

1 **THE TRIBUNAL COMMENCED AS FOLLOWS ON THURSDAY,**
2 **12TH FEBRUARY, 2004 AT 10.30 AM:**

3
4 CHAIRMAN: Good morning.

5
6 MR. O'NEILL: Good morning Mr. Chairman.

7
8 The next witness to be called will be Mr. Frank Friel.

9
10 Mr. Friel please would you come forward to the witness box?

11
12 **FRANK FRIEL, HAVING BEEN SWORN WAS EXAMINED**
13 **AS FOLLOWS BY MR. O'NEILL:**

14
15 Q. 1 Good morning Mr. Friel, I think you are a practising solicitor.

16 A. That is correct.

17 Q. 2 Are you a sole practitioner?

18 A. That's correct.

19 Q. 3 How long have you been in practice as a solicitor?

20 A. As a solicitor or sole practitioner?

21 Q. 4 As solicitor.

22 A. Approximately 30 years.

23 Q. 5 And when did you go into private practice or into sole practice?

24 A. Approximately 1985, '86.

25 Q. 6 And prior to that date where did you practice?

26 A. I practised, it was firstly called Fitzpatrick's and subsequently Binchys.

27 Q. 7 And were you a partner in Binchys?

28 A. I was at the end of my term there.

29 Q. 8 I see. And Mr. John Caldwell then was a fellow partner in the same enterprise?

30 A. He was indeed.

- 1 Q. 9 Until 1985, is that right?
- 2 A. Exactly.
- 3 Q. 10 The Tribunal is currently enquiring into the ownership issues arising from
- 4 lands at Carrickmines which at some point in time were registered in the name
- 5 of a company called Paisley Park Investments Limited, which is an Isle of Man
- 6 company. And I think you, in your professional capacity, acted as a solicitor
- 7 in connection with the affairs of that company in a number of instances, isn't
- 8 that correct?
- 9 A. That is correct.
- 10 Q. 11 And you have provided the Tribunal with a statement in which you outline your
- 11 initial involvement in 1988 in connection with a Land Registry matter, where a
- 12 caution was registered in 1992. You became involved in the liquidation of that
- 13 company upon the instruction of the liquidator, a Mr. Roderick Harker, and that
- 14 continued, I think, until 1994 or thereabouts.
- 15 A. That is correct.
- 16 Q. 12 And subsequently you tell us in your statement, there was a further matter
- 17 where you were engaged to endeavour to recover, from Mr. Grant, the sum of
- 18 money which was due to Paisley Park in respect of the letting of the land
- 19 during to the currency of it's ownership, and that didn't progress any further.
- 20 A. That is correct.
- 21 Q. 13 Now in relation to the 1988 involvement, I understand from your statement that
- 22 your documentation, generated in 1988, is no longer available to you on the
- 23 basis that it has been disposed of in the normal course of disposition of
- 24 redundant or archived or moribund files, is that right?
- 25 A. That's correct, not solely it, but part as a clearing out.
- 26 Q. 14 Sure. You indicate that in October 1999, some 390 kilograms of documentation
- 27 was removed for shredding from your office and was shredded and it is your
- 28 belief that such documents as you had in relation to the 1988 involvement were
- 29 shredded at that time.
- 30 A. That is correct.

1 Q. 15 You are in a position to give evidence in relation to the 1988 matters then.
2 From your memory of those events and I take it from having considered the
3 brief of documentation which was circulated to you by the Tribunal which
4 contains, I believe, the copy documentation which came into the public domain,
5 namely the Land Registry documentation, isn't that right?

6 A. Exactly, yes.

7 Q. 16 And that is an aid to you in jogging your memory, I take it as to what --

8 A. I thought I had a slight, even before I saw the document, I thought I had a
9 slight recall, but this make it is clearer.

10 Q. 17 You say in your statement that you believe that Mr. John Caldwell of Binchy
11 solicitors telephoned your office in July 1988, "advising that he was going on
12 holidays and requesting, during his holidays, that I would enter a priority
13 search to effect the lands comprised in Folio 4940 County Dublin during his
14 absence on holidays. I suggested rather than entering and having to continue
15 entering priority searches that a caution be entered on the Folio itself." Is
16 that your recollection?

17 A. That is my recollection.

18 Q. 18 Yes. This was three years after you left Binchys, you were now out on your own
19 conducting your own practice, is that right?

20 A. That is right.

21 Q. 19 You believe it was in July that Mr. Caldwell informed you that he was going on
22 holidays and he wanted you to deal with this matter.

23 A. That is correct.

24 Q. 20 I take it Binchys, at that point, was a relatively large firm with it's own
25 conveyancing solicitors, at least, certainly more than two.

26 A. Absolutely, that's correct.

27 Q. 21 Did Mr. Caldwell give you any explanation as to why it was that he did not have
28 this done within the firm of Binchys, but required you as an outside solicitor
29 to become engaged in that?

30 A. My recollection, but I am not stating that it is 100 per cent, my recollection

1 is that he wanted it to be sure that it was done. In other words, that he
2 would rely on me to do it, but he mightn't rely on other people inside the firm
3 as much.

4 Q. 22 Without being unduly critical of any of the then members of the staff of
5 Binchys, at that time, they were, as far as the Tribunal is aware, very senior
6 solicitors, in fact may well have been more senior to yourself, isn't that
7 right, on the conveyancing side now I am talking about?

8 A. On the conveyancing side, no. No. It would be more on the commercial side,
9 more senior people were there. On the conveyancing side at that stage I would
10 have been one of the more senior conveyancers.

11 Q. 23 Now, the task of registering a caution, however, is hardly one that requires
12 somebody of long experience to complete or indeed what Mr. Caldwell's initial
13 suggestion registering a priority search is not something which requires the
14 expertise of --

15 A. But it's very surprising. Very few people know about a priority search, very
16 few people know about entering a caution.

17 Q. 24 Yes. Well you might just briefly tell us what the effect of registering the
18 priority search would be vis-a-vis other ranking or intended interests that
19 might be placed on the Folio?

20 A. Well the intention was, the Land Registry's purpose of a priority search
21 initially was that when a person bought a piece of registered land they entered
22 a priority search and that had the effect of closing down the Folio to all
23 other people for 14 days, so that when you completed your purchase, in theory
24 you ran off and got the deeds stamped and lodged it in the Land Registry and
25 your dealing would be registered and that would, nobody else could have any
26 dealings during that period. That was the intention of the priority search, in
27 practise it obviously, the Land Registry doesn't happen within that period of
28 time now so nobody does a priority search.

29 Q. 25 At this time in 1988 it was more effective is that --

30 A. No.

- 1 Q. 26 Even then.
- 2 A. Even then, I think even since the Act came into operation, it was never
3 effective for what it's intended purpose was.
- 4 Q. 27 Indeed. Whilst Mr. Caldwell indicated to you he was going on holidays, did he
5 tell you why it was he wanted to effectively freeze the Folio on this
6 particular land at the time?
- 7 A. My recollection would be that they had a contract, or some person had a
8 contract for the purchase of the land.
- 9 Q. 28 And I assume, obviously, therefore, that Mr. Caldwell was indicating to you
10 that he was representing the interests of the party who was acquiring the land
11 and who had the contract to acquire the land, is that right?
- 12 A. Indeed, yes.
- 13 Q. 29 The documentation which was generated in connection with that is documentation
14 which has been extracted from the Land Registry records. And we'll see on the
15 documentation which will be put up on screen shortly before you, that a letter
16 was written by Mr. Martin Bullock on the 3rd of August 1988 under the title of
17 Paisley Park Investments Limited, to the registrar of the Land Registry at
18 Setanta Centre, we see that at page 2229, sorry 2228, it will come up on screen
19 you now, just beside you.
- 20
- 21 So the gentleman there, Mr. Martin Bullock, to this point in August, had you
22 had any contact with him directly, by that firstly I should ask you whether you
23 had met with Mr. Bullock, face-to-face, in connection with this transaction or
24 any earlier transaction?
- 25 A. I had never met with Mr. Bullock face-to-face.
- 26 Q. 30 Did you know of a Mr. Martin Bullock and if so, what did you know of him?
- 27 A. I had various dealings when I was in Fitzpatricks, subsequently Binchys, with
28 Mr. Bullock.
- 29 Q. 31 And what did you understand Mr. Bullock's capacity or role to be in connection
30 with Irish companies or indeed foreign companies dealing in Ireland?

- 1 A. I took his role to be that of a company secretary.
- 2 Q. 32 As regards the issue of beneficial ownership or ultimate beneficial ownership
3 of companies or their assets, did you identify Mr. Bullock as falling with in
4 the category of persons who was a beneficial owner or did you see him in the
5 category as being an administrator, secretary or cipher for --
- 6 A. The latter.
- 7 Q. 33 Did Mr. Caldwell explain to you what Mr. Bullock's role was in this particular
8 company we see named here, Paisley Park Investment Limited?
- 9 A. Yes, he would have said that he was the secretary of the company.
- 10 Q. 34 Right. He signs here as director rather than secretary?
- 11 A. Well maybe director, maybe director/secretary.
- 12 Q. 35 But in that capacity of being somebody who was a transmitter of the resolutions
13 of the company to others rather than a person, who would own the assets, is
14 that right?
- 15 A. Indeed.
- 16 Q. 36 The company here Paisley Park Investments Limited is one with which you were to
17 have dealings on and off from 1988 up to 1994, a period of six years or
18 thereabouts, in the course of those dealings, did you ever have contact on
19 behalf of this company or for this company, with anybody other than Mr. Martin
20 Bullock, Mr. Roderick Harker or Mr. John Caldwell?
- 21 A. I think I might be misunderstanding you there. But after 1988 --
- 22 Q. 37 I know you didn't come back into the company until 1992, but I mean back into
23 dealings with it's affairs, but just in the overall, because I want to cover
24 the period from the time that you first learned of Paisley Park until the time
25 that you ceased to have dealings with it, when you were instructed to hand over
26 your papers to Miley & Miley Solicitors who were going to act from then on. In
27 that period, did you have any dealings with, on behalf of the company, and by
28 that I mean the company having dealings with you rather than third parties who
29 were not involved?
- 30 A. Sorry I might be --

- 1 Q. 38 Okay, I will take it in stages. Paisley Park Investments Limited as we know is
2 a company which had two registered directors, one of those directors was
3 Mr. Martin Bullock who is the gentleman we see in that document here?
- 4 A. Yes.
- 5 Q. 39 The other director was Mr. Roderick Harker. And Mr. Roderick Harker was to go
6 on to become the liquidator of the company once it was determined that it
7 should be wound up. And they were the officers of the company from the company
8 law point of view, in addition to those individuals you were taking
9 instructions as in this instance from Mr. John Caldwell. Do I understand that?
- 10 A. (nods).
- 11 Q. 40 Now did you take instructions on behalf of this company, Paisley Park from any
12 person other than those three individuals?
- 13 A. No.
- 14 Q. 41 In the time that you were --
- 15 A. No, I did not.
- 16 Q. 42 All right. Did you ever have any contact with a Mr. Jim Kennedy, and in
17 particular did you ever receive instructions, directions or meet with Mr. Jim
18 Kennedy in the context of Paisley Park Investments?
- 19 A. I never met with Mr. Jim Kennedy in any way, shape or form, in relation to
20 Paisley Park or anything else.
- 21 Q. 43 Right. Did you know him to be a client of Mr. John Caldwell's during the
22 currency of your being a partner at Binchys?
- 23 A. I did not know he was a client of John Caldwell's during my period of being in
24 that firm.
- 25 Q. 44 So you didn't know anything at all about Mr. Jim Kennedy?
- 26 A. Nothing whatsoever.
- 27 Q. 45 Is your knowledge of him limited to what you have learned in the press since or
28 did you know of him --
- 29 A. Totally limited to what I learned in the press since.
- 30 Q. 46 I see. The evidence has been given before the Tribunal over the past number of

1 days, Mr. Friel, dealing with the acquisition of these particular lands. The
2 acquisition was being carried out by a firm of solicitors called Reddy Charlton
3 & McKnight, a firm I am sure you are familiar with, and with the members of
4 that firm, isn't that right?

5 A. That's right.

6 Q. 47 And the evidence of Mr. Stanley who was acting as the agent in the acquisition,
7 certainly the agent for somebody in the acquisition of this particular property
8 in Carrickmines on Folio 4940, was that Mr. Jim Kennedy was the person behind
9 Paisley Park Investments Limited and he was the person calling the shots
10 effectively. Did you have any inkling of that at any time when you were
11 dealing with the affairs of Paisley Park at the instruction of the three
12 gentlemen I have mentioned earlier?

13 A. None whatsoever.

14 Q. 48 It follows therefore, that in July of 1988 Mr. Caldwell contacted you in
15 connection with Paisley Park, he did not tell you that he was acting for
16 Mr. Jim Kennedy in this context, is that correct?

17 A. That is correct.

18 Q. 49 Did he tell you that he himself was a person who had a personal interest, by
19 that I mean, ultimate financial beneficial interest in these lands and that you
20 would be doing him a favour if you were to act in the manner for which he asked
21 you to act?

22 A. No, he did not.

23 Q. 50 Would that be a surprise to you to learn that a colleague with whom you had
24 practiced for some years as a partner in a firm, which obviously you would have
25 joint responsibilities and liabilities, that he would act in a way where he was
26 asking you to act for an Isle of Man company, which he had ultimately an
27 interest in what it owned, without disclosing that to you?

28 A. I would have thought he would, yes.

29 Q. 51 You would have thought he would have disclosed it to you had he had an
30 interest?

1 A. I would, yes, but then again. You know, I wouldn't say -- I would have been
2 surprised to learn that he had an interest in the thing, if I can put it that
3 way, in the land, if I put it that way.

4 Q. 52 And that surprise would arise I take it, from the fact that he had such an
5 interest, you would have expected him to tell you about it because he was going
6 outside his own firm, coming to your firm and asking you to you do something
7 for him, as a favour presumably, within the firm, because he was going away on
8 holidays.

9 A. I don't think I would put it that way, no.

10 Q. 53 How would you put it?

11 A. I would --

12 Q. 54 On the assumption that the Tribunal is now being informed by Mr. Caldwell that
13 he is a person who has had an interest which now translates effectively to a 50
14 per cent ultimate beneficial ownership in these lands, in those circumstances,
15 are you not surprised that when he contacted you in 1988 to ask you to do this
16 job, that he did not tell you that you it was for him, or for a company
17 associated with him?

18 A. I would have been surprised that John's dealing in land, that -- I saw John as
19 a hard-working solicitor, which not to sound facetious, a lot of them are. I
20 wasn't aware that he was dealing in land. If he actually said to me "I have an
21 interest in this land" I think I would have been surprised.

22 Q. 55 Yes. I appreciate that whilst you would have been surprised if he told you,
23 are you now surprised that he did not tell you?

24 A. Not really, no.

25 Q. 56 So in that scenario you are saying Mr. Friel, just to get it straight
26 Mr. Friel, that a person with whom you had a close professional relationship as
27 a partner for some years, involved you in a land transaction whilst he was
28 going on holidays, without telling you that he was, in fact, going to be the
29 substantial beneficiary of whatever you did, and that it doesn't surprise you
30 that he would not have told you about it.

- 1 A. No, it does not surprise me .
- 2 Q. 57 Is that because of the particular relationship you had with Mr. Caldwell or his
3 general approach to life?
- 4 A. I think that, yes. I think that would be summing it up, his general approach
5 to life. If he was doing a job it was to get from A to Z and not to digress,
6 but very many times -- when I was in Fitzpatrick's subsequently Binchys, I did a
7 lot of conveyancing with, for John. He would have done the tax side. But if
8 John asked me to do conveyance from A to Z, the parties A to Z, I would do it,
9 I wouldn't necessarily say what's A or who is the owner of A or what's this all
10 about.
- 11 Q. 58 But if he was A, if it was company A owned by John Caldwell or one of his many
12 trusts, were you saying you wouldn't expect him to tell you "This is one for me
13 Frank?"
- 14 A. Just go on and do it.
- 15 Q. 59 So it was that you received information on a need to know basis, you didn't
16 need to know that Mr. Caldwell was a 50 per cent owner of this company and
17 therefore he didn't tell you, is that the approach?
- 18 A. That's right and I wouldn't ask.
- 19 Q. 60 Right. Certainly, did you understand from Mr. Caldwell that Binchys were
20 acting for the purchasers in the acquisition of the land?
- 21 A. In 1988?
- 22 Q. 61 Yes.
- 23 A. Well, I presume they must have been when they were entering the caution and --
24 or when I advised or said, when he was doing the priority search to close off
25 the Folio. I presumed that it was litigation coming down the line or something
26 like that. Binchys were, it must have been acting.
- 27 Q. 62 Did you prepare the documentation for the Land Registry which was going to be
28 sworn by Mr. Bullock in support of the application?
- 29 A. I did.
- 30 Q. 63 Right. And if we look to the document which we'll see at page 2231? You will

1 see that this is an affidavit which was sworn by Mr. Martin Bullock in the Isle
2 of Man on the 28th of July 1988. In it he deposes, in paragraph two, or
3 paragraph 1A and B, I should say, to the fact that:

4

5 "Robert Tracey, the registered owner of the lands contained in Folio 4940 of
6 the register, etcetera, did by signature on a Memorandum of Agreement dated 9th
7 March 1988, contract to sell all of the lands to Gerard Charlton, solicitor in
8 trust.

9

10 Gerard Charlton, the stated trustee, held in trust for Paisley Park Investments
11 Limited".

12

13 I assume that in drafting this and prior to it's signature by Mr. Bullock, that
14 you had been the recipient of information which bore this out or stood it up.

15 A. That's correct.

16 Q. 64 Presumably therefore, you had sight of the document which is described as the
17 Memorandum of Agreement dated 9th of March 1988.

18 A. That, I can't recall if I had, I noticed here the dates are added in. But I
19 have a vague recollection again I might be, I am relying on my memory, that I
20 saw a handwritten, on a piece of rough paper.

21 Q. 65 Yes.

22 A. A handwritten note, memorandum, but I don't --

23 Q. 66 That handwritten note or memorandum as you describe, in manuscript, would be a
24 document that had been prepared by Mr. Sam Stanley, it's at page 90 on screen.
25 Does that look familiar in the context of my question?

26 A. It does not look familiar.

27 Q. 67 No. The document you have a recollection of in any event was a manuscript
28 document, was it?

29 A. It was.

30 Q. 68 Yes. This, as far as the Tribunal's documentation is concerned, is the only

- 1 document generated on the 9th of March 1988 which could conform to the
2 description of a document contained in Mr. Bullock's affidavit.
- 3 A. That's correct.
- 4 Q. 69 Yes. You think, do you think there might have been another one?
- 5 A. I wouldn't have thought so.
- 6 Q. 70 I'm sorry Mr. Friel?
- 7 A. I wouldn't have thought so.
- 8 Q. 71 No. Well, may the Tribunal take it that this is the document that is referred
9 to in Mr. Martin Bullock's --
- 10 A. Oh I would say so, yes, definitely.
- 11 Q. 72 And a matter of course, you as a conveyancing solicitor, in drafting an
12 affidavit which was to be sworn in support of the caution, would have seen what
13 the underlying document was, that merited the caution being registered, isn't
14 that right?
- 15 A. No. That it might, again I am only surmising, it could be that Martin Bullock
16 told me that the document was dated 9th of March or he added in the 9th of
17 March.
- 18 Q. 73 Sure.
- 19 A. Because the caution there you notice there is that slight --
- 20 Q. 74 Yes.
- 21 A. I just can't recall.
- 22 Q. 75 So it's possible that you, in drafting the draft of this affidavit, did not
23 know what the Memorandum of Agreement was particularly, is that possible?
- 24 A. It is possible.
- 25 Q. 76 Right. Do you accept that the reference to the contract to sell all of the
26 lands to Gerard Charlton, solicitor in trust, was probably in the draft that
27 you sent to Mr. Bullock?
- 28 A. It probably was, yes.
- 29 Q. 77 Now you knew that Mr. Charlton was not a solicitor in Binchy & Partners.
- 30 A. Absolutely.

- 1 Q. 78 And you knew that he is the person with whom the contract was being made.
- 2 A. (nods).
- 3 Q. 79 Did that not put you on notice, to inquire from Mr. Charlton, what the position
- 4 was in relation to a caution being registered on lands, where he was the party
- 5 who had the contract?
- 6 A. I must say it didn't, no, maybe it should have, but it didn't.
- 7 Q. 80 Well was that not an unusual, did it not strike you as unusual firstly that
- 8 Binchy & Partners were, would engage you, an outside solicitor, to file a
- 9 caution in respect of a contract in which it would appear that the purchaser in
- 10 that contract is yet another solicitor, who was wholly independent from Binchy?
- 11 A. It was my suggestion that the caution should be entered.
- 12 Q. 81 Yes. But once you made that suggestion, Mr. Friel, would you not have
- 13 established what the basis of registering a caution would be, in other words,
- 14 if Mr. Caldwell is saying to you, what I want registered is a priority search
- 15 and you decide that that would be an ineffective way of dealing with it, but
- 16 that an appropriate way would be to register a caution, that would involve
- 17 yourself and Mr. Caldwell discussing exactly what was his fear that he might be
- 18 in some way gazumped presumably by somebody else in this deal and why a caution
- 19 was necessary, isn't that right?
- 20 A. Yes or Mr. Bullock.
- 21 Q. 82 Or Mr. Bullock. Certainly one or other of them would have had to discuss with
- 22 you the detail of the transaction, which required to be protected by this
- 23 caution.
- 24 A. That is correct.
- 25 Q. 83 Now, presumably whoever did talk to you informed you that Gerard Charlton is
- 26 the stated trustee, holding on trust for Paisley Park Investments?
- 27 A. That is correct.
- 28 Q. 84 Can you recollect whether or not it was Mr. Caldwell who informed you that
- 29 Mr. Charlton was holding this property in trust for Paisley Park or whether it
- 30 was Mr. Bullock who indicated that to you?

- 1 A. I can't recall, but again I would surmise it was Mr. Bullock, because I presume
2 if John Caldwell was going away on holidays he had gone at this stage.
- 3 Q. 85 Well he had not gone before you and he had discussed the issue, and determined
4 that caution was the appropriate way too proceed forward, rather than
5 registering a priority search.
- 6 A. That's right.
- 7 Q. 86 So obviously you must have understood the transaction would be Mr. Caldwell,
8 before you dealt with Mr. Bullock?
- 9 A. Well possibly so. But --
- 10 Q. 87 Could I suggest, particularly so, Mr. Friel, because Mr. Bullock, as you knew
11 to that point in time, was a person whose function generally was that of a
12 company secretary or administrator and certainly not the party who would have
13 the knowledge, or the entitlement perhaps, to instruct a solicitor to proceed
14 in a legal matter, isn't that right?
- 15 A. That would be correct.
- 16 Q. 88 So is it more probable than not, probable that it was Mr. Caldwell who gave you
17 information which allowed you to conclude that the property was being held by
18 Mr, sorry, that the contract document was one in which Mr. Charlton was holding
19 in trust for Paisley Park?
- 20 A. Yes, it is more probable.
- 21 Q. 89 I just want to refer now to some correspondence which passed between
22 Mr. Charlton and Mr. Caldwell as to the status of Mr. Caldwell, Mr. Caldwell
23 and Mr. Charlton in the month of July of 1988. You'll see at document 192 on
24 screen, that on the 14th July 1989, Reddy Charlton were in communication with
25 Mr. Caldwell and one of the matters in issue was that Mr. Caldwell had referred
26 to Paisley Park Investments Limited as "Our mutual client" in the course of
27 correspondence which had emanated just shortly before that from Binchy &
28 Partners. You will see the response of Mr. Charlton or Mr. O'Siochain, in this
29 instance, to the suggestion that his firm were acting for a mutual client,
30 namely Paisley Park Investments.

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In paragraph two Mr. O'Siochain says:

"In the first place we have no instruction whatsoever to act on behalf of your clients and we are most surprised at that reference in your letter to our mutual client. Such is quite definitely not the case, and we wish to make it quite clear that we do not so act. The fact that a gentleman, identifying himself as a Mr. Bullock, whom we do not know, and whom we have never met, purporting to be a director of your client company, has made contact with us and has sent a cheque to us in the expectation of a draft contract, does not, nor should it be construed as meaning that we are formally acting on behalf of, or as agents for, your clients."

Paragraph 3, "We have in fact been retained by and are solely acting for Mr. Stanley in relation to his agreement with Mr. Jim Kennedy and his company, Paisley Park Investments Limited, your client."

So certainly as of that date, which is shortly before your discussions with Mr. Caldwell, the position was that Mr. Gerard Charlton's firm did not purport to be trustees in this situation, isn't that right?

A. That is correct.

Q. 90 We'll see at page 209, Binchy & Partners response on the 19th of July of 1988, and towards the bottom of the second paragraph you will see Mr. Caldwell writes as follows:

"This firm has stated that it is not acting for Paisley Park in the completion of it's contract with Mr. Tracey. This is a matter in which your firm is instructed to act and by it's correspondence and actions, is so doing."

Again whilst in and around this time, and it may have been a week later, Mr. Caldwell is telling you, or you understand from him, that Binchys are

1 acting on behalf of Paisley Park, in the acquisition of the lands, that is not
2 the case, if this letter is correct, isn't that true?

3 A. That's correct.

4 Q. 91 We see at page 211, which is the last page of the letter that is on screen in
5 the second, sorry first paragraph of it. Mr. Caldwell states:
6 "Mr. Charlton is trustee for Paisley Park and has acknowledged this by his
7 correspondence and communication with Paisley Park" he then goes on in the next
8 paragraph towards the end to say.

9

10 "In view however of the contents of your letter of the 14th July" That is the
11 one where Mr. Charlton says their client is Mr. Stanley and not Paisley Park
12 "In view of the content of your letter of the 14th July, it appears that you
13 may not be happy to continue to so act. If that is the case please so advise
14 Paisley Park by 5 pm on Wednesday, so that Paisley Park can make arrangements
15 for another firm of solicitors to act. We are instructed to under take to
16 discharge your fee force your work to date"

17

18 So at this point in time, it would appear that Paisley Park is endeavouring to
19 place itself in the position where it can change it's solicitors from Reddy
20 Charlton & McKnight and take with it the benefit of the contract which exists,
21 it claims, with Mr. Tracey and Paisley Park, isn't that right?

22 A. That is correct.

23 Q. 92 Did Mr. Caldwell ever discuss with you that it was possible that you would be
24 made the solicitor acting on behalf of the purchasers, Paisley Park, in lieu of
25 an existing firm which was acting, whether it be Binchys or Reddy Charlton
26 McKnight?

27 A. I have no recollection of that being, being advised of that, no.

28 Q. 93 We'll see that whilst Mr. Caldwell, at this point on the 19th of July, is
29 maintaining that Mr. Charlton is acting as a trustee, we see in document 217 on
30 the 20th of July, that there is a faxed response from Reddy Charlton & McKnight

1 which says:

2

3 "We received your letter of the 19 inst and we note it's contents. We
4 reiterate what we have already stated in our letter of the 14th of July,
5 regarding our acting as agents for, or trustees for your clients."

6 It reads in the copy "for our trustees your clients."
7

7

8 So here we see Mr. Charlton, particularly Mr. Charlton, rejecting the
9 suggestion that he was a trustee for Paisley Park in this transaction, isn't
10 that so?

11 A. Yes.

12 Q. 94 Though we know that within 7 or 8 days of this, Mr. Bullock is to swear an
13 affidavit in which he claims the contrary, isn't that right?

14 A. That's correct.

15 Q. 95 You will see that the rejection by Mr. Charlton of the role of trustee is
16 stated here, in it's context, that there was a claimed agreement under which
17 the client for whom he actually acknowledged acting, Mr. Stanley, was claiming
18 one million pounds, which would be payable by the parties who might ultimately
19 acquire the lands, that is Paisley Park Investments, we'll see that at the end
20 of the letter there.

21

22 "As indicated by your Mr. Caldwell at the recent meeting at this office, the
23 agreement between Mr. Kennedy and Mr. Stanley is that shares to a value of one
24 million pounds in Paisley Park Investment Limited would be issued to Siteland
25 Management Limited and/or Mr. Stanley and that this is to the subject matter of
26 a shareholders agreement to protect the interest of Mr. Stanley. Please let us
27 here from you in this regard."

28

29 So as identified in the evidence over the past number of days, which you may or
30 may not have been aware of, the entitlement of Paisley Park to proceed with the

1 contract was subject to their reaching the agreement with Mr. Stanley, the
2 person who had the agreement for sale dated the 9th of March 1988, which is
3 referred to subsequently in Mr. Bullock's agreement, isn't that so?

4 A. That is correct.

5 Q. 96 Whilst Reddy Charlton here state, that having discussed the matter with
6 Mr. Stanley he has expressed his agreement to our acting -- sorry to our acting
7 formally on behalf of Paisley Park Investments Limited in this transaction,
8 there is no acknowledgement here, that in going forward, that Mr. Charlton will
9 be the trustee for Paisley Park, isn't that so?

10 A. That is correct.

11 Q. 97 In fact, we see that the authority, that Mr. Charlton appears in page 224, and
12 that is a manuscript document signed by Mr. Stanley, where he agrees to Reddy
13 Charlton & McKnight acting for Paisley Park Investments Limited and himself so
14 that it was an authority for them to act, but it was not either a concession
15 that they were no longer acting for him nor was it a consent to Mr. Charlton
16 acting in a trustee capacity, isn't that so?

17 A. That is so.

18 Q. 98 Now, notwithstanding that letter, Mr. Caldwell apparently, on the 22nd July at
19 page 227, responds to Mr. Charlton's letter and he first draws attention to
20 the, that he can't understand the second sentence, we know why that is, it's
21 because the use of the word "for our", instead of the word "or". He goes on to
22 say:

23
24 "I do not understand the second sentence thereof, but reiterate that you were
25 acting as trustee for Paisley Park. I note that you will be continuing to so
26 act."

27
28 Again insofar as Mr. Caldwell draws an inference from the letter we have
29 already seen on screen, that Mr. Charlton was going to act as trustee, that is
30 not apparent on the face of that document, isn't that right?

1 A. That is correct.

2 Q. 99 And Mr. Charlton takes issue with this at page 238, to come on screen, in the
3 third paragraph in that letter, where he says:

4

5 "We have already made it quite clear, both to yourself and to our clients, that
6 neither this firm nor Mr. Charlton has ever agreed to act as trustee for your
7 client in this matter, or indeed for anyone else."

8

9 He then goes on, at page 239, to set out what the basis upon which he was
10 acting was, and that is paragraph two there.

11

12 "As already stated, our retainer was from Siteland and we can only act for
13 Paisley with our clients permission, which is forthcoming provided that there
14 is no conflict between the parties. It is therefore important that you let us
15 hear immediately on the agreement between our clients and Mr. Kennedy.

16

17 We have not acted as trustees or otherwise for Paisley and we'll only accept a
18 retainer to act on the basis set out above. Your reference to Mr. Kennedy
19 and/or his company Paisley as our "Mutual" client is incorrect. They are your
20 clients and you have acted on their behalf in this matter."

21

22 So that is a letter written on the 28th of July 1988 and it is a letter written
23 on the same date as the affidavit that we were looking at a little earlier,
24 that is Mr. Martin Bullock's affidavit. Now, if we now read Mr. Bullock's
25 affidavit in the context of the information which has been gleaned from a
26 review of the correspondence between Mr. Caldwell and Mr. Charlton, it says:

27

28 "Robert Tracey, the registered owner of the land contained in Folio 4940 of the
29 Register of Freeholders, County Dublin, did, by signature of Memorandum of
30 Agreement dated 9th day March 1988, contract to sell all of the lands to Gerard

1 Charlton, solicitor in trust." That is a true and accurate statement that
2 could be sworn to without qualification, isn't that so, the content 1A is
3 entirely correct?

4 A. It is.

5 Q. 100 Yes, when we turn to 2B.

6

7 "Gerard Charlton, the stated trustee, held in trust for Paisley Park
8 Investments Limited " -- that is not true.

9 A. That is correct.

10 Q. 101 Not only is it not true, but it is something which Mr. Caldwell's attention to
11 has, Mr. Caldwell's attention has been drawn to, in clear and specific terms
12 over correspondence lasting for at least two and a half weeks before the date
13 of the swearing of this affidavit, isn't that so?

14 A. That is correct.

15 Q. 102 Does it surprise you that you were asked to draft an affidavit in these terms
16 by Mr. Caldwell, in the light of the information which he must have known given
17 the correspondence that we have already opened?

18 A. It does.

19 Q. 103 Have you any reason or do you know why the conflict which was readily
20 identified in this correspondence was withheld from you?

21 A. I have no idea why, I have no knowledge of the correspondence, or the, what was
22 happening between Mr. Charlton and Mr. Caldwell.

23 Q. 104 Presumably if this transaction, by that I mean the registration of a caution,
24 was one conducted by Binchys, all of that correspondence would be on file for
25 the conveyancing solicitor, who was delegated the task of either registering a
26 priority search or registering a caution, isn't that right?

27 A. It would.

28 Q. 105 Equally, had you been aware of the exchange which had taken place between
29 Mr. Caldwell and Mr. Charlton regarding his capacity, whether it be as trustee
30 or otherwise, I take it you would not have drafted the affidavit in this

- 1 format?
- 2 A. I couldn't have.
- 3 Q. 106 So were you being misled Mr. Friel?
- 4 A. Well, from what I have seen there, yes.
- 5 Q. 107 Did Mr. Caldwell ever contact you after his return from holiday, if that's
- 6 where he was at the time, to inquire further as to how you had progressed
- 7 matters and what had taken place?
- 8 A. Again I can't recall. But I would have thought not, because on, shortly after
- 9 entering that caution, peculiarly enough, just to see that it was entered and
- 10 in case it hadn't been, I did a priority search which I was then, it was a
- 11 usual animal, I just did it in case it wasn't entered, to cover the period, and
- 12 I can't recall having any subsequent correspondence, or talking about
- 13 Mr. Caldwell, Mr. Bullock or anybody else, after that time .
- 14 Q. 108 So we may take it from that, that you were not to know that the parties who
- 15 were in dispute in the correspondence that we have opened earlier, between
- 16 Reddy Charlton & McKnight and Binchys, ultimately went on to reach a
- 17 shareholders agreement in which a shareholding in Paisley Park was to be
- 18 allocated to a company in the British Virgin Islands?
- 19 A. I have no knowledge whatsoever.
- 20 Q. 109 None of that was brought to your attention?
- 21 A. No.
- 22 Q. 110 And your interest, effectively had ceased once you had registered on behalf of
- 23 Paisley Park Investments, a caution, which would remain there I take it, until
- 24 such time as it was removed from the Folio at the instance of either the
- 25 affected party, that is the registered owner of the land, or the party in whose
- 26 favour the caution had been registered, Paisley Park Investments Limited.
- 27 A. That is correct, more usually the -- more usually the latter.
- 28 Q. 111 Yes. Unless they come to an arrangement or --
- 29 A. Yes, the court decides it shouldn't be there, or whatever.
- 30 Q. 112 So by the registration of this caution, Paisley Park Investments Limited had

1 advanced it's position as ahead of any other potential purchasers of the lands
2 because there was now notice to any prospective purchaser on the Folio, of the
3 existence of a prior dealing, so that if there was a subsequent sale it would
4 be capable of being upset if the original agreement stood, is that right?

5 A. I put it further, no purchaser would buy it would it?

6 Q. 113 In practical terms it secured for Paisley Park it's contractual, a contractual
7 relationship over these lands, which until finally determined by either a court
8 case or by the payment over of the monies, would ensure that nobody else would
9 get the land.

10 A. Exactly.

11 Q. 114 Yes. And as you have said earlier, this is something which would normally, and
12 only be done by the solicitors who were acting in the conveyance on behalf of
13 the purchasers, isn't that right?

14 A. That is correct.

15 Q. 115 But you now learn that Reddy Charlton & McKnight were at all times the
16 solicitors acting on behalf of the purchaser, that Paisley Park was not the
17 client of Binchy and solicitors, in this acquisition, isn't that right?

18 A. That is correct.

19 Q. 116 And that is acknowledged by Mr. Caldwell in his exchange with Reddy Charlton,
20 who were the solicitors.

21 A. That is correct.

22 Q. 117 Does that strike you as extraordinary?

23 A. It does.

24 Q. 118 But it achieved it's purpose from the point of view of Paisley Park
25 Investments, they secured their position, though Mr. Stanley who was in the
26 middle, is not referred to as being a party whose interest is noted on the
27 Folio.

28 A. It does. And it would sit, I think, I find if it was planned in that way,
29 unbelievably devious.

30 Q. 119 We can see from the sequence of correspondence here, and the facts as they

1 emerge, that this was not an accident. This did not happen purely
2 fortuitously, it required a conscious and deliberate effort on the part of the
3 person setting up this arrangement which you describe as devious. And I take
4 it that is because you were used in this, unknowingly, to secure the ends of
5 Paisley Park without full knowledge of what the dispute was with Mr. Stanley?

6 A. Well from what I have learned now, I would have to assume that.

7 Q. 120 I want to turn now Mr. Friel, to the second aspect in which you became involved
8 in the affairs of Paisley Park Investments Limited, and this arises in 1992
9 when the company Paisley Park Investments goes into a voluntary solvent winding
10 up in the Isle of Man and it's liquidator Mr. Roderick, otherwise Rod, Harker,
11 communicates with you in his capacity as liquidator?

12 A. That's correct.

13 Q. 121 And before dealing with your exact involvement here, you might just confirm to
14 me that the liquidator of the company, on his appointment, becomes the actual
15 controller of the company, matters rest solely with him, the directors
16 effectively do not have a function?

17 A. Absolutely.

18 Q. 122 In the company, isn't that correct?

19 A. Absolutely, yes.

20 Q. 123 And he must proceed forward to perform the statutory obligations of the
21 liquidator, in other words to realise the assets and to dispose of them as
22 directed by law to the creditors or the shareholders of the company as is their
23 entitlement, isn't that right?

24 A. That's correct.

25 Q. 124 Did you, prior to your acceptance of instructions to act on behalf of the
26 liquidator, learn from Mr. Harker why it was that this company which was
27 apparently solvent was liquidated?

28 A. I did not.

29 Q. 125 You knew that it had an Irish land holding?

30 A. Yes.

- 1 Q. 126 That it was intended to deal with that Irish land holding, but you did not know
2 why it was that the company entity that was Paisley Park Investments Limited
3 was no longer to be involved with that land holding.
- 4 A. No, but like, my education would, my educated guess would be, it was part of a
5 tax mitigation or some sort of scheme like that.
- 6 Q. 127 Well, if you are dealing with an offshore entity for the first instance, as
7 Paisley Park Investments was in the Isle of Man, the liquidation of that
8 company wouldn't have appeared on it's face to have any immediate tax
9 implication benefits in Ireland, isn't that right?
- 10 A. I wouldn't be familiar with the tax situations of the Isle of Man.
- 11 Q. 128 No, I am talking about the Irish situation. If they are Irish lands and the
12 Isle of Man company is in liquidation, it owns assets in Ireland, it's
13 disposing of those assets by a winding up. Can you identify any particular
14 tax advantage to anybody by the winding up process?
- 15 A. I don't know.
- 16 Q. 129 It appears that your initial contact with Mr. Harker, in his capacity as
17 liquidator, took place perhaps in April of 1992, we see from your letter, his
18 letter to you makes reference to an earlier discussion some weeks beforehand.
19 Looking at the document at page 1107. Just noting the third paragraph of that.
20
21 "When we spoke a few weeks ago, you agreed that your firm could act" Do you
22 see that?
- 23 A. Yes, I do.
- 24 Q. 130 The letter was dated 11th of March, we take it that it was sometime in April of
25 1992 that you had your discussion?
- 26 A. Yes.
- 27 Q. 131 To that point, is it the case that you have not spoken with Mr. Harker in his
28 capacity as a director of Paisley Park Investment?
- 29 A. That is correct.
- 30 Q. 132 Your dealings were with Mr. Bullock?

- 1 A. That's correct.
- 2 Q. 133 And you have already told us of what you understood the role of Mr. Bullock to
3 be in the company's, which you were involved in whilst a solicitor in Binchys,
4 had you had prior dealings with Mr. Roderick Harker?
- 5 A. I can't recall having had previous dealings with him, no.
- 6 Q. 134 Whilst you knew of Mr. Bullock from earlier dealings, did you know of a
7 Mr. Harker from earlier dealings?
- 8 A. From my best recollections, no I did not.
- 9 Q. 135 Have you any recollection as to how it was that he, Mr. Harker, came to you,
10 rather than to Binchys or anybody else in 1992? You had had a limited
11 involvement some four years previously for the company, your functions had been
12 overtaken by Binchys and by Reddy Charlton & McKnight, have you any idea as to
13 why you were selected in 1992 by Mr. Harker, who apparently is a person you
14 didn't know, to act for him in the liquidation?
- 15 A. I presume John Caldwell recommended --
- 16 Q. 136 Recommended that you would handle it?
- 17 A. Yes.
- 18 Q. 137 As we know, the liquidation of this company and the land registration
19 requirements of the company were such that, I'm not saying it was a huge fee,
20 but a sizable fee would be earned for the work done, isn't that right?
- 21 A. Well --
- 22 Q. 138 I'm not saying it's excessive by any means, there is a scale for this type of
23 work.
- 24 A. There is, but then if you see the size of the file, maybe I can justify it.
- 25 Q. 139 I am not saying for a moment you were charging over what the scale was. But it
26 was work which would be attractive to any firm of solicitors, it was
27 essentially routine registration of title requirement, is what was envisaged as
28 your role, isn't that so?
- 29 A. I would disagree with you. It's what the client always says, but it's not what
30 the solicitor always experiences.

- 1 Q. 140 That may be so, but it's not the type of work that any solicitor would turn
2 away from his door, isn't that right?
- 3 A. Absolutely not, no. That is correct.
- 4 Q. 141 Is there any reason that occurs to you, at this point, as to why it was that
5 Mr. Caldwell didn't take it for his own firm Binchy & Partners, which is like
6 every busy firm, I am sure, would like even more work?
- 7 A. No, none whatsoever. No, no reason why he shouldn't have taken it.
- 8 Q. 142 And your assumption is, that it was he who nominated your firm for the task.
9 Did he ever confirm that to you, that he was in fact the person who nominated
10 you to go the work?
- 11 A. I don't think he ever confirmed it had but I, it would have been taken as read.
- 12 Q. 143 Yeah. Was it practice, as far as you know, of Mr. Caldwell's to have former
13 solicitors in his firm operate a satellites to carry out tasks for him?
- 14 A. It was not my knowledge.
- 15 Q. 144 You didn't know that?
- 16 A. I didn't, no.
- 17 Q. 145 But in this instance, whilst you were acting as an independent solicitor
18 carrying out this transaction, it was at the least at the nomination of
19 Mr. Caldwell that you were engaged, and if Mr. Caldwell's evidence is correct,
20 you were in fact acting for him, because he was he was the 50 per cent owner of
21 the entity involved, and so you were his solicitor.
- 22 A. Well that is correct, from hindsight, at the time of doing the work, I wasn't
23 aware of that, but in hindsight, yes.
- 24 Q. 146 If we examine the content of the first letter then which passed from Mr. Harker
25 to you? It reads:
26
27 "The company purchased 108 acres of land at Carrickmines from a Mr. Tracey in
28 June 1991. Binchys in Dublin have been dealing with the purchase. I
29 understand that the conveyance has not yet been recorded, that there is still
30 stamp duty to pay.

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I was appointed liquidator of the company on the 13th of March 1992. As liquidator, I have agreed that the property should be distributed in specie to the majority shareholder (Iris Development Company Inc, Via Espania, 122 Bank of Boston, 8th floor, Panama City, Panama) a condition of the distribution will be that Iris will waive a claim to recover monies advanced to the company (circa 50,000 pounds).

When we spoke a few weeks ago you agreed that your firm could act for me , could you please give me an indication as to what the costs of the transfer will be.

This matter has now become very urgent and I should be grateful if you could deal with it as soon as possible. Please let me know what further information will be required.

Faxes may be sent to my typist on" a number there.

That was the initial letter.

A. That's correct.

Q. 147 Does that jog your memory in any way as to what was discussed in your telephone conversation with Mr. Harker in April, some weeks before this?

A. I'm afraid it doesn't, but if I was asked to surmise it just would be, would you be prepared to act in a liquidation.

Q. 148 Right. Now I suppose there is a somewhat unusual feature about this exchange insofar as it involved an entity in the 8th floor of a building in Panama City, not the usual run of dealings, would be with entities like that, I take it? Do you deal with distributions that contain an international content such as this, or was this an unusual feature of your practice?

A. For Frank Friel or --

Q. 149 For Frank Friel?

1 A. Most unusual for Frank Friel.

2 Q. 150 Right. Do I interpret this letter as requiring you to do two things which are
3 linked but essentially separate, and they are firstly that you are to complete
4 the conveyance of the lands from it's then owner Mr. Tracey to the new entity,
5 Paisley Park Investments?

6 A. That is correct.

7 Q. 151 And that secondly in the course of the liquidation of that company, you are to
8 arrange the distribution in specie, or I should say the legal documentation
9 which would follow upon the distribution in specie to this company in Panama?

10 A. That's correct. I recall myself, I didn't realise the first part of that until
11 I got the documents.

12 Q. 152 Until you got the documents from the Tribunal?

13 A. No sorry. Until I got the - I didn't realise there were two transactions that
14 you just spoke of there, it was only when I got the documents a few days later,
15 whenever it was, that I realised there were two parts to it.

16 Q. 153 And I think that we'll see from your acknowledgement to Mr. Harker, which
17 appears on page 1108 that you were in a position to identify these two separate
18 requirements that were being asked of you.

19

20 You say in your letter of the 12th May 1992. "Dear Rod, I acknowledge receipt
21 of your fax dated 11th May.

22

23 I note that the transfer has yet to be stamped but I presume that the
24 transferee shall be in a position to take advantage of the present amnesty in
25 relation to stamp duty. However, the deed shall of course, have to be
26 registered.

27

28 With regard to the costs, I would propose dealing with the same as a voluntary
29 transfer and the scale attaching there to is £100 plus a half per cent of the
30 market value. There shall in addition be whatever outlay is expended. I trust

1 you will find same acceptable, but if you have any queries in relation to this
2 matter, please do not hesitate to let me know." Just as a ballpark figure, if
3 the land was worth eight hundred thousand at that time, your fee would have
4 been 4,100; half a per cent plus 100 pounds?

5 A. That's correct.

6 Q. 154 And I think ultimately your fees came to something in and around that?

7 A. That's correct.

8 Q. 155 You were prepared to act on a scale fee.

9

10 You then identified the matters require to be dealt with by the liquidator in
11 order to allow to you perform these two functions. I think you divide it as
12 between the Iris company and the Paisley Park completion by a numbering system,
13 where you have nine queries in relation to the first aspect and 12 in relation
14 to the second, isn't that so?

15 A. That's correct.

16 Q. 156 In relation to the registration of Paisley Park you sought the following
17 information.

18

19 "1. The date of incorporation of Paisley Park Investments Limited.

20 (presumably it is a private company).

21

22 2. The nominal share capital and it's division type and value of each share.

23

24 3. The number and issue of fully paid up shares and the owners thereof.

25

26 4. A list of all the shareholders in the company.

27

28 5. A certified copy of the statutory declaration of solvency pursuant to

29 Section 256 of the Company Act and date of delivery to the Company Office of

30

same for filing.

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6. A certified copy of the special resolution resolving that the company be wound up voluntarily.

7. A certified copy of the special resolution and any other sanctions required authorising the liquidator to distribute to Iris Development Company Incorporated the land.

8. The original Land Certificate on Folio 4940 County Dublin.

9. A certificate from the liquidator that Section 352 of the Companies Act does not apply."

If we just deal with those, the last of them is the certificate which is required from a foreign company that is intending to conduct business in Ireland, isn't that right?

A. That's correct.

Q. 157 And if one isn't intending to have an established place of business in Ireland one merely executes a declaration to that effect and that has revenue implications in that the Revenue do not concern themselves then with that company's activities?

A. That's correct.

Q. 158 If we move back to 8 then, the original Land Certificate, you will see that there is a manuscript note on the side of that, I suggest that that is a manuscript note made by Mr. Martin Bullock whose writing we find throughout the documentation?

A. That is correct, yes.

Q. 159 This copy I should say of this document has come from a discovery of Isle of Man documentation, so this is an annotation made on your original documentation, once it reached the Isle of Man, and we can I think assume from

- 1 these manuscript notes that at 8 there as I have already referred to, also a
2 further note down near your signature, you will see that, Ron IOM liquidator --
3 perhaps Rod IOM, liquidator?
- 4 A. Yes, I see that.
- 5 Q. 160 Again this is the writer, Mr. Bullock?
- 6 A. It would appear to be, yes.
- 7 Q. 161 Whilst you are writing to Mr. Bullock, Mr - sorry to Mr. Harker, Mr. Bullock is
8 getting a hard copy of this documentation and he is making his annotation on
9 it?
- 10 A. Well I actually, funnily enough I must have sent it by fax because I have a
11 hard copy here.
- 12 Q. 162 Yes. You did send it by fax because we see at the top of the page there the
13 reference 12.05.1992. Perhaps not on the screen version, but in my brief copy.
14 It did go by fax.
- 15 A. It did go by fax.
- 16 Q. 163 On your original you wouldn't have the manuscript additions.
- 17 A. I wouldn't have these.
- 18 Q. 164 You don't have Mr. Bullock's --
- 19 A. That's correct.
- 20 Q. 165 Manuscript additions, isn't that right?
- 21 A. That's correct.
- 22 Q. 166 But we can glean from this that you are writing to Mr. Harker, Mr. Harker has
23 the facility of dealing with Mr. Bullock, who is also an Isle of Man resident
24 apparently, and who was the director with Mr. Harker of the company prior to
25 liquidation?
- 26 A. That's correct.
- 27 Q. 167 The resolution which is referred to here at paragraph 7, the distribution to
28 Iris Development Company Incorporated, a liquidation of a company does not
29 necessarily involve the distribution of it's assets in specie, isn't that
30 right?

- 1 A. That is correct. It's an, an unusual animal.
- 2 Q. 168 Yes. It's more usual that the liquidator realises the assets for their cash
3 value and then accounts for them either by selling them on or whatever it might
4 be?
- 5 A. That is correct.
- 6 Q. 169 Isn't that right? But in this instance there is a liquidation which involves
7 the distribution in specie, and as we heard in the evidence over the last
8 number of days, that distribution involved the land going to the principal
9 shareholders and the cash sum going to a minority shareholder, but that was
10 something that you were unaware of?
- 11 A. That wouldn't have concerned me .
- 12 Q. 170 At the time. Yes. You were unaware at the time this letter was written, isn't
13 that right?
- 14 A. I would, yes. I would have just done the conveyancing side, would have said
15 what was necessary. If it's necessary for me to say it, I would have just set
16 out what is necessary for the conveyancing side of the distribution in specie .
- 17 Q. 171 Right. But if we move then to your second requirements on this letter and that
18 is dealing with Iris, in distinction to the conveyancing aspects for Paisley
19 Park. This was the second task you had and that was presumably to ensure that
20 after Paisley Park's interest had been properly constituted by completing the
21 conveyancing documentation that the party called Iris Development Corporation
22 would find itself registered as the owner of the land, isn't that right?
- 23 A. Paisley Park.
- 24 Q. 172 Sorry. Paisley Park was the company going into liquidation. The liquidator of
25 that company was distributing in specie. At that time Paisley Park had not
26 been registered as the owner of the land on the register?
- 27 A. That is correct.
- 28 Q. 173 And that would have to be completed?
- 29 A. That would have to be done first.
- 30 Q. 174 Yes. All of the queries to point nine of your letter were to deal with that,

1 isn't that right? I am I'm talking about point nine of the nine points that
2 start on 1108 and continue to 1109?

3 A. They would relate to the liquidation of Paisley Park.

4 Q. 175 Well only insofar as it bore on Paisley Park yes, they would relate to Paisley
5 Park, yes, not to Iris, per se?

6 A. Exactly. To enable Paisley Park to be liquidated.

7 Q. 176 To enable Paisley Park to be liquidated yes, but to enable Paisley Park to be
8 registered as the owner of the land?

9 A. No, I don't think. No, I don't think so, no, that has nothing to do with the
10 registration of Paisley Park.

11 Q. 177 We know that you went on to register Paisley Park?

12 A. Yes. I think - may I just check my file a second.

13 Q. 178 You may.

14 A. I think when - it was, the penny dropped at a later stage that, when I got the
15 title documents in that Paisley Park hadn't been.

16

17 CHAIRMAN: This might be a good time to take a ten minute break, Mr. Friel can
18 have a look at his file.

19

20 MR. O'NEILL: Certainly.

21

22 **THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND**

23 **RESUMED AGAIN AS FOLLOWS:**

24

25 MR. O'NEILL: Mr. Friel, before the break I was suggesting to you that you
26 were engaged in a two step process that involved Paisley Park Investments
27 Limited, in it's acquisition of or completion of the acquisition of the Tracey
28 lands, and also in the distribution in specie from Paisley Park to Iris, isn't
29 that so?

30 A. That is correct.

- 1 Q. 179 And in the sequence of events, as you envisaged it, when you wrote the letter
2 in May of 1992 that we have been discussing, was that you would do the
3 completion of the Paisley Park transfer from Mr. Tracey first and thereafter
4 you would prepare the transfer and obtain the section 45 consent to the vesting
5 of the land in Iris, do you see that at page 1109, just after point nine on the
6 letter.
- 7 A. Yes. Now, that letter of the 12th May just purely related to the liquidation
8 of Paisley Park.
- 9 Q. 180 Right.
- 10 A. And then the vesting of it in Iris.
- 11 Q. 181 Yes. But what you have indicated here as a quote "Thereafter I should prepare
12 the transfer and obtain the Section 45 consent to the vesting of the land in
13 Iris", isn't that right?
- 14 A. Thereafter, inferring when I get the information that one to nine --
- 15 Q. 182 Yes.
- 16 A. I would prepare the transfer for the Paisley Park to Iris. It is not to
17 register Paisley Park, that --
- 18 Q. 183 That occurred later on.
- 19 A. It did indeed.
- 20 Q. 184 What was required then to register Iris as the owner, were details set out in
21 points 1 to 12 in your letter, isn't that right?
- 22 A. That is correct.
- 23 Q. 185 And obviously you refer here to section 45 consent, the land commission has to
24 consent to the agricultural land being transferred, isn't that right?
- 25 A. That's correct.
- 26 Q. 186 And in order to do that there has to be documentation completed by the owner of
27 the lands who is applying for the consent.
- 28 A. That is correct.
- 29 Q. 187 And in order to supply that information you would need answers to all of the
30 matters which are set out between points 1 to 10.

1 A. That's correct.

2 Q. 188 So in your letter then, you asked Mr. Harker to provide the original
3 Certificate of Incorporation and a copy of the Memorandum and Articles of
4 Association of Iris, isn't that right?

5 A. That is correct.

6 Q. 189 Now we'll see that some three days after that letter, Mr. Harker wrote to
7 Mr. John Caldwell in Binchys, it's not a document that you find in your file,
8 but it is a document which is available to the Tribunal at page 1114. This is
9 a letter from Mr. Harker which he signs as liquidator, addressed to
10 Mr. Caldwell at Binchys.

11

12 "Dear Mr. Caldwell, Paisley Park Investments Limited, land at Carrickmines,
13 Folio 4940 County Dublin.

14

15 I was appointed liquidator of the company on 13th March 1992. As liquidator, I
16 have agreed that the property should be distributed in specie to the
17 shareholders and I have appointed Frank Friel of Frank Friel & Company to
18 handle the transaction. You are hereby authorised to liaise with him and to
19 provide him with such information and papers as he may request.

20

21 Faxes may be sent to my typist" and he gives the number there.

22

23 Now looking at that documentation and in the number, Mr. Friel, that it was in
24 fact Mr. Caldwell who nominated you in the first instance, does it surprise you
25 to see that he is writing a letter four days after your acceptance of what I
26 might call the brief in this matter on behalf of the company, that he is being
27 written to in these terms by Mr. Harker?

28 A. Well it would seem superfluous.

29 Q. 190 But not only is it superfluous, but it seems to suggest that the appointment
30 was one of the decisions made by the liquidator, whereas, if your surmise is

1 correct, you were appointed at the recommendation of Mr. Caldwell to the
2 liquidator and not vice versa, isn't that correct?

3 A. That is correct.

4 Q. 191 But this is a document of record, generated obviously for some purpose, but you
5 are not aware of what that purpose was?

6 A. No.

7 Q. 192 On your evidence, Mr. Caldwell could hardly have been surprised by any of the
8 information that's contained in here and this letter was superfluous.

9 A. Yes.

10 Q. 193 You responded on the 18th May 1992 to, sorry Mr. Harker responded to you on the
11 18th May 1992 in relation to your faxed document of the 12th May that we have
12 already considered, and he there addresses the queries which you had raised and
13 we'll see that at page 1117. Where he says:

14

15 "Dear Frank, I refer to your fax dated 12th May and our telephone conversation
16 on 15th May.

17

18 I have today given instructions to Standard Chartered in Douglas to telex
19 transfer 44,000 Irish pounds on Wednesday 20th May to your client account which
20 is in Bank of Ireland. This is to cover the stamp duty, Land Registry fees and
21 sundry outlay.

22

23 According to James Sinnott & Company, the market value of the lands on 19th
24 February 1992 was 800,000 pounds. I calculate the scale of fee at 4,961 pounds
25 inclusive of VAT at 21 per cent. I hope that your charges will be less than
26 the scale fees, but I accept that any reduction must depend on the amount of
27 time spent.

28

29 In answer to your queries" he then uses the same numbering as you did in your
30 queries so we might follow that in your letter of the 12th, which you have

1 before you:

2

3

"1. Paisley Park Investments Limited was incorporated in the Isle of Man as a private company on the 5th March 1987 with number 33261.

5

6

2. The authorised share capital of 2,000 pounds divided into 1600 A shares of one pound each and 400 B shares of one pound each. All have been issued and are fully paid up.

9

10

As of today's date the owners of the shares are.

11

12

Iris Development Company Incorporated, 1,600 A shares and 380 B shares, making a total of 1,980.

13

14

15

Xenon Limited 20 B shares" and at the top there that's the 2,000 issued.

16

17

The next question he answers then is at 4.

18

"4. As of today's date the shareholders are Iris Development Company

19

Incorporated, 1,560 A shares, 372 B shares. RP Harker 20 A shares, 4 B shares.

20

M E Bullock, 20 A shares, 4 B shares. Xenon Limited 20 B shares." again

21

totalling 2,000.

22

23

Before moving onto the next page, may I just draw a distinction between the

24

matters referred to in reply 3 and reply 4. In reply 3 Mr. Harker is advising

25

you of the owners of the shares and in reply 4 he is advising you of the

26

shareholders, you see that?

27

A. Yes.

28

Q. 194 And that was a distinction which we'll see was initially lost on you and you

29

raised queries about an apparent inconsistency between there being two owners

30

in query number 3, but four set out in number 4. The answer to that

1 ultimately, it seems, is that the owner of the shares were Iris Development
2 Company Incorporated and Xenon, but the shareholding was divided as between the
3 four parties in reply number 4, two of those parties, Mr. Harker and
4 Mr. Bullock, indicating that they held their shareholding in trust for Iris, so
5 that whilst they were a shareholder they were not a shareholder, but that was
6 the explanation subsequently given.

7
8 If we turn then to page 118, the following page, he says:

9
10 "I will obtain from the registry a certified copy of the special and
11 extraordinary resolutions passed on 13th March 1992."

12
13 That was the decision of the company Paisley Park to wind up voluntarily and to
14 distribute in specie, isn't that right?

15 A. That is correct.

16 Q. 195 Number 7 then:

17 "I enclose a copy of a declaration I made on the 12th May 1992." we'll shortly
18 turn to that document, it is a document recording the division, in specie, of
19 the assets.

20
21 Number 8, "Please contact John Caldwell at Binchys regarding the Land
22 Certificate. I have authorised him to give you such information and papers as
23 you may request."

24
25 Again Mr. Harker here seemingly indicating to you that he is the person
26 authorising Mr. Caldwell to act, isn't that so?

27
28 "9. He encloses a draft certificate re section 352 of the Companies Act."

29 That's the certificate stating that the company will not have an establishment
30 in Ireland.

1 A. That's correct.

2 Q. 196 He then goes on to deal, I suggest, with the second aspect of your queries,
3 relating to Iris. In the following paragraph he says:

4

5 "Regarding the section 45 consent." I take it we are talking about Iris's
6 section 45 consent rather than Paisley Park.

7 A. I take it, yes.

8 Q. 197 "I think you should refer to John Caldwell regarding specific queries on the
9 land itself. Queries regarding Iris should be addressed to Martin Bullock."

10 Now did you ever get any explanation from Mr. Harker as to why it was that you
11 should be going to those sources for this information? He was the party who
12 was the liquidator of the company, he was the party who was going to make the
13 declarations as regards division in specie towards certain parties, do you know
14 he was sending you on to Mr. Caldwell and Mr. Bullock for this information?

15 A. I don't.

16 Q. 198 Mr. Bullock, as we know of course, is a person who is in the Isle of Man with
17 Mr. Harker, and he is the person who seemingly addressed your queries, as we
18 can see from his annotations on your faxed copy, isn't that right?

19 A. That is correct.

20 Q. 199 Presumably therefore, Mr. Harker could have contacted him at that time and
21 responded to your queries having consulted with him on the document, but you
22 weren't to know that at that time .

23 A. That is correct.

24 Q. 200 The letter goes on then to deal with the property being in tillage, etcetera.
25 At the very end then we'll see in the last paragraph, he says.

26

27 "In our recent telephone conversation you stated that you thought that the
28 registration of the title of Paisley Park would delay matters by up to three
29 months. You suggested that the transfer from Paisley Park to Iris could be
30 drawn up on the basis that Paisley Park are the "Person entitled to be

1 registered as owner" thereby missing out on one stage. I agree that you should
2 proceed on that basis."

3

4 Could you just explain what you had in mind, I know that that didn't happen.

5 What was the proposition?

6 A. Paisley Park weren't registered, but they were entitled to be registered, the
7 name wasn't on the Folio.

8 Q. 201 Yes.

9 A. You could have, the person entitled to be registered can transfer on to - if I
10 take examples A, B and C, if A is entitled to be registered D, sorry, A and B.

11 A is entitled to be registered, but he sells it to B before he becomes

12 registered, he can sell it on to B as the person entitled to be registered.

13 Q. 202 Yes.

14 A. So A never really appears on the Folio.

15 Q. 203 Right. If that had applied in this circumstances here, we know that Mr. Tracey
16 is the registered owner as and from 1975, he was on the register in other
17 words, until the Paisley Park interest was acquired by purchase, we know that
18 that happened in June of 1991?

19 A. Yes.

20 Q. 204 In June of 1991, Paisley Park could have set about registering itself at that
21 time as owner, isn't that so?

22 A. That's correct, that's what should have been.

23 Q. 205 Right. That didn't happen. You come in a year later, in 1992, and the option
24 you are addressing here is one where Iris could find itself as the next
25 registered owner to Mr. Tracey, isn't that right?

26 A. That's correct.

27 Q. 206 Eliminating any Paisley Park involvement.

28 A. That is correct.

29 Q. 207 But we know that that didn't take place.

30 A. That is correct.

1 Q. 208 Of course if Iris featured on that document it would seem that, to any person
2 consulting the register, that the person who had acquired from Mr. Tracey was
3 Iris.

4 A. That is correct.

5 Q. 209 Right. If one wanted to make a distinction between Paisley Park and Iris or
6 indeed between Iris and Paisley Park, one would register both?

7 A. Exactly.

8 Q. 210 The declaration which was referred to in response number 7, that is the
9 declaration made on the 12th May 1992 appears at page 1112.

10

11

This document expresses itself to be a declaration which is a solemn
12 declaration made conscientiously believing the same to be true and by virtue of
13 the provisions of the evidence act of 1871. Mr. Harker says:

14

15

"I Roderick Peter Harker, of 12 Mount Havalock, Douglas, Isle of Man being the
16 liquidator of Paisley Park Investments Limited, do solemnly and sincerely
17 declare that as liquidator of the company and with the sanction of an
18 extraordinary resolution of the members of the company, passed on the 13th day
19 of March 1992, I have today resolved to distribute in specie to the majority
20 shareholder, Iris Development Company Incorporated, the whole of the company's
21 interest in the lands at Carrickmines, County Dublin, so that the remaining
22 shareholders will in due course receive only a cash distribution" he then goes
23 on to say "And I make this solemn declaration consciously believing the same to
24 be true by virtue of the provisions of the evidence act 1871."

25

26

That declaration was declared in the Isle of Man before a Commissioner for
27 Oaths by Mr. Harker, you see his signature and the signature of a commissioner
28 for oaths and a solicitor, Walmsley on that document, isn't that right?

29

A. That is correct.

30

Q. 211 In addition to that document, Mr. Harker swore a second document on the same

1 day, before the same commissioner, which we'll see at page 1111, this again is
2 a statutory declaration made in the following terms.

3

4 "I Roderick Peter Harker, of 12 Mount Havalock, Douglas Isle of Man, being the
5 liquidator of Paisley Park Investments Limited, do solemnly and sincerely
6 declare that as liquidator of the company, I have sanctioned the under
7 mentioned share transfers.

8

9 1. 780 A ordinary shares and 186 B ordinary shares from Renzenbrinck
10 Investments Incorporated to Iris Development Company Incorporated.

11

12 2. 780 A ordinary shares and 186 B ordinary shares from Maskani Management
13 Limited to Iris Development Company Incorporated.

14

15 And I further declare, that at the date here of, Iris Development Company
16 Incorporated is the holder of 1,560 A ordinary shares and 372 B ordinary
17 shares. And I make this solemn declaration consciously believing the same to
18 be true by virtue of the provisions of the Evidence Act 1871."

19

20 What do you understand the import of those two declarations to be in the
21 context of the ownership of the shares of Paisley Park Investments at the time
22 that you were instructed in May 1992 to deal with the affairs of the company?

23

24 I will break down the question perhaps for you Mr. Friel, it if it helps. You
25 will see from your letter, sorry Mr. Harker's letter at page 1117, that in
26 response to you, that at paragraph three and four, you were receiving
27 information which you had sought specifically as to the ownership of Paisley
28 Park

29 A. Yes.

30 Q. 212 Investments limited's shareholding.

- 1 A. Yes.
- 2 Q. 213 Isn't that right?
- 3 A. That is correct.
- 4 Q. 214 And in the response, the writer, Mr. Harker, was advising you as to the
5 position as of that date, the 18th May of 1992.
- 6 A. Yes.
- 7 Q. 215 Isn't that correct? And whilst there is a distinction which he makes between
8 the ownership of the shares and the shareholders, which we have already
9 mentioned earlier, what he is saying is that Iris Development Company
10 Incorporated is the owner of 1980 of the 2,000 shares.
- 11 A. Yes.
- 12 Q. 216 And that Xenon is the holder of the 20 B shares, isn't that right?
- 13 A. That's correct.
- 14 Q. 217 In support of that statement, I suggest, you were furnished with the copy of
15 the declaration in relation to the distribution, isn't that so?
- 16 A. That is correct.
- 17 Q. 218 You had also, as you were to receive, a copy of the special resolution allowing
18 for the distribution in specie.
- 19 A. That's correct.
- 20 Q. 219 So if we look firstly at the document at page 1112, that is the document which
21 is dealing with the distribution in specie.
- 22 A. That is correct.
- 23 Q. 220 And it's indicating how the liquidator had dealt with the requirement to
24 distribute in specie, which was imposed on him in the resolution of the 13th
25 March, isn't that correct?
- 26 A. That is correct.
- 27 Q. 221 And the distinction as between the distribution of the land at Carrickmines and
28 as between a cash distribution to others, isn't that right?
- 29 A. That is correct.
- 30 Q. 222 And what he says is that he has today resolved to distribute in specie to the

- 1 majority shareholder, Iris Development Company Incorporated, the whole of the
2 company's interest in the land at Carrickmines?
- 3 A. That is correct.
- 4 Q. 223 Now what did you understand that declaration to mean?
- 5 A. That Iris Developments being the larger shareholder were going to take the
6 distribution in specie.
- 7 Q. 224 And that the other shareholder.
- 8 A. Would be paid in cash.
- 9 Q. 225 Would be paid cash. This was sent to you in support of the instruction which
10 you had received to proceed to register Iris ultimately as the owner of these
11 land, isn't that right?
- 12 A. That is correct.
- 13 Q. 226 And was this evidence to you of the ownership of the lands by Iris Development
14 Incorporated, Company Incorporated?
- 15 A. It would be.
- 16 Q. 227 Right. As regards the second document, that's the second declaration at pages
17 1111, that deals not with the distribution of the company's assets but rather
18 with the allocation of the shares within the company, isn't that right?
- 19 A. That is right.
- 20 Q. 228 Right. And what it is acknowledging is that firstly, that the liquidator has
21 sanctioned the share transfers.
- 22 A. Yes.
- 23 Q. 229 And I think you might be able to confirm to us that once a company does elect
24 to go into liquidation, there can be no transfer of shares without the sanction
25 and authority of the liquidator, isn't that so?
- 26 A. That's correct.
- 27 Q. 230 Under the Company's Act. So his first task was to sanction the transfers, and
28 secondly, he makes a declaration as to the effect of those transfers, isn't
29 that right?
- 30 A. That is correct.

- 1 Q. 231 Do you understand this document to mean that Mr. Harker, in swearing this
2 document before a Commissioner for Oaths was intending to perpetuate his
3 testimony on the fact that there had been a distribution or a transfer of
4 shares to Iris Development Corporation on this date, 12th May 1992?
- 5 A. Well, isn't he saying differently on that?
- 6 Q. 232 You tell me if --
- 7 A. He is.
- 8 Q. 233 Yes.
- 9 A. It is different.
- 10 Q. 234 Well what is the distinction?
- 11 A. The distinction is that he is saying in that declaration that it is going to
12 Renzenbrinck and Maskani.
- 13 Q. 235 It's going from them to Iris.
- 14 A. I beg your pardon?
- 15 Q. 236 Just so we have no confusion about this.
- 16 A. Yes.
- 17 Q. 237 If we take it in stage Mr. Friel. The first part of it deals with the sanction
18 which he gives in his capacity as liquidator, and he says that :
19 "I have sanctioned the under mentioned share transfers" and there are two
20 identical share transfers here, save that Renzenbrinck is the party
21 transferring in number one and Maskani is the party transferring in number two,
22 but they are both transferring to Iris Development, do you see that?
- 23 A. I do indeed.
- 24 Q. 238 And we know from the accompanying letter or the earlier letter that I mentioned
25 to you, that those transfers by Renzenbrinck and Maskani represent the entire,
26 their shareholding in the company, isn't that right?
- 27 A. That is correct.
- 28 Q. 239 Right. So I will ask you again then, when we get to the second part of this
29 document which is where he says:
30 "I further declare that at the date here of Iris Development Company

1 Incorporated is the holder of 1,560 A ordinary shares and 372 B ordinary
2 shares". Do you conclude from that, that as of that date, the 12th May 1992
3 Mr. Harker was swearing that the ownership of Paisley Park Investments Limited
4 as to 1,932 of the shares, I take it that's the total referred to here, was in
5 Iris Development Company Incorporated?

6 A. Yes.

7 Q. 240 And you proceeded forward on that basis, isn't that right?

8 A. That is correct.

9 Q. 241 And we'll see that in the manuscript beneath Mr. Roderick Harker's signature,
10 which is the signature affixed as of the 12th May 1992, he further certified
11 this as being a true copy of the original on the 21st January of 1993, some
12 eight months later.

13 A. That is correct.

14 Q. 242 Have you any doubt in your mind that there was two events which took place on
15 the 12th May of 1992, the first was that the existing shareholders Maskani and
16 Renzenbrinck, transferred their shares to the new entity called Iris
17 Development Company Incorporated, and secondly that the liquidator as
18 liquidator distributed in specie, the lands at Carrickmines to that company?

19 A. No.

20 Q. 243 If we move forward then to the next letter, which is at page 1221. It is a
21 letter of the 21st May 1992 from you to Mr. Harker, and it's -- sorry number
22 1121.

23

24 This is a letter of the 21st May 1992 from you to Mr. Harker:

25

26 "Dear Rod, many thanks for your fax dated 18th May" that is the document we
27 have just considered.

28

29 "I note you were to give instructions to Standard Charter in Douglas to telex
30 transfer of stamp duty. Please confirm that this has been done and when the

1 bank anticipates that it shall arrive in my account. I have just received the
2 Deed of Transfer from John Caldwell of Binchy's solicitors. It has not yet
3 been executed by Paisley Park Investments Limited. I trust this shall not
4 cause any delay in the stamping of the transfers and subsequently the loss of
5 benefit of the stamp duty amnesty.

6
7 With regard to the items requested in my letter of 12th May last, I comment as
8 follows"

9
10 You then deal with his responses to your initial queries of the 12th May as
11 follows:

12
13 You note one and two.

14 One and two dealt with the Paisley Park being a private company and being
15 incorporated in the Isle of Man.

16
17 3 and 4 you say

18 "There would appear to me to be a contradiction here, in that in 4, you state
19 there are four shareholders yet at 3 you only indicate two shareholders.

20 Please advise." I think that we have dealt with that.

21 A. Yes.

22 Q. 244 5 "I note you will let me have a certified copy of this declaration" that is,
23 it's the declaration of solvency of the company because you cannot have a
24 solvent winding up unless the directors have sworn to the company being
25 solvent, isn't that right?

26 A. That is correct.

27 Q. 245 6 "Likewise, I note you will let me have a certified copy of this resolution."
28 that was the resolution to wind up of the 13th March.

29 A. That is correct.

30 Q. 246 7 "I acknowledge receipt of copy declaration" that is the declaration of the

1 distribution to Iris, which was made on the 12th May 1992 and we see at page
2 1112, isn't that so?

3 A. That is so.

4 Q. 247 Then acknowledged you have received the Land Certificate from John Caldwell.

5

6 9 "I would suggest if you let me have the certificate, dated the beginning of
7 June, this should meet with the Land Registry requirements" that I think is
8 dealing with the Section 352 Companies Act Declaration, that the company did
9 not intend to have an establishment in Ireland, isn't that correct?

10 A. That is correct.

11 Q. 248 And the next page then at 1122, you deal with the Iris position as far as I can
12 see. Though not mentioned specifically.

13

14 "Regarding section 45 Consent, I have requested the information from John
15 Caldwell." You might just confirm that is with regard to the vesting of Iris
16 as registered owner?

17 A. That is correct.

18 Q. 249 At the end you say.

19 "I agree it would be desirable to progress the two registrations at the same
20 time in order to prevent undue delay" Is that intended to mean that you were
21 going to progress both, but register only one, and that is Iris?

22 A. I would have thought reading that, no, that whatever happened in the meantime I
23 suggested to transfer the person and title to be registered, to lodge one
24 transfer and then lodge a second transfer.

25 Q. 250 I see. Right. So, do I understand from that, that the register would show if
26 this was implemented, that there was a transfer to Paisley Park and then it
27 would show that there was a transfer to Iris?

28 A. That is correct.

29 Q. 251 Just on that point Mr. Friel, I take it that the publicly available
30 documentation would not show that Iris had necessarily received that document,

- 1 sorry its title by way of distribution, would it?
- 2 A. It wouldn't, no.
- 3 Q. 252 So it might appear to be a sale for example, from an -- an onward sale from
- 4 Paisley Park to Iris?
- 5 A. To the, a person from the public walking in and looking at the Folio, they
- 6 wouldn't know whether it was a voluntary consideration was paid or whether it
- 7 was a distribution in specie.
- 8 Q. 253 Sure. And the Land Registry scheme of things is so designed, that the
- 9 conclusiveness of the register is preserved by excluding a matter such as
- 10 trusts, declarations or voluntary information like that.
- 11 A. That is totally correct, yes.
- 12 Q. 254 In the event that Mr. Stanley or any other person who felt that they had a
- 13 claim against Paisley Park tried to enforce that claim against an interest in
- 14 the lands at Carrickmines, they would find that once Paisley Park had
- 15 transferred to Iris there was no apparent connection between those two
- 16 entities, isn't that right?
- 17 A. That is correct.
- 18 Q. 255 Do you know why it was that your suggestion, that Iris be registered as the
- 19 owner in a straight transaction, if I might describe it as that, from
- 20 Mr. Tracey to Iris, why that wasn't followed?
- 21 A. Well, I can only come to the assumption, I am assuming that it was to leave
- 22 Paisley Park off the Folio.
- 23 Q. 256 Sorry, Paisley Park went onto the Folio as we know. If your suggestion had
- 24 been followed, and as I understand your suggestion, it was that it would be
- 25 done in one transaction initially, that you had a circumstances where Paisley
- 26 Park had not completed it's side of the transfer with Mr. Tracey, isn't that
- 27 right?
- 28 A. That is correct.
- 29 Q. 257 At that point Iris could have been substituted as the party to take from
- 30 Mr. Tracey?

- 1 A. That is correct.
- 2 Q. 258 Had that happened, the Folio would show Iris as the success or to Mr. Tracey.
- 3 A. That is correct.
- 4 Q. 259 Yes.
- 5 A. That was my first suggestion.
- 6 Q. 260 That was your first suggestion. That could have eliminated some of the
7 paperwork involved perhaps?
- 8 A. It would just save time .
- 9 Q. 261 It would save time. But that advice was not accepted and instead, a two stage
10 process went on whereby Paisley Park was registered first and Iris was to be
11 registered second?
- 12 A. That's exactly it.
- 13 Q. 262 And that would mean that any liabilities of Paisley Park which were not
14 registered on the Folio against the lands could not be registered against the
15 lands once Iris became the owner, isn't that so?
- 16 A. Yes.
- 17 Q. 263 You wrote to Mr. John Caldwell on the 22nd of May, that's the day after the
18 letter we have just considered, we see it at page 1123.
19
- 20 In this letter you acknowledge receipt of the original transfer by courier on
21 Tuesday afternoon last. Now, that is the original transfer that you had
22 addressed in your letter to Mr. Harker, which is the letter we referred to just
23 previously on the 21st, isn't that right?
- 24 A. That's the one from Mr. Tracey to --
- 25 Q. 264 Paisley Park?
- 26 A. Exactly.
- 27 Q. 265 And you were able to see, having received that document, that it hadn't been
28 executed by Paisley Park?
- 29 A. That's correct.
- 30 Q. 266 You say "I note it hasn't been executed by Paisley Park Investments Limited and

1 presumably it will now have to be executed by Rod Harker as liquidator of the
2 company. Kindly confirm.?"

3 A. That's correct.

4 Q. 267 As you say, once the company goes into voluntary liquidation or liquidation of
5 any sort, the liquidator becomes the party who, in whom the assets of the
6 company are vested, and who is charged responsibility of dealing with the
7 company assets, any dealings of the companies assets have to be done through
8 the liquidator.

9 A. Totally.

10 Q. 268 And not the directors.

11 A. Yes.

12 Q. 269 The letter continues "I also note the transfer contains a certificate to the
13 effect, that Paisley Park Investments Limited obtained the consent of the Lands
14 Commission. However there was no Section 45 consent with the papers given to
15 me on Friday last. Do you have the original of same?"

16 I think we'll see as we go through your file, that there wasn't in fact a Land
17 Commission consent?

18 A. That's correct. We were tripping up over the earlier Section 45 consent.

19 Q. 270 Yes. The Section 45 consent which normally would be sought by the purchaser to
20 protect his interest, would it?

21 A. It is always the purchaser.

22 Q. 271 It's always the purchaser. Because if he pays the vendor and then the Land
23 Commission refuses the consent, in theory he has no come back, he is not
24 entitled to take the land and he has paid the --

25 A. The purchaser would always sign a contract subject to getting Section 45
26 consent.

27 Q. 272 Yes. "I also acknowledge receipt of your fax message. You enclosed the
28 priority search itself, but what I require is a copy of the application for the
29 priority search." I don't think we have to dwell on that.

30

1 "I shall also need to obtain Section 45 consent for Iris Development Company
2 Incorporated. I asked Rod Harker for the relevant information but he has
3 referred me to you. The type of information I need is as follows" and you set
4 out the information here.

5
6 Now Mr. Harker I think was distinguishing between Mr. Caldwell and Mr. Bullock
7 as regards information in his letter, he was saying with regard to land you
8 should inquire to John Caldwell, with regard to Iris you should inquire from
9 Martin Bullock. But this seems to have changed somewhat in that you now say
10 that you asked Mr. Rod Harker for the relevant information, but he has referred
11 me to you.

12 A. That was information in relation to the land.

13 Q. 273 Right. Whilst it is information that relates to the land, it also includes
14 matters such as we'll see at number five, the name of the person having control
15 of the company, that is Iris, their address, occupation and citizenship.
16 Details of other land in the State held by that company, etcetera.
17 So it does involve, I think you are familiar with the standard form, it's an
18 NQ1 which is completed by the person seeking from the Land Commission; and
19 amongst the requirements of that form are that one sets out the name and
20 address, occupation of the person who is in control of the lands, isn't that
21 so?

22 A. That's correct.

23 Q. 274 Now obviously you couldn't advance any application on behalf of Iris
24 Development Company Incorporated until such time as you knew what this
25 information was, because it would have to be put into the form, and it would
26 have to be duly signed by the authorised party, isn't that right?

27 A. That is correct.

28 Q. 275 In writing to Mr. Caldwell for this information, does it follow that you
29 believed that Mr. Caldwell was the person who had the information in relation
30 to Iris Development Company Incorporated?

- 1 A. Yes.
- 2 Q. 276 Did you ever get a response from Mr. Caldwell about setting out these details,
3 the question now from Mr. Caldwell?
- 4 A. I have to assume I got it by telephone, because I can't, I don't note any on my
5 file. But the - I completed the form NQ1 that you have referred to.
- 6 Q. 277 Yes. Were you sent any documentation by Mr. Caldwell or by Mr. Harker or by
7 Mr. Bullock establishing any of the details in relation to the company Iris
8 Development Company Incorporated, other than the reference in the first letter
9 that that company had an address in Panama?
- 10 A. No.
- 11 Q. 278 You needed to know, for example, the person who had control of that company,
12 isn't that right?
- 13 A. That is correct.
- 14 Q. 279 The first matter which was referred to in the letter there was the question of
15 the original transfer and we see the original transfer at page 1022. This
16 document is one which, you will see at the bottom of the page, is signed,
17 sealed and delivered by Robert A Tracey, as you expect, being the vendor of the
18 land, isn't that right?
- 19 A. That is correct.
- 20 Q. 280 And it recites a number of matters. It certifies firstly that the transaction
21 does not form part of a larger transaction or a series of transactions, isn't
22 that so?
- 23 A. Yes, that is correct.
- 24 Q. 281 It goes on to certify that the transferee has obtained consent of the Land
25 Commission to the vesting of the property in an unqualified person under
26 Section 45.2 of the Land Act 1965, I think it is common case that that in fact
27 was not the case?
- 28 A. That's correct.
- 29 Q. 282 This certification was done in expectation that it had been obtained but it
30 wasn't in fact obtained at that point?

- 1 A. That's correct.
- 2 Q. 283 If we turn to page 1023 you will see that on the place on the deed where the
3 common seal of Paisley Park Investments Limited was affixed there are the
4 signatures of Martin Bullock, director, and Roderick P Harker, director, isn't
5 that so?
- 6 A. That is correct.
- 7 Q. 284 And if we revert back to the document itself, page 1022 we'll see that it bears
8 the date the 5th June, 1991?
- 9 A. That's right.
- 10 Q. 285 Now, it is the case, is it not Mr. Friel, that this document was not completed
11 on the 5th June 1991, it was completed only by Mr. Tracey as of that time?
- 12 A. That is correct.
- 13 Q. 286 Can you recollect when the document came to you whether it was undated, whether
14 in other words the insertion here in manuscript of the 5th June 1991, whether
15 that took place at a later date?
- 16 A. I have no record, but I would have thought it was, it came to me dated.
- 17 Q. 287 You think it had the date on the 5th June 1991 when it came to you?
- 18 A. I think so. Because there is a copy on file that's dated in the same writing
19 of the 5th June, on, unsigned by the, by Paisley Park Investments, I have a
20 copy just signed by one party.
- 21 Q. 288 I see.
- 22 A. And it's dated at that time.
- 23 Q. 289 We may take it then that the 5th June was the date Mr. Tracey signed it in the
24 presence of his solicitor, Mr. Russell?
- 25 A. Yes.
- 26 Q. 290 But as regards the other entry, could I suggest to you that that is an
27 incorrect entry and that it is not a legitimate entry, by that I mean that you
28 have properly identified that the role of the directors was now *functis officio*
29 because a liquidator had been appointed to the company and that in order for
30 this document to be completed it should have been signed by the liquidator, qua

1 liquidator, and not as directors, isn't that so?

2 A. That is so.

3 Q. 291 It appears we have reached one o'clock.

4

5 CHAIRMAN: We'll sit again at two o'clock.

6

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

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MR. O'NEILL: Before lunch Mr. Friel, we were discussing the transfer of the 5th June 1991, and in particular the sealing of that document by the company, Paisley Park Investments Limited, which as we know was in liquidation at the time, that the deed was forwarded for signature by the company, isn't that correct?

A. That is correct.

Q. 292 And as you indicated this morning, in order to validly execute this document, the liquidator should affix the seal and sign qua liquidator and that did not occur on this occasion, isn't that right?

A. It did not occur.

Q. 293 And the directors, in fact, took on a function here which was not one they were permitted to do at law, isn't that correct?

A. That's correct.

Q. 294 And this document, insofar as it purports in the overall, to be a document which was completed by the company, and consequently appears in the 5th June 1991, that was not the factual position, isn't that right?

A. That is correct.

Q. 295 Although this document was going to be submitted in support of the registration of the title to the land, isn't that correct?

A. That is correct.

Q. 296 Could I suggest to you, that this cannot have been a mere oversight in view of the fact that you had specifically drawn to the attention of the liquidator, the fact that this document should properly be executed by the liquidator?

A. That is correct.

Q. 297 Now, when I say that you draw to the attention of the liquidator, you did so through Mr. Caldwell who himself is a solicitor, it was to him you indicated in your letter "I note it hasn't been executed and presumably will now have to be executed by Mr. Harker as liquidator for the company?"

1 A. That is correct.

2 Q. 298 Equally any liquidator, certainly any chartered accountant purporting to have
3 the expertise to act as a liquidator, will be aware of the fact that the
4 directors do not have the function which they sought to exercise in this deed,
5 isn't that right?

6 A. That is right.

7 Q. 299 Now, this document, as we know, was then submitted as part of the documentation
8 to achieve the registration of Paisley Park Investments as the registered owner
9 of the lands, isn't that right?

10 A. That is right.

11 Q. 300 Now I take it, it wasn't your decision that this should take place, in this
12 fashion, was it? When you received this document back from the directors, it
13 was apparent on the face of the document that they hadn't heeded the stricture
14 that you had alerted them to, namely that it was appropriately a matter for the
15 liquidator?

16 A. Well, until you pointed it out to me today, I didn't even, although I said it
17 had to be signed by the liquidator, I didn't even notice it until today.

18 Q. 301 Although you submitted it with the documentation, isn't that correct?

19 A. That is correct, that's correct.

20 Q. 302 Part of the documentation which would be sent or would be generated in
21 connection with this registration would be a Land Commission consent, isn't
22 that right?

23 A. That is right.

24 Q. 303 And that does not come from the Land Registry, but rather from the Land
25 Commission, now through the Department of Agriculture.

26 A. That is correct.

27 Q. 304 And they do so on the basis of a specific form and if we look at page 2240 on
28 screen, we'll see a document, it's a standard form document call form N.Q.1.
29 Form, it's referred to as such in a number of places throughout the
30 correspondence.

- 1 A. That's correct.
- 2 Q. 305 Which is why I draw your attention to it, but in your file there are a number
3 of such forms, isn't that right because?
- 4 A. There are.
- 5 Q. 306 There was the registration of Paisley Park which required such a form. There
6 would have been the intended registration of Iris, and there was to be
7 subsequently, a similar form on behalf of Jackson Way Properties, the company
8 which we will come to in due, course isn't that right?
- 9 A. That is right.
- 10 Q. 307 So, in referring to these forms, we have to be mindful of the fact that there
11 are three, depending on the particular part of the file it is dealing with.
12 This one was to give effect to the registration of Paisley Park Investments
13 Limited as owner, and it was generated because no such form had been filed in
14 advance of the 6th June of 1991, which was the date of transfer, isn't that
15 right?
- 16 A. Was it the 5th June?
- 17 Q. 308 5th June.
- 18 A. That is correct.
- 19 Q. 309 Yes. So this is a document now, as we'll see from page 2,243, it was dated the
20 27th of August 1992, Mr. Harker was the signatory to it and his signature was
21 witnessed by a bank manager beneath it, and it bears the date the 27th August
22 1992. We'll see from page 2,241, the details which were entered on this form
23 by Mr. Harker. And this information effectively is the information that you
24 would have sought in your initial letters, to establish who the parties were,
25 addresses, location of land and so forth, isn't that right?
- 26 A. That's correct.
- 27 Q. 310 Now, it shows the present owner of the lands, by that, one is talking about, in
28 this instance, the registered ownership of Mr. Tracey, isn't that right?
- 29 A. That's right.
- 30 Q. 311 He is shown as the registered owner of the lands, albeit, be at his legal

1 interest and equitable interest, indeed had been extinguished in June of 1991
2 when he received the full payment for the lands, isn't that so? This document
3 in other words doesn't, it was not intended to allow for the application being
4 made after the legal title had passed. This document is --

5 A. It's retrospective consent basically.

6 Q. 312 Well it was looking for retrospective consent but it was using the form that
7 one would use in the first instance, to get consent in advance of the transfer,
8 isn't that correct? Because there isn't in fact a form that allows you to look
9 for retrospective consent. The effect would be if consent was forthcoming on
10 foot of this document it would be retrospective?

11 A. That's correct.

12 Q. 313 But the information contained in it indicates that the person whom the interest
13 was proposed to be vested was Paisley Park Investments Limited, it's address in
14 the State is 12 Fitzwilliam Place, Dublin 2, a limited liability company
15 incorporated in the Isle of Man. And you will see that there is no entry for
16 citizenship, it was a company rather than an individual, and ahead of paragraph
17 11, or response number 11, there is a note on the form to the person intending
18 to complete it, to indicate that in respect of a body corporate, instead of the
19 particulars at 9 and 10, a copy of the Articles of Association should be
20 furnished and additional information as in 11 following, should be supplied
21 concerning the person having control of such body corporate. The word control
22 having the same meaning as is ascribed to it in Section 45.5.B of the Land Act
23 1965. And there is then a footnote which gives a description of what control
24 means from the point of view of completing this document, isn't that right?

25 A. That's right.

26 Q. 314 Control has a specific meaning here in relation to a body corporate.

27

28 It means that in relation to a body corporate it is the power of a person to
29 secure, by means of the holding of shares, or the possession of voting power
30 in, or in relation to that or any other body corporate, or by virtue of any

1 power conferred by the Articles of Association or other document regulating
2 that, or any other body corporate, that the affairs of the first mentioned body
3 corporate are conducted in accordance with the wishes of that person.

4
5 Now it's quite a complex definition. But could I suggest to you, that it's
6 clear from it that the intention is that the authority which is going to
7 consider the question of issuing consent or not, when dealing with a corporate
8 body, want to know the identity of the person who controls it

9 A. That's correct.

10 Q. 315 So in 11, we see that Mr. Harker signs that as RP Harker, chartered accountant,
11 although it is spelled "chartered accounted", with his address there. From the
12 point of view of this document therefore, Mr. Harker is saying that he is the
13 person who controls Paisley Park Investments Limited. In doing so he doesn't
14 say that he does so by virtue of being a liquidator, isn't that right?

15 A. That is right.

16 Q. 316 But can we take it that in answering this question, he is stating that Paisley
17 Park the company, is a company which is operated at his wishes?

18 A. Well, yes. It would have to be, yes.

19 Q. 317 Would you agree with me that any person acting in a nominee capacity or as a
20 trustee for others could not enter their names as the person who is in control
21 of such a company?

22 A. They couldn't.

23 Q. 318 No. We see that Mr. Harker then communicates with you on the 4th September
24 1992 at page 1147. I think we are still here dealing with Paisley Park's
25 attempts to have itself registered with the Land Registry:

26
27 "Further to our recent telephone conversation. I enclose the following
28 documents.

29
30 Certified copy of the declaration of solvency". That's a Paisley Park

- 1 declaration, isn't that right?
- 2 A. That's right.
- 3 Q. 319 "Certified copy of the resolutions passed on the 13th March 1992", that is the
4 winding up declaration and authority to do so in specie.
5
6 "Completed form NQ1", that's the document we have just considered.
- 7 A. I wonder is it or is it the later document? I would have thought that is
8 relating to the liquidation of Paisley Park, not to the registration.
- 9 Q. 320 It has to be surely Mr. Friel, form NQ1 in the context of registering any
10 interest of Paisley Park's, would have to be a Paisley Park NQ1 declaration?
- 11 A. Yeah, but I wonder was that a declaration relating to Jackson Way.
- 12 Q. 321 No, Jackson Way doesn't feature for another --
- 13 A. Does it not? Well then. It seems the other declarations relate to the
14 liquidation of, the other declaration in solvency, they relate to the
15 liquidation of Jackson Way. They have nothing to do with the registration.
- 16 Q. 322 Sorry, Jackson Way wasn't liquidated.
- 17 A. I beg your pardon. I beg your pardon, yes. My apologies. What you said is
18 correct.
- 19 Q. 323 I think that you see that the document we last considered, that is the NQ1
20 Paisley Park document.
- 21 A. Yes.
- 22 Q. 324 Was one which you had sent to Mr. Friel (sic) on the 28th of August, we see
23 that page 1144.
- 24 A. Yes.
- 25 Q. 325 "Dear Rod, further to the above, I enclose transfer for sealing by Paisley Park
26 Investments Limited as previously discussed." That's the 5th June
27 documentation, we have already dealt with that.
28
29 "I also enclose herewith Land Commission form NQ1 and I would be grateful if
30 you would sign it on page four where I have signed your initials."

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You will see from page 2243, that I think your initials are just visible underneath Mr. Roderick Harker's signature and also there is a witness who signs at the point where you indicated with an X and we "Mr. RP Sanderson", perhaps, I'm not quite sure.

A. Something like "Henderson".

Q. 326 Yes. That they signed this document, you having inserted the particulars except for possibly number 11, is that right? Or did they complete all of the documentation? I know that in the later document of Jackson Way Properties you inserted an amount of the information and the balance was put in by Mr. Harker.

A. I think I would have inserted that information.

Q. 327 Yes. Very well, we know now that that document was returned to you signed and witnessed and was to form the documentation which would accompany the registration of the Paisley Park lands, isn't that right?

A. That is correct.

Q. 328 In the course of that letter, that is the letter of page 1147, Mr. Harker asked, or expresses the wish as follows:
"I trust you will now be in a position to proceed with the registration of the lands in the name of Paisley Park Investments Limited. I apologise for the delay in dealing with this matter."

So to that point we are dealing now exclusively with Paisley Park's intended registration as the owner of the lands.

A. That is correct.

Q. 329 He now goes on to deal with the Iris issue where he says:
"As previously discussed, there is a hiccup regarding the distribution in specie. Some necessary details are still outstanding, I will give you further instructions in due course", isn't that so?

A. That's correct.

Q. 330 So to that point in September 1992, some four months after your initial

1 engagement, you hadn't received the documentation regarding Iris and the onward
2 distribution in specie to them, save for the two declarations of the 12th May
3 1992, which established the status of Iris as being the owner of the shares and
4 the party to whom the distribution was taking place, is that correct?

5 A. That is so.

6 Q. 331 When it comes to October of that year, we'll see at page 1151, you wrote to
7 Mr. Harker raising a number of issues, the ones in relation to Iris, I think,
8 at the last paragraph.

9

10 Firstly, there is the reference to three and four, three and four as you know
11 in your initial letter by way of fax of the 18th May -- sorry it was earlier
12 than that, I think it was the 14th May, then the response was the 18th May and
13 your reply on the 21st May, they all deal with the same matter, paragraphs
14 three and four, and that is the ownership of the shares of Paisley Park
15 Investments by Iris Development Company Incorporated, isn't that right?

16 A. That is right.

17 Q. 332 And to this point in October you were still unclear as to how, on the one hand
18 they could say that there were two owners and on the other hand say that there
19 were four shareholders.

20 A. That is right.

21 Q. 333 And you repeat your query here at the first paragraph, you say:

22 "As advised in my letter of the 21st May, there would appear to be a
23 contradiction in your replies to questions 3 and 4, in that you state that
24 there are 4 shareholders, yet you only indicate 3 owners of the shares. Please
25 advise."

26

27 The second matter then is to deal with query 7. And 7 was the declaration of
28 the decision taken to distribute in specie. And here you say:

29 "I would be grateful if you could furnish me with a further copy of the
30 declaration made on the 12th May 1992 (i.e. the declaration resolving to

1 distribute in specie) as the faxed copy shall not be accepted by the Land
2 Registry", isn't that right?

3 A. That is right.

4 Q. 334 So at this point, at the end of the October, Iris were still on line to become
5 the owners of the land, isn't that right?

6 A. That is right.

7 Q. 335 You then forwarded the necessary documentation to the Department of Agriculture
8 for the Land Commission consent. We'll see that at 1152. Where you send to
9 the Department of Agriculture the form NQ1, again, it doesn't say that is
10 Paisley Park, but we may take it that it is, the copy transfer. And the copy
11 Certificate of Incorporation and Articles of Association of Paisley Park
12 Investments.

13 A. Yes.

14 Q. 336 And in this, accompanying that documentation you request retrospective consent
15 of the Land Commission to the vesting of the property in Paisley Park?

16 A. Yes.

17 Q. 337 And they comply with that request at 2242, on the 13th November 1992 you
18 receive a consent, I beg your pardon 2244.

19 A. Yes.

20 Q. 338 A consent is issued to Paisley Park Investments Limited with retrospective
21 effect to the 5th June 1991 and that's issued in November 1992, isn't that
22 right?

23 A. Yes, that's right.

24 Q. 339 There was a continuing delay, I think, in receiving complete documentation from
25 Mr. Harker, because a month later in November 1992, we see at page 1159, you
26 advise on the 20th November 1992 that, "you have received the Section 457
27 consent to the vesting of the property in Paisley Park and you have today
28 lodged the title documents in the Land Registry for the purpose of registering
29 their ownership in the said lands." That is Paisley Park's ownership in the
30 said lands.

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You say, "I shall need the original Certificates of Incorporation, together with a copy of the Memorandum and Articles of Association of Paisley Park Investments Limited, for the purpose of the said registration and I would be grateful if you let me have same as soon as possible."

A. That's right.

Q. 340 Now you had lodged your documentation with the Land Registry, there was a delay occurring, and I think you were fearful of the fact that if you didn't have all the documentation in on time, the application to register might well not succeed because the Land Registry mightn't entertain the documentation if it wasn't complete.

A. I would need it.

Q. 341 Yes.

A. Sometimes if you need it, five documents, lodge three anyway.

Q. 342 Two months later in January 1993 you are again writing to Mr. Harker, drawing his attention to the fact that you had lodged documentation, but that you hadn't received from him the necessary documentation and expressing the fear that the Land Registry might reject them if the documents are not lodged in the very near future.

A. That is right.

Q. 343 You see that at page 1229.

You say, "I await the original Certificate of Incorporation together with the copy of Memorandum and Articles of Association of Paisley Park Investments. Until I receive these, the Land Registry will not proceed with the registration. Indeed the dealing has been lodged with them since November last, they might reject same if the documents are not lodged with them in the near future.

When replying I would be obliged if you would confirm that Paisley do not

1 intend to carry on business in the State."

2

3 That's necessary for the declaration that we have referred to earlier.

4 A. That's right.

5 Q. 344 Mr. Harker responded to you on the 21st January 1993, there had been a sizable
6 delay of course in your communications, which had commenced in November of the
7 previous year, isn't that right?

8 A. That is right.

9 Q. 345 He, I don't think gave you any specific reason as to why he had not complied
10 with what's seemed relatively straightforward to that point, is that right?

11 A. No, other than the fact that it was a duplicate certificate and it took him
12 that length of time to get it.

13 Q. 346 We see at page 1230, Mr. Harker's letter to you,.

14

15 "I apologise for the delay in replying to your letter of 20th November 1992 and
16 now enclose the duplicate Certificate of Incorporation. (it is anybody's guess
17 what might have happened to the original). According to your letter of the
18 22nd November 1992, I had already sent with my letter of 4th September, a copy
19 of the Memorandum and Articles of Association (as amended by special resolution
20 of the 22nd November 1988).

21

22 I can confirm that Paisley Park Investments Limited does not intend to carry on
23 business in the Irish State.

24

25 I trust you will now be in a position to proceed with the registration of the
26 lands in the name of Paisley Park Investments Limited.

27

28 I refer to the final paragraph of your letter of the 22nd October 1992, and"
29 that was dealing with the distribution in specie to Iris. "And enclose
30 certified copies of the two declarations I made on the 12th May 1992. As at

1 12th May, Iris was the holder of the 1,560 A shares. It was the owner of 1,600
2 A shares, as Martin and myself had no beneficial interest in the shares
3 registered in our names. Does this explain the apparent contradiction? This
4 is all academic at present, as I am still awaiting instructions from the
5 principals.

6

7 If you have any queries please do not hesitate to contact me."

8

9 So as regards your query about the apparent inconsistency, that was obviously
10 explained here, isn't that right?

11 A. It was, yes.

12 Q. 347 Here we see Mr. Friel, the first reference to there being principals behind
13 Mr. Harker. Normally I take it, that where a liquidator is carrying out the
14 functions of a liquidator under the Companies Act, he does not have principals,
15 he is the principal and he is administering the function as he is obliged to
16 under the Act, independently and not as an agent for anybody?

17 A. Certainly that's correct, yes.

18 Q. 348 Did it occur to you to query him here as to what he was saying in the context
19 of there being principals involved with this?

20 A. I'm afraid to say, no, it didn't.

21 Q. 349 The certified copies of the two declarations, you might just confirm, are the
22 certified copies that we referred to originally as originals and we drew your
23 attention to the certification on the bottom of them earlier today, isn't that
24 right?

25 A. They are.

26 Q. 350 So that as of this date of 21st January 1993, as far as you were concerned, the
27 owners of this property, that is the lands at Carrickmines, were Iris
28 Development Company Incorporated, and it's ownership root of title was the fact
29 that it was the recipient of a distribution in specie from the duly appointed
30 liquidator, Mr. Harker, isn't that right?

1 A. That is correct.

2 Q. 351 Yes. Now later that month, on the 28th January, we see at page 1234, you write
3 again to Mr. Harker, acknowledging receipt of the letter of the 21st January,
4 which we have just referred.

5

6 "The certificate enclosed should suffice for Land Registry purposes and I
7 should be able to proceed to have the company registered as registered owner.
8 I shall advise on developments.

9

10 I note what you say in relation to shares. Are you still awaiting instructions
11 from the principals?" My interpretation of it is, and you may have the
12 original there before you, "I shall leave matters in relation to declarations,
13 etcetera, and any queries arising therefrom, until you receive instructions",
14 is that right?

15 A. That is right.

16 Q. 352 Okay. So to that extent the question of there being principals or parties
17 behind the liquidator was addressed there, isn't that right?

18 A. It was.

19 Q. 353 What had you in contemplation? Can you say at this point?

20 A. No just possibly a little ignorance of the function of a liquidator, that being
21 my only response to the letter.

22 Q. 354 The registration of Paisley Park proceeded speedily once the appropriate
23 documents had been lodged with the Land Registry, isn't that right?

24 A. That is right.

25 Q. 355 And we'll see that on the 10th March 1993, at page 1255, you advised Mr. Harker
26 as follows:

27 "Just a note to let you know that Paisley Park Investments Limited have now
28 been registered as owners of the lands comprised in the above-mentioned Folio"
29 isn't that right?

30 A. That's right.

1 Q. 356 So insofar as we have advised this as a two step process, that is the
2 registration of Paisley Park as owners and the subsequent dealing in specie
3 with the lands. The first step was now complete as of this date, isn't that
4 right?

5 A. That's correct.

6 Q. 357 And the only matter then remaining was the Iris position. I believe that there
7 was no further communication with Mr. Harker on this issue until the 25th May
8 of 1993, approximately two and a half months later, where he writes to you on
9 the 25th May 1993, isn't that right?

10 A. That's right.

11 Q. 358 This is a letter which appears on screen before you at page 1322.

12

13 The letter reads, "At long last I have received instructions from my principals
14 regarding the disposition of the aforementioned lands.

15

16 I enclose a copy of the declaration made by me on the 20th May 1993." That is
17 five days before this letter to you. "I am informed that Jackson Way
18 Properties Limited was incorporated in England and Wales (as Arriveclever
19 Limited) on 14th April 1993, with the number 2808944. I am advised that it's
20 registered office is situated 43 Jackson Way, Quinton, Birmingham, B32 1BL,
21 that it's sole director is Alan Holland and the company secretary is Marion
22 Gillies.

23

24 I believe that the intention is that Jackson Way Properties Limited will hold
25 the land as nominee for Renzenbrinck Investments Incorporated and Maskani
26 Management Limited jointly. A cash distribution will be made to Xenon
27 Investments Limited.

28

29 The shareholders of Paisley Park Investments Limited as at 13th March 1992,
30 were Martin Bullock (nominee for Renzenbrinck) 20 A shares, 4 B shares.

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Renzenbrinck Investments Incorporated 780 A shares, 186 B shares. RP Harker nominee for Maskani. 20 A shares, 4 B shares.

Maskani Management Limited 780 A shares, 186 B shares. Xenon Investments Limited 20 B shares.

Please note that the shareholders remain unchanged. (the principals have withdrawn their suggestion that they would transfer their shareholdings to a Panama company).

I believe that there is some requirement to notify the Irish revenue authorities of the proposed distribution in specie. I should be grateful if you would deal with that matter on my behalf. Is it right, that there is a three month time limit for lodging the transfer documents with the Land Registry?

Doubtless you will have queries! Please do not hesitate to contact me."

Now up to this date Mr. Friel, it seems that your instructions were that the owners of the lands at Carrickmines were Iris Development Company and as I have indicated a moment ago, it's root of title was the fact that it was the shareholder, majority shareholder, isn't that right?

A. That's right.

Q. 359 You now receive this document here, in which it is stated that the parties who were, the majority shareholders were Renzenbrinck Investments and Maskani Management.

A. That's right.

Q. 360 Now it is obvious that that is wholly and totally inconsistent with the documentation which had been furnished to you prior to that date, isn't that

1 right?

2 A. That's right.

3 Q. 361 Accompanying this letter there was a declaration, which we see at page 1318,
4 which is in very similar terms to that which was sworn approximately one year
5 and one week beforehand by Mr. Harker, in connection with Iris Development.
6 And in this document, which is another statutory declaration, pursuant to the
7 Evidence Act 1878, '71 rather. He says as follows:

8

9 "I Roderick Peter Harker, of 12 Mount Havalock, Douglas, Isle of Man, being
10 liquidator of Paisley Park Investments Limited, do solemnly and sincerely
11 declare that as liquidator of the company and with the sanction of an
12 extraordinary resolution of the members of the company passed on the 13th day
13 of March 1992, and at the specific request of the holders of 1,560 A ordinary
14 shares and 372 B ordinary shares, I have today resolved to distribute in specie
15 to Jackson Way Properties Limited, the whole of the company's interest in the
16 lands at Carrickmines, County Dublin. On the basis of professional advice
17 received, I have determined the value of the land at 800,000. The remaining
18 shareholders will receive only a cash distribution. And I make this solemn
19 declaration conscientiously believing the same to be true, by virtue of the
20 provisions of the Evidence Act 1871"

21

22 That was sworn in the Isle of Man in Douglas on 20 May, 1993 although you note,
23 it is not sworn before the same commissioner to whom a similar declaration had
24 been sworn one year earlier, isn't that right?

25 A. That is correct.

26 Q. 362 This statutory declaration, whilst it refers to the holders of the shares, that
27 is the A shares and the B shares, it does not name them Maskani or
28 Renzenbrinck, isn't that right?

29 A. That is right.

30 Q. 363 We have to return back to the letter of the 28th, sorry 25th of May, at page

- 1 1322, to see that Renzenbrinck and Maskani are claimed in this letter to be the
2 owners of the shares, isn't that right?
- 3 A. That's correct.
- 4 Q. 364 Now, if we look to the documents which was sworn on the 12th May 1992, at page
5 1111, we'll see that the shareholding therein was transferred by both
6 Renzenbrinck and Maskani to Iris Development, isn't that right?
- 7 A. That's right.
- 8 Q. 365 A consequence of that, I take it you would agree Mr. Friel, is that they were
9 no longer the major shareholder, or the majority shareholder in the company.
- 10 A. Yes, yes.
- 11 Q. 366 And since they are no longer the major shareholder in the company, they were
12 not entitled to receive a distribution in specie in that capacity or any other
13 capacity.
- 14 A. Yes.
- 15 Q. 367 Isn't that right?
- 16 A. Yes.
- 17 Q. 368 Equally they were not entitled, having disposed of their shares by transfer to
18 Iris, to purport to transfer them elsewhere or to exercise any rights over the
19 shares at that point, isn't that right?
- 20 A. That is correct.
- 21 Q. 369 And how, in those circumstances, could Maskani and Renzenbrinck authorise the
22 transfer of documents to Jackson Way?
- 23 A. They couldn't.
- 24 Q. 370 They couldn't?
- 25 A. No.
- 26 Q. 371 In making the statement in his letter of the 25th May 1993, that the
27 shareholders remained unchanged, was Mr. Harker telling you something which was
28 true or untrue?
- 29 A. It was untrue.
- 30 Q. 372 By way of explanation possibly to the existence of Iris, although it is not

1 mentioned by name, there is in brackets a reference to a Panamanian company
2 which reads as follows:
3 "The principals have withdrawn their suggestion that they would transfer their
4 shareholdings to a Panama company". Now the documents that we have seen sworn
5 before the commissioner in the Isle of Man on the 12th May of 1992, did they
6 evidence a concluded fact or a suggestion?

7 A. A concluded fact.

8 Q. 373 So that insofar as Mr. Harker here suggests to you that there was originally an
9 intention on behalf of these unnamed principals, which was never implemented,
10 again that is untrue, isn't that so?

11 A. That is correct.

12 Q. 374 Insofar as Jackson Way purports to have any title to these lands, it arises
13 solely from a distribution in specie, isn't that right?

14 A. That is right.

15 Q. 375 As a solicitor experienced in conveyancing matters and in the knowledge of the
16 statutory declarations, which have been considered in the past number of
17 questions, do they have any title to this property?

18 A. No.

19 Q. 376 Now Mr. Harker concludes his letter hereby saying:

20 "Doubtless you will have queries!" And could I suggest to you that it would be
21 very, very difficult not to have queries arising from the sequence of events
22 which lead to this letter, that sequence, I think, being apparent that a
23 liquidator was acting as liquidator of a company which was claiming to be
24 solvent and claiming to have an asset in Ireland which was a substantial asset
25 with the value of some 800,000 pounds.

26
27 In exercising the role of liquidator, the liquidator had, as between the
28 persons having a right to the company's assets, that is the shareholders, made
29 certain determinations. Part of those determinations were that one of the
30 shareholders was effectively removed from the ownership of the lands, isn't

1 that so?

2 A. That's so.

3 Q. 377 And the other two shareholders had disposed of their shareholdings to a single
4 individual, which was an incorporated company called Iris Development Company
5 Incorporated, which is registered in Panama, isn't that right?

6 A. That's right.

7 Q. 378 This single Panamanian entity therefore, was the party who was to receive this
8 property in Carrickmines on the distribution?

9 A. That's right.

10 Q. 379 You had been engaged by the company liquidator for a little over one year and
11 two weeks, to give effect to that determination of the liquidators, to
12 distribution in specie.

13 A. That's right.

14 Q. 380 But now he was telling you that there had never been a distribution to a
15 Panamanian company, it was only ever to be a suggestion which was never
16 implemented, and yet you had before you the documentation which satisfied you
17 that the distribution in specie had taken place and that the original
18 shareholders had no further function, isn't that right?

19 A. That is right.

20 Q. 381 Did that not cause you to get on to Mr. Harker and say, what are you asking me
21 to do here? Where is the consent of the Panama company, Iris, to this
22 position?

23 A. Possibly it should, but I think the nature of -- I would regard myself as a
24 conveyancer, not a company law person and possibly we shouldn't give, I
25 wouldn't have given the attention to the -- if I asked for whatever the Section
26 6; 265 declaration I would take it as such, and the only excuse I can give is
27 that I wouldn't follow the company law side as closely as I should. I would
28 just follow the conveyancing side.

29 Q. 382 But the conveyancing side would involve, could I suggest, certain declarations
30 in particular, declarations of trust being executed by parties, particularly if

1 it was to be contended that in the distribution in specie, that it was a
2 distribution which was for the benefit of shareholders, isn't that right?

3 A. That's right.

4 Q. 383 And we'll move through the documentation which deals with the declarations of
5 trust, which were sworn by the parties here, but just to fix matters as of the
6 25th May 1993, would it be fair to say that there was a complete about face
7 here and an entirely new entity was being considered to be the owner of these
8 lands, and as we'll see in different circumstances to what was originally
9 intended?

10 A. That would be fair to say.

11 Q. 384 Had the Iris scheme progressed and had your instructions not altered as they
12 did with this letter, would it be accurate to say that Iris Development Company
13 of Panama would have been the reasonable registered owner of the lands on Folio
14 4940 of Carrickmines in Dublin?

15 A. It would.

16 Q. 385 That is a single company, isn't that right, as far as you know?

17 A. That's right.

18 Q. 386 And previous to it acquiring it's ownership of the shares, those shares had
19 been divided apparently as between two companies, one Renzenbrinck, which was
20 Panamanian company, and one Maskani, which was an Isle of Man company?

21 A. That's correct.

22 Q. 387 And one might possibly assume that because there are two companies, that they
23 are owned by different parties.

24 A. Yes.

25 Q. 388 But, once they transferred their interests to Iris there was now only one
26 company.

27 A. Yes.

28 Q. 389 That owned the lands, isn't that right?

29 A. That is correct.

30 Q. 390 Now there are endless combinations, I am sure, and possibilities that arise

1 from that, but one of them could be, that the initial two companies were owned
2 by the same individual, who is now consolidating his interests into one
3 company, Iris, isn't that a possibility?

4 A. That is right, yes. That's a possibility.

5 Q. 391 I have to say of course there are others, insofar as it might be that one of
6 the two parties had sold out the entire of his interest to the other and the
7 other then took that in a new company which he formed, or they may have formed
8 a company together in which they had shareholdings of varying degrees, the list
9 is no doubt endless as to what one can do behind the guise or the shield of
10 corporate structures, isn't that right?

11 A. That is right.

12 Q. 392 But certainly, as regards going forward from May of 1992, the two companies
13 Renzenbrinck and Maskani were ceasing and one company only was intended to
14 progress matters.

15 A. 1993.

16 Q. 393 Sorry, in 1993, things change again.

17 A. I beg your pardon, yes.

18 Q. 394 But in 1992 Renzenbrinck and Maskani effectively were standing down and Iris
19 was going to proceed.

20 A. That's right.

21 Q. 395 We don't know whether Iris represented the interests of Maskani or Renzenbrinck
22 or both or none. Isn't that so?

23 A. That's so.

24 Q. 396 But from Mr. Harker's letter here in May, there is again this reference to the
25 principals?

26 A. Yes.

27 Q. 397 So that there are people behind all these corporate structures who are really
28 controlling events, these companies were, could I suggest, pieces on a chess
29 board and no more?

30 A. Well they could have been anybody.

- 1 Q. 398 Yes, but not only could they have been anybody, but they all seemed to go back
2 to the principals behind it. There is nothing in this letter, from Mr. Harker,
3 to suggest that Iris is a company which is separate and distinct from Paisley
4 Park or from Renzenbrinck or from any of the other companies.
- 5 A. Yes, yes.
- 6 Q. 399 Isn't that so?
- 7 A. That is so.
- 8 Q. 400 At any time, did Mr. Harker ever tell you who his principals were?
- 9 A. No.
- 10 Q. 401 In this letter of the 25th of May, we see that Mr. Harker is making reference
11 to some events in the recent past. Firstly, he refers to the fact that it was
12 a company called Arriveclever Limited, which was incorporated on the 14th April
13 of 1993. And that that company was going to become Jackson Way Properties,
14 isn't that so?
- 15 A. That's right, yes.
- 16 Q. 402 To that point in time, had you heard anything about such a company, or the
17 possibility that this UK based entity would be coming into the title picture?
- 18 A. No.
- 19 Q. 403 Now in order that we might progress matters further, and allow for the context
20 in which Jackson Way comes into play, I'm going to ask you to consider a number
21 of documents which have come to the Tribunal, they were briefed to you in the
22 body of the documentation, in which the history of the setting up of the
23 Jackson Way entity took place. I accept that many of these documents would not
24 be documents that you would have seen in your capacity as the Irish solicitor
25 acting on behalf of the liquidator of the company, but I think you went on to
26 have dealings with this company Jackson Way, and with a Mr. Holland who was a
27 director of that company, isn't that so?
- 28 A. Well yes, but limited dealings I should say.
- 29 Q. 404 Yes, I accept that they were not complete. The genesis of the company, which
30 was to become Jackson Way Properties Limited, appears to stem from a

1 communication which issued from Channel Islands and International Law Trust
2 Company Limited, which is referred to CI Law Trust group at various stages in
3 the course of this Tribunal, and we'll see at page 1258, a letter of the 23rd
4 March 1993, this is some two months prior to Mr. Harker writing to you as
5 liquidator, advising you of the existence of such a company.

6
7 In this document we see it is a fax to Alan Holland, from Francine Webster with
8 an address at West Away Chambers, Done Street St, Helier, Jersey, it's sent by
9 fax to Mr. Holland, it reads as follows:

10
11 "Nick has been asked by a substantial Irish client to arrange for the
12 formation/acquisition of a UK company, which is empowered to hold property and
13 also act as trustee and nominee. Ideally the company needs to be set up by a
14 "UK property man" and beneficially owned by him, and he should also appear as a
15 director and arrange for an appropriate secretary to be provided. It is
16 intended that certain lands in Ireland, presently held by a company in
17 liquidation, will be transferred to the company by way of distribution in
18 specie and the UK company will hold as trustee 50/50 for two offshore
19 companies. The UK company owners will then render an invoice for the provision
20 of this trustee service which will also include the usual set up cost of the
21 company. There should be no specific taxation problems but we are arranging
22 for a UK firm of accountants of tax consultants to confirm this. Would it be
23 possible for you to assist us in this matter?

24
25 Please contact Nick or myself as soon as possible to discuss, as we need to get
26 the vehicle in place before 31st March 1993"

27
28 The last matter may have something to do with the tax year, the first of April,
29 that tax consequences.

30 A. That's what would spring to mind.

1 Q. 405 The Nick referred to here, as we'll see later, is a Mr. Nick Morgan, who is a
2 solicitor in Jersey and a principal of this entity called Channel Islands and
3 International Law Trust Group Limited.

4
5 At the end of that document, you will see a manuscript of certain notes, which
6 read:

7 "P S, perhaps your friend David at Stoys could arrange to acquire or set up a
8 UK company which should include properties in the name. Stoys may also wish to
9 vet the scheme."

10

11 Underneath that another hand:

12 "David Stoys' accountants set up a company and registered office. Director and
13 secretary supplied by us. Vet scheme. Paisley Park Investments IOM. Lands
14 transferred to new company. 50 per cent on trust" and above that -- sorry "50
15 per cent on trust for Irish company". Above that "Pertland". And beneath that
16 "For Panamanian company", so perhaps 50 per cent for Panamanian company as
17 well.

18

19 I take it you were unaware and had never heard of a company called Pertland
20 Limited or an Irish trust having any involvement in these lands at
21 Carrickmines.

22 A. Never, never.

23 Q. 406 No. So this set up was taking place without your knowledge.

24 A. That is right.

25 Q. 407 If we move to document 1259, we'll see the response of Mr. Holland to this,
26 from the title to the document, the heading, we'll see, it comes from Fishers,
27 a firm of surveyors, valuers and property managers, located at High Street,
28 Harborne in Birmingham. It's a fax message from there. And you will see at
29 the bottom of the page, that the principals of that entity are AG Holland, with
30 a number of consultants.

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"To David Morgan, Whitehead & Company." And whilst the document that we referred to earlier had come from Channel Islands and International Law Trust Company Limited, the response is to David Morgan, Whitehead & Company, who are a firm of solicitors in Jersey of which Mr. Nick Morgan is a solicitor and which has an association with CI Law Trust group.

"To David Morgan, Whitehead & Company, for the attention of Nick Morgan, re Irish trust."

Message "Thank you for your fax and subsequent conversation. Subject to clearance of my accountant, David Seacombe, at Stoy Hayward, I should of course be pleased to assist you and your client and thank you for thinking of me in this context.

I have spoken briefly to David and he would be more than happy to assist, but clearly he will need certain assurances with regard to his fees and the nature of his involvement. He will be in touch with you independently today and I shall be contactable should you need me."

The next document I would refer you to is a document at page 1260, it's an internal memorandum in the form of Stoy Hayward, who were the accountants who were envisaged as having an involvement in both Mr. Morgans' or rather Ms. Francine Webster's letter to Mr. Holland and Mr. Holland's response to David Morgan, Whitehead & Company.

From Rodney Taylor of 25 March 1993, on the subject of the trustee company for Irish property.

It records as follows:

1 "I spoke to Nick Morgan, of Channel Islands and International Law Trust
2 Company Limited as requested by Gary Taggart.

3
4 NM told me his clients were the owners of some potentially valuable land in
5 Ireland, which was at present owned by an Isle of Man company. The Isle of Man
6 company is currently in liquidation, in order to take out the interest of one
7 of the current shareholders.

8
9 It is being proposed that the legal interest in the land be transferred to a
10 new UK trust company which would hold the property on trust for two non UK
11 resident companies.

12
13 NM was acting for the principals of the offshore companies. He had suggested
14 Alan Holland (a client of the Birmingham office) to be a director. (and
15 probably also beneficial owner) of the trust company. I understood that Alan
16 Holland was not one of the principals, but had been approached by Nick Morgan
17 because of his involvement with property generally.

18
19 The trust company (or maybe Alan Holland) estate agencies business would
20 receive an annual fee for acting as trustee.

21
22 NM said that Alan Holland would need advice on whether there was any risk to
23 himself. I said that clearly there would be obligations from trust law &
24 company law on which he would need legal advice.

25
26 I said that we would need to consider whether the UK revenue would have the
27 right to see the Declaration of Trust on the property in favour of the offshore
28 companies.

29
30 If we were to act, we would need an engagement letter. Nicholas Morgan

1 indicated that in his view we would need two letters, namely one from Alan
2 Holland for establishing the UK company and also one from Nicholas Morgan
3 himself for the subsequent vetting of the overall scheme.

4

5 I also indicated that if it we were to decide to go ahead, the company would
6 probably be established by our Birmingham office, of which Alan Holland was a
7 client. My own involvement would probably be limited to commenting on the
8 international tax aspects of the arrangements. In respect, I indicated that I
9 myself could not advise on Irish tax, but would need to take advice from our
10 local associates in Ireland.

11

12 Nicholas Morgan is to meet the Irish lawyers next Wednesday/Thursday (31
13 March/1 April). He indicated that he would be in contact again following that
14 meeting. I said that I would be speaking to Gary Taggart and passing this on
15 to him, and that we would speak to Alan Holland to let him know what the
16 current position was.

17

18 I later spoke to Gary Taggart and passed this on to him. Gary expressed some
19 concern about Alan Holland's involvement in this, from the point of view of the
20 possibility that this would lead to an investigation of his own interests. He
21 indicated that he would speak to Alan Holland himself.

22

23 I said that I did not propose sending an engagement letter at this stage,
24 although clearly one would be necessary if Nicholas Morgan gave instructions
25 following his meeting with the Irish lawyers next week."

26

27 Now any reference there to Irish lawyers, Mr. Friel, I take it, is not to
28 yourself?

29

A. Certainly not.

30

Q. 408 No, if we move then to the next document at at page 1265, it is again a fax

1 from Fishers, this time to Stoy Hayward and Mr. Seacombe in that firm.

2
3 It says "Thank you for your fax with copy of an internal memo from Rodney
4 Taylor. If your London people are happy that the scheme is entirely legal then
5 I do not perceive a problem, save in the event that the revenue would choose to
6 challenge it. However my understanding is that it is intended as a scheme to
7 avoid Irish taxes, not UK taxes.

8
9 I hardly think that the UK authorities would be over concerned assuming that
10 the company was properly established, audited and paid it's taxes.

11
12 Am I being over simplistic?" and that's signed "AG Holland."

13
14 We then see at page 1264, a letter to Mr. Holland from Nicholas St. Clair
15 Morgan signed on his behalf, at page 1264. This is dated 28th April,
16 approximately one month after the last communication.

17
18 "Dear Alan, I attach a copy of the letter I have sent to Rodney Taylor, a tax
19 partner at Stoy's London office. Who has been brought into this by Stoys,
20 Birmingham. Please telephone me on receipt of this so that I can explain
21 matters more fully to you. It may be helpful for us to meet up in London to
22 discuss this in greater detail and also to talk about" other things.

23
24 This letter, Mr. Friel, apparently suggests that Mr. Nicholas Morgan was going
25 to involve himself with Mr. Alan Holland, in the acquisition of a company which
26 was going to be used in the ownership structure of the lands at Carrickmines,
27 is that so?

28 A. That would appear so, yes.

29 Q. 409 To this point in the 28th April, approximately a month before Mr. Harker got in
30 touch with him to advise of the existence of the Jackson Way company, had you

1 ever heard of Mr. Nicholas Morgan?

2 A. No.

3 Q. 410 Had you ever had any dealings with Channel Islands and International Law Trust
4 Company?

5 A. No.

6 Q. 411 Or with David Morgan Whitehead?

7 A. No.

8 Q. 412 The document which was referred to in that letter of the 28th April 1993, was a
9 copy of a letter which Mr. Morgan was sending to Roderick Taylor, who is the
10 tax specialist in Stoy's in London, and it is a document setting out what the
11 parties had in mind. We see that at page 1282.

12

13 It's dated 28 April 1993 and reads as follows:

14

15 "Dear Mr. Taylor, re formation of the UK company.

16

17 I refer to today's telephone conversation and now set out all details in
18 respect of the company to be incorporated on behalf of Mr. Alan Holland.

19

20 1. It is proposed that a United Kingdom company should be established by
21 Mr. Holland with an appropriate property name, which will be empowered to act
22 as a trustee and nominee and to hold and develop property as trustee. It is
23 further proposed that the company should have its registered office at the
24 offices of Stoy Hayward, that Mr. Holland should be appointed sole director and
25 that the company secretary should be provided by Stoy Hayward who would also
26 act as auditors to the company. The company should have a minimum share
27 capital and there is no specific requirement for special articles.

28

29 2. It is proposed that 108 acres of land at Carrickmines, County Dublin, will
30 be transferred to the UK company by the liquidator of Paisley Park Investments

1 Limited. This Isle of Man company is presently in solvent liquidation and
2 there will be a distribution in specie in order to minimise Irish stamp duty.
3 It is then proposed that the UK company will execute a Declaration of Trust in
4 relation to this land in favour of two existing offshore companies and the UK
5 company will also enter into an a co-ownership agreement with the two offshore
6 companies. Drafts of the Declaration of Trust and co-ownership agreement will
7 accompany the hard copy of this letter. I will also need to agree separately
8 with Mr. Holland, by way of side letter, details about remuneration for
9 provision of this facility. The receipt of instructions generally and success
10 or arrangements, in the event of anything happening to him.

11
12 3. After incorporation of the company, it will be necessary for a suitable
13 letterhead to be prepared for the company and the company will need to appoint
14 Messrs Mason Hayes & Curran of Fitzwilliam Square, Dublin. Mr. Anthony Burke
15 is to act as lawyers for the company with regard to the land to be transferred
16 to it. The Irish lawyers will, upon the distribution in specie from Paisley
17 Park Investments Limited, confirm that the transfer is correct and arrange for
18 registration of the same at the Irish Land Registry. The deeds will be
19 obtained from Binchy & Company, the present solicitors to Paisley Park
20 Investments Limited, and after registration, will be sent via Mr. Holland for
21 safe keeping with ourselves. It will be necessary for the UK company to write
22 to the Irish lawyers, setting out their initial instructions and also certain
23 specific instructions with regard to rights-of-way/access to the lands. A
24 draft of the letter to be sent will be available to me within the next week or
25 so. This letter may also deal with the question of way leaves."

26
27 I might just stop at that point Mr. Friel, it would appear certainly from that
28 document, that as of late April of 1993, Mr. Nicholas Morgan was writing to the
29 tax advisers in London, advising that Binchy & Company were the present
30 solicitors to Paisley Park Investments Limited, in the context of their

1 dealings in Ireland, isn't that so?

2 A. That's so.

3 Q. 413 You, I take it, reject that.

4 A. Absolutely, yes.

5 Q. 414 You were acting in your capacity as a sole practitioner, Frank Friel & Company
6 and you were acting as the solicitor to the company on the basis of
7 instructions from the liquidator?

8 A. That is right.

9 Q. 415 Apparently what was envisaged here, was yet another change of solicitor to
10 another firm in Dublin, Mason Hayes and Curran which might take place at some
11 later stage, isn't that right?

12 A. Yes.

13 Q. 416 You, I take it, were never alerted to that situation.

14 A. No.

15 Q. 417 Nor did it ever happen as far as I know.

16 A. No.

17 Q. 418 There is reference here to, at the very end of that paragraph, to a draft of a
18 letter to be sent, will be made available to Mr. Morgan within the next week or
19 so. So that in the hierarchy of instruction and direction of these companies,
20 it seems that whilst Mr. Holland was proposed to have a function through his
21 company Jackson Way, which would be exercised by Mr. Morgan giving him
22 instructions; Mr. Morgan in his own turn was receiving instructions from
23 somebody else. And what he was receiving, amongst other things, was drafts of
24 letters which would be sent to others down the line, is that right?

25 A. It would appear so, yes.

26 Q. 419 And that ultimately, insofar as anybody can be identified as being at the top
27 of the pile, to use that phrase, it is the substantial Irish investors for whom
28 Nicholas Morgan acts, is that right?

29 A. Yes.

30 Q. 420 Who remain unnamed in this correspondence. To continue with the letter.

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Paragraph 4:

"I am advised by our underlying clients that there will be no requirement to file any tax returns in Ireland. The situation would only change if at some future point, rental income arose in which case tax agents would be appointed to account for the 27 per cent Irish withholding tax on rents paid to non Irish companies. In any event, our client companies will indemnify the UK company and Mr. Holland against all taxes, expenses and other liabilities that may arise from providing this trustee/nominee facility."

Again, what is sought to be achieved here by Mr. Morgan, apparently, is that Mr. Holland will act in a trustee/nominee facility only, and that he will be protected against liabilities to tax by indemnities, which will be provided by him, Mr. Morgan, or the Irish company, sorry not the Irish, but the companies, described as the client companies, isn't that right? But that equally, Mr. Holland, will not himself have any benefit whatsoever in the companies because appropriate success or arrangements will be appointed, will be put in place so that if anything happens to him it won't fall in with his estate.

A. His estate, yes.

Q. 421 Right. Further detail then of the nature of the offshore companies which are referred to here, is contained at paragraph 5.

"With regard to the two offshore companies that will be the beneficial owners of the land at Carrickmines via the Declaration of Trust, these companies have each advanced the sum of Irish pounds 417,855.47 to Paisley Park Investments Limited in relation to the purchase of the land and subsequent expenses. I attach a schedule showing the break down of these figures and it is my understanding that the burden of these loans will be assigned to the new United Kingdom company at the time of the distribution in specie. There will be loan agreement in force between the offshore company and the UK company, whereby

1 interest will accrue at 3 per cent over base rate, with a minimum interest rate
2 of 10/11 per cent."

3

4 If true, this document would appear to suggest that Paisley Park was indebted
5 to two companies in a total sum of about 835,000 pounds, isn't that right?

6 A. That's right, yes.

7 Q. 422 And that that indebtedness was an indebtedness that arose by way of loan, and
8 those loans were from two bodies, which were offshore companies as far as the
9 UK jurisdiction was concerned, which had contributed equally this amount of
10 money, which is very specific, to the penny, isn't that right?

11 A. Yes.

12 Q. 423 And that in some way these loans were going to be scheduled in such a way that
13 they would be loan agreements in force between the offshore company and the UK
14 company, that's the intended UK company, carrying rates of interest of 3 per
15 cent over base, with a minimum of 10 per cent or 11 per cent.

16

17 Again insofar as that loan agreement would arise, that is the loan agreement
18 between the company, Jackson Way Properties and the offshore companies, that
19 would be an inter company loan, in law, wouldn't it?

20 A. It would.

21 Q. 424 Again, if those companies were the owners of Jackson Way, sorry of Paisley Park
22 Investments, it would be a similar, of a similar nature.

23 A. It would.

24 Q. 425 A company within the group, lending another company within the group, money at
25 a fixed rate of interest, which would be accounted for in their respective
26 accounts, but we don't know how necessarily, the physical movement of cash
27 would take place in that situation, isn't that right?

28 A. Yes.

29 Q. 426 The next paragraph is paragraph 6, which provides: "locally, it will be made
30 known that a UK company has acquired the land and any communications received

1 by the United Kingdom company should be referred to ourselves who will liaise
2 with Mr. Holland and/or the company's Irish solicitors, with regard to the
3 wording of any reply that is considered necessary." I think that illustrates
4 precisely the function that Mr. Holland was to have here, which we'll see he
5 subsequently recognised, as that of being a letter box only.

6
7 Firstly, there were to be steps taken locally, by that I mean local to the
8 lands in Carrickmines, to make it known that a UK company had acquired the
9 land. Secondly, that any communications which might be received by the UK
10 company will be referred on to Jersey, to Mr. Morgan's company, David Morgan
11 Whitehead & Company or alternatively as he was writing in this letter under his
12 Channel Islands and International Law Trust Company correspondence, that it
13 will go to that address, where it will be dealt with by them in consultation
14 with Mr. Holland and/or the company's Irish solicitors, with regard to the
15 wording of any reply that is considered necessary. So this is the blueprint
16 for setting up a chain through which correspondence, written by any Irish
17 entity to the UK company, will find itself vetted and dealt with in Jersey and
18 then sent back from the UK company under the UK company's letterhead, isn't
19 that so?

20 A. Yes, that's so, yes.

21 Q. 427 "It is likely that this arrangement will continue for a number of years and
22 we'll reimburse" -- sorry "we'll reimburse, to Mr. Holland, all direct expenses
23 and disbursements incurred in respect of the company and separately agree a fee
24 with him which will effectively cover the provision of this facility and such
25 costs and disbursements. It may well be that this fee should be paid to one of
26 Mr. Holland's other companies, but I will discuss this directly with him.

27
28 From Mr. Holland's point of view, I should be grateful if you would confirm
29 that there will be no United Kingdom or Irish tax liability arising to him as a
30 result of such a trusteeship (other than in respect of any fee paid to him

1 personally for this service). With regard to the United Kingdom company, I
2 should be grateful if you would confirm that in the light of the proposed
3 ownership structure, that it is correct there will be no UK taxes payable by
4 the company in relation to it's initial acquisition and subsequent holding of
5 the land and in the event that the land is subsequently disposed of at a
6 significant capital gain. Presumably because of the existence of the
7 Declaration of Trust in favour of the two offshore companies there are no
8 inheritance tax implications that could arise from the transaction. It is my
9 understanding that the ultimate owners of the two offshore companies are non
10 resident trusts, established some years ago for non UK residents.

11
12 Should you require any additional information, please do not hesitate to
13 contact me."

14
15 So as of that date this was the proposal which was being advanced to Stoy
16 Hayward's international tax expert, for the purpose of having him consider what
17 the implications would be for Mr. Holland, who was proposed to come in in this
18 capacity, which has been described here, as a trustee type of capacity, isn't
19 that right?

20 A. That's right.

21 Q. 428 Whilst the lands in question we know to be very valuable lands at this point in
22 time, and certainly valuable lands in 1993 when this was being dealt with, it
23 appears that Mr. Holland's fees for taking on this role were relatively modest,
24 you will see at page 1289, that Mr. Holland faxes Mr. Morgan on the 30th April
25 1993 as follows:

26
27 "Many thanks for your letter of the 28th April, which I have carefully
28 considered. I do not anticipate a problem here and would set my gross fee
29 level for this function at 2,000 pounds plus VAT per annum, reviewable
30 annually.

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In addition, I shall invoice for what work I carry out through my office. My charge out rate is 120 pounds per hour, plus disbursements, plus expenses.

I look forward to hearing from you with regard to the next stage of this matter."

So this perhaps identifies what Mr. Holland envisaged at that time as being the role that he would play here, one which merited the 2,000 a year payment, plus 120 pounds an hour, should he have to do more than to be the letter box for the principals behind this transaction, isn't that right?

A. That is right, yes.

Q. 429 Nonetheless, if his company, Jackson Way Property Limited, becomes the registered owner of the lands on title in Ireland, he would appear from a title point of view, to have absolute title, when I say he, I mean the company Jackson Way Properties Limited, would appear to have absolute title to these lands and clearly from a Land Registry point of view, can pass on good title to others, isn't that right?

A. That is right.

Q. 430 In the event that that was to happen of course, if what was proposed in these documents was translated into a reality he, Mr. Holland, and his company Jackson Way Properties Limited, would receive not one penny out of the Carrickmines lands, isn't that so?

A. That is right.

Q. 431 If we move on to early May then, at page 1293, we see Mr. Holland is writing to Nicholas Morgan again, he says:

"Dear Nick, re Irish trust.

I am obliged for your recent fax and with it a draft letter, which appears

1 satisfactory.

2

3 Before finally confirming my involvement in this affair, I have, as you know,
4 asked my accountants Stoy Hayward to satisfy themselves that I would be in no
5 way prejudiced and to that end Rodney Taylor of their London office has my
6 instructions to direct whatever questions he may feel to be relevant to
7 yourselves in confident expectation that frank and satisfactory answers will be
8 forthcoming.

9

10 On that basis and given that they are satisfied, I shall spring into action. I
11 am marking my diary to show that if possible I will get to London on the
12 evening of the 14th May 1993.

13

14 With kind regards."

15

16 So Mr. Holland, apparently in this document, was putting back to Mr. Morgan the
17 responsibility for ensuring that his, Mr. Holland's rights, were protected and
18 that he wasn't in anyway prejudiced by his involvement, isn't that right?

19 A. That's correct.

20 Q. 432 We'll see, I think, that Stoy Hayward specifically advised the parties on what
21 might occur in their relationship. We see on the 11th of May, this is at page
22 1294, the advices of Stoy Hayward, which are given by Mr. Rodney Taylor, on the
23 11th May.

24

25 "Dear Mr. Morgan. Formation of UK company (new CO)"

26

27 I think from your experience of accountants, before a company is acquired "new
28 co" is the phrase used to indicate the proposed vehicle that may be set up by
29 the accountant to deal with the given tax situation, isn't that right? Rather
30 than to form a company called "new co."

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"Thank you for forwarding to me , by fax, the signed engagement letter dated 5th May.

I have now had an opportunity of considering your letter and of reading the attached documents. We also discussed, last Friday, a number of points concerning the existing and future financing arrangements. These superseded paragraph 5 of your letter."

Now, if we go back to paragraph 5 of the letter from Mr. Morgan, we'll see that that is page 1283, at the bottom. Paragraph 5. It was the reference to there being two companies which had each advanced 417,855.47 pounds to Paisley Park in relation to the purchase of the lands and the subsequent expenses and it was accompanied by a schedule apparently which was standing up those figures, those, that schedule is not a document that we have ever obtained, and it talks of the burden of these loans being assigned, it talks of there being loan agreements which were in force between parties.

We now see that in response, having considered this letter and a future discussion with Mr. Morgan, that the contents of that paragraph are now "superseded" is the word used, so we might envisage that perhaps some other structures are now proposed or have been put in place before the 11th May 1993 or intended to be structure going forward, rather than what might have been contained in the fifth paragraph of the letter.

As I say, these superseded paragraph five of your letter.

"My understanding is that Mr. Holland's involvement in this transaction is required for wholly commercial reasons, in that the principals wish to associate, with the project, a person who is well established in the UK

1 property market.

2

3 I am of course, only considering the UK tax position of Newco and Alan Holland
4 and not the principals (referred to as company A, company B) and their
5 shareholders. I am copying this to our Irish associates, Simpson Xavier, for
6 their comments on the Irish tax position of Newco and Alan Holland.

7

8 My understandings concerning the residence and ownership of company A & Company
9 B are as contained in the engagement letter."

10

11 Again the engagement letter is not a letter which has ever been furnished to
12 the Tribunal.

13

14 "My comments are as follows.

15

16 1. Nature of the proposed activity.

17

18 1.1. From the draft letter of intent it is proposed "That the property at
19 Carrickmines, County Dublin Ireland, and any additional property required to
20 facilitate it's development, be rezoned from agricultural to a developable
21 zoning and that the lands be sold in one or more lots as soon as possible
22 thereafter".

23

24 1.2. This clearly indicates in UK terms that the beneficial owners of the land
25 are trading in land rather than investing subject to tax on the profits as
26 income and not as capital gains. I believe this would be the position as far
27 as Irish tax is concerned, but will ask Simpson Xavier to confirm.

28

29 1.3. If Newco is holding the Irish property as bare trustee for two non UK
30 resident companies who are carrying on a trade wholly outside the UK, neither

1 Newco or the beneficial owner would be liable to UK tax on the profits arising
2 from the trade.

3
4 1.4. Section 60 of the Tax Capital Gains Act 1992 provides guidance on the
5 meaning of bare trustee as follows "In relation to assets held by a person as
6 nominee for another person or as trustee for another person absolutely entitled
7 as against the trustee, this Act shall apply as if the property were vested in
8 and the acts of the nominee or trustee in relation to, the assets were of, the
9 person or persons for whom he is the nominee or trustee (acquisitions from or
10 dispositions to him by that person or persons being disregarded accordingly)

11
12 1.5 Section 60.2 continues "It is hereby declared that reference in this act to
13 any assets held by a person as trustee for any other person absolutely entitled
14 against the trustee are reference to a case where that other person has the
15 exclusive right, subject only to satisfying any outstanding charge, lien or
16 right of the trustees to resort to the assets for payment of duty, taxes, costs
17 or other outgoings or to direct how the assets should be dealt with.

18
19 1.6, it is clearly essential that it can be demonstrated to the UK Inland
20 Revenue that Newco is merely acting as nominee or bare trustee for two non UK
21 and non Irish resident companies. Company A & Company B.

22
23 1.7, it would appear that the draft Declaration of Trust enclosed with your
24 letter would be effective to ensure that Newco is regarded as bare trustee.
25 However this is essentially a legal question, so that I am asking for your
26 confirmation that this is your view also, and I would be relying on your
27 opinion in this matter.

28
29 1.8. In due course the UK Inland Revenue may request a copy of the Declaration
30 of Trust as evidence that Newco is acting merely as bare trustee the Irish

1 Revenue may request this also and I am asking Simpson Xavier to advise on this.

2

3

Comment on your letter."

4

Again these are comments to the letter we have already read out in full from

5

Mr. Morgan to Stoy Hayward.

6

7

2.1 "Your paragraph 1 - I take it that you intend that Newco should not include

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the property in the balance sheet, but that the accounts of Newco would simply

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state that it owns the property as nominee. Please confirm.

10

11

2.2. I understand that a fee would be payable, either to Newco or preferably

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to a UK company controlled by Alan Holland, firstly in consideration for

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providing the services of the nominee company; and secondly for management

14

services provided under a management agreement. This fee would be subject to

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tax in the normal way. If the company in receipt of the fee were to have

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permanent establishment (example, an office in Ireland) it could be assets to

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Irish Tax although a credit would be given in the UK for Irish tax paid. If as

18

seems likely, there is no permanent establishment in Ireland, the fee would be

19

subject to UK tax only.

20

21

2.3. Your paragraph 2, I understand that Company A & Company B are both 50 per

22

cent shareholders in Paisley Park Investments Limited (in liquidation).

23

Accordingly, in the normal course of events the title to the property both

24

legal and beneficial would be transferred to those companies.

25

26

2.4. In this case the legal title to the property is to be transferred to

27

Newco. Therefore, as discussed, I presume there will be some form of

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instruction from Company A & Company B to the liquidator authorising him to

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transfer the legal title to the property to Newco. I would be grateful if you

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would confirm this please.

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Your paragraph 3 noted.

2.6, your paragraph 4. I assume that no income arises currently from the property. I am asking Simpson Xavier to confirm the content of this paragraph.

2.7 your paragraph 5. From our telephone conversation I understand that the structure is somewhat different from that outlined in your letter."

That's dealt with further in 2.8.

"I now understand that there are two further companies Company C & Company D which have lent funds to Company A & Company B respectively. Following the transactions these loans will remain in place. The loans have a ten year term and are at three per cent over base rate, with a minimum rate of interest of 11 per cent.

2.9. If, as I would expect Company A & Company B are assessed, Irish tax on the profits of the development, I understand that company C & Company D anticipate that the interest payable would be offset against their profits arising on the land. However, companies A and B should take advice on this from their own Irish tax advisers.

3. Agreement of ownership.

As discussed on the telephone this agreement may obscure unnecessarily the capacity in which Newco is acting. My strong preference would be for Newco to act only as bare trustee and not itself also be acting as managing agent, likewise it would be preferable for any fees to be received by a trading company controlled by Alan Holland rather than by Newco itself, so that Newco has no taxable income.

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3.2. From our discussion I understand that you see no reason why an agreement similar in objectives to the agreement of co-ownership should not be entered into by a company controlled by Mr. Holland. You will be discussing this with the representatives of companies A and B.

I look forward to receiving a receiving a further draft of the amended agreement in due course.

4. Inheritance tax. I can confirm your understanding set out in the penultimate paragraph of your letter that the Irish property would not fall into Mr. Holland's estate for inheritance tax purposes and that there would be no UK inheritance tax implications for Newco.

Please let me know if you have any comments you wish to discuss any of the points."

So we see from that, Mr. Friel, that at paragraph 2.4 it was envisaged by the tax advisers here that there would be some form of instruction from company A & Company B to the liquidator, authorising him to transfer the legal title to the property to Newco. That seems to be something that might be mirrored in the letter from Mr. Harker of the 25th May 1993 where apparently we see Maskani and Renzenbrinck transferring their interest to a new company called Jackson Way, isn't that so?

A. Yes.

Q. 433 If that were so it's possible that companies A and B refer to Renzenbrinck and Maskani and that that may be the case, that could be, Mr. Morgan's initial letter which was subject of comment that there were two companies involved, A and B, we don't learn of C and D until this particular letter?

A. That is right.

1 Q. 434 But the A and B companies were ones which were envisaged here by the accountant
2 as being the companies which might transfer to Newco. Of course Mr. Taylor in
3 this regard is relying, as far as we can see exclusively on a letter of
4 engagement which has been furnished to him by Mr. Morgan which we don't have
5 sight of and we don't know what's in it, but also the letter in May that we
6 read in full, isn't that so?

7 A. That is so, yes.

8 Q. 435 Now if we may move then to page 1299 you will see that on the 11th May Stoy
9 Hayward get in touch with Mr. Alan Holland, and they tell him as follows.

10

11

"Following our meeting yesterday I confirm that I have purchased a shelf
12 company from Jordans called Arriveclever Limited. Once they have changed the
13 officers of the company I will draw up the appropriate resolutions to change
14 the name to Jackson Way Properties Limited, unless I hear from you to the
15 contrary.

16

17

For your information I enclose copy paperwork for your records"

18

19

You will see that it wasn't until the 4th June 1993 that Jackson Way Properties
20 Limited is actually authorised by a certificate of incorporation on change of
21 name, to conduct business as Jackson Way Properties Limited, we see that at
22 page 1332.

23

24

Companies Registered Office, Registration Office rather Cardiff, on 4th June
25 1993, certifies that Arriveclever Limited having by special resolution changed
26 it's name, is now incorporated under the name of Jackson Way Properties
27 Limited.

28

29

But obviously the parties involved had this in mind because on the 25th May of
30 1993 some two weeks before this they were in a position to tell you that

1 Jackson Way Properties was a company to which company the lands would be held
2 by that company on behalf of Renzenbrinck and Maskani, isn't that so?

3 A. That's right.

4 Q. 436 Although this letter was sent to you on the 25th May 1993 in anticipation that
5 Jackson Way would be the company involved and that Mr. Holland would be in
6 charge of those operations, it seems that the question of Jackson Way's role
7 and Mr. Holland's role have not yet been resolved as between Mr. Morgan and the
8 tax advisers acting on behalf of Mr. Holland, as we'll see in a letter of the
9 27th May 1993 page 1327.

10

11 Where Mr. Taylor writes to Mr. Morgan as follows.

12

13 "I note your letter of the 12 May and our subsequent telephone conversation.

14

15 I have now had comments from Frank Sheedy of Simpson Xavier, our Irish
16 associates.

17

18 He informs us that there are extensive provisions in Irish law relating to
19 persons who receive profits or gains belonging to any other person who is
20 chargeable to Irish tax in respect of them. Such persons may be required to
21 make a return to the Irish tax authorities showing the profits or gains and the
22 names and addresses of the persons to whom the income belongs.

23

24 In Simpson Xavier's opinion it would be unwise for Mr. Holland to proceed with
25 the current proposals without first obtaining an opinion from Irish Counsel.

26 Among the main questions on which Counsel's view would be required, would be
27 the following.

28

29 1. To what extent under Irish law, would Newco or Mr. Holland be required to
30 disclose to the Irish tax authorities the identity of the beneficial owners of

1 the income. Would it be sufficient for him to refer to the names of the two
2 non Irish registered companies, or should the names of the ultimate
3 beneficiaries of the trusts which own these companies be ascertained also?
4

5 2. Bearing in mind the answer to 1 above, to what extent should Newco and
6 Mr. Holland make enquiries into the trust which own Company A & Company B and
7 the identities of the settlors and beneficiaries of those trusts? For example,
8 would it be sufficient for Newco to obtain written confirmation from the
9 Channel Islands companies that no Irish residents are beneficially interested
10 in the company?
11

12 3. Whether Newco as legal owner needs to report to the Irish Revenue under the
13 Capital Gains Tax Clearance procedures that it has acquired legal title to the
14 land by distribution in specie.
15

16 4. Whether Newco could possibly have a secondary liability to Irish tax on the
17 assumption that a substantial fee is received by a related company in
18 connection with it's involvement.
19

20 5. Whether the draft documentation is appropriate to ensure that no Irish tax
21 liability will arise on Newco or on Alan Holland personally.
22

23 In order to obtain Counsel's opinion, the facts of the matter would need to be
24 set out in detail. We think it would be appropriate for you to instruct
25 counsel in conjunction with Simpson Xavier, since both a clear understanding of
26 the facts and a knowledge of the Irish legislation would be required.
27

28 Indemnities.

29 In your letter of the 28 April, paragraph 4, you indicate that your client
30 companies, company A & Company B would indemnify Newco and Mr. Holland against

1 all faxes, expenses and other liables that might arise from providing the
2 trustee/nominee facilities. Could you please provide a draft of the indemnity
3 when appropriate. In view of the difficulty which Mr. Holland might encounter
4 in enforcing the indemnity from offshore companies we would recommend to him to
5 consider taking some form of additional security, for example bank guarantee.

6
7 Should you wish to discuss this, I would of course be pleased to do so."
8

9 So certainly there is caution being exercised on the part of the advisors to
10 Mr. Holland as opposed to Mr. Morgan in relation to the proposals which
11 Mr. Holland was advancing at this time, isn't that right?

12 A. That is right.

13 Q. 437 And we'll see that these are addressed by Mr. Holland and Mr. Morgan directly
14 in correspondence on 28 of May 1993 where Mr. Morgan offers his view on the
15 qualifications or reservations that might appear in the letter we have just
16 read.

17
18 At page 1329 Mr. Morgan writes to Mr. Holland on the 28 of May 1993 as follows.
19

20 "I attach a copy of a letter which I have today received from Rodney Taylor of
21 Stoy Hayward which sets out the comments that he has received from Simpson
22 Xavier, their Irish associates.

23
24 I am disappointed that Simpson Xavier have provided no direct advice other than
25 that we should refer the matters to Irish Counsel, and bearing in mind that I
26 have already received a bill for in excess of 5,000 pound from Stoy Hayward. I
27 find it surprising that these people do not seem to have the immediate
28 knowledge to provide preliminary advice themselves. I now set out below my
29 comment on the questions upon which they suggest that counsel's view should be
30 obtained.

1
2 1. With regard to disclosure to Irish tax authorities under Irish law, I
3 consider that this is a matter that can properly be dealt with as and when any
4 enquiry is directed to the UK company from such authorities. As far as I am
5 concerned it is sufficient that you have been approached by my firm, acting on
6 behalf of the two non-resident companies to provide a simple nominee service
7 and I do not propose to trouble you with the details of what structure lies
8 behind these two companies. You can rest assured that the best advice will be
9 available to guide all parties on how to deal with such enquiries.

10
11 2. As referred to in one above, it is best that you make no enquiries into the
12 ownership of either company A or company B in relation to their beneficial
13 ownership. I would be prepared to provide written confirmation that the two
14 offshore companies are not beneficially owned by an Irish resident, as the
15 ultimate ownership of these companies is vested in further offshore vehicles.

16
17 3. Lawyers are acting on the transfer of the legal title to the UK company
18 under the distribution in specie and in the registration of the transfer at the
19 Irish Land Registry. As I have already advised you, the UK company will be
20 appointing it's own firm of lawyers in Ireland and between them I am certain
21 that the lawyers will follow any necessary clearance procedures.

22
23 4. I do not entirely understand this question as no substantial fee is being
24 earned by any related company in connection with it's involvement. A nominee
25 fee is being charged by yourself or your main company in relation to provision
26 of the nominee service, this is the service provided in the UK and not Ireland
27 and I can see no possibility of any secondary liability. In any event, were
28 such liability to arise it would be minimal bearing in mind the size of the fee
29 we are paying you, and therefore paying the tax on this would not be a problem.

30

1 5. Again as this transaction proceeds yourself and the UK company will have
2 the benefit of advice from experienced Irish professionals who will deal with
3 the question of any Irish tax authority. I have already assured you that we'll
4 provide you with a suitable indemnity in respect of any liabilities incurred
5 and the bottom line is that we are sitting on land that eventually will have
6 substantial value, and if any disposal is made that could trigger a liability
7 then I will have recourse to the sale proceeds in order to settle such
8 liability.

9
10 Turning to the question of Indemnities, I have already advised you that the
11 offshore companies will indemnify both the UK company and yourself against all
12 taxes, expenses and other liabilities. I will be drafting an appropriate
13 indemnity in the near future which I will run through with you and I consider
14 it unnecessary to take any form of additional security.

15
16 Perhaps when you have had an opportunity to consider Stoy Hayward's letter and
17 my own, you would telephone me so that we can discuss the points arising."

18
19 So that whilst Mr. Morgan was here aware of the fact that Mr. Holland was
20 receiving his own independent advice, it seems that insofar as he didn't agree
21 with it himself, he was offering his own advice and suggesting that Mr. Holland
22 and himself would between them resolve the issues arising, isn't that so?

23 A. (nods).

24 Q. 438 I will be turning to another matter at this point, Sir, perhaps it might be an
25 appropriate time?

26
27 CHAIRMAN: Right. We'll rise until half ten tomorrow.

28
29 **THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY.**

30 **FRIDAY, 13TH FEBRUARY, 2004 AT 10.30 AM.**