41 1 Street, Douglas in the Isle of Man.
- 2 A. Yes.
- 3 Q. 286 I take it that that was an address which had been given to you by?
- 4 A. John Caldwell.
- 12:23:48 5 Q. 287 By somebody. By John Caldwell?
- 6 A. Yes.
- 7 Q. 288 And what is Mr. Caldwell say that the connection between Bauval and the lands
- 8 between Baldoyle was?
- 9 A. Well when I was seeking instructions in relation to the planning application
- 12:24:02 10 for the lands in Baldoyle, the industrial development, I wrote to John Caldwell
- 11 and I said look it, I've got no instructions here, I'm doing no work on this
- 12 until I get instructions. And out of the blue a letter came from this company
- 13 for me to proceed with the design of the industrial development. So obviously
- 14 it hasn't fallen out of the sky, there's a link between Bauval and John
- 12:24:36 15 Caldwell. I proceeded.
- 16 Q. 289 Right. So you raised this invoice in anticipation I assume that Bauval
- 17 Limited would pay?
- 18 A. Yes, well they were the people who instructed me so I raised the invoice with
- 19 them.
- 12:24:52 20 Q. 290 And we'll see at page 985 the cheque which paid you that amount is a cheque
- 21 drawn on the account of Southfield Property Company Limited?
- 22 A. Correct.
- 23 Q. 291 Isn't that so? We'll see then somebody has noted on the bottom of it there
- 24 that it's posted re planning fees.
- 12:25:15 25 A. Uh-huh.
- 26 Q. 292 Insofar as they were planning fees in so far as you're concerned had they any
- 27 connection with Southfield the company that owned the Coolamber lands?
- 28 A. Just say that again, sorry.
- 29 Q. 293 Is insofar as they were posted as planning fees, did you see any planning fee
- 12:25:30 30 connection with the Coolamber lands and Southfield?

- 12:25:33 1 A. No, no.
- 2 Q. 294 No. The industrial development lands at Baldoyle involved I think an  
3 agreement between yourself and the promoters of that project that you would be  
4 paid 20,000 pounds; isn't that so?
- 12:26:00 5 A. Correct, that's right, yes.
- 6 Q. 295 And the appropriate rate of VAT that follow upon that?
- 7 A. Correct.
- 8 Q. 296 And the invoice that we saw was for 13,000 and the balance was 3,250 pounds in  
9 respect of the VAT at the rate applicable at the time; isn't that so?
- 12:26:21 10 A. Correct.
- 11 Q. 297 And that re as a resulted in your receipt of the sum of 16,250?
- 12 A. Correct.
- 13 Q. 298 I think you subsequently billed for the balance of the amount which was due to  
14 you, at page 1470 we see that. Where on the 6th of September 1991, 16 months  
15 later, you send invoice No. V 186.
- 12:26:44 16 A. Yes.
- 17 Q. 299 And that is for the agreed fee in respect of application and appeal for site  
18 development works at the industrial development for industrial development  
19 rather amount now due 7,000 VAT 21%, 1,470. Total 8,470 pounds; isn't that  
20 right?
- 12:27:13 21 A. That's correct.
- 22 Q. 300 And this copy that we have here is your copy of.
- 23 A. Absolutely, yes.
- 24 Q. 301 Of the document; isn't that right? And we see on the following page, 1471,  
25 presumably an original of this document.
- 12:27:27 26 A. Correct.
- 27 Q. 302 Sent by you; isn't that right? Now, in this instance you haven't billed Bauval  
28 Limited for the money?
- 29 A. Um.
- 12:27:43 30 Q. 303 You've billed Southfield.

- 12:27:44 1 A. Southfield, correct.
- 2 Q. 304 And is there an explanation for that?
- 3 A. Well I was paid by Southfield in respect of the first tranche, the 13,000 and
- 4 the balance, if Southfield paid the first bit I expected them to pay the second
- 12:28:00 5 part.
- 6 Q. 305 Right. I think your attempts to recover this amount were not immediately
- 7 successful; is that right?
- 8 A. I think the reply would be that they were totally fruitless.
- 9 Q. 306 You engaged solicitors to advise you in relation to your claim for these funds.
- 12:28:30 10 And a draft letter was prepared by Mr. James Foy of Smith Foy & Partners on
- 11 your behalf on the 5th of October 1994. If we could see that at page 3282.
- 12
- 13 This reverts back now to Bauval. We had been dealing with Southfield so far.
- 14 And this draft is one to be sent to the secretary Bauval, Douglas, Isle of Man.
- 12:29:03 15 Regarding lands at Baldoyle:
- 16
- 17 "We act for the above named John J O'Connor and Associates who were instructed
- 18 by one of your directors, Mr. Martin Bullock, in or about January of 1990. To
- 19 process an industrial and residential planning application in respect of lands
- 12:29:23 20 at Baldoyle, County Dublin.
- 21
- 22 It was agreed that the following fees would be paid to Mr. O'Connor".
- 23
- 24 Before we get into the detail of the fees. I think it's correct to say that
- 12:29:34 25 for the purpose of these calculations the author of this letter has inserted
- 26 23% of the rate of VAT, whereas 21% of VAT was the figure at the time when the
- 27 invoices were raised. I mention this because there is a disparity between
- 28 these figures in this letter and the figures which had been reflected in the
- 29 invoices; isn't that so?
- 12:29:58 30 A. Yes, that's correct.

- 12:29:59 1 Q. 307 But the fees themselves are, firstly, 20,000 pounds. And was that the  
2 combination of the 13 which was reflected in the 16,250 pound cheque to you?  
3 A. Yes.
- 4 Q. 308 And it's done here as a total. A credit is given for an amount paid, which is  
12:30:26 5 clearly an error because you were paid 16,250 not 15,730?  
6 A. Correct, yes.
- 7 Q. 309 So the figures are a little bit incorrect in this.  
8 A. Yes.
- 9 Q. 310 The industrial planning application is separate and distinct from another  
12:30:50 10 application which we see as the residential planning application.  
11 A. Correct.
- 12 Q. 311 Isn't that right?  
13 A. Correct.
- 14 Q. 312 And that residential planning application, is that a second and separate scheme  
12:31:02 15 of development for 92 houses at a site at Stapolin?  
16 A. Correct.
- 17 Q. 313 In Baldoyle?  
18 A. Absolutely. Yes.
- 19 Q. 314 And both of these lands formed part of the lands which had been Endcamp's  
12:31:16 20 lands; isn't that so?  
21 A. Correct.
- 22 Q. 315 And the companies in question were companies which asked you to put in planning  
23 applications for them; isn't that right?  
24 A. That's correct.
- 12:31:30 25 Q. 316 Again, in relation to the residential development, is it a case that you were  
26 billing the company Southfield Limited for those charges also?  
27 A. I think that's on the invoice. You probably have a copy of my invoice there.
- 28 Q. 317 You see at page 1472 invoice No.  
29 A. Yes.
- 12:31:55 30 Q. 318 V 185. There's a fee in respect of site survey and lodgement for planning

- 12:32:01 1 permission as agreed. And that sum is for 6,900 pounds; isn't that right?  
2 With VAT of 1,449 pounds?
- 3 A. Yes.
- 4 Q. 319 And if we revert back to page 3282 we'll see it's the same, 6,900 pounds as  
12:32:23 5 item B, the residential planning application?
- 6 A. Yes.
- 7 Q. 320 But the VAT rate is different at 23 rather than 21.
- 8 A. Correct.
- 9 Q. 321 Now, do I understand the sequence of these events to be that you were engaged  
12:32:42 10 initially by Mr. Caldwell in relation to the Coolamber lands, the lots that are  
11 not being sold on to Mr. Tiernan?
- 12 A. Yes.
- 13 Q. 322 At that time he discusses with you the fact that Mr. Galbraith is no longer --
- 14 A. Correct.
- 12:32:56 15 Q. 323 Available to him because of illness or whatever. He asks you to act on his  
16 behalf in relation to Coolamber?
- 17 A. Yes. It was probably simultaneously with the requirement to process the  
18 application for Joe Tiernan.
- 19 Q. 324 Yes.
- 12:33:20 20 A. Probably was a parallel instructions by Tiernan and instructions by John  
21 Caldwell.
- 22 Q. 325 And also from the documentation we've seen already, it was contemporaneous with  
23 Baldoyle.
- 24 A. Baldoyle.
- 12:33:34 25 Q. 326 And also with Cruck House?
- 26 A. Correct.
- 27 Q. 327 Effectively, you were being taken on as the architect for the ongoing projects  
28 at the time, which included those three, Baldoyle, Cruck House, and Coolamber?
- 29 A. Correct.
- 12:33:48 30 Q. 328 From the point of view of Mr. Caldwell and whoever else was involved with him?

- 12:33:53 1 A. Yes.
- 2 Q. 329 You had initially not been given the name of anybody as a company or a  
3 corporate entity that you should bill?
- 4 A. Correct.
- 12:34:03 5 Q. 330 You were paid initially by a bank draft. You subsequently raised an invoice  
6 against Southfield?
- 7 A. Yes.
- 8 Q. 331 Southfield was the company you billed, not only for the Coolamber lands which  
9 had been owned by Southfield and a portion of which remained in the ownership  
10 of Southfield.
- 11 A. That's right.
- 12 Q. 332 But also in respect of Baldoyle which as far as we can see has no title  
13 whatsoever to Baldoyle; isn't that right?
- 14 A. Correct.
- 12:34:35 15 Q. 333 And in relation to the Baldoyle lands, while you initially started by way of  
16 raising an invoice against Bauval with an address in the Isle of Man when you  
17 did so you were paid by Southfield?
- 18 A. Absolutely, correct.
- 19 Q. 334 And you followed that then by seeking the remainder of the fees due on that  
12:34:56 20 project, that is the industrial project, by billing Southfield who had paid you  
21 in the first instance?
- 22 A. That's correct.
- 23 Q. 335 They didn't pay you the second time around. And in relation to your second  
24 invoice for 7,000, you weren't paid by Bauval?
- 12:35:10 25 A. It hasn't by paid to date.
- 26 Q. 336 No. So you wrote to them, through your solicitor, in an effort to recover  
27 those fees from them?
- 28 A. Correct.
- 29 Q. 337 And then independent of that there was also the lands which were the  
12:35:24 30 residential lands in Baldoyle.

- 12:35:26 1 A. Yes.
- 2 Q. 338 And again, you identified Southfield as the appropriate person.
- 3 A. Correct.
- 4 Q. 339 To pay in respect of that; isn't that so?
- 12:35:33 5 A. That's correct.
- 6 Q. 340 The Baldoyle residential property was to be paid for in two tranches also;
- 7 isn't that correct?
- 8 A. Correct.
- 9 Q. 341 Were you paid in respect of the first tranche do you recollect?
- 12:36:00 10 A. Yes, I was fully paid the first amount, I think it was about 6,900 plus VAT.
- 11 Q. 342 Yes. And was that paid by Southfield to you?
- 12 A. I would have invoiced.
- 13 Q. 343 You would have invoiced --
- 14 A. I would be fairly certain it was Southfield because I received all my cheques
- 12:36:26 15 from Southfield.
- 16 Q. 344 Page 2187 I think we'll see the invoice?
- 17 A. Yes.
- 18 Q. 345 And that is to a fee in respect of site survey amount now due 50%, 6,900 plus
- 19 1,587 with a note at the bottom of it, "the remainder to be paid upon the
- 12:36:48 20 determination of the application."
- 21 A. Yes.
- 22 Q. 346 The remainder sum then was on invoice No. V 186 I think. Sorry. I'm wrong
- 23 there.
- 24 It's referred to in your letter, sir -- sorry. It's referred to certainly in
- 12:37:26 25 the draft letter of your solicitor of being a balance due, that's at page 3282.
- 26 Fee agreed, balance due 8,487; isn't that right?
- 27 A. Yes.
- 28 Q. 347 I'll find that invoice for you.
- 29
- 12:37:44 30 But in the meantime, that was still outstanding as of the 21st of February

- 12:37:50 1 1995. We see that at 3281.
- 2
- 3 On this occasion your solicitor is writing to you and saying that he has now
- 4 furnished papers to Paul Fogarty, barrister, to draft proceedings for the
- 12:38:06 5 recovery of the sum of 8,870 being the outstanding sum due to you by the above
- 6 named company in connection with the industrial development application at
- 7 Baldoyle." That's the Bauval aspect. It then goes on to deal with the
- 8 residential aspect. "Please confirm if you wish me to formally write to Sabre
- 9 Developments Limited in relation to the outstanding fees on the residential
- 12:38:32 10 planning application for Baldoyle in the sum of 8,487".
- 11
- 12 So it would appear that you were owed in respect of both the industrial and the
- 13 residential intended developments in Baldoyle; isn't that right?
- 14 A. Correct.
- 12:38:49 15 Q. 348 In one instance though you were owed by Bauval/Southfield. In the other
- 16 instance, you'd billed Southfield but we now see a reference to Sabre
- 17 Developments Limited. And can you explain how that arises?
- 18 A. I'm afraid I just can't be certain as to what or how the Sabre company evolved.
- 19 All of my correspondence was with John Caldwell and just it was difficult to
- 12:39:34 20 find out exactly what the target should be in terms of the proceedings that I
- 21 was commencing and in order to recover all of my fees. And I think the wisdom
- 22 at that time was that this whole thing could have cost me an awful lot more
- 23 money and I'd get nothing at the end of the day. And we'll see I have written
- 24 a little note at the bottom right hand corner of that 23rd of February '95 to
- 12:40:05 25 hold off. I think --
- 26 Q. 349 You didn't want to involve yourself in the costs of litigation; is that it?
- 27 A. I didn't, no.
- 28 Q. 350 And obviously, the defendants were based outside the jurisdiction?
- 29 A. Correct.
- 12:40:19 30 Q. 351 Did you ever consider suing Mr. Caldwell personally on the basis that he was

- 12:40:24 1 the person who had instructed you in these matters?
- 2 A. Around about the same time, there was an arbitration process going on in  
3 relation to the 92 houses. It related to the contractual obligations of the  
4 successor, the purchaser of the Baldoyle lands. And there was an arbitration  
12:40:50 5 process in, I just can't remember exactly where they were offhand, but there  
6 were a number of eminent senior council men present. And the question of my  
7 fees in relation to this whole process arose.  
8  
9 And the consensus at the time was that I really was wasting my time pursuing  
12:41:17 10 the matter. It would cost me a lot of money to try and secure eventual  
11 payment. In relation to the housing element of it, the residential element,  
12 my fees were ultimately paid by the purchaser of the Baldoyle, the residential  
13 lands. So in effect half of my, half of what was due to me was paid. But  
14 the 7,000 in relation to the industrial was never paid.
- 12:41:51 15 Q. 352 Was that Hayesbury?
- 16 A. No, it was Tower Homes.
- 17 Q. 353 Tower Homes?
- 18 A. Tower Homes.
- 19 Q. 354 In your dealings with Mr. Caldwell in relation to these three plots of land  
12:42:10 20 that we're talking about. Were you ever given to understand that there was  
21 any difference in the ownership between the Coolamber/Southfield interest and  
22 the Baldoyle/Southfield interest that was expressed to you?
- 23 A. No. No. In all of these situations I never met with a client. It was  
24 always Mr. Caldwell.
- 12:42:42 25 Q. 355 And the amount obviously to put in a planning application you require pretty  
26 specific instructions as to what you're going to build, to what standard it's  
27 going to be built, what size the infrastructure will be beneath it whether it's  
28 to serve only that development or other developments; isn't that right?
- 29 A. That's right.
- 12:43:07 30 Q. 356 There would be quite an amount of technical information required from you for

12:43:13 1 the client, what that might be in order for you to progress.

2 A. Uh-huh.

3 Q. 357 Who gave you that technical information?

4 A. In relation to?

12:43:21 5 Q. 358 In relation to Baldoyle and indeed any of the others?

6 A. I was never required. Sorry, you mean the instructions for the specific units

7 that were going to be built?

8 Q. 359 Yes.

9 A. It was left entirely in relation to myself. In relation to the residential,

12:43:37 10 it was how many houses were going to get on it, what was the numbers. There

11 was no particular requirement as to whether these were two-bedroom,

12 three-bedroom for our bedroom houses.

13

14 It was the numbers in relation to the industrial it was how much land can we

12:43:49 15 get covered by the planning. It was all about getting a planning permission,

16 a planning consent.

17 Q. 360 But we know from the contracts that dealt with the acquisition of the lands at

18 Baldoyle that they shared equal clauses with regard to the ownership of the

19 infrastructure and pipe sizes for the benefits of the ultimate or sorry, the

12:44:16 20 superior owner. So all of that required to be addressed as to pipe sizes and

21 matters of that nature; isn't that right?

22 A. There were contractual obligations.

23 Q. 361 Yes.

24 A. Certainly in relation to the Baldoyle lands, there were stipulations regarding

12:44:36 25 pipe sizes to be included in the planning application.

26 Q. 362 As regards Bauval and Sabre, did you understand there to be any distinction

27 between those two companies?

28 A. No.

29 Q. 363 One of them apparently was a company which had the right to exercise an option

12:44:52 30 so as to require Endcamp to sell it tranches of land of not less than ten

12:45:01 1 acres.

2 A. Yes.

3 Q. 364 And paperwork accompanying the transaction suggests that Bauval did that and  
4 then sold on to Sabre at a profit to Bauval. But as far as you're concerned  
12:45:15 5 there's no distinction between the two of them?

6 A. No.

7 Q. 365 To revert to the lands at Coolamber and in particular Mr. Tiernan's take.  
8 We'll see at page 988 that on the 21st of March 1990, Mr. Caldwell was in  
9 discussion with you. This is an attendance on you at 2:30 on that date in  
12:45:46 10 which he was discussing the pipe sizes and gradients for the development of the  
11 lands which were being sold to Mr. Tiernan; isn't that so?

12 A. Yes.

13 Q. 366 I think we see the names of a number of council officials, we see the potential  
14 for the development of houses which would be served by the pipe work  
12:46:08 15 infrastructure, 15 to 20,000 houses perhaps in that area.

16 A. Yes.

17 Q. 367 Proposals for alternative pipeline where apparently a requirement of the chief  
18 engineer. Your advice or your information passed to Mr. Caldwell, spoke of a  
19 12 inch pipe with a gradient of 1 to 300. And then if other lands were to be  
12:46:36 20 connected perhaps he was happy to see a larger pipe of 525 millimeter.  
21 Quite detailed discussion I suggest?

22 A. Yes.

23 Q. 368 And curious that you're discussing the detail of this with the vendor rather  
24 than with Mr. Tiernan, who would be your client effectively in respect of these  
12:47:00 25 lands which would be affected by this proposal; isn't that right?

26 A. Yes.

27 Q. 369 Was there a distinction between the instruction you received throughout this  
28 process from Mr. Tiernan and Mr. Caldwell or was it just one seamless  
29 instruction sometimes from Mr. Tiernan, sometimes from Mr. Caldwell?

12:47:24 30 A. Um, the -- I'd say most of my instructions would have come, the vast majority

12:47:30 1 of my instructions would have come from Joe Tiernan. But obviously, I did  
2 have quite a number of meetings with Mr. Caldwell, where we may have fleshed  
3 out as to what the development capacity of the area was. For example, we all  
4 knew about this 555 diameter pipe and he may have asked me, you know, how many  
12:47:52 5 acres, how many houses would that size pipe facilitate. And there would have  
6 been in generality discussion about the matter. But I don't, I have no  
7 specific recollection of the meeting or of the, you know, the way that the  
8 discussion evolved.

9 Q. 370 Right. But you were in discussion with him, obviously, discussing the detail  
12:48:22 10 of.

11 A. Absolutely, yes.

12 Q. 371 Of this development. And I think also in the context of the capacity of the  
13 infrastructure which was being put in under the Coolamber lands to facilitate  
14 development Westward.

12:48:37 15 A. Yes.

16 Q. 372 Of the lands themselves; isn't that right?

17 A. Yes.

18 Q. 373 The lands immediately to the west are those of Mr. Liam Lawlor at Somerton?

19 A. Well there was another 300 acres which were owned by the Crowley family which  
12:48:53 20 surrounded Liam Lawlor and I think that was a bigger agenda.

21 Q. 374 Well there's at the Airlie Stud.

22 A. Well they were lands further to the north and would not have drained via the  
23 drainage route that might have gone through the Coolamber lands.

24 Q. 375 Right. We'll see that the lands at Somerton were the subject of a specific  
12:49:25 25 discussion between yourself and Mr. Caldwell, which is recorded at pages 29 --  
26 pages 993 and more particularly at 994.

27  
28 If we start at 993 we'll see that on the 23rd of March 1990 there's a  
29 discussion there between himself and yourself by telephone. The telephone  
12:49:49 30 attendance. And it's dealing firstly with the connection of 60 to 70 acres

12:49:54 1 Westwards; you see that?

2 A. Yes.

3 Q. 376 "Possible to drain those lands. Not necessary to connect into the manhole.

4 South side of site that is the Newcastle site", not clear as to what that is.

12:50:14 5 "There's no need to go down the road. There's an invert at the foul sewer of

6 53.66 on the Newcastle side".

7

8 So this is discussing that detail that I mentioned earlier of the possibility

9 of drainage of that area; isn't that right?

12:50:33 10 A. Yes.

11 Q. 377 And you mentioned the question of the drainage of the Crowley lands. I think

12 that had come up very early on in in your discussions with Mr. Caldwell?

13 A. Yes.

14 Q. 378 In January of 1990?

12:50:49 15 A. Uh-huh.

16 Q. 379 There was the queries raised of you as to the capacity to drain those lands.

17 We'll see that at page 911, Mr. Caldwell wrote to you as a director of

18 Southfield saying:

19

12:51:02 20 "I would be obliged to receive confirmation that Southfield Property Company

21 provides the plans and drawings for the public house, shop and petrol station,

22 showrooms for the 21st of December 1989.

23 I also note that it is in order for the Crowley land on the other side of the

24 Newcastle Road to drain its surface water into the stream and surface water

12:51:25 25 system associated with Tyrell's lands -- that's the Coolamber land. Should it

26 prove not to be technical feasible to have the surface water pipe at the Tandy

27 Lane end of the Tyrells' land at a sufficient depth to drain the Crowley's

28 land. This right belongs to Southfield, its successor and assigns". So,

29 certainly there was a consideration on the part of Mr. Caldwell Southfield to

12:51:53 30 the possibility of dealing with the drainage of a much larger area on the

- 12:51:57 1 Western side of the road; isn't that right?
- 2 A. Yes.
- 3 Q. 380 In relation to Somerton, we'll see at page 995 -- sorry. I beg your pardon.
- 4 994. That perhaps you had already taken levels at Somerton. You see
- 12:52:27 5 immediately beneath the reference to 60 and 70 acres. "Taken levels at
- 6 Somerton. Won't drain into the Tyrell's land. Far too low"; isn't at that
- 7 right?
- 8 A. Correct.
- 9 Q. 381 So that the land which was on the Western side of the road, that is the
- 12:52:48 10 Newcastle Road, and to the northwest, was too low to drain through Coolamber?
- 11 A. Correct.
- 12 Q. 382 Right. But presumably would be at a sufficient level to drain through the
- 13 Cruck House, Pentagon pipeline; isn't that right?
- 14 A. That's correct.
- 12:53:04 15 Q. 383 And you were investigating the general capacity of the pipe work infrastructure
- 16 in the area to drain those lands, both the existing pipe work, which includes
- 17 Pentagon, and new pipe work that would in go in running through the Coolamber
- 18 lands; isn't that right?
- 19 A. Yes. We may have been trying to establish as to whether it was necessary or
- 12:53:27 20 not to cross the Grifeen Park with this very large diameter surface water pipe
- 21 and to see was there another possible route down along the Newcastle Road via
- 22 the Crowley lands that would actually connect into the back of Cruck House near
- 23 Stassen's land.
- 24 Q. 384 Right. Because they had negotiated already a wayleave for surface water into
- 12:53:53 25 the Grifeen River at a point --
- 26 A. Yes.
- 27 Q. 385 Further up?
- 28 A. Correct.
- 29 Q. 386 And that was done by Pentagon Property Company?
- 12:54:01 30 A. Yes.

- 12:54:04 1 Q. 387 The detail of these proposed levels, drawings, and intended works was a matter  
2 which at the conclusion of the discussion with you Mr. Caldwell indicated he  
3 would be contacting Mr. Tiernan to discuss, as we see at page 997. This is  
4 the last page of the attendance that I've referred to earlier.
- 12:54:40 5  
6 "I said that both". Noted the position. I don't know. But it was to call  
7 Mr. Tiernan at the conclusion of having this detailed discussion with you.
- 8 A. Correct.
- 9 Q. 388 And we see beneath it then that he phoned Mr. Tiernan, he wasn't in. He  
12:55:04 10 phoned him again etc.  
11  
12 So it seems that there was some sharing of information between yourself,  
13 Mr. Caldwell, Mr. Caldwell in turn would discuss it with Mr. Tiernan and  
14 presumably he'd get back to you. There was only one architect involved and  
12:55:23 15 that was you.  
16 A. That's right.
- 17 Q. 389 Whether you were acting for Mr. Caldwell?
- 18 A. That's right.
- 19 Q. 390 Or his companies. For Mr. Tiernan or whatever that might be. And they were  
12:55:31 20 happy to share your expertise and to rely upon the work that you were doing;  
21 isn't that right?
- 22 A. Yes, that's right.
- 23 Q. 391 You were involved to some extent in the dispute which arose when Mr. Ray  
24 Jackson, the owner of Coolamber House and its lands, challenged the entitlement  
12:55:59 25 of the parties; isn't that right?
- 26 A. Yes.
- 27 Q. 392 You took issue with some of the allegations that were being made about what was  
28 or was not included in the original application?
- 29 A. Yes.
- 12:56:09 30 Q. 393 It wasn't then until 1991, I take it, that you became aware that the planning

- 12:56:18 1 permission had lapsed. Sorry, had been reversed.
- 2 A. Yes.
- 3 Q. 394 And that in consequence, Mr. Tiernan did not exercise his contractual right and
- 4 obligation to acquire the lands; isn't that right?
- 12:56:35 5 A. That's correct.
- 6 Q. 395 Do you remember any specific discussion with Mr. Tiernan as to what was to take
- 7 place now that the planning permission was no longer extant?
- 8 A. I think the initial reaction was to put in a much smaller application.
- 9 Q. 396 Yes.
- 12:56:54 10 A. And I think that proceeded for, it might have been for around 214 houses or
- 11 something like that.
- 12 Q. 397 Yes. I think that that in fact had been put in in advance of a Bord Pleanala
- 13 decision rescinding the initial decision. We see that at page 1335. Where
- 14 on the 25th of October 1990 on behalf of Tiernan Home Builders you applied for
- 12:57:23 15 permission for 214 houses.
- 16 A. Yes.
- 17 Q. 398 Kind of a fall-back position but it still would require a Section 4 route to be
- 18 follow; isn't that right?
- 19 A. Correct.
- 12:57:35 20 Q. 399 So that position was there in the event that the other one had not succeeded.
- 21 And I think immediately after that was lodged Mr. Caldwell as a director of
- 22 Southfield on the 26th of October 1990, sought a set of the original plans
- 23 which were lodged for the material contravention motion. He did that at page
- 24 1337.
- 12:58:02 25 A. Yes.
- 26 Q. 400 So Mr. Caldwell was keeping himself up-to-date with everything that took place?
- 27 A. Oh, yes.
- 28 Q. 401 In relation to this project; isn't that right?
- 29 A. Correct.
- 12:58:17 30 Q. 402 Now, I think you had initially advised that the filling station site was a

12:58:31 1 non-runner?

2 A. Completely.

3 Q. 403 From the beginning. And I think that subsequently Binchy and Partners

4 confirmed to Mr. Tiernan that they had no objection to a planning application

12:58:45 5 being lodged for housing on that part of the lands, which had formerly formed

6 part of the petrol station site. We see that at page 1343.

7

8 Consent was given to an application for this part of the land being made by

9 Mr. Tiernan's company.

12:59:10 10

11 Now, of course the fact that a person has no objection to somebody making a

12 planning application doesn't give them the legal status to do so; isn't that

13 right?

14 A. Correct.

12:59:21 15 Q. 404 They have to have a legal interest in the property in order to do so. And as

16 of this date, the 1st of November 1990, these lands apparently were still part

17 of the excluded lands under the only contract that existed for sale at the

18 time.

19 A. Correct.

12:59:37 20 Q. 405 That was the 1989 contract was valid until 1991 until it was rescinded in

21 December. But you know of no other contract at this time in 1990, whereby

22 these lands were sold to Mr. Tiernan, either by way of option otherwise; isn't

23 that so?

24 A. No, I would have no idea.

12:59:59 25 Q. 406 Well I mean, it didn't happen I think because we'll see that negotiations to

26 acquire that plot of land were subsequently commenced in the year 1994 when it

27 was sought to acquire these lands?

28 A. Yes.

29 Q. 407 That is by Mr. Tiernan?

13:00:18 30 A. Uh-huh.

13:00:19 1 Q. 408 But we look to the documentation at page 2205. We see on the 18th of March  
2 1994. And this is at a time when a new company called Kylewood Construction  
3 Limited, a company of Mr. Tiernan's, had contracted in December 1992 to acquire  
4 the lands for 2.7 million pounds. And those lands were again the lands with  
13:00:53 5 the exception of the filling station site, I'll call it that, although it was  
6 no longer to be used for that purpose, and also the pub site and commercial  
7 site.

8 A. Yes.

9 Q. 409 What was being sold was essentially what had been the subject matter of the  
13:01:08 10 1989 contract.

11

12 CHAIRMAN: It's just gone one o'clock.

13

14 MR. O'NEILL: Sorry.

13:01:15 15

16 CHAIRMAN: We will sit again at two o'clock.

17

18

19 **THE TRIBUNAL THEN ADJOURNED FOR LUNCH.**

20

21

22

23

24

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27

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30

**THE TRIBUNAL RESUMED AS FOLLOWS AT 2:00 P.M.:**

13:01:44 1  
2

3 Q. 410 MR. O'NEILL: Before the break, Mr. O'Connor, we were dealing with the  
4 application which you made in March, that is on the 18th of March 1994, in  
14:05:57 5 relation to a proposed development on what had formerly been considered as the  
6 petrol station site; isn't that so?

7 A. That's correct.

8 Q. 411 And I think you can confirm from your experience as an architect that in order  
9 for a person to apply for planning permission they have to have a legal  
14:06:13 10 interest in the lands; isn't that so?

11 A. Correct.

12 Q. 412 And as we see from your letter at page 2205 you were lodging an application for  
13 planning permission on behalf of your clients, Tiernan Homes, applying for two  
14 three-bedroom dormer and bungalows, two four bed houses and 21 three bed houses  
14:06:37 15 at Finnstown Lucan. Sorry, we if we could have that on screen, please, 2205.  
16 In the first paragraph it sets out what you are seeking. And it makes  
17 references to the earlier permission, that is for the 505 houses.  
18  
19 "The council will be aware that permission has been sought by my clients for a  
14:07:09 20 large development adjacent to the site the subject matter of this application  
21 and all the services proposed will be available to cater for the application.  
22  
23 My clients have now acquired the subject lands and the proposed development  
24 will facilitate a satisfactory interrogation of the entire development in  
14:07:27 25 support of the application you lodge a number of items including planning  
26 fees."  
27  
28 And as we see , that application is dated on the 18th of March 1994.  
29 Now, can you say who it was who indicated to you that Tiernan Homes had in fact  
14:07:44 30 acquired these lands at the time?

14:07:48 1 A. Joe Tiernan. The application for the petrol filling station failed, as I  
2 advised earlier that it would fail. So the obvious use for the lands was to  
3 put it into residential, it had been zoned hadn't it at the time? I think it  
4 had been zoned at that time.

14:08:05 5 Q. 413 Yes.

6 A. And it made an ideal location for a show house complex. And that was what  
7 transpired Joe Tiernan built several show houses in the vicinity of this block  
8 of 25 sites I think it was.

9 Q. 414 We'll see that whilst that letter was written on the 18th of March 1994,  
14:08:32 10 Tiernan Property Group Limited wrote to Miley & Miley Solicitors on the 13th of  
11 April of 1994. We see that at page 2223. On the 13th of April under the  
12 subject matter Vino Property Limited lands at Finnstown, Lucan, County Dublin.  
13  
14 "Dear sir. I refer to the above lands and contract between Vino Properties  
14:08:56 15 Limited and Kylewood Construction Limited".  
16  
17 I might just confirm Kylewood Construction Limited was the Joe Tiernan company  
18 which it contracted in December 1992 to buy the lands that had formerly been on  
19 offer to Finbar Cahill on trust. But in a a new contract on which there was a  
14:09:17 20 2.7 million pound consideration as opposed to 2.2 million in the original  
21 consideration.  
22  
23 "I wish to know if your clients would be interested in disposing of the  
24 retained two and a half acres of land marked on the enclosed location map.  
14:09:32 25 Kylewood construction would pay 250,000 pounds for same with the same closing  
26 date for the other lands. Look forward to hearing you from you at an early  
27 date".  
28  
29 Now, those lands were in fact the lands the subject of your application; isn't  
14:09:48 30 that so?

- 14:09:48 1 A. It sounds as if the lands might be bigger. Were they not commercial lands  
2 here?
- 3 Q. 415 The commercial lands were they not sold to Mr. ?
- 4 A. At the time, yes, to Ricciland.
- 14:10:04 5 Q. 416 To Ricciland. I think you were responsible for drawing the maps for that.  
6 We saw that a little earlier. I believe this to be what was called the petrol  
7 station.
- 8 A. It looks like that, yes.
- 9 Q. 417 In the event that that is so of course, it mean that is Mr. Tiernan had applied  
14:10:26 10 for planning permission through you for lands that he didn't own at the time?
- 11 A. Correct.
- 12 Q. 418 And couldn't reasonably have assumed that he would own until such time as he'd  
13 satisfactorily negotiated a price with the vendor; isn't that right?
- 14 A. Well there was obviously a consensus between himself and John Caldwell in  
14:10:45 15 relation to the processing of an application. There was an earlier letter  
16 that you read.
- 17 Q. 419 True. But the earlier letter doesn't give somebody a legal entitlement to  
18 apply for planning permission. Obviously they can enter into a contract, be  
19 it to purchase or what have you. But something that confers some legal  
14:11:03 20 interest on the party enabling them to apply for planning. What you were  
21 informed was that Mr. Tiernan was the owner of the land?
- 22 A. Correct. Yes.
- 23 Q. 420 Not that he had an option to purchase them. Not that he was contracted to  
24 purchase them?
- 14:11:16 25 A. Yes.
- 26 Q. 421 But that he was the owner of them?
- 27 A. Correct. That would be correct.
- 28 Q. 422 And that wouldn't appear to be the case. If we're talking about the same  
29 lands here and I suggest we are talking about the same lands?
- 14:11:26 30 A. Yes.

- 14:11:29 1 Q. 423 So that either Mr. Tiernan and Mr. Caldwell were aware in advance of your  
2 planning application and of what the situation was that in fact Mr. Tiernan was  
3 the owner of the lands or else there wouldn't appear to be any other  
4 explanation for this; isn't that right?
- 14:11:48 5 A. There's no other explanation.
- 6 Q. 424 The parties then go on to have a chain of correspondence suggesting negotiation  
7 of an acceptable figure to purchase this portion of lands. We see at page  
8 2267 Mr. Miley responds to the letter of the 9th, which is the -- sorry, was an  
9 earlier letter I should say. This is the 9th of June. Oh, yes. In either  
10 14:12:25 10 event, it's dealing with the suggestion that there would be an offer of 275,000  
11 pounds. So there obviously is an intermediate document there which I'm --  
12  
13 I think for the moment if we concentrate on the letter the 6th of June 1994  
14 we'll see the progression of the dealings to acquire this additional portion of  
15 14:12:48 15 land.  
16  
17 The second paragraph: "Our clients are not prepared accept your offer of  
18 275,000 pounds for the lands in question. But would entertain an offer of  
19 285,000 pounds subject to contract etc. If the foregoing figure is acceptable  
20 14:13:05 20 to you our clients will require to include the following conditions as part of  
21 the overall agreement.  
22  
23 Two small portions of land to be retained out of our clients holding. In this  
24 regard our clients will require to see a copy of the layout plan in which the  
25 14:13:21 25 notification decision to grant planning permission has been granted together  
26 with a copy of the decision once received our clients will mark out the  
27 portions of the land to be so retained."  
28  
29 Does that bring to your recollection what portions?
- 14:13:37 30 A. I don't remember this little portion that you're talking about. I don't know

14:13:40 1 what the purpose for that was.

2 Q. 425 Yes. Or indeed if it was ever retained?

3 A. I don't think it ever was.

4 Q. 426 The response to this in any event we see at page 2270 on the 7th of June, the

14:13:57 5 day after. A letter from Tiernan Property Group to Miley & Miley Solicitors:

6

7 "I refer to your letter dated the 6th and confirm as follows. 285,000 pounds

8 agreed subject to contract.

9

14:14:11 10 Copy enclosed of notification of decision to grant permission for 25 houses.

11

12 Enclosed copy map in red showing lands for sale. Your client should mark

13 areas proposed to be retained within this area subject to purchaser's

14 agreement".

14:14:28 15

16 I think this confirms secondly that it is the same portion of ground --

17 A. Absolutely.

18 Q. 427 What Mr. Tiernan is doing is now furnishing a copy of the planning permission

19 which he applied for on the basis that he was the owner of the land but he

14:14:42 20 wasn't in fact at the time the owner of the land?

21 A. Correct.

22 Q. 428 And this then of course resulted in there being amendments to the original

23 contract for sale between Vino Properties Limited and Kylewood so as to reflect

24 the additional acreage No. 1 and an increase in price accordingly; isn't that

14:15:11 25 so?

26 A. That's correct.

27 Q. 429 Now, I think that if we leave Vino out of the question for the moment. To

28 this point in time, you had been involved with a series of companies in the

29 capacity as an architect. Both vendor and purchaser effectively?

14:15:31 30 A. Uh-huh.

14:15:32 1 Q. 430 In the initial stages.

2 A. Yes.

3 Q. 431 Where you are dealing with Southfield. And you're dealing with the purchaser

4 from Southfield which is a Tiernan company. You believe it to be Tiernan Home

14:15:47 5 Builders Limited but in fact it seems that no specific company was in fact set

6 up to take the contract during that period. Your dealings with Southfield

7 ceased when the 1991 contract came to a conclusion. Southfield didn't buy.

8 A. Yes.

9 Q. 432 Sorry. Southfield didn't sell to Finbar Cahill.

14:16:12 10 A. Correct.

11 Q. 433 Right. But in this later contract that we see here Southfield is not the

12 vendor, a company called Vino is the company; isn't that correct?

13 A. That's right.

14 Q. 434 And whilst your involvement had been initially with both Southfield and

14:16:31 15 Mr. Tiernan, you were engaged to act on behalf of Vino also by Mr. Miley; isn't

16 that so, in the context of maps?

17 A. That's right.

18 Q. 435 We see at page 1982 that on the 12th of May 1993 you were written to by

19 Mr. Miley as follows:

14:17:07 20

21 "Dear Mr. O'Connor. I have been instructed by my clients, Vino Properties

22 Limited, to contact you in connection with the above property. I understand

23 that you prepared some of the maps which have been used in relation to these

24 lands. A map is now required suitable for Land Registry registration purposes

14:17:27 25 for the pub site and I would be obliged if you would be kind enough to prepare

26 this for me.

27

28 I suggest you contact me to make an appointment to call to see me so that I can

29 explain what is involved. I did try to contact you on the telephone today but

14:17:45 30 unfortunately there was no answer."

14:17:47 1  
2 That was in on the 12th of May.  
3 Can you recollect what you understood the position to be vis-a-vis the Vino  
4 Property Company on the 12th of May 1993 or thereabouts?  
14:18:00 5 A. Um, not specifically. I know that I had a request to prepare the Land  
6 Registry maps.  
7 Q. 436 Fine.  
8 A. But other than that, you know, whether it was Vino or Southfield really didn't  
9 make any impact with me.  
14:18:18 10 Q. 437 Uh-huh. Well I take it you'd have to identify, firstly, on whose authority  
11 you were acting?  
12 A. Yes.  
13 Q. 438 Isn't that right?  
14 A. Absolutely.  
14:18:28 15 Q. 439 There's a reference here to a telephone conversation with Mr. Miley. But  
16 there doesn't appear to be any attendance of yours that we have on file  
17 certainly generated by you.  
18 A. Yes.  
19 Q. 440 Arising out of this.  
14:18:41 20 A. Uh-huh.  
21 Q. 441 I'm just wondering how you came to understand who you were acting for in all of  
22 this?  
23 A. It was difficult at times I can tell you.  
24 Q. 442 Yes.  
14:18:49 25 A. My clear understanding of the time that the instructions were ultimately coming  
26 from Mr. Caldwell. That he had been carrying right through from late 1989 and  
27 he was a constant throughout the entire progression of what evolved on the  
28 site. So that Mr. Miley being involved in it was a minor distraction.  
29 Q. 443 Did that extend through to Vino Properties then, you still believed that  
14:19:21 30 Mr. Caldwell was behind that?

14:19:22 1 A. My understanding was that this was amount emanating from Mr. Caldwell.  
2 Q. 444 We'll see that on the 15th of June 1993, page 1995, Mr. Miley is writing to you  
3 in connection again with the pub site for sale.  
4

14:19:38 5 "I refer to my letter of the 12th of May last" that's the last document on  
6 screen. "And our subsequent telephone conversation. The matter of the map  
7 is now urgent. And I will accordingly be obliged if you would contact me to  
8 make an appointment to call, so that I can fully instruct you in relation to  
9 the preparation of the map."

14:19:59 10  
11 I think you did call to him. Because by the 29th of June, at page 2017 you  
12 were able to send him copies of the map as follows. 2107.  
13

14 "Dear Mr. Miley. I refer to your letter dated 15th inst and your instruction  
14:20:15 15 on the 22nd inst in connection with the above and I enclose herewith two Land  
16 Registry maps with the land in sale outlined in red. The maps are defined as  
17 suggested by the Land Registry. I trust you find them satisfactory and I  
18 enclose a note for my fees".  
19

14:20:35 20 Which you did. And you provided also a declaration, at page 2027, for Land  
21 Registry purposes indicating you were an architect retained by Vino Properties  
22 Limited. You are familiar with the lands on the folio. You say the lands  
23 outlined on the map B marked exhibit 1 are wholly comprised within the  
24 boundaries of the lands. And then we see that map at page 2028.

14:21:05 25  
26 So it is the pub. 2028. It's the pub site with the letter B there in the  
27 centre of it.  
28 A. Yes, I remember  
29 Q. 445 Though it's not in colour I take it that the outside line is the red line that  
14:21:18 30 marks the boundaries?

- 14:21:19 1 A. There are written dimensions on it actually there.
- 2 Q. 446 Yes. You were paid for that by a Mr. Miley, as we see, at page 2029.
- 3 A. Yes.
- 4 Q. 447 Now, I think there was then some further mapping, possibly a difficulty, I'm
- 14:21:44 5 not sure but it involved re mapping. As we see at page 2058, when Mr. Tiernan
- 6 wrote to you this time under the heading Tiernan Homesteads Limited re
- 7 Finnstown:
- 8
- 9 "I refer to our telephone discussion at 4 p.m. I confirm our agreement that
- 14:22:00 10 you will prepare adjusted maps immediately to reflect the position as indicated
- 11 on the map furnished to you by Miley & Miley Solicitors. This will result in
- 12 a reduction in my take of land. I will then have to negotiate with Vino
- 13 Properties and Miley & Miley to reflect this change in my situation.
- 14
- 14:22:18 15 When you speak to Mr. Miley, solicitor, you will now be able to tell him that
- 16 you have the maps ready for collection as and from tomorrow morning the 12th
- 17 inst". That's the 12th of October.
- 18
- 19 Can you recollect what that was about?
- 14:22:33 20 A. There was some difficulty in relation to the area that was to be sold to Vino.
- 21 I can't remember the specifics of it. But there was a difference of opinion.
- 22 Q. 448 Right.
- 23 A. Well between Vino's --
- 24 Q. 449 Ricciland.
- 14:23:03 25 A. There was another architect involved, who examined the maps that I had
- 26 prepared.
- 27 Q. 450 Sure.
- 28 A. And ...
- 29 Q. 451 We're still talking about the pub site here?
- 14:23:03 30 A. Absolutely completely. Totally.

14:23:05 1 Q. 452 And as a result of the view that was expressed by the other architect the map  
2 was to be redrawn with the result that Mr. Tiernan, as the purchaser, of Vino's  
3 interest through his company would be acquiring less; is that the position?  
4 A. He would be acquiring less of the overall lands.

14:23:27 5 Q. 453 Yes. And therefore he would be looking for an abatement on the purchase price  
6 to reflect that; isn't that right?  
7 A. Perhaps, yes.

8 Q. 454 I mean, there's nothing unusual about that in an arm's length transaction where  
9 the parties contract on the basis of a certain area.

14:23:43 10 A. Yeah.

11 Q. 455 If the area in fact transpires to be less they tend to apply a pro rata  
12 deduction for any lesser amount or indeed if there's a greater amount it indeed  
13 pay more for it; isn't that right?  
14 A. Yes.

14:23:59 15 Q. 456 Apparently, Mr. Miley had to get back to you in December of the same year, two  
16 months later, we see at 2115. Where again in relation to the pub site:  
17  
18 "I enclose a letter dated 24th ult with map and ex provided by Smith Foy &  
19 Partners which is self explanatory. Would you please be kind enough to let me  
14:24:24 20 know whether the map you sent to me at the beginning of November is accurate or  
21 whether the map requires further amendment.  
22 If it does require further amendment would you be kind enough to let me have  
23 two further maps correctly marked suitable for Land Registry purposes.  
24

14:24:36 25 I will be obliged to hear from you in relation to this matter at your earliest  
26 possible convenience. You will appreciate that my clients are becoming  
27 Increasingly upset at the delay in completing this transaction".  
28

29 Now, Mr. Miley is there expressing some disquiet which we see is to continue  
14:24:55 30 for some time thereafter.

14:24:56 1 A. Uh-huh.

2 Q. 457 And we see in a letter of page 2121, a week later, Mr. Miley is writing to

3 Smith Foy:

4

14:25:05 5 "I refer to your fax and our subsequent telephone conversation when you made a

6 provisional appointment to complete the sale on Tuesday next 14th inst.

7 Having regard to your fax of 7th inst and the issue in relation to the map we

8 must place on record how bizarre it is that you should be able to deal directly

9 with the architect retained by our client and agree matters with him and we

10 have been unable to get him to respond at all to us.

11

12 We are pleased however to note that you have now agreed that the revised map

13 which was sent to you with our letters is now agreed and your objections in

14 relation to it are fully withdrawn".

14:25:41 15

16 Certainly, there appears to be some confusion here as to what exactly what hat

17 you were wearing in the context of all of this by this stage.

18 A. Uh-huh.

19 Q. 458 Isn't that so?

14:25:50 20 A. Yeah. I think there was a little bit of a spat.

21 Q. 459 Yes. Mr. Miley's disquiet continues to the 16th of December where we see at

22 page 2142 he's writing again to Smith Foy. In the third paragraph of it he

23 says:

24

14:26:10 25 "While we note the last paragraph of your letter we believe that the facts

26 speak for themselves. It seems to us to be even more curious that when the

27 writer contacted Mr. O'Connor on the morning of the closing and requested him

28 to attend the closing he was not available to do so while later in the day at

29 your request he was able to find time and did actually attend the closing."

14:26:31 30

- 14:26:31 1 So that he was unsure really as to whose interest you were representing in all  
2 of this. But is it the case that at all times you consider that you were  
3 reflecting the interests of Mr. Caldwell in your dealings throughout with the  
4 Coolamber land?
- 14:26:47 5 A. Yes, yes. Like, it was -- I was trying to facilitate, you know, the smooth  
6 transition or conveyancing of the lands between the various parties. My  
7 primary, I suppose client, would have always been Joe Tiernan and that was my  
8 primary and always to facilitate him in every way possible. And I was also  
9 obviously engaged by a Mr. Caldwell to, via Mr. Miley, to do whatever was  
10 required to be done in order to secure the conveyance of the commercial lands  
11 at the pub site.
- 12 Q. 460 Yes.
- 13 A. I was there to facilitate both really. I wouldn't --
- 14 Q. 461 The current inquiry that is being pursued by the Tribunal in relation to the  
15 Coolamber lands stems from its inquiry into the relationship between Mr. Liam  
16 Lawlor, Mr. John Caldwell and Mr. Jim Kennedy.
- 17 A. Yes.
- 18 Q. 462 So far in the evidence we have avenue referred to two persons. Firstly,  
19 Mr. Kennedy who you have no recollection of meeting.
- 14:28:19 20 A. Yes.
- 21 Q. 463 Nor have you any recollection of his being mentioned in the context of having  
22 agreed the drainage outfall with the sanitary services people though we see the  
23 documents around that time?
- 24 A. His name would have meant absolutely nothing to me at the time. Absolutely  
14:28:28 25 nothing. It wasn't until this whole thing evolved that it was obviously  
26 common knowledge. But I had no knowledge whatever in relation to Jim  
27 Kennedy's involvement.
- 28 Q. 464 Is it equally the case that you didn't know of any involvement of Mr. Kennedy  
29 in the Pentagon Pipeline or Cruck House?
- 14:28:47 30 A. I had no idea.

- 14:28:48 1 Q. 465 And equally, in relation to the Baldoyle lands either the industrial lands or  
2 the residential lands would be --
- 3 A. I have the very vaguest, and I can only put it, that's the strongest I can put  
4 it. The very vaguest recollection of a meeting in John Caldwell's office  
14:29:09 5 sometime early 1990.
- 6 Q. 466 Uh-huh.
- 7 A. When I was experiencing planning difficulties in trying to promote both the  
8 industrial site and the residential site in Baldoyle.
- 9 Q. 467 Yes.
- 14:29:24 10 A. Because there were severe complaints in the drainage system. Now, I can put  
11 it no stronger than this. That I have the vaguest recollection of meeting, I  
12 think in hindsight may very well have been Mr. Kennedy and Mr. Caldwell. And  
13 the purpose of the meeting was to try and explain to me how both could be  
14 accommodated within the constraints that were there in the drainage system in  
14:30:03 15 Baldoyle.
- 16 Q. 468 That's both schemes?
- 17 A. I can really not put it any stronger than that.
- 18 Q. 469 That's both schemes as opposed to both individuals?
- 19 A. Correct.
- 14:30:13 20 Q. 470 In what role did you understand that this additional person who you believed to  
21 be Mr. Kennedy?
- 22 A. It was, you know, I wondered who he was, do you know, but no more than that.
- 23 Q. 471 Yes.
- 24 A. I don't even remember him being introduced to me.
- 14:30:28 25 Q. 472 Right.
- 26 A. But there was a conversation and it was not terribly coherent.
- 27 Q. 473 Right.
- 28 A. But I really can put it no stronger than that. I wish I could.
- 29 Q. 474 Do you understand that it was Mr. Kennedy?
- 14:30:43 30 A. I believe in hindsight that it probably was him, yes.

- 14:30:47 1 Q. 475 And now Mr. Lawlor was the third member of, I mention there. And have you a  
2 recollection of Mr. Lawlor being involved either in discussions with you, in  
3 offering you assistance in relation to the drainage or otherwise in respect of  
4 any one of these transactions?
- 14:31:06 5 A. No, no.
- 6 Q. 476 You may or may not know, Mr. O'Connor, that Mr. Caldwell indicates that since  
7 the acquisition of the lands by Vino Properties Limited, and that was by virtue  
8 of a contract which was entered into in the early part of 1992 from that time  
9 forward he indicates that he was a 50% owner of the lands through various  
14:31:35 10 structures that would reflect his interest --
- 11 A. He being?
- 12 Q. 477 He personally through various stuff.
- 13 A. That's okay.
- 14 Q. 478 That he was the owner of 50%.
- 14:31:47 15 A. Yes.
- 16 Q. 479 And that the other 50% in Vino was being held for the benefit of Mr. Kennedy.
- 17 A. Yes.
- 18 Q. 480 Through other structures. Is that a surprise to you, firstly, to learn of  
19 Mr. Kennedy's involvement or involvement to that extent in the transaction?
- 14:32:02 20 A. I would have had no knowledge of it. No knowledge.
- 21 Q. 481 Right. And Mr. Caldwell also tells us that the acquisition of these lands  
22 initially through the Isle of Man company, Navona, which is represented by  
23 Mr. Martin Bullock, was carried out at the instruction of Mr. Liam Lawlor.
- 24 A. Uh-huh.
- 14:32:23 25 Q. 482 And that Mr. Liam Lawlor was involved in the company from that time until Vino  
26 acquired the property.
- 27 A. Uh-huh.
- 28 Q. 483 But that from that date forwarded no interest. Are you aware of any of that?
- 29 A. I'm not.
- 14:32:36 30 Q. 484 No. Thanks, Mr. O'Connor. There may be questions put to you. If you just

14:32:50 1 stay where you are.

2

3 CHAIRMAN: Mr. Finlay, do you want to ask any questions?

4

14:32:54 5 MR. FINLAY: No, thank you very much, Chairman.

6

7 CHAIRMAN: That concludes your evidence, Mr. O'Connor. Thank you very much

8 A. Thank you.

9

14:33:03 10 **THE WITNESS THEN WITHDREW:**

11

12 MR. O'NEILL: The next witness, sir, Mr. Stephen Miley.

13

14 Mr. Miley, please.

14:33:08 15

16

17

18

19

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23

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26

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28

29

30

**MR. STEPHEN HAVING BEEN SWORN, WAS QUESTIONED BY**

**MR. O'NEILL AS FOLLOWS:**

- 14:33:09 1
- 2
- 3
- 4 Q. 485 MR. O'NEILL: Good afternoon, Mr. Miley
- 14:33:43 5 A. Good afternoon.
- 6 Q. 486 In advance of the commencement of the Coolamber phase of the Carrickmines II
- 7 and Related Issues Module you were written to by the Tribunal know the 4th of
- 8 December of 2003 and requested to provide information in relation to the
- 9 Coolamber lands as we know them; isn't that so?
- 14:34:05 10 A. Yes.
- 11 Q. 487 And I think that you provided the statement, the Tribunal with a letter dated
- 12 the 16th of December 2003, which is in the brief at page 2658. And which is
- 13 your response to the query raised of you; isn't that so?
- 14 A. Yes, that's correct, yes.
- 14:34:24 15 Q. 488 And if we just read that statement in the record. It is a response to the
- 16 letter of the 4th and it reads as follows:
- 17
- 18 "I refer to your letter of the 4th inst once more and in particular to item (D)
- 19 of it dealing with the acquisition of the property at Coolamber, Lucan, by Vino
- 14:34:44 20 Properties Limited (Vino) from Southfield Property Company Limited
- 21 (Southfield). I assume this is a reference to the lands comprised in folio
- 22 67869F County Dublin.
- 23
- 24 I have very little recollection of this transaction and have been unable to
- 14:35:02 25 refresh my memory as my file in relation to this matter was sent to
- 26 Mr. Nicholas Morgan following completion of the transaction.
- 27
- 28 I did, however, keep copies of my file note relating to the completion of the
- 29 sale on the 15th of May 1992 and a copy of my letter to Richard Parsons, who
- 14:35:21 30 instructed me in the matter of the 18th of May 1992 advising him of the

14:35:26 1 successful completion of the sale and how the monies received amounting to  
2 389,513.50 were dealt with. I enclose copies herewith.

3  
4 As far as I can recall this was just another routine purchase of lands in a  
14:35:45 5 single freehold folio. While I cannot be sure I think I may have taken over  
6 the transaction after the contract was completed. I was instructed by  
7 Mr. Richard Parsons of Harney Westwood and Riegels, barristers and solicitors  
8 of Roadtown, Tortola, in the British Virgin Islands. As I recall it  
9 Mr. Parson's firm acted for Vino Properties Limited and I acted as the agent  
14:36:13 10 for Mr. Parson's firm on the ground.

11  
12 I expect that Mr. Nicholas Morgan was involved in the transaction to some  
13 extent but I cannot recall his role. If indeed he was involved in the  
14 transaction, I expect he was operating on the basis of some delegated authority  
14:36:29 15 from either Vino Properties Limited or Messrs. Harney Westwood and Riegels.

16  
17 I'm afraid I cannot be of more help. From my point of view, however, this was  
18 a simple routine straight forward transaction. Similar to many hundreds of  
19 transactions which I have dealt with over the years and there is very little  
14:36:50 20 which I remember about it. It will be apparent from the correspondence that  
21 this transaction was completed on the 15th of May 1992.

22  
23 I have a recollection that at some stage prior to my becoming involved John  
24 Caldwell mentioned to me that I would be receiving instructions in the matter.

14:37:09 25  
26 Yours sincerely, Stephen Miley". That's your statement?

27 A. That's correct, yes.

28 Q. 489 And I think that was based, Mr. Miley, on the information which was available  
29 to you to that point which was limited, given that the entire of your file had  
14:37:24 30 been sent to Jersey, to Mr. Nicholas Morgan.

- 14:37:27 1 A. Yeah.
- 2 Q. 490 Save the two documents that you refer to; isn't that right?
- 3 A. That's correct, yes.
- 4 Q. 491 I think in the interim however you've had sight of the brief in which much of
- 14:37:36 5 your documentation to others has been replicated so that you can read both the
- 6 copies of that documentation and also the documents which were sent to you by
- 7 the other solicitors acting in the transaction; isn't that right?
- 8 A. Yes, that's quite right. In fact, listening to the evidence earlier on today
- 9 I have recalled quite a a bit about what happened at the time.
- 14:38:00 10 Q. 492 Right. Does it still fall within the description as far as you're concerned
- 11 of being a routine transaction which was simple, straight forward and similar
- 12 to many hundreds of others that you'd engaged in to that point?
- 13 A. Absolutely until I got the letter from the Tribunal in December '03, I think it
- 14 was. It was a straight forward transaction.
- 14:38:24 15 Q. 493 Sure. But what I'm asking you is whether in the light of all of the
- 16 documentation you've now seen within the brief it still falls within the
- 17 description of a transaction to you or does it have the hallmarks of something
- 18 out of the ordinary or extraordinary?
- 19 A. No. Part of the overall thing that you're dealing with, the acquisition by
- 14:38:44 20 Southfield -- sorry, the acquisition by Vino from Southfield, that was straight
- 21 forward. The subsequent onward sale by Vino to Tiernan Homes, that was far
- 22 from normal or far from usual.
- 23 Q. 494 In brief, I think the situation was that when you came into the transaction
- 24 this was a property which was owned by a company called Southfield Limited;
- 14:39:13 25 isn't that right?
- 26 A. Yes. And as far as I remember, I took it over after the contract had been
- 27 completed. But I'm not completely sure about that.
- 28 Q. 495 I don't believe that's absolutely accurate.
- 29 A. Possibly not.
- 14:39:22 30 Q. 496 I think the parties certainly had been in touch and may well have agreed terms.

- 14:39:28 1 But as regards there being a contract in the sense of being a written and  
2 legally enforceable contract, I think that occurred within the period?
- 3 A. I think it could well be. I have no recollection of it.
- 4 Q. 497 We may look at some of those documents. In the large picture, this is a  
14:39:48 5 transaction where Southfield Limited, a company, owned these lands from a date  
6 in 1988; isn't that so? They having been declared to be the beneficiary by  
7 Navona Limited, a company in the Isle of Man which Mr. Martin Bullock is a  
8 director of, which had successfully tendered for the lands from the Tyrell  
9 family?
- 14:40:14 10 A. Well I followed the evidence. I don't remember the dates but --
- 11 Q. 498 It was registered land anyway, so you could consult the folio and --
- 12 A. Yes, I mean, the folio at this stage I'd have dealt with it, it would have  
13 shown Southfield as the registered owner and I wouldn't have inquired behind  
14 that.
- 14:40:34 15 Q. 499 Now, Southfield was to be the vendor of the lands to your client, Vino  
16 Properties; isn't that so?
- 17 A. Yes.
- 18 Q. 500 And the consideration for that contract was the sum of 400,000 pounds?
- 19 A. Yes, I think that's right.
- 14:40:45 20 Q. 501 And that contract was completed in May of 1992?
- 21 A. Yes, that's correct, yes.
- 22 Q. 502 The 15th of May of 1992. And from the period of your initial involvement as  
23 the solicitor acting for the purchaser, you shortly thereafter became involved  
24 also in an onward sale transaction from Vino, to what was ultimately to be  
14:41:15 25 Kylewood Construction, Mr. Tiernan's company; isn't that so?
- 26 A. Yes. And I think also and maybe this is where I was confused about taking it  
27 over with the contract already signed. I think at the time, at the point when  
28 Vino acquired it they bought it subject to and with the benefit of that  
29 contract in favour of, which ultimately was Ricciland, I think that contract  
14:41:37 30 was in place.

14:41:38 1 Q. 503 Yes. That contract was in place. But that contract was for the sale only of  
2 what's called the pub site.

3 A. Yeah.

4 Q. 504 A relatively small site which was being sold for 125,000 pounds together with  
14:41:52 5 interest thereon from a certain period of time. But the major contract which  
6 took place was an onward sale by your client, Vino, to Kylewood Construction  
7 Company, which was a company with which Mr. Joe Tiernan was associated.

8 A. Yes, that's correct.

9 Q. 505 And that contract was for 2.7 million pounds. And that contract was signed in  
14:42:15 10 December of 1992.

11 A. Yeah, I accept what you say. I just don't remember the details offhand.

12 Q. 506 So the company which bought the land for 400,000 pounds in May was capable of  
13 selling it on for 2.7 million pounds in December of the same year?

14 A. Yes, I think so but the terms were completely different.

14:42:37 15 Q. 507 Of course they were. The terms were that it would not be until 1994 that that  
16 contract would be completed, depending on the status of the Dublin Development  
17 Plan because the closing date provided for in the contract was that it was to  
18 be closed within six months of the date upon which Dublin County Council  
19 adopted the then draft Development Plan; isn't that right?

14:43:07 20 A. Yeah, I think that's correct. I haven't had a look at it recently.

21 Q. 508 Did it ever occur to you that the same parties were involved at the vendor's  
22 Southfield, and as the vendors, Vino, in that transaction? I'm not saying  
23 exclusively the same parties. But rather that some of the parties who were  
24 involved behind the vendor, Southfield, would appear to be the same parties who  
14:43:40 25 were behind the vendor Vino. Did that ever occur to you in your dealings or  
26 transactions?

27 A. Yes but probably not in the way that you're suggesting to me.

28 Q. 509 Right.

29 A. As far as I can recall, I understood that John Caldwell was behind both  
14:43:58 30 companies.

- 14:43:59 1 Q. 510 Right.
- 2 A. And ...
- 3 Q. 511 And is that from something you learnt from Mr. Caldwell directly or was it from  
4 your evaluation of the documentation which was available to you as to title and  
14:44:14 5 having regard to the correspondence which passed with other solicitors dealing  
6 with the matter?
- 7 A. No it would have been from the impression that he gave me when we were talking  
8 about things and probably a very similar situation to that which we previously  
9 discussed in relation to the Carrickmines lands.
- 14:44:33 10 Q. 512 Yes. But there is apparently one important distinction at least now being  
11 made in what are the apparent similarities between the two of those instances;  
12 the first being that Mr. Liam Lawlor, according to Mr. Caldwell, is involved in  
13 the Coolamber land transaction, by reason of having advanced the funds  
14 initially for their acquisition through Navona Limited and its subsequent  
14:45:01 15 Declaration of Trust for Southfield.  
16 Whereas he indicates that he's not involved in the Carrickmines lands, though  
17 the documentation of course shows him to be involved in neither.
- 18 A. That's as may be. But I knew nothing about any of that.
- 19 Q. 513 Sure.
- 14:45:16 20 A. The only time -- well the first time I knew that Liam Lawlor claimed an  
21 interest in the Coolamber lands was when he called into my office one day, I  
22 think it was shortly after the transaction was completed, without an  
23 appointment and insisted on seeing me and when I did see him he told me that he  
24 was entitled to a share of the proceeds of sale, which came as a complete  
14:45:39 25 surprise to me.
- 26 Q. 514 Right. And I think in response to that request of Mr. Lawlor's, you indicated  
27 to him that your instructions came from Mr. Parson's of or from the company I  
28 should say?
- 29 A. More precisely what I would have told him is that I was acting for the company  
14:45:59 30 and whatever interest he thought he had wasn't for me to deal with.

- 14:46:02 1 Q. 515 Yes. The company being Vino?
- 2 A. Yes, yes.
- 3 Q. 516 And you didn't indicate to him who was behind Vino?
- 4 A. No.
- 14:46:09 5 Q. 517 No, you didn't identify?
- 6 A. Well I think John Caldwell's name did come up in the conversation and I'd have
- 7 possibly said to him to discuss it with him. I do remember telling John
- 8 Caldwell about the, what had happened afterwards, you know.
- 9 Q. 518 Sure. From your evidence it's clear that you believe that Mr. Caldwell was
- 14:46:32 10 involved with both companies, that is with Southfield and also with Vino,
- 11 that's both of the vendor companies; isn't that right?
- 12 A. Well that was certainly my understanding.
- 13 Q. 519 Right. And I think you are aware because you act for Mr. Caldwell before this
- 14 Tribunal, that Mr. Caldwell indicates that he was not involved in the company,
- 14:46:56 15 save as a director of Southfield. But that he did not have the beneficial
- 16 interest in the company Southfield when it owned the lands?
- 17 A. Yes.
- 18 Q. 520 Yes.
- 19 A. Yes, that's right. But, I mean, he was involved as a legal owner I think and
- 14:47:12 20 as a director of the company.
- 21 Q. 521 Well he was involved in the capacity of being a solicitor in the first
- 22 instance.
- 23 A. Yes, well his firm would have been also, yes.
- 24 Q. 522 And he was also involved in the capacity of being a director but he indicates
- 14:47:28 25 that he was not.
- 26 A. When I say I believe he was involved in both companies. I wouldn't have
- 27 known -- I'd have had no information about the precise capacity.
- 28 Q. 523 Sure. Well in respect of the first company, that is Southfield Limited, he
- 29 was obviously involved in that because any search of the companies office
- 14:47:51 30 record would show him registered as a director of the company and indeed he had

- 14:47:56 1 signed various documents in that capacity. In respect of the other company,  
2 Vino, however, there was no documentation whatsoever to indicate any  
3 involvement of his; isn't that right?
- 4 A. Yes, that's correct.
- 14:48:06 5 Q. 524 In fact, there is a chain of correspondence which was generated in which if one  
6 was not perhaps aware of the true circumstances, it would appear that he was  
7 totally divorced from the company and had no connection whatsoever with it;  
8 isn't that right?
- 9 A. Well it wouldn't have been necessary for him to have associated himself or  
10 disassociated himself with the company.
- 11 Q. 525 Sure.
- 12 A. The correspondence was undertaken by the company and not by him.
- 13 Q. 526 Well indeed. But in his own correspondence with the agents for the company he  
14 put himself in a position where he appeared to be a person who did not have  
14:48:52 15 knowledge of Vino whereas in fact if one accepts his evidence now he was a 50%  
16 beneficial owner of Vino. Are you aware of that?
- 17 A. Well I'm aware that there was a series of correspondence in which I was  
18 involved to some extent while there was obviously a verbal negotiation going on  
19 in tandem with that and I think that's what you're referring to.
- 14:49:20 20 Q. 527 No, I will refer to that subsequently. I'm talking about the earlier  
21 correspondence which followed immediately upon the attempts which were made to  
22 divest Southfield of any beneficial interest in the lands following upon the  
23 visit to the Bank of Nova Scotia by Mr. Noel Smyth, who was proposing a take  
24 out of the interests of Southfield by means of the assignment of the loan  
14:49:51 25 facility to a company called Mobberley, which would move in and appoint a  
26 receiver once Southfield was unable to pay its debt.
- 27
- 28 Following upon that you will see a chain of correspondence from Mr. Caldwell to  
29 Mr. Martin Bullock in which he, on the face of the documents, appears to be  
14:50:10 30 seeking a purchaser for the lands and then there are responses from Mr. Bullock

14:50:16 1 on behalf of Vino to Mr. Caldwell who is of course Vino, as he says now. And  
2 therefore, the correspondence is curious to say the least.

3 A. I wasn't involved with any of that as far as I'm aware.

4 Q. 528 No, I'm not suggesting you were.

14:50:34 5 A. The only thing I know about that is what I've heard before the Tribunal.

6 Q. 529 Yes.

7 A. I mean, I just don't know anything about it other than that.

8 Q. 530 Yes. We'll just look at some of that correspondence, if we may.  
9

14:50:51 10 It starts at page 1527 where Mr. Caldwell writes to the Bank of Nova Scotia to  
11 Mr. McCabe on the 27th of November 1991 to say:

12  
13 "Dear Peter, thank you for your fax of the 26th. Mr. Smyth has no authority  
14 whatsoever to act on behalf of Southfield or to obtain any information in  
15 relation to its affairs. It is most improper of him to attend Mr. Gannon and  
16 to seek to discuss the company's business".

17  
18 And on the same date as that is written Mr. Caldwell writes to Martin Bullock  
19 of Navona Limited in the Isle of Man, on page 1529:

14:51:33 20  
21 "Dear Martin. As you know this company is in default in regard to its payments  
22 on our agreement.

23  
24 Unfortunately, the contract with Mr. Tiernan's company has now ended due to his  
14:51:41 25 non-completion. I have sought a valuation on the lands from a leading firm of  
26 valuers in Dublin, they have not yet expressed a view as to the lands value.

27  
28 The company has also failed to meet its last interest payment and the Bank of  
29 Nova Scotia is pressing for payment. They have threatened to proceed to  
14:51:58 30 commence action to protect their interest.

14:52:01 1  
2 It is most unlikely that the amount due to Navona will now be paid in the bank.  
3 It may very well seek to appoint a receiver or a liquidator on foot of its  
4 mortgage.

14:52:09 5  
6 I regret having to inform you of these conditions. I am presently considering  
7 what actions the company should take with regard to its financial position.  
8 If the valuation is unsatisfactory it may be necessary for the company to go  
9 into liquidation. In which case your company will in all probability receive  
14:52:26 10 nothing on foot of its agreement."  
11  
12 I'm not sure if you're aware of that agreement. But it was the option release  
13 document under which some 700,000 pounds was to be paid to Navona for having  
14 released the option which it had acquired for 100 pounds to buy the lands off  
14:52:49 15 Southfield  
16 A. I just wasn't involved with any of this, Mr. O'Neill.  
17 Q. 531 Mr. Bullock replied to that on the following day at page 1530:  
18  
19 "Dear John. I was most disappointed to read the contents of your letter faxed  
14:53:04 20 to me yesterday. In order to safeguard our interests I'm trying to find a  
21 buyer through my own contacts but I am hopeful that I may be able to tie  
22 something up in a day or two. I will keep you informed of developments, Yours  
23 sincerely".  
24

14:53:18 25 Now we know that the buyer that Mr. Bullock found was in fact Mr. John Caldwell  
26 through Vino Properties.  
27 A. Yeah, well Vino Properties did acquire it, yes.  
28 Q. 532 Page 1531. Mr. Bullock again on the same day as the last communication  
29 indicates:  
14:53:41 30

14:53:41 1 "Further to my fax to you this morning, I have obtained the agreement in  
2 principle of Vino Properties Limited of Craigmuir Chambers, Roadtown, Tortola,  
3 British Virgin Islands to buy. Perhaps we can discuss the finer details so  
4 that I can inform Vino. "

14:53:57 5  
6 We now know of course that Mr. Caldwell is Vino, so that Mr. Caldwell learns  
7 that he himself is going to buy the property on the 28th of November. And he  
8 learns that through Mr. Bullock, who obviously receives instructions from  
9 Mr. Caldwell or from Vino Properties Limited in Tortola that that is what he is  
10 going to do.

11 A. Yes.

12 Q. 533 That was the circular type of correspondence that I'm asking you about.

13 A. Yes, and I have seen this kind of thing before in dealing with John Caldwell.

14 And I think he's right to do it this way because of the companies are separate

14:54:39 15 legal entities. And I think his purpose in this correspondence is to identify  
16 the different legal situations.

17 Q. 534 Right.

18 A. I mean, it's only speculation on my part. But I would imagine that  
19 Mr. Bullock when he wrote that letter also knew what the relationship between  
14:54:58 20 John Caldwell and Vino Properties would have been.

21 Q. 535 Yes. Of course, it could have been done in any other fashion without this  
22 claimed lack of knowledge of the events and the inference that is drawn by any  
23 reader who is not familiar with this means of communication, that this is an  
24 arms length transaction. Whereas in fact it wouldn't appear to be; isn't that  
14:55:25 25 right?

26 A. I suppose in fairness we could both speculate until the cows come home. I  
27 have to go back and remind you that I really just wasn't involved in this.  
28 He'll be here to give evidence himself and I'm sure he'll be able to deal with  
29 it himself.

14:55:40 30 Q. 536 Do you think if this is his usual means of dealing that you yourself were being

- 14:55:44 1 used in a similar fashion by him to set up the chain of correspondence, the  
2 content of which if scrutinised may reveal a different scenario than appears on  
3 the face of the document?
- 4 A. I think I was probably only involved in the extent that it was necessary for me  
14:56:00 5 to be involved. I would certainly accept that I wasn't aware of the wider  
6 global picture.
- 7 Q. 537 Your formal involvement in this I think stemmed from the appointment of your  
8 firm as solicitors to act on behalf of Vino Properties; isn't that right?
- 9 A. Yes.
- 14:56:27 10 Q. 538 And I think you indicated in your statement that before you became involved you  
11 have a recollection that John Caldwell may have indicated to you that you would  
12 become involved; is that right?
- 13 A. Yes, yes.
- 14 Q. 539 And of course he, at that time, was involved insofar as he was a director of  
14:56:46 15 Southfield.
- 16 A. Yes.
- 17 Q. 540 Isn't that right?
- 18 A. Yes.
- 19 Q. 541 The vendor company.
- 14:56:50 20 A. Yes. If I wasn't aware that John Caldwell had been involved I probably would  
21 have made more inquiries when I did receive instructions to satisfy myself who  
22 was involved.
- 23 Q. 542 Yes. When he did tell you that you were likely to be involved did he tell you  
24 that you were likely to be involved on behalf of the purchaser and that he  
14:57:12 25 would have an interest in the purchasing side as well as the vendor's side,  
26 which he was now acting on?
- 27 A. No, not at all.
- 28 Q. 543 I see.
- 29 A. When he told me that I would be receiving instructions I was quite satisfied to  
14:57:26 30 leave it at that and I was quite happy with the pedigree of the whole thing

14:57:31 1 because it was he who was recommending it to me.

2 Q. 544 Right. We'll see that at page 1567 Mr. Caldwell as a director of Southfield

3 Properties writes to Martin Bullock in the Isle of Man:

4

14:57:45 5 "Dear Martin, further to my fax of the 13th of December, I would be obliged if

6 you would let me have details of the purchaser so that we can deal directly

7 with them. Contracts have been prepared. Please confirm that the agreement

8 in respect of your release of the option is now rescinded and that no payment

9 is due to your company" etc.

14:58:04 10

11 So that letter goes out on the 19th. Its it's replied to on the same day by

12 fax at page 1568. Martin Bullock responds:

13

14 "Dear John, thanks for your letter faxed this morning. Details of Vino are as

14:58:21 15 follows; Vino Properties Limited Craigmuir Gardens, Roadtown, Tortola, British

16 Virgin Islands, phone number and contact is Richard Parsons".

17

18 Mr. Caldwell then writes a letter as we see at page 1569 to Vino Properties

19 Limited on the 19th re lands at Lucan, County Dublin:

14:58:44 20

21 "We act for Southfield Property Company. We understand from Mr. Martin

22 Bullock that your company has agreed to purchase lands owned by our client.

23 We enclose herewith a copy of the contract. We would be obliged if you would

24 please let us have the name and address of your solicitor in Ireland so that we

14:59:01 25 may progress this matter with them, yours faithfully per pro Binchys".

26

27 All of which is information already within the remit of Mr. Caldwell. Indeed,

28 it's Mr. Caldwell who has directed that you will be appointed presumably rather

29 than Mr. Parsons, who I take it was unknown to you to this point in time?

14:59:26 30 A. Yes, I think that's correct. I'm just curious though about the reference to

- 14:59:32 1 the contract because --
- 2 Q. 545 The contract that is the contract for sale being sent to Roadtown, Tortola?
- 3 A. Not so much that. That's a letter from Binchys which would seem to indicate
- 4 that maybe they had prepared the contract. It goes back to what we were
- 14:59:51 5 discussing a few moments ago. When I told you that I thought but I wasn't sure
- 6 that I took it over after the contract had been completed.
- 7 Q. 546 Right. I think we'll see that there's no signed contract until well into --
- 8 A. Possibly so maybe it was in draft form or something it had been prepared by
- 9 Binchys. But, again, that would be part of the style of John Caldwell's
- 15:00:16 10 correspondence.
- 11 Q. 547 The next letter then at page 1574 is a release by Navona Limited of its option.
- 12 And that no payment is due in respect of the to the company for that release.
- 13 This was an option which effectively tied the company, the vendor company,
- 14 Southfield, to selling the property to Navona for 17,000 pounds an acre, which
- 15:00:43 15 would have been 665,000 pounds, that was the original option. That option was
- 16 then the subject of a separate agreement which indicated that 700,000 pounds
- 17 would be paid to Navona in order to release that option.
- 18
- 19 And Navona Limited, according to Mr. Caldwell, was a company of Mr. Liam
- 15:01:10 20 Lawlor's.
- 21 A. Yes, I've heard all of the evidence. But, again, I knew nothing about it
- 22 before the Tribunal's sort of involvement.
- 23 Q. 548 I take it that the confirmation then by Mr. Bullock of the release of the
- 24 option allowed the parties to deal with the property without reference to that
- 15:01:31 25 being any impediment on the title of the property?
- 26 A. Well as far as I can recall. And again, I don't have any great memory of it.
- 27 When Vino Properties bought the property there was no option in existence. And
- 28 I think probably also it wasn't disclosed. So I think I was unaware of it.
- 29 Q. 549 It was never registered as a charge.
- 15:01:52 30 A. Yes, if it was gone I don't think it would have been a document that I'd have

- 15:01:56 1                   been made aware of.
- 2           Q. 550    Right. We see that on the 20th of December -- sorry I think it's the 20th of  
3                   January. No, it's the 20th of December 1991, at page 1575. Harney Westwood  
4                   and Riegels solicitors and barristers write to Binchys and they say:
- 15:02:19 5
- 6                   "Thank you for your fax of yesterday. We are pleased to advise you that Vino  
7                   Properties Limited solicitors are Miley & Miley for the attention of  
8                   Mr. Stephen Miley".
- 9
- 15:02:29 10                  And that really is the chain of documentation which was set up so as to reflect  
11                  that you became involved in this transaction as the solicitor to the company  
12                  upon the instruction of Mr. Parsons of that firm; isn't that right?
- 13          A.        Yes.
- 14          Q. 551    You then directly received the documentation from Mr. Caldwell. We see at  
15:02:55 15                  page 1580 on the 23rd of December where a letter is sent to you as follows by  
16                  Mr. Caldwell. "We act for Southfield Property Company Limited. We have been  
17                  notified that you act for Vino Properties Limited. We enclose herewith the  
18                  following.
- 19                  1. Contract for sale.
- 15:03:14 20                  Copy contract dated the 19th of December 1989."
- 21
- 22                  That's the sale to Mr. Kevin Smith in trust for Ricciland, the pub site.
- 23                  "Draft mortgage and charge". That was a mortgage to protect I think the  
24                  Barclays Bank; is that right?
- 15:03:33 25          A.        I thought that came later but I'm not sure.
- 26          Q. 552    To protect the deposit then of 40,000, I'm not sure.
- 27          A.        Possibly, it doesn't ring a bell at all I'm afraid.
- 28          Q. 553    "Copy folio itself and the plan and the certificate of incorporation."
- 29
- 15:03:49 30                  And that document I know that you don't have your own file but we can assume I

- 15:03:59 1 think that the enclosures referred to here found themselves with you?
- 2 A. I think so, yeah, that would be all be fairly standard sort of stuff.
- 3 Q. 554 And obviously the Christmas break intervenes. You are getting this almost on
- 4 Christmas Eve.
- 15:04:13 5 A. I don't think it would have been looked at immediately it was received.
- 6 Q. 555 The 8th of January then we see the next letter at page 1591, where you are
- 7 written to again by Mr. Caldwell in his capacity as a solicitor in Binchys
- 8 rather than as a director of Southfield, referring to the earlier letter and
- 9 saying we'd be obliged to hear from you with any comments you may have on the
- 15:04:37 10 draft contracts forwarded. I think that confirms that it was a pre contract
- 11 stage that you received the documents. In other words, they were not the
- 12 signed contracts; isn't that right?
- 13 A. I accept that, yes.
- 14 Q. 556 And that then I think obliges you from your client's point of view to read and
- 15:04:53 15 assess the contract and to be in a position to advise them as to any negative?
- 16 A. I would think so and probably on the Binchys counterpart of my file would be
- 17 requisitions on title, draft deeds and all of that sort of stuff.
- 18 Q. 557 Apparently, there was some confusion or mix-up with regard to the incoming
- 19 funds which were to represent the deposit payable of 40,000 pounds on the
- 15:05:25 20 contract, possibly because of some bank difficulty; is that right?
- 21 A. Yes. I imagine there must have been some pressure to get the sale completed
- 22 and I had been led to believe that funds would have been remitted to me to do
- 23 that on a certain date. And on that date and for each of the following few
- 24 days we checked with our bank who told us that the funds hadn't been received.
- 15:05:51 25 And ultimately it turned out that the funds were there all of the time and
- 26 they'd just given us the wrong information.
- 27 Q. 558 Sure. In the absence of any documentation available to the Tribunal, the
- 28 Tribunal is not in a position to say from whom you received these funds. But
- 29 we know that the funds apparently came from offshore because they came into
- 15:06:18 30 Ireland from Barclays Bank connection; is that so?

- 15:06:22 1 A. Yes, I think that's correct, yes.
- 2 Q. 559 Right.
- 3 A. I'm not sure whether it was Barclays in London or Barclays in the Channel
- 4 Islands.
- 15:06:30 5 Q. 560 Yes. The documentation from Barclays Plc was documentation which would
- 6 indicate apparently that the seal of Barclays Bank was affixed by the office
- 7 which deals with Channel Island affairs and the discharge of the mortgage was
- 8 one which seems to have been conducted through the Jersey Business Centre.
- 9 A. Yeah. Actually, I think you're quite right. I've kind of a correct
- 15:07:01 10 recollection of having sent the mortgage to the Channel Islands for completion
- 11 to Barclays.
- 12 Q. 561 The document at 1596 is a letter to Mr. Caldwell on the 10th of January writing
- 13 to acknowledge faxes which he'd been sending to you and you "confirm that you'd
- 14 been informed that the deposit monies have been sent to us by TT", I think
- 15:07:26 15 that's telegraphic transfer. "But at the time of writing they have not been
- 16 received in our bank account. We expect the funds would be made available
- 17 Monday and we would hope to contact you at that time to make arrangements to
- 18 exchange the contracts. We shall be in further touch with you as soon as
- 19 possible."
- 15:07:45 20
- 21 I think you may be aware that at this point in time Southfield was under
- 22 considerable pressure from its bank to discharge a commitment which had been
- 23 given to remit the proceeds of sale of the contract to the bank so as to meet
- 24 an outstanding interest charge which was due to the bank
- 15:08:07 25 A. Yes, I was unaware of all of that at the time though. Again, it's only since
- 26 I have been involved with the Tribunal that I've become aware from of that.
- 27 Q. 562 I take it then that you were equally unaware of the fact that the bank
- 28 certainly from the correspondence which has been produced was led to believe
- 29 that the contracting party, Vino Properties Limited, was a Tiernan Homes
- 15:08:30 30 company. And that Mr. Tiernan would be funding these, this acquisition through

- 15:08:36 1 this offshore company?
- 2 A. Well I saw that in the bank's memo but, I mean, it just didn't seem to be
- 3 terribly credible to me. But it's just my opinion.
- 4 Q. 563 Right. What didn't seem credible to you about it? The correspondence was
- 15:08:54 5 correspondence where the bank was noting exchanges which had passed between the
- 6 bank and Mr. Tiernan whereby Mr. Tiernan and Mr. Caldwell had attended at the
- 7 bank and in Mr. Tiernan's presence Mr. Caldwell had assured the bank managers
- 8 that the new offshore company would be set up in which Mr. Tiernan would be a
- 9 major shareholder, they were unwilling to disclose the identity of the other
- 15:09:22 10 shareholders, save to say that Mr. Goodman would not be a party to that
- 11 transaction. Was there anything inherent in that?
- 12 A. I have to qualify it again by saying that I wasn't involved. It's pure
- 13 speculation on my part. It did seem to me from listening to the evidence that
- 14 there had been a proposition that Tiernan would be involved or would buy. And
- 15:09:44 15 I think that evolved into Vino Properties. And my guess is that the bank got
- 16 confused between the two separate propositions and assumed they were the same
- 17 one. But I just don't know.
- 18 Q. 564 Sure. Well equally, I think you've seen all of the correspondence. When I
- 19 say seen. In your capacity as solicitor to an interested party in the
- 15:10:04 20 Tribunal you have observed all of the documents and noted its content,
- 21 including the exchanges which took place between your client and the bank in
- 22 which the bank indicated that it had recorded communications in writing to
- 23 Mr. Caldwell asking him when the Tiernan contract would be completed and it had
- 24 received responses from him which did not qualify their belief that this was a
- 15:10:34 25 contract with Mr. Tiernan's company. There was no rejoinder from Mr. Caldwell
- 26 to the bank where the bank outlined that the contract would be with
- 27 Mr. Tiernan. Mr. Caldwell did not dispute that in his rejoinders; isn't that
- 28 so?
- 29 A. I think that's correct. Again, he'll be able to deal with that when he gives
- 15:10:51 30 his own evidence.

- 15:10:53 1 Q. 565 Sure.
- 2 A. It just bothered me looking at the series of those bank memos that and we heard
- 3 Mr. O'Moore enquiring from the bank witnesses too, they all three of them as
- 4 far as I can recall were, had no real memories of what had happened other than
- 15:11:17 5 what was recorded in the memos. And the memos seemed to me that, to be -- well
- 6 to be incomplete in some ways and perhaps probably inaccurate in other ways.
- 7 Q. 566 Sure.
- 8 A. But, I mean, I suppose everybody has their own view on it.
- 9 Q. 567 Sure. Certainly, you did not feel it necessary to question any of those bank
- 15:11:38 10 witnesses in relation to the accuracy of their accounts insofar as they touched
- 11 upon your client's involvement?
- 12 A. No, I think John Caldwell will be able to deal with it himself.
- 13 Q. 568 I see. But if he does, it's merely to put up his account of events without
- 14 having teased out with the witnesses the possibility that they may be in error
- 15:12:03 15 in that regard; isn't that so?
- 16 A. Yes except though I think that each of them acknowledged that they had no real
- 17 memories other than what was in the memos.
- 18 Q. 569 True. But what the memos say is that Mr. Tiernan said -- sorry.
- 19 Mr. Caldwell said that Mr. Tiernan was going to be involved through an offshore
- 15:12:22 20 entity in taking over the companies in question. And that Mr. Goodman would
- 21 not be involved. So to that extent there was no ambiguity in the memos; isn't
- 22 that right?
- 23 A. Well, I mean, the memos say what they say. And there's no doubt about that.
- 24 Q. 570 You, on the 14th of January 1992, we see at page 1607 you were in contact with
- 15:13:05 25 Mr. Caldwell. You said that you had a signed faxed copy of the contract. I
- 26 take it this meant one that would have come to you from abroad; isn't that
- 27 right?
- 28 A. Yes. I assume that I'd have sent it either to the British Virgin Islands or
- 29 perhaps to the Channel Islands because it could have been signed there I think.
- 15:13:30 30 Q. 571 Yes. You proposed to send the original. And you deal with the question of

- 15:13:38 1 the 12,500 pound deposit, that was the 10% deposit, isn't that right, on the  
2 pub site? It's 125,000 pounds sale? It had been accompanied by --
- 3 A. Yes and that was released on the completion of that, the of the sale to  
4 Ricciland.
- 15:14:01 5 Q. 572 Yes.
- 6 A. To -- yes, that was sent by Binchys I think to my firm following the completion  
7 of the Ricciland's, yes.
- 8 Q. 573 You were now effectively Vino would be the vendors rather than Southfield to  
9 Ricciland. But the Ricciland contract stood.
- 15:14:19 10 A. Yes, yes.
- 11 Q. 574 That contract was one which had a number of clauses in it, which would possibly  
12 be relevant from the point of view of any intending purchaser of the land.  
13 They would of course have the benefit of it, 125,000.
- 14 A. Yes.
- 15:14:48 15 Q. 575 Vino Properties would have been?
- 16 A. Bought with the subject of the benefit of that contract. They were obliged to  
17 sell the plot of land but would have had the benefit of the purchase monies.
- 18 Q. 576 They equally would have to take on board any covenants or obligations by way of  
19 any special condition which were in that?
- 15:15:07 20 A. Absolutely, yes. They would be reflected in the transfer deed.
- 21 Q. 577 And we see that that documentation in relation to that contract included  
22 obligations which were imposed on the vendor company, which in this instance  
23 would now become Vino Properties, to provide the connections to the sewage  
24 infrastructure?
- 15:15:30 25 A. There would have been easements on both sides.
- 26 Q. 578 Yes. Have you any recollection of either asking or advising your client,  
27 Vino, as to the content of this contract and the obligations which they assumed  
28 by taking on that contract or did you understand that they had already  
29 considered the matter in some other format?
- 15:15:54 30 A. Well I think the vast majority of the special conditions were drafted by

15:16:02 1 Binchys, probably by John Caldwell. And I inherited them. Certainly, I think  
2 they rolled over into the contract when the property was sold to Tiernan. But  
3 to answer your question, I think the contract document, whenever I sent to get  
4 it signed, was just for a signing operation. It wasn't necessary to explain  
15:16:34 5 anything to anybody, just to sign it and return it.

6 Q. 579 Sure. Was that because you were satisfied that Mr. Caldwell was in fact the  
7 person behind it and didn't require to be legally advised by you?

8 A. Yes, I think that's fair, yes.

9 Q. 580 Did you ever become aware of the fact that there had been a contract for sale  
15:17:07 10 to Mr. Tiernan of these lands which had expired in September of 1991, some  
11 three months before your instruction, and had expired because of the fact that  
12 no planning permission was granted in respect of --

13 A. I don't think so. I have no recollection of it.

14 Q. 581 Right.

15:17:30 15 A. And if it had expired I wouldn't have needed to know anything about it either  
16 so.

17 Q. 582 You were to find that the same Mr. Tiernan, mind you, came back into the  
18 picture in February, you having embarked on the negotiations to purchase in  
19 January. You were seeking to purchase?

15:17:52 20 A. Well Vino bought in January.

21 Q. 583 Yes. You were acting for Vino as the purchaser in January and in February you  
22 received communications effectively from --

23 A. From Tiernan Homes.

24 Q. 584 John Caldwell?

15:18:10 25 A. Yes, I think that was the first contact I had in relation to that.

26 Q. 585 The contact it seems, commenced with a letter from Mr. Tiernan to Southfield of  
27 the 24th of February 1992, at page No. 1668. Where Mr. Tiernan writes to  
28 Mr. Caldwell saying:

29  
15:18:32 30 "I refer to the above lands. And I wish to state that I'm interested in

- 15:18:37 1 acquiring the Finnstown lands."  
2  
3 And that's dated the 24th of February 1992. Mr. Tiernan had in fact been  
4 endeavouring to negotiate the acquisition of the lands notwithstanding the  
15:18:53 5 expiry of the original contracts in November -- sorry, in September of 1991.  
6 And he had been having meetings with the bank in November of 1991 with a view  
7 to obtaining their consent.  
8 A. Yeah.  
9 Q. 586 To the loan continuing and he becoming the purchaser for a new consideration.  
15:19:20 10 But matters had then lapsed for a period of three months in which there was no  
11 apparent contact between the parties. And this letter represents the  
12 resumption of contact between Mr. Tiernan seeking to purchase. He addresses  
13 his letter to Southfield Property Company Limited although Southfield was  
14 contracted to sell to Vino as and from January; isn't that right?  
15:19:47 15 A. Yes.  
16 Q. 587 It was an enforceable contract as far as you were concerned a signed contract  
17 in writing?  
18 A. Yes.  
19 Q. 588 The query which Mr. Tiernan raised of Mr. Caldwell on the 24th was answered by  
15:20:02 20 Mr. Caldwell on the 25th, at page 1669. Where he says:  
21  
22 "Thank you for your letter of the 24th. I note your interest in acquiring the  
23 Finnstown land. The land has, however, been sold."  
24  
15:20:16 25 He signs that for Southfield Property Company. He doesn't identify that it  
26 has been sold to Vino. Nor does he identify that you are acting for Vino.  
27 Nor does he indicate that Vino is a company that would be prepared to sell on  
28 to Mr. Tiernan; isn't that right?  
29 A. Yes, that's quite right.  
15:20:35 30 Q. 589 And then we see on the next day Tiernan Home Builders acknowledge in writing

15:20:40 1 the receipt of that information. And they say page 1670.

2

3 "Dear Mr. Caldwell. I refer to your letter of the 25th inst stating that the

4 above lands have been sold. I would be obliged to receive from you the

15:20:54 5 purchase ears name or agent so that I may contact them.

6

7 Yours sincerely, Joe Tiernan."

8

9 And in response to that Mr. Caldwell writes to you on the 28th of February at

15:21:10 10 page 1673:

11

12 "Dear Sirs. We refer to the above matter. Mr. Joseph Tiernan of Tiernan

13 Homes Limited has written requesting us to furnish the name of the purchaser.

14 He is interested in contacting the purchaser. Perhaps you would either

15:21:24 15 authorise us to disclose the purchaser name or you might wish to contact him

16 directly yourself. A copy of his fax is enclosed".

17

18 And your response to that follows a month later on the 30th of March 1992 at

19 page 1695 where you write:

15:21:45 20

21 "Dear sirs. Your letter of the 26th ult addressed to Southfield Property

22 Company Limited has been handed to us for attention. We confirm that we act

23 for Vino Properties Limited who have recently concluded an agreement for the

24 purchase of the above lands. If you wish to make contact with our clients you

15:22:13 25 might do so through us. Yours faithfully".

26

27 That is then, as you see, at the very top there's a reference to J Synnott,

28 that's Mr. James Synnott who is property agent. And we see that on the day

29 after your letter of the 30th and two days later on the 1st of April page 1699

15:22:35 30 to state:

15:22:36 1  
2 "Dear sir, I refer to your letter of the 30th, the contents of which I note. I  
3 have instructed Mr. Jim Synnott of James Synnott and Company to act on my  
4 behalf. He will make immediate contact with you.

15:22:48 5  
6 Yours sincerely Joe Tiernan".

7  
8 With a copy to James Synnott. And the day after that at 1702, Mr. Synnott then  
9 writes to you on the 2nd of April 1992:

15:23:01 10  
11 "Dear sirs. We've been instructed by Joe Tiernan of Tiernan Home Builders to  
12 contact you regarding the above lands. Our client is interested in the  
13 possible purchase of these lands. Perhaps you would let me know when it would  
14 be convenient to call on you for further discussion".

15:23:23 15  
16 Again, that is again entirely orchestrated correspondence which could have been  
17 obviating in the first instance by Mr. Caldwell acknowledging that you are now  
18 the person dealing with matter and they were intending to sell the property on  
19 to Mr. Tiernan, who had been in negotiation with them since November. And this  
15:23:41 20 is to reinforce the independent nature and arms length distance between Vino  
21 Properties and Southfield; isn't that right?

22 A. I assume it is, yes. It's all sort of procedurally correct correspondence.  
23 But I don't know what was in John Caldwell's mind in relation to it. But I  
24 assume it was because he wanted to draw a distinction between the different  
15:24:09 25 legal entities.

26 Q. 590 Sure. And as we see later when correspondence emanates from a party who  
27 claimed that his interests have not been fairly represented in that there was a  
28 sale for an under value of the assets of Southfield, all of this correspondence  
29 becomes material in indicating that there are two separate legal entities  
15:24:32 30 involved, one of which is Southfield, the other is Vino. And that Vino has

15:24:37 1 nothing to do with Southfield, as evidenced by this chain of communication  
2 between parties. None of whom can make a connection directly between  
3 Southfield and Vino, including yourself; isn't that right?

4 A. Well I wasn't -- I mean, I wasn't aware of what was going on in the background.  
15:24:57 5 I'm not sure what you mean by an under value.

6 Q. 591 Well the lands were bought in May for 400,000. They were sold for 2.7 million  
7 pounds by a contract six months later. The contract of which was the  
8 intermediate contract between the original contract in October to sell for 2.2  
9 million and the contract in December of 1992 to sell for 2.7 million was the  
10 400,000 pounds contract to Vino Properties. And that contract was entered into  
11 without reference to apparently Mr. Tiernan who is endeavouring to negotiate  
12 the acquisition of the land from Southfield and who was bidding, suggesting  
13 figures of over 2.5 million pounds at the time.

14  
15:25:54 15 Now, it would appear that in concluding the contracts between Southfield and  
16 Vino, Southfield did not make contact with Mr. Tiernan to see whether or not he  
17 would be prepared to pay more than 400,000 pounds for a shorter closing period  
18 than he subsequently entered into in his contract in October. It's for that  
19 reason that the correspondence which emanated and commenced with letters from  
15:26:26 20 Noel Smyth solicitor to each one of the parties was involved in this  
21 transaction proceeds on the basis that the sale onward of the Southfield  
22 interest for a sum which coincidentally met only its liabilities, but was not  
23 sufficient to meet -- sorry, only its liabilities to the bank. It's secured  
24 borrower but did not meet the liabilities of unsecured borrowers was in fact a  
15:26:57 25 slight of hand or an endeavoured to do the legitimate creditors of the company  
26 or shareholders out of their interest. That is what I mean.

27 A. Well I've seen all of that too. But all of that, the supposition that there  
28 was a sale at an under value totally and absolutely overlooks the valuation  
29 which Mr. Caldwell got at the time from Hamilton Osborne King which said that  
15:27:23 30 was a fair value of the property. When you commented later to values of 2.2

15:27:30 1 or 2.7 million you're not comparing like with like.

2

3 On the one hand, you're looking at at property which has a market value

4 according to one of the most eminent firms of estate agents in the city of

15:27:52 5 400,000 on a straight sale basis. A piece of unzoned land. And then you've

6 got a sale on with a completion date far into the future after the value of it

7 has been enhanced by a rezoning or planning permission. And I gather that the

8 planning permission for about 500 houses was got which actually makes the price

9 of 2.7 million as far as I can see a much better deal than paying 400,000 for

15:28:12 10 it. Again, it's a matter of opinion.

11 Q. 592 The valuation which was sought in relation to the property did not come in in

12 time for -- sorry. The valuation was received days after the contract to sell

13 the property to Vino Properties for 400,000 pounds had been reached. In other

14 words, Mr. Caldwell sold this property without the benefit of the subsequent

15:28:45 15 evaluation which followed on the 9th of December. And had already been a

16 transfer and an agreement to sell. Sorry. And had already been a transfer

17 of the shareholding, a majority shareholding in Southfield to Vino Properties

18 before that date. And there was a contract for the sale of the property agreed

19 between the parties, albeit orally, for 400,000 pounds before the valuation was

15:29:11 20 received.

21

22 And equally, it seem that whilst the valuation was received, there is nothing

23 in the instruction given to the valuers to indicate that there were

24 negotiations extant at that point in time with a purchaser, Mr. Tiernan, who

15:29:28 25 had been prepared to pay 2.2 million pounds for the lands. Nor was that

26 referred to in any way. So that the worth of this valuation is dependent on a

27 number of factors. But I suggest to you that it was only obtained after the

28 event and was not being obtained for the purpose of a legitimate valuation of

29 the property.

15:29:54 30 A. Well I'm sure John Caldwell will be able to tell you the precise circumstances

- 15:30:00 1 relating to it.
- 2 Q. 593 Yes.
- 3 A. But if the valuation related to a period a year beyond when it was needed for,  
4 then presumably the values would have been less a year earlier. And it may be  
15:30:15 5 that he got a verbal valuation. I don't know. I'm sure he'll be able to  
6 explain the circumstances himself. But it does seem to me that the valuation  
7 which Hamilton Osborne King produced is a reliable valuation even regardless  
8 of, at the date it was given.  
9
- 15:30:36 10 JUDGE FAHERTY: Mr. Miley.
- 11 A. Yes, Judge.  
12
- 13 JUDGE FAHERTY: Mr. Tiernan wasn't even given, say, first refusal on the lands  
14 on the basis of a short closing? We know what he had negotiated? At least on  
15:30:52 15 two occasions he had a contract which lapsed. He was still in negotiations for  
16 the lands up to certainly the end of 1991. There's nothing to suggest, as far  
17 as I can recall, that Mr. Tiernan wasn't given the option of saying just buying  
18 the lands at the --
- 19 A. I understand your question, Judge.  
15:31:12 20
- 21 JUDGE FAHERTY: He may well have said I'm not interested because I want a long  
22 closing and I want to see how the Development Plan goes. He may have walked  
23 away from it.
- 24 A. I would suspect that was the position. We haven't heard any evidence that I  
15:31:25 25 can recall in relation to that.  
26
- 27 JUDGE FAHERTY: Are you surprised that Southfield wouldn't have said rather  
28 than going back into the market for a new purchaser, that Southfield wouldn't  
29 have put that proposition to Mr. Tiernan?
- 15:31:37 30 A. Well I don't want to pre judge the evidence Mr. Caldwell will give. I would

- 15:31:43 1 be surprised if that proposition wasn't put it him. And it -- just reviewing  
2 the dates it came into my mind that when all of this was going on we were at  
3 the heat of the currency crisis if you remember Judge, the end of 1991, start  
4 of 1992 and it wouldn't surprise me in the slightest, if people have very very  
15:32:07 5 short of cash. It was an extremely difficult time to bank anything.
- 6 Q. 594 MR. O'NEILL: The involvement of Mr. Synnott in this instance, Mr. Miley, did  
7 you become aware that Mr. Synnott had been advised the vendors, that is the  
8 vendors Southfield and Mr. Caldwell, prior to now coming on board for the  
9 purchasers?
- 15:32:50 10 A. I've no recollection of that really. But I'd have known Jim Synnott for many  
11 years previously and would have dealt with him businesswise on many occasions  
12 before that.
- 13 Q. 595 And Mr. Synnott certainly didn't believe initially that he was dealing with the  
14 same parties in the sale on of the property or the purchase of the property  
15:33:29 15 from Vino Properties.
- 16 A. Yeah. I don't know and I can't remember what he said in his own evidence  
17 about that.
- 18 Q. 596 Uh-huh. There was a whole series of letters between himself and yourself  
19 leading through the months of March and April of 1992, as the offer had upped  
15:33:47 20 from 2 million to 2.4 million, 2.5 million; isn't that right?
- 21 A. Yes, there was an ongoing apparent negotiation as it turns out between himself  
22 and myself which seems to have been prompted by instructions given to Jim  
23 Synnott after the principals, if you like, had negotiated to some extent.
- 24 Q. 597 The principals being Mr. Caldwell, as far as you were concerned?
- 15:34:13 25 A. Yeah, I'm using the word loosely but John Caldwell and Joe Tiernan.
- 26 Q. 598 And do you know of any reason why it was that Mr. Caldwell and Mr.--
- 27 A. Sorry. I beg your pardon. Because Kennedy I think was involved at one stage  
28 too.
- 29 Q. 599 He was in November he was involved?
- 15:34:28 30 A. I think he probably took over the negotiation or maybe directed it entirely, I

- 15:34:36 1 just can't recall.
- 2 Q. 600 The only recorded involvement that the Tribunal has of Mr. Kennedy's  
3 involvement in negotiation was in November. Sorry. It was the 19th of  
4 October of 1992.
- 15:34:53 5 A. Well there was a single sheet memo setting out the terms here.
- 6 Q. 601 Yes. That's the 19th of October 1992. And immediately thereafter on the 21st  
7 of November.
- 8 A. Yeah, there was some --
- 9 Q. 602 After elapse of some four months or so silence between yourself and  
10 Mr. Synnott. Mr. Synnott already then recommences inquiries of you as to  
11 whether your client is still interest in the pursuing.
- 12 A. I didn't, I quoted some of the terms of the previous memo verbatim. So there  
13 was definitely some connection there.
- 14 Q. 603 But did that connection include, as far as you're aware, Mr. Caldwell  
15 negotiating with Mr. Tiernan as well?
- 16 A. Well I only became aware of that as you led the evidence in relation to it.  
17 So I just didn't know at the time.
- 18 Q. 604 Sure. Do you know why it is that these parties saw fit to have yourself and  
19 Mr. Synnott being the apparent negotiators of transactions when they in fact  
15:35:55 20 were carrying out the real negotiations and had in fact concluded an agreement  
21 months before you were seen to receive formal instructions and allow yourself  
22 and Mr. Synnott to conclude the agreement?
- 23 A. Well I don't think they had concluded an agreement months before. I think --  
24 I suspect there was an ongoing negotiation. And I would expect that on John  
15:36:23 25 Caldwell's side he was and Kennedy I suppose, they were negotiating to get as  
26 much as they could. On the correspondence side, I suppose that was probably  
27 directed by John Caldwell for the formality of it, to keep a written record of  
28 what was going on.
- 29 Q. 605 The document at page 3008, which is the 19th of November 1992, records the  
15:36:50 30 minutes of a meeting which took place on Monday the 19th between Mr. Kennedy

15:36:55 1 and Mr. Tiernan at which they record the following as being agreed. Now, the  
2 contract which was entered into subsequently was a contract entered into in  
3 December of 1992, a little over two months later.

4 A. Uh-huh.

15:37:10 5 Q. 606 But its content is what is --

6 A. Yes.

7 Q. 607 Reflect in the this document.

8 A. Yes.

9 Q. 608 So despite having reached this agreement there is then almost two months of  
15:37:21 10 correspondence between yourself and Mr. Synnott in which it appears that you  
11 two parties are negotiating upward from some low point to arrive at these  
12 figures which had already been concluded. I'm just wondering if you have any  
13 reason or do you know why it was, firstly, that these parties took so long to  
14 conclude their agreement, that is between the time that the first formal  
15:37:49 15 letters are written by Mr. Tiernan to Mr. Caldwell in February of 1992, why it  
16 took ten months for them to reach this point? What was preventing them do you  
17 know?

18 A. I have no idea but I presume that there were elements probably in price and  
19 this business about the pipe I suppose which was novel, probably took a lot of  
15:38:14 20 time to negotiate, I just don't know.

21 Q. 609 Did you know of any internal dispute between the shareholders in Southfield as  
22 to the disposition of the Southfield interest to Vino, which might have left  
23 one or other of them feeling that his interests had not been translated or  
24 transmuted through the Southfield structure and into Vino in the same  
15:38:38 25 proportion?

26 A. No, throughout the entire transaction I never knew anything about the ownership  
27 of Southfield or Vino in the sense that you're talking about. But I was aware  
28 that John Caldwell was there. And the first time any kind of ownership or  
29 shareholder issue ever arose for me was that day that Liam Lawlor walked into  
15:39:03 30 my office.

- 15:39:03 1 Q. 610 Right. You'd be aware of the documents which he generated and which he called  
2 his meeting notes, which he endeavoured to use in his dealings with Mr. Goodman  
3 and Mr. Smyth which purported to indicate that he originally had had a 43%  
4 interest with Mr. Kennedy in the project and that Mr. Caldwell had a 17%  
15:39:26 5 interest and that that had been restructured following upon the bringing in of  
6 the 400,000 pounds of funds from abroad to finance the Vino -- well he didn't  
7 name it as Vino but to finance the transaction. And that upon that redivision  
8 of the property that his interest fell to 25%. Mr. Caldwell's increased to  
9 25% from 17. And Mr. Kennedy's went to 50.
- 15:39:58 10 A. Well I've seen all of that. I know nothing about it again. But I do  
11 understand that those notes were not contemporaneous notes.
- 12 Q. 611 No. And are demonstrably inaccurate I think in a number of areas; isn't that  
13 so?
- 14 A. To say the least, yes.
- 15:40:14 15 Q. 612 I'm wondering when Mr. Lawlor came in to see you after the property had been  
16 sold on for nearly 3 million at the end of the day. Did he indicate to you  
17 the precise percentage of his claim shareholding?
- 18 A. I have no recollection of that. I mean, I was just astounded. It was just a  
19 remarkable thing to have happened. I suppose that's why I remember it. But  
15:40:48 20 I can't recall whether he said what his share was. If he had I'd remember  
21 that I would have remembered it.
- 22 Q. 613 I take it that whilst it may have seemed remarkable to you at the time. Had  
23 you known that his monies had been used, that his 208,000 pounds of monies  
24 which were lent to him, had been used to buy the entire of the lands, I'm  
15:41:12 25 sure --
- 26 A. But, sure, I knew nothing about that.
- 27 Q. 614 No -- Had you done so.
- 28 A. I probably would have been in very considerable doubt if he had told me that,  
29 whether that was true.
- 15:41:24 30 Q. 615 Well I take it, it follows from that equally that Mr. Caldwell didn't tell you

- 15:41:29 1 that Mr. Lawlor had in fact funded the acquisition of the entire of the lands  
2 from the Tyrell family by paying 208,000 pounds for it, that Southfield had not  
3 paid a penny, a single penny for the land. And that the interest had been paid  
4 to, by Mr. Goodman on the basis of an understanding he had with Mr. Lawlor?
- 15:41:52 5 A. I knew nothing about anything like that. John Caldwell told me nothing about  
6 it. And if I could remind you that my position was purely and simply as a  
7 conveyancer, buying and selling a piece of land. I knew absolutely nothing  
8 about what was going on in the background.
- 9 Q. 616 Sure. Certainly you're put on inquiry when somebody comes into your office  
15:42:13 10 and says look, you conveyed those lands, you conveyed them for a sizeable sum  
11 of money I in fact have an entitlement to the proceeds. You can become  
12 flabbergasted I'm sure.
- 13 A. Even if he had, Mr. O'Neill, I wasn't the person to talk to. I represented  
14 the company. His claim was, if he had a claim at all, was not in respect of  
15:42:35 15 the proceeds of the sale of the lands. It was as a result of his interest in  
16 the company to be dealt with somewhere else and certainly not by me.
- 17 Q. 617 But I thought that I had understood that what he claimed from you was a share  
18 in the proceeds of the sale?
- 19 A. Yes, I think that's right, yes.
- 15:42:50 20 Q. 618 I mean, he wasn't saying I want a shareholding in the company Vino or anything  
21 of that nature. He's saying I'm coming to you because you're the person who  
22 conducted the sale, I'm entitled to a share in the proceeds of sale and you  
23 told him it's matter, I have my instructions from the company, deal with the  
24 company is effectively what you said.
- 15:43:10 25 A. Yes, I'm sorry. I hadn't appreciated the distinction you're making. And I'm  
26 not sure I recollect the conversation well enough to say a yea or nay on  
27 whether it was the proceeds of sale from the land or from the company but --
- 28 Q. 619 I think I am accurate though in saying that's what you said in your statement  
29 that it was in the proceeds of sale?
- 15:43:30 30 A. Well then that's my memory of it.

- 15:43:33 1 Q. 620 Yes. I take it that in the exchanges you were having with Mr. Synnott over  
2 time when he wrote to you and put offers to you and you had to put those to  
3 your clients, as you've indicated to him, who did that go to? Who did you  
4 write to or who wrote to you on the matter?
- 15:44:14 5 A. Um, that's a very good question.
- 6 Q. 621 I mean, was it Mr. Nicholas Morgan's office for example?
- 7 A. I think it would have been Mr. Parsons I think in the British Virgin Islands.
- 8 Q. 622 Well --
- 9 A. Or maybe Nick -- I really just can't remember. I'm sure that whoever it would  
15:44:39 10 have gone to, it would have got passed the onto the various other people as  
11 well.
- 12 Q. 623 Sure. I mean, allowing for time zones and matters of that nature and the  
13 delay in post?
- 14 A. Well, you see, presumably it would have all been done by fax. But I'm pretty  
15:44:57 15 certain I'd have spoken to both Mr. Harney and to Nick Morgan during the course  
16 of the transaction. And there would have been logistical problems in terms of  
17 getting documents completed and that and I think the documents went to the  
18 Channel Islands because Nick Morgan was a director or an alternate directors  
19 and I think the signatories were in the Channel Islands.
- 15:45:24 20 Q. 624 I think it was signed in Don Street in Jersey?
- 21 A. That's not an address though that rings a bell with me.
- 22 Q. 625 I think it's Nick Morgan's address.
- 23 A. Is it?
- 24 Q. 626 West Away Trust was Don Street?
- 15:45:40 25 A. I thought his address was a different one.
- 26 Q. 627 19/21 Don Street.
- 27 A. Well then that's the explanation of that.
- 28 Q. 628 Certainly as regards the role of those two gentleman that you've mentioned;  
29 Mr. Parsons and Mr. Morgan. We know that Mr. Morgan is the person who gave  
15:45:59 30 the instructions with regard to what was to take place to the proceeds of sale.

- 15:46:05 1 In other words, when the surplus of funds after deduction of the retention tax  
2 from the sale of the property was made?
- 3 A. Yes. I think the arrangements for the disposal of the purchase monies were  
4 made with him, yes.
- 15:46:19 5 Q. 629 And in addition to that, which was a direction that those funds would be lodged  
6 to the AIB bank account which had been set up by Vino Properties?
- 7 A. Yes. I think CGT deduction was made by the purchaser's solicitors and the  
8 balance then was paid into that bank account.
- 9 Q. 630 And from there paid to Guernsey to the nominated bank account?
- 15:46:47 10 A. I don't know but I think I might have seen paperwork to that effect in the  
11 brief but --
- 12 Q. 631 Certainly once the transaction was closed it was not interested really in where  
13 the funds went?
- 14 A. No.
- 15:47:00 15 Q. 632 They went --
- 16 A. No, I really wasn't, no.
- 17 Q. 633 Just for the purpose of confirming the addresses of the parties. I will just  
18 put a document on screen.  
19
- 15:47:33 20 I will just read it in. And you may take it just the address of it is West  
21 Away Trust Company, which is one of Mr. Morgan's trust companies. We also  
22 have Channel Islands and International Law Trust Company Limited. We have CI  
23 Law Trustees Limited. And then there is the Morgan Law Partnership Trust  
24 Company Limited. They are all associated trust companies within West Away  
15:47:58 25 Trust Company. And it has as its address Box PO 303 West Away Chambers, 39 Don  
26 Street, St. Helier, Jersey.
- 27 A. Yes, it was West Away Chambers that was in my mind, yes.
- 28 Q. 634 One of the features of the transaction I think, Mr. Miley, was that whilst you  
29 did have your instructions from Roadtown, Tortola and Mr. Parsons of that  
15:48:56 30 address. When it came to finalising matters and winding up the situation the

- 15:49:01 1 direction was given to give the file not to that address but rather to  
2 Mr. Morgan; isn't that right?
- 3 A. Yes, that's my memory of it, yes.
- 4 Q. 635 Right. Which would appear to indicate certainly that who was controlling the  
15:49:14 5 company wished the documentation to find itself at that location and not  
6 necessarily in the British Virgin Islands; isn't that right?
- 7 A. Presumably, yes.
- 8 Q. 636 Right. Obviously, you acceded to the request which was made of you. Did you  
9 query as to why it was that the parties wanted the entire of your file to be  
15:49:37 10 taken out of the jurisdiction?
- 11 A. Well it was a most unusual request, I complied with it most reluctantly. But  
12 at the end of the day the file belongs to the client and you have no choice.
- 13 Q. 637 The attendances, I think there is certainly a legal ruling to that effect as  
14 far as I know of Mr. Justice Barron?
- 15:49:57 15 A. I was personally involved some litigation.
- 16 Q. 638 Judge Barron's decision was it?
- 17 A. I remember the name of the company was Alpine Investments or something.
- 18 Q. 639 I think it held that whilst the documentation that passed might well be the  
19 property of the client that the attendances of the solicitor remained his own  
15:50:17 20 and that he was not obliged to turn over his attendances even on his own  
21 client?
- 22 A. Possibly, I don't remember, I don't recall that.
- 23 Q. 640 In any event, you didn't turn your mind to sorting out the documentation with  
24 the exception of removing or perhaps copying the documents which confirmed the  
15:50:35 25 monies paid for the acquisition of the lands?
- 26 A. Yes. I wanted to keep some record. When you hand over a file to a client,  
27 well my concern is always that if you get a letter subsequently alleging  
28 negligence or something like that, you don't have your file to defend yourself  
29 with.
- 15:50:57 30 Q. 641 Sure. I think probably as important as receiving the funds in from the client

- 15:51:03 1 for onward transmission to another party by way of the consideration on the  
2 contract and that's what happened in relation to the 400,000 pounds. You  
3 received 400,000 pounds?
- 4 A. Yes.
- 15:51:15 5 Q. 642 From your client. You paid it over to the vendor's solicitor. You got a  
6 receipt.
- 7 A. Yes and the receipt would be in the deed.
- 8 Q. 643 And you recorded all of that documentation and kept that documentation, that is  
9 in relation to the 393,000 odd pounds?
- 15:51:33 10 A. Yes.
- 11 Q. 644 You had all of that documentation?
- 12 A. Although looking at that memo about the completion, I notice that I'd listed  
13 all the documents I got on completion but it overlooked listing the actual  
14 transfer deed.
- 15:51:47 15 Q. 645 Right.
- 16 A. Which I'm sure I did get.
- 17 Q. 646 But on the other hand, when selling on the same property you received  
18 effectively just short of 3 million pound for --
- 19 A. No, I didn't receive any.
- 15:52:02 20 Q. 647 You didn't receive it?
- 21 A. No.
- 22 Q. 648 Was it because it went directly to the bank that you didn't have to deal with  
23 it in that matter?
- 24 A. Yes. None of that money came through my firm.
- 15:52:24 25 Q. 649 Were you curious as to why it was that your file was sought from you and  
26 requested to be sent abroad by Mr. Morgan?
- 27 A. Yes and no I suppose is the answer to that. Yes because it was an unusual  
28 thing to do but no because knowing the nature of John Caldwell, I didn't  
29 particular it didn't particularly surprise me but John's a very private person.
- 15:53:07 30 Q. 650 I think you had had a number of dealings with Mr. Nicholas Morgan's firm over

- 15:53:13 1 time; isn't that right?
- 2 A. I'm trying to remember.
- 3 Q. 651 Put another way --
- 4 A. I'm not sure the answer to that question was yes. I know that there was some
- 15:53:27 5 involvement but I just can't recall what it was.
- 6 Q. 652 Sure. Do you remember dealing with him in the context other than what I would
- 7 call John Caldwell related matters or did one come with the other?
- 8 A. Well I remember going to meet him in London a couple of years ago there
- 9 relation to the Carrickmines trying to persuade him to hand over documents and
- 15:53:48 10 that. And yeah, yes, he was involved in the Jackson Way stuff and all of that.
- 11 We've been through that. I don't --
- 12 Q. 653 My query was whether or not you had a recollection of dealing with him in the
- 13 capacity of being a solicitor in matters which did not involve Mr. Caldwell or
- 14 can we --
- 15:54:14 15 A. No, I have no recollection of that. I think the only time I dealt with him
- 16 was in relation to those two parcels of land. And there was one occasion I
- 17 remember that he asked me to investigate something about something of this
- 18 business of an immigration matter which was totally unrelated to anything,
- 19 which went nowhere.
- 15:54:39 20 Q. 654 Yes. I'm not sure if I asked in relation to this when you gave evidence in
- 21 the Carrickmines phase of the inquiry, but it touches upon the communication
- 22 which passed between Mr. Nick El Cornu and yourself regarding maintaining
- 23 documents on file or otherwise?
- 24 A. Yes, that name is familiar. I don't think you did ask me in relation. But
- 15:55:11 25 he was a member of the --
- 26 Q. 655 Of the firm of Nicholas Morgan?
- 27 A. You did because he sent me a letter asking me to destroy it or something, which
- 28 I didn't do. You did ask me that the last time around.
- 29 Q. 656 Just this document is in the earlier part of the brief not in the Coolamber
- 15:55:29 30 phase of the brief. It's at the reference 1613, I'm not sure if you can put

15:55:38 1 it on screen. Carrickmines II brief reference. Whilst it's coming on screen  
2 I'll just read it to you, Mr. Miley. It says in relation to Jackson Way that  
3 is.  
4

15:55:49 5 "Jackson Way Properties Limited lands at Carrickmines Rathdown gives the Folio  
6 number.  
7 I write further to your letter in my fax of the 14th of November 1997. I  
8 would be interested to know whether you have been able to bespoken from the Land  
9 Registry the transfer from Paisley Park Investments Limited to Jackson Way  
10 Properties Limited. The precise date of the transfer is vital before I can  
11 arrange stamping of the Declaration of Trust."

12 A. Yes, I remember that.

13 Q. 657 "I am aware from the efficacy of this transaction no appearance of  
14 communication between ourselves on our respective files. I would therefore  
15:56:26 15 ask you to remove all correspondence from ourselves from your file and we will  
16 do likewise. I would be obliged to receive confirmation that this has been  
17 effected. I look forward to hearing from you in respect of both points".  
18

19 Now, you included this document on your file.

15:56:44 20 A. It's not the way I would do my business. And that's why the letter stayed on  
21 the file.

22 Q. 658 Right. The fact you do include all of your documentation on your file means  
23 that if your file was discovered or considered by some party, all of the  
24 information would appear on it; isn't that right?

15:57:15 25 A. It should be yes, unless something has been removed, yes.

26 Q. 659 Do you think that might be the reason why your file was removed out of the  
27 jurisdiction so it wouldn't be capable of being reviewed by anybody else.  
28

29 JUDGE FAHERTY: Do you know when the request was made of Mr. Miley?  
15:57:36 30

15:57:36 1 MR. O'NEILL: It was shortly after the closing I understand. Isn't that  
2 right?

3 A. That's my memory of it.

4 Q. 660 We don't have a date. I'm not sure.

15:57:44 5  
6 JUDGE FAHERTY: We're talking about 1994 then is it or 1992?

7  
8 MR. O'NEILL: I think it's '94. You didn't record this in your book or  
9 anything?

15:57:54 10 A. There's nothing that would help me to work-out a date but obviously it was  
11 after the transaction was completed and I presume shortly afterwards. And I  
12 think it was Nick Morgan who asked me to send it to him or I presume it was.

13 Q. 661 I will be moving to another matter if I may. And it might take some time so we  
14 might break now.

15:58:17 15  
16 CHAIRMAN: We will rise until 10:30.

17  
18 **THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,**  
19 **WEDNESDAY 2ND FEBRUARY 2005, AT 10:30 A.M.**

15:59:04 20  
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