

1 **THE TRIBUNAL COMMENCED AS FOLLOWS ON FRIDAY, 13TH FEBRUARY,**
2 **2004 AT 10.30 AM:**

3
4 CHAIRMAN: Good morning.

5
6 MR. O'NEILL: Morning Mr. Chairman.

7
8 Mr. Friel please?

9
10 **FRANK FRIEL RETURNS TO THE WITNESS BOX AND CONTINUES**
11 **TO BE EXAMINED BY MR. O'NEILL AS FOLLOWS:**

12
13 Q. 1 Good morning Mr. Friel.

14 A. Good morning.

15 Q. 2 In the course of yesterday's evidence we were reviewing documentation which had
16 been generated out of this jurisdiction in the UK, in the Isle of Man and in
17 Jersey, involving a number of parties to be subsequently involved in these
18 lands, namely Mr. Nicholas Morgan, a solicitor and principal perhaps of the
19 company CI Law Trust group. Mr. Allan Holland, who was a surveyor or is a
20 surveyor in a firm called Fishers in Birmingham, who was intending to take on a
21 position as a director of a company, to be formed to hold the legal interest in
22 the lands in Carrickmines. And also Mr. Harker, who we have already dealt with
23 in his capacity as liquidator of Paisley Park Investments Limited. Isn't that
24 so?

25 A. That is so.

26 Q. 3 And we were reviewing this in the context of your position as of the 25th of
27 May of 1993, when you had been written to by Mr. Harker, setting out in some
28 detail in his letter at page 1322, what appeared to be a change in the position
29 which had pertained to that date from May of the year before, when you were
30 acting, you believed, to ensure the registration as owner of a company called

- 1 Iris Development Company Incorporated of Panama, isn't that right?
- 2 A. That's right.
- 3 Q. 4 And we see in this letter here, that you received your first notification of
- 4 the existence of a company called Jackson Way Properties Limited, which was
- 5 incorporated as Arriveclever Limited on the 14th April of the same year, 1993,
- 6 isn't that right?
- 7 A. That's right.
- 8 Q. 5 And we established yesterday that the name changed to Jackson Way is something
- 9 which was not to happen until the 3rd of June. This letter was written in
- 10 anticipation that that name change would be acceptable to the Companies Office
- 11 in the UK, isn't that right?
- 12 A. That's right.
- 13 Q. 6 I think you indicated yesterday, that the shareholding which is identified in
- 14 this letter was the same shareholding which had been identified to you in two
- 15 earlier declarations which were sworn before a commissioner for oaths in the
- 16 Isle of Man by Mr. Harker at the time when he was declaring his sanction to the
- 17 transfer of those same shares to Iris Development Company Incorporated.
- 18 A. That's right.
- 19 Q. 7 Isn't that so? And whilst the letter indicated to you that you should please
- 20 note that the shareholders remain unchanged, that is not the view that you
- 21 have, of what had taken place in the previous year.
- 22 A. That's right.
- 23 Q. 8 I had asked you whether or not, in that context, the fundamental root of title
- 24 of Jackson Way Properties was in issue, given the fact that the donor to them
- 25 apparently was not a person that had an interest in the company Paisley Park at
- 26 that time, isn't that so?
- 27 A. That's right.
- 28 Q. 9 And I think your evidence on that point was that Jackson Way Properties could
- 29 not be the owner of these lands if that was it's root of title, isn't that so?
- 30 A. That's right.

1 Q. 10 And you as the conveyancing solicitor, having charge of the registration of
2 Jackson Way, as owner of the lands in the Land Registry at that time, did not
3 receive any other documentation to indicate that there was an other root of
4 title to Jackson Way, other than through what was set out in this letter and
5 subsequently in the copy declaration which was behind it, isn't that right?

6 A. That's right.

7 Q. 11 I think that in your earlier evidence yesterday afternoon, we considered the
8 actual transfer by which Paisley Park itself became a registered owner of these
9 land, isn't that right?

10 A. That is correct.

11 Q. 12 And I think that that document also suffered from a fundamental flaw, namely
12 that the transfer was not executed by the liquidator who in fact was the person
13 who at that time had the property.

14 A. That's right.

15 Q. 13 Isn't that right?

16 A. That's right.

17 Q. 14 So that when we look to the document which was on screen yesterday, that is
18 1022, the transfer of the 5th June 1991, which was a transfer of the property
19 from Mr. Tracey to Paisley Park, that document itself was not a valid document
20 because it was signed at a time when the directors who purport to sign on
21 behalf of the company were no longer acting, and could no longer act in the
22 affairs of this company, since it was in liquidation, isn't that so?

23 A. That is correct.

24 Q. 15 Right. Now, you were given your instructions by the liquidator to proceed on
25 the basis as set out in his letter of the 25th May 1993, isn't that right?

26 A. That is right.

27 Q. 16 And you set about doing so. The very last paragraph in that letter refers to
28 an Irish revenue authority obligation, Mr. Harker says:

29 "I believe that there is some requirement to notify the Irish revenue
30 authorities of the proposed distribution in specie, I would be grateful if you

1 would deal with this matter on my behalf. Is it right that there is a three
2 month -- sorry it should be page 1322, it's your letter of the 25th May?

3

4 "I believe -- sorry "Is it right there is a three month time limit for lodging
5 the transfer documents in the Land Registry?" You will see that there is a
6 little annotation there saying "No". Do you see that in the manuscript? It
7 might not be on your file copy.

8 A. I do, yes.

9 Q. 17 Which was the answer to that query. In other words, is it right, that there is
10 a three month time limit for lodging the transfer documents and in the Land
11 Registry? Apparently no. Do you remember making that note or is it somebody
12 elses?

13 A. It's somebody elses.

14 Q. 18 Okay. And the earlier question is also answered with a manuscript yes, do you
15 see that?

16 A. I can see that, yes.

17 Q. 19 And similarly you didn't do either of those, is that right?

18 A. I didn't, no.

19 Q. 20 Now I think you address the issue then, of the Revenue involvement in a letter
20 which you write to the Revenue at page 1334, on the 16th June 1993. This is a
21 letter on your letter heading to the Revenue Commissioners Capital Acquisition
22 Tax Branch at Dublin Castle.

23

24 It's sent by registered post and reads:

25 "Dear Sirs we have been requested to advise as follows.

26

27 1. Jackson Way Properties Limited having it's registered office at 43 Jackson
28 Way, Quinton, Birmingham, is acquiring the land specified at number 2 below.

29

30 2. Lands comprising 43.951 hectares situated at Carrickmines, Great Barony of

1 Rathdown, County Dublin, being the lands comprised in the Folio 4940, of the
2 Register of Freeholders County Dublin.

3

4 3. The consideration is a distribution in specie on the liquidation of Paisley
5 Park Investments Limited (in liquidation).

6

7 4. The market value of the property is 800,000 pounds.

8

9 5. The disponent is RP Harker, chartered accountant, liquidator of Paisley Park
10 Investments Limited. We are instructed by Mr. Harker.

11

12 Yours faithfully."

13

14 And beneath that, you will see, there is another hand written addition you
15 might cipher that, if you would?

16 A. It appears to be general --

17 Q. 21 Is it "John C amended this" -- is it just "John"? In any event, can you
18 identify the "John" who amended it? It is your letter in the normal course,
19 you are solicitor acting in your own right, I am sure you send out your
20 documentation without having to refer to others, but this document was
21 apparently amended by John, I am wondering whether or not that John is John
22 Caldwell?

23 A. No, I have no recollection of John Caldwell.

24 Q. 22 I see.

25 A. I have -- I note, I have a draft of the letter prepared before that date.

26 Q. 23 Yes.

27 A. And it would appear to me that I sent it to, I presume it's an Isle of Man fax
28 number on it 0044, so I presume it went to Rod Harker.

29 Q. 24 Yes.

30 A. The draft.

- 1 Q. 25 Very good. And how does, how did the words "John amended" thus appear then on
2 your, on this copy here, do you know?
- 3 A. I have no idea.
- 4 Q. 26 Right. Is that your writing Mr. Friel, "John amended this"?
- 5 A. I wouldn't have thought so.
- 6 Q. 27 No. So, a copy of this letter, we have this from your file -- is there another
7 copy on file of the 16th?
- 8 A. There is, yes.
- 9 Q. 28 And on that is there writing "John amended this"?
- 10 A. There is, yes.
- 11 Q. 29 And how does that come on to your file?
- 12 A. I think, what I said before, must be incorrect, it must be my writing.
- 13 Q. 30 I see?
- 14 A. I didn't think it was.
- 15 Q. 31 And I suggest to you, that Mr. Caldwell had a particular expertise in dealing
16 with the Revenue and revenue implications, isn't that right?
- 17 A. That would be correct.
- 18 Q. 32 And it would not be that you might contact him in connection where there was a
19 matter of Revenue involvement.
- 20 A. I don't think I contacted him directly, I might be incorrect but I presume I
21 sent it to Rod Harker.
- 22 Q. 33 Can we look at a document which also might be on your file, it is dated the 3rd
23 June 1993, it appears at page 1331. The author of the document is not
24 identified but if we look to the document we'll see that it's dated 3rd June
25 1993, Paisley Park Investments Limited.
- 26
- 27 "The requirements to notify the Revenue Commissioners are contained in the 4th
28 schedule of the Capital Acquisition Tax Act.
- 29
- 30 What you have to advise the Revenue Commissioners of is the following:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

1. The person acquiring the assets.
2. The assets being acquired.
3. The consideration being given, i.e. distribution in specie.
4. The market value of the property, i.e. 800,000 pounds.
5. The name and address of the disponent i.e. Rod Harker as liquidator.

For adjudication you will need:

1. The deed.
2. The resolution winding up account and appointing the liquidator.
3. Copy of the resolution distributing the assets in specie i.e. Rod Harker's resolution of May 1993.
4. In Ireland you need a copy of the notice from Iris Oifiguil. In relation to the Isle of Man ask Rod Harker is there a similar notice that he had to publish."

Now could I suggest to you firstly, that that is information being generated within Ireland as to the Irish Revenue requirements and that it is a matter upon which Mr. Harker would be unlikely to be aware of.

A. That is correct.

Q. 34 So we may take it that it wasn't Mr. Harker, or somebody in the Isle of Man who was directing, who wrote this document, isn't that right?

- 1 A. That is correct.
- 2 Q. 35 And secondly, it was advices given to you as the person who was going to
3 complete the revenue requirement, isn't that right?
- 4 A. That's, it wasn't advices given to me, it was my file note.
- 5 Q. 36 It was your file note, did you prepare this document?
- 6 A. I did.
- 7 Q. 37 Right. So you are sending a note to yourself as to what the revenue
8 requirements are.
- 9 A. I did my research of what the revenue requirements were, what the adjudication
10 was, there is even a handwritten note that was on the file, that was handed in
11 to you, is actually on the very second item.
- 12 Q. 38 Before I leave the document that's on screen Mr. Friel, do you usually refer to
13 yourself as "You" when you are sending yourself a note. If you look at this
14 document, it certainly appears on it's face to be one where a third party is
15 informing you of what to do, so and says for example what you need, what you
16 have to advise the Revenue Commissioners, is the following. For adjudication
17 you will need this. In Ireland you need a copy of Iris Oifigiuil, etcetera.
18 It is a curiously worded memo to ones self.
- 19 A. I take the point you are making, I could regard it as we need or I need or you
20 need.
- 21 Q. 39 There is a document which I am not sure, certainly I know it is not briefed,
22 but it appears on your file, it's a copy of the letter which was intended to be
23 sent to the Revenue before the draft amendment.
24
25 I think we have that document on your file, isn't that right? Do you see the
26 document?
- 27 A. I have the document here.
- 28 Q. 40 Just in the sequence of the documents, this, the amendments made to this
29 document here are, represent what the ultimate document, which went to the
30 Revenue Commissioners, was, isn't that it?

- 1 A. That is right.
- 2 Q. 41 So your original intended document is the one at page 1334, sorry, that was the
3 one we put on screen earlier, the document with "John amended this" on the
4 bottom?
- 5 A. That is right.
- 6 Q. 42 That is what you had intended to send, you sent it to the Isle of Man, you had
7 obviously some dealings with Mr. Caldwell on it, because you note "John amended
8 this" and the amendment that John made, I suggest, is what you have recorded in
9 the document that we had on screen marked "Draft?"
- 10 A. That would seem correct.
- 11 Q. 43 Right. So Mr. Caldwell was to some extent either advising or directing you in
12 the manner in which you were to communicate with the Revenue Commissioners on
13 this issue, is that right?
- 14 A. That is right.
- 15 Q. 44 And is that the position that continued in your future dealings with the
16 Revenue on this matter, that Mr. Caldwell was in touch with you and confirmed
17 your approach to the Revenue, have you a memory of that?
- 18 A. I don't, no. I don't have a memory.
- 19 Q. 45 Well, we'll progress through the documentation then.
20
21 We'll see that on the 18th June 1993, at page 1337, you wrote to Mr. Harker and
22 you enclosed a number of documents, firstly a draft transfer for his perusal,
23 having regard to the authorised share capital, the nominee of the said shares
24 and your declaration dated 20th May 1993. That document obviously was a draft
25 which was to give effect to what he had indicated to you in his letter of the
26 25th May, namely, that there was to be an agreement as between or a transfer, I
27 should say, as between the parties who were the nominees of the shareholding of
28 Paisley Park, isn't that right?
- 29 A. That's correct.
- 30 Q. 46 The second matter dealt with and enclosed, was a Section 45 application form.

1 Again that's form NQ1 that we have seen before, the application to the Land
2 Commission for consent to the vesting of the property in a non qualified
3 person, in other words a foreign company which was acquiring lands which were
4 agricultural in nature and the consent of the Land Commission was requested.

5 A. That's right.

6 Q. 47 You specifically draw the attention of Mr. Harker here to question number 11,
7 which is the question on that form which deals with the control of the company,
8 where a corporate entity is identified as being an owner, and where under the
9 requirement of question 11 the person who has control of the company, that is
10 the individual, rather than the corporate entity, must be identified, isn't
11 that so?

12 A. That's right.

13 Q. 48 You also enclosed a copy of the draft of your letter to be sent to the Revenue
14 Commissioners, that's the draft we have considered just a moment ago. You
15 enclose that for his attention. If we can deal firstly with the transfer
16 document which was intended to be completed, we'll see that on the 23rd of June
17 1993, page 1349, you wrote specifically in relation to the transfer document to
18 Mr. Harker, enclosing for his attention the following:

19

20 "1. The transfer, Paisley Park Limited first part, you (that is Mr. Harker) of
21 the second part and Jackson Way of the third part."

22

23 You look forward to receiving the transfer duly executed by all parties
24 together with the Section 45 application form enclosed with your earlier
25 letter. There are at the bottom of that page are some manuscript additions,
26 I'm not sure --

27 A. They are mine.

28 Q. 49 If they are yours, you might perhaps interpret that?

29 A. It is just saying, when I refer to the Section 45, I just have my note there
30 that Certificate of Incorporation, to be referred to previously and -- I'm

1 afraid I can't read my own writing then.

2 Q. 50 Right. It might be "Binchys", is it? The word which is there and then
3 "25th/26th".

4 A. It seems to --

5 Q. 51 "Estimated" perhaps? "25th/26th".

6 A. Yes "25th/26th."

7 Q. 52 You can't decipher on your own copy, what is the reference before that? Is it
8 to "Binchys"?

9 A. No, I think it's just a note to myself, what I left out in possibly the, you
10 know, in the previous letter, where you said I want A, B, C, the Certificate of
11 Incorporation, Memo and Arts, I didn't mention it in that letter and it must be
12 saying I left it out of whatever that other note is.

13 Q. 53 Well having sent the documentation to Mr. Harker, obviously he was the person
14 you were receiving instructions from on behalf of Paisley Park, and you were
15 not setting up a direct line of communication with the other party to the deed
16 here, namely Jackson Way Property, isn't that so?

17 A. That's right.

18 Q. 54 At this point. We'll see at document 1378, that in the Isle of Man, Mr. Harker
19 had obviously written to Birmingham, to Mr. Holland, in connection with the
20 transfer document.

21
22 On the 23rd July 1993, Mr. Holland writes to Mr. Harker copying his
23 correspondence to Nick Morgan as follows:

24
25 "Dear Mr. Harker, Paisley Park investments, in voluntary liquidation, lands at
26 Carrickmines.

27
28 I have now returned from holiday and enclose herewith a photocopy of Memorandum
29 and Articles of Association of Arriveclever Limited, Certificate of
30 Incorporation of that company, Certificate of Incorporation of change of name

1 for Jackson Way Properties and notice of change in situation of registered
2 office.

3

4 I note that the transfer which you sent me was intended to be approved. I have
5 had it amended per your letter of 28th June. You will see that I have.

6

7 A. Changed the registered office of Jackson Way Properties.

8

9 B. Paragraph D I have changed, subject to extraordinary.

10

11 C. I have changed purchaser to transferee where you see the red underline.

12

13 Would you please approve these amendments and I shall then arrange for the
14 document to be sealed and executed."

15

16 So whilst you had sent over the document in a particular form to Mr. Harker,
17 Mr. Harker and Mr. Holland between them, had identified a number of amendments
18 that would be required to give effect to the transfer, isn't that right?

19 A. That is correct.

20 Q. 55 And Mr. Harker --

21 A. Maybe not -- it was dotting I's and crossing T's there on one or two of the
22 points.

23 Q. 56 Yes, but it certainly involved both of them considering the document in full.

24 A. Absolutely, yes.

25 Q. 57 Reading it, appreciating it and noting alterations in it, that they felt were
26 necessary, isn't that right? And we'll see those amendments as we look at the
27 document itself.

28 A. Yes, yes.

29 Q. 58 One of them being a signature because it indicates that the party was receiving
30 the interest as a transferee rather than a purchaser, a matter which will be

1 vital from the point of view of stamp duty of the deed, isn't that right? Well
2 if there was a purchase between parties that might attract stamp duty at a
3 different rate than this, if there was a transfer taking place as a
4 distribution in specie?

5 A. No, it was just that, the correct word for transfer is a transferee, as opposed
6 to purchaser, it wouldn't have any difference whatsoever.

7 Q. 59 If it made no difference, certainly it was something that the eagle eye of
8 those reading it felt was significant and they felt the purchaser was an
9 inappropriate term to use and amended it, isn't that right?

10 A. Maybe that's the way they saw it, I just don't know.

11 Q. 60 We'll see that at document 1380, Mr. Harker writes to you on the 27th July
12 1993:

13

14 "I refer to earlier correspondence regarding the transfer to Jackson Way
15 Properties Limited.

16

17 I have now heard from Alan Holland regarding the deed and have the following
18 comments.

19

20 "The registered office" obviously of Jackson Way Properties "Has recently
21 changed to 20/24 High Street, Harborne, Birmingham.

22

23 Recital D should refer to an extraordinary resolution" this was referring, as
24 we'll see, to the winding up of the company.

25

26 "Clause 1 and the final paragraph should refer to transferee (not purchaser).

27

28 I have marked the alterations on the attached copy.

29

30 Alan Holland says he would be happy to execute the document with these

1 alterations affected in manuscript. If this is acceptable to you, we can
2 proceed on that basis. Please let me know your thoughts.

3

4 I am posting to you today some other documents.

5

6 I look forward to hearing from you".

7

8 In relation to the other documents there Mr. Friel, are you in a position to
9 tell the Tribunal what documents Mr. Friel (sic) was sending to you as distinct
10 from the transfer documents which would require amendment?

11 A. I can't recall, but I wonder could it have been the Certificate of
12 Incorporation, the NQ1 that, those other documents I had previously asked for.
13 I am only surmising that now, I just --

14 Q. 61 I asked you that because, whilst you acknowledge the letter of the 27th in your
15 letter on the following day the 28th, which we see at page 1381, there would
16 not appear to be any reference to these other documents which had been sent to
17 you by Mr. Harker.

18

19 The letter to you from Mr -- sorry, from you to Mr. Harker says:

20

21 "I acknowledge receipt of your fax dated 27th July.

22

23 I note Mr. Holland would be happy to execute the document with the alterations
24 affected in manuscript and would suggest that this is satisfactory. However
25 the alteration should be initialled by the various persons signing the
26 transfer.

27

28 If you have any queries in relation to the above please do not hesitate to give
29 me a call."

30

1 So that we don't know from that what other documents there were that were sent
2 to you by Mr. Harker.

3 A. No. The only --

4 Q. 62 Logically they should be presumably the Articles of Association?

5 A. It would, and I think that -- pardon me, I think that the, he was sending those
6 to me by post, they didn't come .

7 Q. 63 So you got a fax copy without enclosures, a hard copy followed, probably with
8 enclosures.

9 A. That's probably it. I got a fax copy with a copy of the draft transfer
10 amended.

11 Q. 64 Right. We'll see at page 1383, a document which expresses itself to be a
12 transfer between Paisley Park Investments limited, RP Harker and Jackson Way
13 Properties. It's dated 30th July 1993 at page 1383. Some two days after you
14 acknowledged receipt of the communication which you received from Mr. Harker.
15 So, it may well be that he retained a document, being an intended transfer,
16 pending your further advices and you gave the advices on the 28th, he set about
17 having it executed by the various parties.

18 A. That's correct .

19 Q. 65 As advised by you there are initials in respect of each amendment to the
20 document, isn't that so?

21 A. That is so.

22 Q. 66 And as a solicitor you might just confirm that, why one initials amendments,
23 what's the intended effect of putting one's initials to a document which you
24 ultimately, subsequently sign at the bottom?

25 A. It acknowledges that the change has been made before the deed has been -- it
26 hasn't been done at a later stage.

27 Q. 67 Right. In other words, so that there are no subsequent alterations made after
28 the time of the signature which appears at the bottom of the document, is that
29 right?

30 A. Yes, they were there at the time of the signing of the document, or the

1 execution of the document.

2 Q. 68 Sure. And as far as you are concerned I take it, it would be improper to
3 initial documents in blank and send them off so that parties might enter
4 information on a document subsequently to the initial, isn't that so?

5 A. It would, yes.

6 Q. 69 As we see in that document, at page 1383, there is a recital or preamble of the
7 material facts under paragraphs following the words "whereas", isn't that
8 right?

9 A. That is correct.

10 Q. 70 This is the standard legal format of documentation, which sets out under the
11 paragraph marked "whereas" the basis upon which the document is prepared and
12 it's effect then is, follows the words "Now this indenture witness as follows",
13 is that correct?

14 A. That is correct.

15 Q. 71 What is intended to be set out in a deed such as this, is the accurate
16 information which leads the parties to the deed to reach the conclusions which
17 they witness subsequently in the deed itself, isn't that right?

18 A. That is correct.

19 Q. 72 And if we go through these recitals we'll see that at paragraph three it is
20 stated that Jackson is the nominee of the registered holder of 1,600 A and 380
21 B shares. As we know there are 2,000 shares issued in this company, of which
22 1,980 were shares that, as we considered yesterday, were held initially by
23 Renzenbrinck and Maskani, Mr. Bullock and Mr. Harker in their representative or
24 nominee capacity for those two companies equally, isn't that right?

25 A. That is right.

26 Q. 73 This document indicates here that Jackson is the nominee of the registered
27 holders of the shares, and I'm curious, Mr. Friel, as to whether or not you
28 drafted this document. I know that you forwarded a draft for signature to
29 Mr. Harker. Did you draft the document or were you given it to forward to him?

30 A. No, I would have drafted it.

- 1 Q. 74 And in drafting paragraph C here, was the basis for that paragraph the
2 information which you had received from Mr. Harker in the letter of the 25th
3 May and it's enclosure?
- 4 A. It would.
- 5 Q. 75 We'll see at paragraph H, on page 1384, a reference to the declaration of the
6 20th May 1993. It says that:
7 "By declaration, dated 28 May 1993, the liquidator, with the sanction of the
8 extraordinary resolution of the members of the company, resolved to distribute
9 in specie, the whole of the company's interest in the premises described in the
10 schedule hereto (hereinafter call the premises) and at the request of the
11 holders of 1,560 A ordinary shares and 372 B ordinary shares and at the request
12 of the nominees of 40 A ordinary shares and 8 B ordinary shares to Jackson",
13 isn't that so?
- 14 A. That is so.
- 15 Q. 76 And again in the, in this document you make no reference to the fact that there
16 had been two earlier declarations sworn by Mr. Harker in May of 1992, which
17 were to the effect that Iris Development Company Incorporated in Panama was in
18 fact the owner of the shares, isn't that right?
- 19 A. That is right.
- 20 Q. 77 And I take it that the reason for that was, that if you had inserted that in
21 this preamble here, there would have to be some further explanation as to how
22 it was that the Iris shares found themselves back with Maskani and
23 Renzenbrinck, so that they in turn could pass them on, isn't that so?
- 24 A. That is so, but like, as a conveyancer, I wouldn't look at the company law.
25 Whatever the liquidator told me was the position, I would --
- 26 Q. 78 You did not see it as your position to iron out what appeared to be and was, an
27 obvious inconsistency insofar as Iris Development Company Incorporated was
28 apparently the owner of these shares and consequently the person to whom the
29 distribution in specie had taken place here.
- 30 A. I didn't regard it as my obligation, no.

1 Q. 79 This document then, on the basis of the averments that I have referred to
2 specifically, namely those at paragraph H, which we have just read and
3 paragraph C which we read earlier, proceeded to acknowledge certain
4 consequences of those recitals, isn't that right?

5 A. That is right.

6 Q. 80 But I take it you would agree that the consequences could not follow if these
7 two premises at C and H were incorrect premises, isn't that right?

8 A. That is right, yes.

9 Q. 81 If we look to what the document then witnesses as having taken place, it says
10 firstly at number 1.

11

12 "That in pursuance of the said agreement, the company, that is Paisley Park
13 Investments, as beneficial owner acting by the liquidator, that is Mr. Harker,
14 hereby transfers on to Jackson, all that and those, the premises, to hold the
15 same unto and to the use of the transferee in fee simple." Isn't that so?

16 A. That is correct.

17 Q. 82 And who do you identify as the as transferee?

18 A. Jackson.

19 Q. 83 Jackson Way. In paragraph 2, at page 1385, it says:

20 "Jackson hereby acknowledges, as nominee for Renzenbrinck Investments
21 Incorporated and Maskani Management Limited, that it has received in full all
22 it's share and interest of and in the assets of the company to which it was by
23 virtue of the ownership of the said shares or otherwise, at the date of the
24 special resolution, hereinafter recited in recital F, entitled to or may
25 hereafter become entitled and hereby release the company and the liquidator and
26 each of them from actions, proceedings, claims and demands for or in respect of
27 such share".

28 I think that is a formal acknowledgement by Jackson Way, insofar as it was a
29 nominee of the shares that the liquidator and the company had complied with
30 their obligations under the liquidation in giving them the land in specie,

1 isn't that so?

2 A. That is right.

3 Q. 84 In that paragraph, insofar as Jackson Way is a nominee, it's a nominee in the
4 capacity of being a nominee for the shareholders rather than a nominee holding
5 the land, isn't that right?

6 A. That is correct.

7 Q. 85 That is not a step which is sought to be addressed here, but is the subject
8 matter of a separate Declaration of Trust, isn't that right?

9 A. That is right.

10 Q. 86 We see at page 1386, that this document was sealed by the various corporate
11 entities and signed by a number of individuals. Mr. Harker signed as
12 liquidator of the company. He also signed in his capacity as liquidator per se
13 and you might note that the handwriting of his address there appears to be
14 Mr. Bullock's. And then the common seal of Jackson was affixed, in Birmingham
15 and it was signed by Mr. Holland and by the company secretary, Marion Gillies,
16 who was an employee of Fishers, isn't that right?

17

18 By this document Mr. Holland, as the signatory to it, became aware of the
19 contents of the document, including the relationship which was stated to have
20 existed between Renzenbrinck Investments and Maskani, isn't that right?

21 A. That is right.

22 Q. 87 And he signed the document as a director on behalf of Paisley, sorry on behalf
23 of Jackson Way, adopting the accuracy of these premises which are set forth in
24 the document itself, isn't that right?

25 A. That is correct.

26 Q. 88 As regards the transfer then of the shareholding, as between the three parties
27 involved, the liquidator, Jackson Way and Paisley Park, it is complete by this
28 document, isn't that right?

29 A. That is right.

30 Q. 89 But there are other matters of course which have to be dealt with, if one is

1 going to go on to register Jackson Way as the owner of the property in the Land
2 Registry, isn't that correct?

3 A. That is right.

4 Q. 90 And if we turn to deal, well that now you will see that at page 1365, we see a
5 document in the form NQ1, we have already considered similar documents in
6 relation to Paisley Park Investments and this is a similar standard form
7 document which is being completed on this occasion for Jackson Way Properties,
8 isn't that right?

9 A. That is right.

10 Q. 91 This was the second enclosure that you had sent to Mr. Harker, you had sent him
11 a draft transfer which we have just dealt with, received back from him the
12 executed transfer in the format we'll see, signed by the parties and this
13 document here is the document which was to be signed in relation to the Jackson
14 Way's application to become the owner of the lands in Carrickmines.

15
16 The contents of this document, as we have seen, were completed by you with the
17 exception of the response to question 11 which was to be completed by
18 Mr. Holland himself.

19 A. That is right.

20 Q. 92 If we see at page 1366, the response to the ownership of lands, it records that
21 as of the date of completion, which was the 1st July 1993, the then present
22 owner of the lands was Paisley Park Investments Limited, having it's registered
23 office at 12 Mount Havalock, Douglas, in the Isle of Man. The person in whom
24 the interest was proposed to be vested was Jackson Way Properties Limited and
25 it's initial address was given as 43 Jackson Way, Quinton, Birmingham but as we
26 know that had been changed to 20/24 High Street, Harborne, Birmingham, and in
27 paragraphs nine and ten it is stated to be a limited liability company
28 incorporated in England and Wales, do you see that?

29 A. That's right.

30 Q. 93 By reason of declaring the fact of it being a limited liability company the

1 obligation then is placed upon an individual to state who has control of the
2 company, isn't that right?

3 A. That is right.

4 Q. 94 And we see that the response to that at 11, which was the only blank left by
5 you when you sent the form, was A Holland, Alan Holland, and he gives his
6 address at 20/24 High Street, Harborne, Birmingham, his occupation is surveyor
7 and his citizenship as British.

8

9 Now in this document, and by fixing his signature to it, Mr. Holland is stating
10 here that he is the person who has control of this company, isn't that right?

11 A. That's right.

12 Q. 95 As we saw in the definition of Section 45.5.B of the Land Act 1965, there is a
13 particular interpretation of the word "control" when one deals with the
14 response being given by an individual to a request as to the relationship of
15 that party with the company who is offered as being the person having the
16 interest in the land, isn't that so?

17 A. That is so.

18 Q. 96 We see that "control" as defined here, envisages that there might be a body
19 corporate which might in turn be controlled by another body corporate or there
20 might be a body corporate which is controlled by means of another document,
21 which controls that company, isn't that right? And that in addressing that
22 situation, what the person completing the form has to do is to establish who
23 the person is whose wishes are such that the company acting in accordance with
24 those wishes, isn't that correct?

25 A. That is correct.

26 Q. 97 Fine. The importance of the accuracy of this document Mr. Friel, I suggest, is
27 evidenced by the preamble to completion of the document itself, where we see at
28 page 1365, directions are given to the person who is to complete it as follows:

29

30 "If practicable, this form should be personally completed by the person in whom

1 the interest is proposed to be vested. If completed by an agent, the
2 circumstances should be explained. In the case of a body corporate it may be
3 completed by any director, manager, secretary or other duly authorised officer
4 of the company. When completed it should be sent to the Land Commission
5 Secretariat." it goes on to note as follows:

6
7 "Special attention is drawn to subsections 6 and 7 of the Section 45 of the
8 Land Act 1965. These subsections include provisions for prosecution and heavy
9 penalties for a false or misleading statement in connection with an application
10 for consent, etcetera. On conviction or indictment, the court may impose a
11 fine not exceeding 10,000 pounds and/or imprisonment not exceeding three
12 years."

13
14 So it is a serious matter to complete a document such as this, isn't that so?

15 A. That is so.

16 Q. 98 And amongst other things that are required of the person completing such a
17 document, are that he should complete such document in the presence of a
18 responsible person who must also witness his signature, isn't that right?

19 A. That is right.

20 Q. 99 And in this instance we see that at page 1368, Mr. Holland, in signing this
21 document, did so in the presence of a Fiona Lawson, a solicitor in Birmingham,
22 isn't that correct?

23 A. That is correct.

24 Q. 100 Do you understand that the obligations that were placed upon Holland by this
25 document were that he should personally, and to the best of his knowledge,
26 respond accurately to the details which were sought of him?

27 A. Yes.

28 Q. 101 And insofar as he was required to indicate who the person was who is in control
29 of the company that he was obliged to identify that person.

30 A. Yes.

1 Q. 102 And that in this document he accepted or stated that he was the person in
2 control of the company.

3 A. Yes.

4 Q. 103 I would like to turn now to some of the English documents which you would not
5 have seen at this time, although you were the person who was to receive this
6 completed document, and the English documents will set out the nature of
7 Mr. Holland's role and control of Jackson Way.

8

9 The first document I would like to refer to is a letter which we see at page
10 1338, from Channel Islands and International Law Trust Company Limited to
11 Mr. Holland, dated 23rd June of 1993, and we consider, I think some of the
12 communications which had passed between these parties earlier in the evidence
13 yesterday, but I want to open this document now.

14

15 It says:

16 "Dear Alan, I refer to our recent telephone conversations and now summarise the
17 position as follows.

18

19 1. You have now arranged for the incorporation of the above UK company". The
20 above reference is to Jackson Way Properties Limited. "And to arrange for the
21 appointment of yourself as director. You are also providing a registered
22 office and a company secretary. It has been agreed that your services for
23 provision of this nominee company facility should be invoiced to us at a
24 present annual rate of 2,000 pounds per annum, plus VAT, if appropriate, with
25 an additional payment to be made and agreed between ourselves from time to
26 time, in respect of significant attendances. You should also advise me of the
27 incorporation costs incurred by you in respect of this company and we'll agree
28 how these are to be recharged/reimbursed.

29

30 2. You should consider the appointment of an alternate director who will

1 similarly comply with your/my instructions in the event of your unavailability.

2
3 3. I have copied to you Stoy Hayward's letter of the 27 May, and you have
4 agreed that at this stage Irish Counsel's opinion is not necessary. I have
5 advised you that our underlying client is minded that such opinion should be
6 taken, and in the event that this is the case, I will copy such opinion to you
7 in due course. In the meantime, I confirm that in the event that yourself or
8 the company are contacted directly by the Irish Revenue or other relevant
9 authorities, you will refer such communications immediately to our firm and
10 we'll ensure that appropriate professional advice is taken in both the UK and
11 Ireland as to what response should be made to such communication, and as to
12 what extent you or the company are required by law to disclose information. It
13 has been agreed generally between ourselves that I should disclose to you the
14 identities of the two offshore companies for whom Jackson Way Properties
15 Limited is holding the Irish land and trust and that I will ensure that such
16 companies are maintained in good standing, but it has been further agreed that
17 I should not disclose to you details of the ownership or ultimate ownership of
18 the shares of these companies." We'll see then that there is an underlining of
19 manuscript of that sentence, and a deletion of the word "should" and it's
20 replacement with the word "need", so that it now reads, "I will ensure that
21 such companies are maintained in good standing, but it has been further agreed
22 that I need not disclose to you details of the ownership or ultimate ownership
23 of the shares of these companies."

24
25 Paragraph 4. "I advised you that the Irish land is being distributed in specie
26 to the company by the liquidator's Irish lawyers. I assume such a transfer is
27 in the process of being registered at the Irish Land Registry, but I will
28 confirm this information and advise you accordingly. In the light of such
29 transfer it is essential that the company should execute a Declaration of Trust
30 in the form attached. This is to acknowledge that neither the company nor

1 yourself are the beneficial owner of such land and that you hold it on trust
2 for the two offshore companies as 50 per cent co-owners.

3
4 5. As previously advised to you, it will be necessary for the two offshore
5 companies to enter into a co-ownership agreement, which will set out their
6 rights in relation to the land and any proceeds of sale derived there from. At
7 present I confirm that I have the authority to convey instructions to you on
8 behalf of both companies, and I will discuss in detail with you the terms of
9 any final co-ownership agreement that is entered into. It may well be that the
10 English company will need to be a party to such agreement, by way of
11 confirmation that it will follow any formula contained in such agreement in the
12 event that either party wishes to divest itself of it's interest in the land.

13 I am presently seeking further instructions from the underlying clients as to
14 what is to happen in the event of the deaths of any of the interested parties
15 as I am anxious that neither yourself, the company nor our firm should be
16 placed in a conflict of interest situation at some future date.

17
18 6. You have confirmed that you have printed letterheads on behalf of the
19 company. I have advised you that it will be necessary in the near future to
20 instruct your solicitor in Ireland on behalf of the company, particularly in
21 respect of highways, roads and access matters and in relation to a possible
22 compulsory purchase order that may be made in relation to a motorway that seems
23 likely to pass through the lands. In relation to the costs to be incurred, in
24 relation to such lawyers and such highway consultants as they may be requested
25 to engage in this matter, I confirm that yourself and the company will be
26 appropriately funded and indemnified in this respect."

27
28 There is a manuscript note at the top of that page with "not yet" on it, I
29 think we'll see that this was a note put on the document by Mr. Alan Holland,
30 recording the fact that he hadn't in fact printed the letterheads of the

1 company at that point in time. It equally seems that the ticks that are on the
2 left hand margin as we go, do you know, through this document are ticks placed
3 on the document by Mr. Holland as he went through the document in some detail?
4

5 "7. I confirm that the fees of Stoy Hayward and their Irish associates will be
6 settled by our firm's clients, although I may request a detailed break down of
7 Stoy Hayward's charges as they appear to both you and I, to be on the high side.
8 I further confirm that we'll discharge any Irish Counsel's fees incurred in
9 relation to this matter.
10

11 8. I further confirm that any disbursements properly and reasonably incurred
12 in relation to the company or the company's business will be reimbursed by our
13 clients. I further confirm that the event of any of the land being disposed of
14 we shall ensure that any necessary retentions are made by the company's Irish
15 solicitors in respect of Irish taxes, stamp duty, legal fees or other expenses
16 or charges prior to such monies being distributed or otherwise disposed of.
17

18 9. I further confirm our verbal agreement, that in the event that your
19 personal affairs are subject to exceptional inquiry by the Inland Revenue as a
20 result of your involvement with Jackson Way Properties Limited then our
21 clients, will pay any reasonable accountancy costs incurred by you in dealings
22 with such inquiry (to the extent that they relate to disclosing the trustee/
23 nominee arrangements relating to this company).
24

25 10. I attach here with a draft indemnity/mandatory agreement that we can
26 discuss in detail when we meet. It may well that be my underlying client will
27 ultimately advise me that you and the English company should merely be granted
28 a straightforward and comprehensive indemnity, rather than merely appearing to
29 be our appointee. However, the mandatory agreement can always be replaced at a
30 later stage. You will recall that Stoy Hayward wished to vet such agreement

1 but I would recommend that this is vetted by your local solicitor and that we
2 merely advise Stoy Hayward of the indemnity that has been granted at a later
3 stage.

4
5 I trust that the above points accurately record and confirm what we have
6 discussed and that we can run through them in greater detail when we meet in
7 London. I can then arrange to give you such extra confirmation as may be
8 agreed between us."

9
10 In the body of that document, letter of the 23rd June, Mr. Friel, there is
11 reference to two documents which are attached as enclosures, one of them being
12 a Declaration of Trust and the other being a form of mandators agreement, we'll
13 see those two documents now.

14
15 At 1343, we see the Declaration of Trust. From the top of it, we'll see the
16 fax read out which said it was sent on the 23rd June 1993 at 3.21, in the
17 afternoon by Xerox telecopier and it came from O 53433979 which is the Jersey
18 fax number of Mr. Morgan's firm.

19
20 Of significance in this document from the context, in the context of the role
21 which was to be played by Jackson Way it indicate that the deed, if it was
22 executed would have witnessed that the trustee, that is Jackson Way, declares
23 that it holds the said property, that is the Carrickmines lands, in trust for
24 the beneficiaries, the beneficiaries are set out above, and that it will at the
25 request and cost of the beneficiaries transfer the property to such person or
26 persons at such time and in such manner or otherwise deal with the same as the
27 beneficiaries shall jointly direct or appoint.

28
29 So if completed that would have been the document where Jackson Way would have
30 done whatever was required of Jackson Way in connection with Carrickmines lands

- 1 at the request of others, isn't that so?
- 2 A. (nods).
- 3 Q. 104 To the extent therefore that Jackson Way as a company had any control over the
- 4 lands, it was subject to this unqualified declaration that it had to do what
- 5 was required of it by the beneficiaries, isn't that right?
- 6 A. If that deed was --
- 7 Q. 105 If, it was executed?
- 8 A. Yes.
- 9 Q. 106 And we know that it wasn't executed in this format certainly, but this is what
- 10 was suggested at that time. I refer to this document because this is a
- 11 document which was sent to Mr. Holland to identify what the intended role was
- 12 that he would be playing in the affairs of the lands at Carrickmines, isn't
- 13 that so?
- 14 A. It appears so, yes.
- 15 Q. 107 And this is apparently from the letter, what was agreed between himself and
- 16 Mr. Morgan, and recorded as having been so agreed in the letter which we have
- 17 just read in June of 1993, and we know that the declaration which was made by
- 18 Mr. Holland was made on the 1st July 1993.
- 19 A. Mm-hmm.
- 20 Q. 108 So he made it in contemplation of this being the arrangement that was to exist
- 21 between them, isn't that right?
- 22 A. Yes. I would just, you know, like I say from a conveyancing point of view, I
- 23 would regard a Declaration of Trust, it would be done contemporaneously with
- 24 the deed.
- 25 Q. 109 Yes. The deed you are discussing now is the transfer deed, is that it?
- 26 A. Exactly.
- 27 Q. 110 And you would expect in the normal course, therefore that the Declaration of
- 28 Trust is one which would be executed on the 30th July?
- 29 A. Absolutely.
- 30 Q. 111 Which was the date on which the transfer document was executed, isn't that so?

- 1 A. Yes, otherwise anybody could do a Declaration of Trust a year later.
- 2 Q. 112 Yes. And it would be certainly a very unusual document if it was done a year
3 later because there would be a year unaccounted for between the transfer
4 document and the subsequent Declaration of Trust.
- 5 A. Even more so, it could be a way of avoiding stamp duty. If I wanted to sell on
6 the land, to give my name and say do a Declaration of Trust and say, no, it was
7 supposed to be the other person.
- 8 Q. 113 Sure. Anything could happen if there were not done contemporaneously.
- 9 A. That is correct.
- 10 Q. 114 And we'll see that they weren't done contemporaneously. In this document here
11 the intention was that the property will be subject to this Declaration of
12 Trust, but there was to be yet another involvement or qualification upon
13 Mr. Holland's entitlement to act. I take it you would accept that in the
14 normal course of events the directors of a company exercise the powers of
15 directors, which are conferred upon them under the Company's Act and by the
16 Articles and Memorandum of Association of the company of which they are
17 directors, isn't that so?
- 18 A. Absolutely, yes.
- 19 Q. 115 They don't act qua directors under any other restraint or qualification, isn't
20 that correct?
- 21 A. That is correct.
- 22 Q. 116 Right. The next document which again was a draft document and was accompanied
23 the letter of the 23rd June, from Mr. Morgan to Mr. Holland appears at page
24 1344. You will see that at the very top of it, it bears the same fax
25 reference, time and date, as the previous document, the Declaration of Trust.
26
27 Now this document expresses itself to be a document where the parties to it
28 were to be Pertland Investments Limited with investments subsequently struck
29 out, and Renzenbrinck. Care of David Morgan Whitehead & Company of P. O. Box
30 302, Westaway Chambers, 39 Don street, St. Helier, Jersey, Channel Islands as

1 mandators.

2

3

They are the parties on the one side. And Allan George Holland of 20/24 High

4

Street, Harborne, Birmingham, and we'll see in manuscript then "plus R V" after

5

that. That "R V" will be identified in subsequent documentation as a

6

Mr. Radovan Vukovic. Now these parties were to be other parties to the

7

agreement. They would be known as the mandatories. The agreement as set out

8

here in draft form was to provide

9

10

1. A. The mandatories accept to act as sole directors struck out and replays

11

with directors of Jackson Way Properties Limited, the company, a company

12

incorporated and beneficially owned by the mandatory to hold as trustee and

13

nominee certain land more particularly described in the first schedule to this

14

agreement (the land).

15

16

B. The mandatory undertakes to exercise his function in conformity with the

17

Memorandum and Articles of Association and Regulations of the Company and with

18

the provisions of this agreement and in accordance with the provisions of a

19

Declaration of Trust the terms of which are set out in the second schedule

20

hereto (the declaration).

21

22

"Significant in that paragraph, Mr. Friel, is that the mandatories were

23

appointed under this agreement, do so in the context of firstly, declarations

24

of trust being made by them, secondly in the capacity that they were to be the

25

directors of a company called Jackson Way Properties, and that their

26

entitlement to act was in accordance with the provision of both of the

27

documents that have been generated in those relationships, that is the

28

Articles, Memorandum of Association where they are dealing as directors of the

29

company, and as trustees where they are dealing under the Declaration of Trust.

30

But also specifically in accordance with the provisions of this agreement,

1 isn't that so?

2 A. (nods).

3 Q. 117 Now we see that at C, it is recorded that:

4 "It is understood that in accepting to exercise these functions the mandatory
5 will not be called upon to do anything which (directly or indirectly) might be
6 a violation of existing or future laws and regulations or of the professional
7 moral and social standing of the mandatory."

8

9 So that there is this overriding exit clause, if I might call it that, for the
10 mandatory who is being requested to perform an act by the mandators that he
11 does not have to involve himself in any violation of any criminal law or civil
12 law or regulation or expose himself to professional, moral or social standing
13 attack, but short of that, he has to do everything he is required to do by law,
14 isn't that right?

15 A. That's right.

16 Q. 118 This is particularly clear where it comes to the exercise of the functions of
17 directors in the company Jackson Way where we see at paragraph 2A:

18 "The mandatory undertakes to exercise the functions of sole director of the
19 company in accordance with such instructions as may be received from an officer
20 of the mandators in person or from Messrs David Morgan Whitehead & Company, as
21 solicitors to the mandators, or from an intermediary duly introduced by written
22 Power of Attorney or other proper authority", isn't that so?

23 A. Yes.

24 Q. 119 So that document would, on it's face if it, had it been executed, appear to
25 place the directors of Jackson Way in a position where they could only act as
26 directors under the sole mandate of these entities, known as the mandator, who
27 are defined here as being Pertland investment and Renzenbrinck, care of
28 Mr. Morgan, isn't that so?

29 A. That is so.

30 Q. 120 To that extent, if such an agreement as this was signed, anything that Jackson

1 Way was doing was effectively the act of Pertland Limited and Renzenbrinck as
2 transmitted through Mr. Morgan, isn't that right?

3 A. That is right.

4 Q. 121 And was not an independent act of Mr. Holland, nor could it be.

5 A. That is correct.

6 Q. 122 Isn't that so? As we know from the document which was sent to you on the 1st
7 July, that is the NQ1 form, which accompanied the application to register these
8 lands, Mr. Holland was there stating that he was the person in control of the
9 company Jackson Way Properties Limited, isn't that so?

10 A. That is correct.

11 Q. 123 Insofar as he purported to say so, is it not the case that he was not in fact
12 the person who was in control, because he had no entitlement to ensure that his
13 own wishes controlled that company?

14 A. That is correct.

15 Q. 124 It would I appear that these documents, in their draft format, which arrived
16 with Mr. Holland as we know on the 23rd June of 1993, were considered by him
17 and he responded to Mr. Morgan on the 29th June 1993, as we see at page 1355,
18 where writing from Fishers Surveyors, Valuers and Property Managers, he
19 addressed the matters which had arisen. He confirms in the first paragraph of
20 it, that he had in fact seen Mr. Morgan at the weekend, as was suggested in the
21 letter of the 23rd June that he might do so.

22

23 Following upon those discussions he sets out his synopsis of what had taken
24 place as follows:

25

26 "Following on from our discussions in this matter I would confirm the
27 following.

28

29 1. I shall discuss with my putative partner, Rad Vukovic, his appointment as
30 director, but in the event that he should decline, I shall arrange for an

1 alternative director with suitable characteristics and responsibility.

2
3 2. I confirm that I am arranging for the transfer of the registered office to
4 Fishers.

5
6 3. Until 1 above is finalised I cannot really get letterheads done, but this
7 is the work of 24 hours through Prontaprint.

8
9 4. I confirm that I have completed and returned the form enclosed by
10 Mr. Harker in his letter of the 23 June, having had my signature witnessed by a
11 solicitor" that's confirmation of the NQ1 form which we have already referred
12 to. "I attach a copy of that form for your records. I note from the form that
13 it is necessary for me to send the Certificate of Incorporation, Certificate of
14 Change of Name, the Memorandum and Articles of Association together with change
15 of registered office. I take the opportunity of enclosing a copy of all those
16 documents which are to be dispatched by post to you as soon as possible.

17
18 3. I confirm having discussed with you those items faxed over from your office
19 on the 23 June" and they are the mandators agreement and the draft Declaration
20 of Trust "My only misgiving relates to your paragraph 3 on the third line up
21 from the bottom, where it states "But it has been further agreed that I should
22 not disclose to you". On the basis of our discussions I would welcome your
23 confirmation that "should" might be amended to the word "need". Quite
24 obviously, I have had to rely upon your expert advice with regard to the extent
25 of any disclosure insofar as my capacity as director of Jackson Way Properties
26 is concerned and as I have pointed out to you, my advice is that it is
27 sufficient that I am acting for two legally constituted companies in a nominee
28 capacity.

29
30 Paragraph 6. The question of letterheads has not been concluded.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

Paragraph 10. Regarding your draft indemnity/mandatory agreement, I am satisfied that this quite clearly reinforces the position of myself and the company in it's legal capacity as nominee/trust company.

With regard to the Declaration of Trust, only the registered office needs to be altered. With regard to the draft indemnity/mandatory agreement, since any director will be appointed, this should be put in the plural."

He then goes on to deal with the question of appointing a solicitor in Dublin, to advise the company particularly in relation to the Irish affairs.

CHAIRMAN: It might be appropriate to break for a few minutes, we'll rise for about ten minutes.

MR. O'NEILL: Break for the stenographer for the moment.

THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED AGAIN AS FOLLOWS:

MR. O'NEILL: Mr. Friel we were dealing with certain draft documents which were sent by Mr. Nicholas Morgan to Mr. Holland for approval by him, one of which was a mandators agreement, the other of which was a Declaration of Trust.

You will see that in both of those documents there is reference to an entity called Pertland or Pertland Investments Limited, isn't that so?

A. That's right.

Q. 125 To this point in time in June/July 1993 you, as the solicitor for Jackson Way, had no knowledge of any connection between that company and Pertland Limited, isn't that right?

1 A. Not even to this day, never mind that day.

2 Q. 126 Now it would appear that the existence of the Pertland/Renzenbrinck
3 relationship as opposed to the Pertland, as opposed to the Maskani/Renzenbrinck
4 relationship caused some concern or inquiry to be raised by Mr. Holland of
5 Mr. Harker, and we'll see at document 1376, which is a letter we have already
6 seen, but now refer to specifically, the Pertland reference is in it, this is a
7 letter of the 2nd July 1993, from Mr. Holland to Mr. Harker.

8

9 In the last paragraph of which reads:

10 "My understanding, per David Morgan Whitehead, was that Jackson was to act as
11 nominee of Renzenbrinck Incorporated and Pertland. We have not heard of
12 Maskani Management Limited. Would you please clarify this matter for David
13 Morgan Whitehead, to whom I am sending a copy of this letter by fax."

14

15 And we'll see from reviewing the three documents in question where
16 Mr. Holland's concern arose. But first if we look to document 1383, where I,
17 which is the transfer document as between Paisley Park, the liquidator, and
18 Jackson Way?

19

20 In that document we'll see the references to Renzenbrinck and Maskani at
21 paragraph H, the reference is to K rather than H.

22

23 Firstly, it refers to the "The liquidator agreeing with Jackson to transfer the
24 premises to Jackson for an estate in fee simple in possession free from
25 encumbrances in satisfaction of Jackson's share as nominee of Renzenbrinck
26 Investments Incorporated and Maskani Management Limited in satisfaction of the
27 said company's share and interest", so that document indicates to Mr. Holland,
28 who is the signatory, as we have already seen, to the document, that there is a
29 relationship between Maskani and Renzenbrinck Investments Limited.

30

A. That's right.

1 Q. 127 And that it was a nominee relationship where Jackson was to hold the shares as
2 their nominee. However, on the 2nd July we see that he has never heard of
3 Maskani before and his understanding was that he was dealing with the company
4 called Pertland and it's involvement in Renzenbrinck.

5 A. That's correct.

6 Q. 128 And his belief that he was dealing with Pertland and Renzenbrinck arises from
7 the other two documents, if we look firstly at page 1344, to the Mandator's
8 Agreement. At the top of that we see Pertland and Renzenbrinck were to be the
9 mandators, who would effectively control Jackson Way.

10 A. Yes.

11 Q. 129 No reference here to the other company, Maskani. And if we look to the trust
12 deed, or Declaration of Trust rather in it's draft form at 1343, we'll see that
13 in this draft, which went to Mr. Holland, Pertland Investments Limited was
14 named and then in paragraph two you will see in brackets (check on Paisley Park
15 package to add Renzenbrinck Inc).

16
17 So there is obviously some bundle of documents put together to show what the
18 relationship between the various players is going to be in this structure and
19 this is a direction to check out that bundle and see whose name is to go in at
20 this point in the document, isn't that right?

21 A. That's what it appears here, yes.

22 Q. 130 But what appears evident is a concern here from Mr. Holland that there is now a
23 loose body out there that he has not heard of and he doesn't know what their
24 role is, and it's Maskani. And he raises this then with Mr. Harker and
25 suggests that it's a matter which should be resolved with Mr. Morgan of Morgan
26 Whitehead & Company and he is sending them on a copy of his letter.

27
28 So, we see that whilst Mr. Holland was prepared to sign the NQ1 form on the 1st
29 July, he was on the 2nd July still mystified as to what the relationship with
30 Maskani was in these lands in relation to the role of Jackson Way, isn't that

1 right?

2 A. That is right, yes.

3 Q. 131 We'll see that on the 22nd November 1993, at page 2053, approximately four and
4 a half months after Mr. Holland had raised the query with Mr. Harker as to what
5 Maskani's role was, Mr. Holland now writes to Mr. Harker in the following terms
6 and only the second part of the letter is relevant to the issue we are now
7 addressing.

8

9 "Please be advised that Maskani Management Limited held it's shares in Paisley
10 Park Investments Limited as nominee for Pertland Investments Limited.
11 Presumably, should this be necessary, you can confirm this on behalf of
12 Maskani." it goes on to say "Perhaps you would also let me have Mr. Friel's
13 details so I can contact him direct to this effect."

14

15 So what is happening here, apparently, is that Mr. Holland, in July 1993,
16 doesn't know who Maskani is or what their role is. He communicates with
17 Mr. Harker, who is the liquidator of Paisley Park, who supposedly should know
18 these matters, there wouldn't appear to be any response from Mr. Harker setting
19 out exactly what the role of Pertland was vis-a-vis Maskani or Maskani versus
20 Pertland, but four and a half months later the explanation comes, not from
21 Mr. Harker to Mr. Holland, but from Mr. Holland to Mr. Harker. And Mr. Holland
22 is here telling Mr. Harker what his, Mr. Harker's role in this is, isn't that
23 so?

24 A. Yes.

25 Q. 132 What he is suggesting here is that Mr. Harker, through Maskani, was at all
26 times acting as a nominee for Pertland, isn't that so?

27 A. That's correct.

28 Q. 133 A matter which if true, is something which Mr. Harker would have to have known
29 in July 1993, when the inquiry was made up, isn't that so?

30 A. Absolutely, yes.

1 Q. 134 The differing roles of Pertland and Maskani can be considered in the context of
2 the Declaration of Trust that I referred you to earlier. We have seen firstly
3 a draft Declaration of Trust which was sent by Mr. Morgan on the 23rd of June
4 by fax to Mr. Holland, isn't that so?

5 A. That is right.

6 Q. 135 We now see how that could rest. We know that Mr. Holland returned the
7 document, that is the draft Declaration of Trust, to Mr. Morgan with his letter
8 of the 29th of June, where the only addition that he suggested was that the
9 registered office of the company be changed in the draft, and following upon
10 that we see, at page 1394, that Mr. Morgan writes to Mr. Holland on the 2nd
11 August 1993 and in the first paragraph of the letter he says:

12

13 "I now enclose an engrossed Declaration of Trust which I shall be grateful if
14 you would sign and seal on behalf of the company and initial against the blank
15 date of transfer which will be inserted later."

16

17 Now, we'll see at page 1401, a Declaration of Trust. You will see that the
18 date of the Declaration of Trust is blank, the declaration is expressed to be
19 supplemental to a transfer dated a blank date in 1993 and you will see that the
20 beneficiaries are here named as Pertland Limited and Renzenbrinck Incorporated
21 as tenants in common, do you see that?

22 A. (nods).

23 Q. 136 So this document goes to Mr. Holland for his approval and signature. It is in
24 effect the same document as we saw going on the 23rd June, except that there is
25 now certainty about Renzenbrinck, rather than look to the Paisley Park package,
26 isn't that so?

27 A. That's right.

28 Q. 137 On the 13th August, some 11 days later, Mr. Holland writes acknowledging this
29 document and returning it completed, as we see at page 1411.

30

1 "Dear Nick, thank you for your letter of the 2nd August 1993.

2

3 I take this opportunity of returning herewith the Declaration of Trust, duly
4 sealed and witnessed by myself and Marion Gillies and initialled as requested."

5 Now, if we can deal firstly with the initialling. The request which was made
6 by Mr. Morgan to Mr. Holland was to initial against a blank date, isn't that
7 so?

8 A. That is correct.

9 Q. 138 Something which you have already indicated would be a wholly inappropriate
10 thing for somebody to do in a deed, isn't that so?

11 A. It would be, yes.

12 Q. 139 It would allow for the deed firstly to be altered at the whim of a person other
13 than the signatory to the deed, isn't that so?

14 A. That is so.

15 Q. 140 And it would then purportedly be offered as a deed which was accurate insofar
16 as the initialled entry was concerned, whereas that might not be the case at
17 all, is that so?

18 A. That is correct.

19 Q. 141 Mr. Holland accordingly, having duly sealed or witnessed the document, which
20 was in blank in material respect, was carrying out something which was
21 improper, isn't that so?

22 A. In my opinion, yes, it was.

23 Q. 142 We'll see on page 2001, that on the 18th August 1993 Mr. Morgan wrote to
24 Mr. Holland thanking him for the return of the Declaration of Trust and the
25 Mandatory Agreement and says:

26 "I will advise you of the date as soon as I know when the transfer took place".

27 I think that's confirmation of the fact that Mr. Holland signed this document
28 in blank as regards the dates, isn't that so?

29 A. That is so.

30 Q. 143 Now, as the solicitor in charge of the conveyancing aspects of the Jackson Way

1 application for registration in the Land Registry, you became aware on the 4th
2 October 1993, of a query from the Revenue Commissioners in Ireland in
3 connection with a Declaration of Trust and we see that at page 2019, which is a
4 letter addressed to you from the Revenue Commissioners. The Stamps
5 Adjudication Office in Dublin Castle.

6
7 They note that "It is noted that Jackson acquired the property as nominee for
8 the registered holder of 1,600A ordinary and 380 B shares, please furnish any
9 Declaration of Trust evidencing the beneficial ownership of the property and
10 explain why the property was taken by the nominee." isn't that so? Which was
11 something you, I think, had anticipated at all times that the Revenue would
12 wish to see a Declaration of Trust, where documents were being lodged for
13 registration of property on the basis of a distribution in specie, rather than
14 a cash transaction which would attract stamp duty.

15 A. Absolutely, yes.

16 Q. 144 So you advise your client of this and that is Mr. Harker, and Mr. Harker in
17 turn contacts Mr. Holland. We see on page 245, on the 9th November 1993,
18 Mr. Harker writes to Mr. Holland as follows, and I don't think you will find
19 this on your file, but he may have copied it to you, I am not sure.

20
21 "Dear Mr. Holland, I refer to your letter of the 3rd November.

22
23 I am advised by Frank Friel that registration of the transfer is currently held
24 up at the Stamps Adjudication Office. They have yet to agree that no stamp
25 duty is payable. Inter alia, they have requested sight of any Declaration of
26 Trust evidencing the beneficial ownership of the property. (you will recall
27 that the transfer deed recites that Jackson Way is the nominee of Renzenbrinck
28 Investments Inc and Maskani Management Limited, the holders of the 1,600 A
29 shares and 380 B shares)."

1 Now I draw your attention in that, to the sentence in brackets here, where the
2 reference is being made to the transfer deed rather than the Declaration of
3 Trust, isn't that so?

4 A. That's so.

5 Q. 145 And that the fact that in that document Jackson Way is the nominee of
6 Renzenbrinck and Maskani, the holders of the shares. We know that the response
7 of Mr. Harker to the query -- the response of Mr. Holland setting out the
8 relationship between Maskani and Pertland that I referred to earlier was
9 generated at the same time as this document.

10

11 The 22nd November is when, in response to Mr. Harker's letter of the 9th, we
12 are looking now at document 2053, in document 2053, which is the 22nd November,
13 it addressed two issues, and the first was responding to Mr. Harker's letter of
14 the 9th of November, which is the document that was on screen a moment ago.
15 And in that Mr. Holland, as we see, was enclosing a copy of the Declaration of
16 Trust executed by Jackson Way Properties Limited in favour of Renzenbrinck and
17 Pertland investments, do you see that?

18 A. I do.

19 Q. 146 So that if we can revert back now to the document at 2045, whilst Mr. Harker
20 was drawing the attention of Mr. Holland to the fact that the Jackson Way
21 transfer deed recorded Renzenbrinck Investments and Maskani Management Limited
22 as the holders of the shares, the Declaration of Trust which was completed by
23 Mr. Holland some date after the 9th November and prior to the 23rd, 22nd
24 November, showed that the trustees were holding in favour of Renzenbrinck and
25 Pertland, not Renzenbrinck and Maskani, isn't that so?

26 A. That's correct.

27 Q. 147 You were pursuing, of course, your inquiries regarding the adjudication of the
28 deed in the stamp office and you were looking for this Declaration of Trust
29 from Mr. Holland as we see at page 2052, where on the 19th November you wrote
30 to Mr. Harker confirming that you were proceeding with the adjudication of the

1 deed and you shall await the declaration of Mr. Holland of Jackson Way
2 Properties, isn't that so?

3 A. That is correct.

4 Q. 148 The next document I ask you to look at is at page 2055, and it is again a
5 Declaration of Trust, it is, I suggest, the Declaration of Trust which was
6 completed by Mr. Holland and his secretary Marion Gillies and referred to in
7 the earlier correspondence between Mr. Morgan and Mr. Holland. You will note
8 in particular that the signatories of both signatures are initials of both
9 Mr. Holland and Ms. Gillies and appear adjacent to the blank entry for the date
10 of transfer, isn't that so?

11 A. That is right.

12 Q. 149 So we may take it, that in November of 1993, Mr. Holland was standing over the
13 Declaration of Trust which he had completed in August, isn't that so?

14 A. That is so.

15 Q. 150 And in that declaration he was saying that Jackson Way was holding the
16 property, as trustee for -- as trustee, and that Pertland and Renzenbrinck were
17 the beneficiaries.

18 A. That is correct.

19 Q. 151 Isn't that correct? Now, the fact that Pertland and Renzenbrinck were shown on
20 the Declaration of Trust, whereas Pertland and Maskani were shown on the
21 transfer --

22

23 JUDGE FAHERTY: I think Renzenbrinck.

24

25 MR. O'NEILL: I beg your pardon, were shown on the transfer, was a matter of
26 concern to Mr. Harker and he brought this to your attention and apparently
27 after so doing he wrote to Mr. Holland on the 25th November of 1993, and we'll
28 see his letter at page 2056 on screen, it's a letter from Mr. Harker to
29 Mr. Bullock -- sorry from Mr. Harker to Mr. Holland. Reading as follows:

30

1 "I refer to your letter of the 22nd November and to our telephone conversation
2 yesterday.

3

4 I have spoken to Frank Friel regarding the Declaration of Trust. He agrees
5 that:

6

7 1. The deed should be dated." the deed we are talking about here is the
8 Declaration of Trust, which is a deed, isn't that right?

9 A. That is right.

10 Q. 152 You may take it from that reference, that the deed which was before him for
11 consideration, was as of that date, undated.

12 A. That is right.

13 Q. 153 Isn't that so?

14 A. That's right.

15 Q. 154 Secondly, "The date of the transfer should be completed (Frank believes this
16 was 30th July 1993)" and if we look back to the document at page 2055, we'll
17 see that both of those dates were dates which were blank in the document.

18 A. That's right.

19 Q. 155 "3. The beneficiaries should agree with those shown in the Deed of Transfer,
20 namely Renzenbrinck Investments Incorporated and Maskani Management Limited".

21 Again if we look back to the document at 2055, we'll see that in this

22 Declaration of Trust, which was completed by Mr. Holland and Ms. Gillies in

23 August, although undated, the beneficiaries are named as Pertland and

24 Renzenbrinck, isn't that so?

25 A. That is correct.

26 Q. 156 It is suggested in this letter that that will be altered or, that the
27 beneficiaries will be brought into conformity with the person's named in the
28 Deed of Transfer, isn't that right?

29 A. That is correct.

30 Q. 157 To do so of course, would mean that the declaration, which was completed in

1 August, would have to be replaced with a fresh declaration swearing to
2 different matters, isn't that right?

3 A. That is right.

4 Q. 158 Mr. Harker goes on in his letter on the, of the 25th November to say that:

5

6 "I suspect that the Stamps Adjudication Office will want to see either an
7 original Declaration of Trust or a notarised copy. I am sure it would be a
8 good idea for you to speak to Frank directly to clarify matters." he then gives
9 your Dublin phone number. Have you a recollection of discussing with
10 Mr. Holland the fact that there was this problem or as you saw it, arising from
11 the fact that there were three parties here, Renzenbrinck, Maskani and Pertland
12 and they should be brought into conformity, so that only two would appear on
13 each of the documents?

14 A. I have no recollection of talking with him.

15 Q. 159 It seems that Mr. Morgan became involved in this situation, because we see at
16 page 2056, Mr. Morgan wrote to Mr. Holland, faxed him a letter on the 30th
17 November of 1993 as follows, 2057.

18

19 "Further to your recent communication from Mr. Harker, I attach a revised
20 Declaration of Trust, which should be completed by yourself with the original
21 being sent to this office and a copy sent to Mr. Harker in response to his
22 letter."

23

24 Now we'll see that accompanying this there was a Declaration of Trust which is
25 at page 2059. At page 2059, we see again a trust deed and it differs from the
26 trust deeds which we have seen to date, insofar as there is now, inserted in
27 the deed, the date the 4th August 1993. You see that?

28 A. I do, yes.

29 Q. 160 It differs from the earlier trust deeds, insofar as the date of the 30th July
30 1993 is now inserted, where appropriate, at paragraph one?

- 1 A. Yes.
- 2 Q. 161 And there is no need to put in any initial to the side of it, isn't that
3 correct?
- 4 A. That's correct.
- 5 Q. 162 And it differs also in that it is now stated at two, that the said property was
6 transferred to the trustees as nominee of Maskani Management Limited and
7 Renzenbrinck, whereas to that point it had been to Pertland and Maskani, and
8 Renzenbrinck, isn't that so?
- 9 A. That is correct.
- 10 Q. 163 It is in fact a radically different document, making a radically different
11 declaration, isn't that correct?
- 12 A. That is correct.
- 13 Q. 164 And it's source appears to be Mr. Nicholas Morgan, who is providing this
14 document on the 30th November 1993, although it bears a date the 4th August
15 1993 and to that date is unsigned and unsworn, isn't that right?
- 16 A. Yes, that's correct.
- 17 Q. 165 If that document was signed by Mr. Holland after this date, he would in effect
18 be declaring something which was untrue, isn't that right, both as regards the
19 nature of the transaction and the date upon which the transaction took place?
- 20 A. Yes.
- 21 Q. 166 You were not aware, I take it, that what Mr. Morgan chose to call a revised
22 Declaration of Trust had passed from his office to Mr. Holland, isn't that so?
- 23 A. I was not aware, no.
- 24 Q. 167 Mr. Holland, insofar as you are aware, did not contact you by telephone as
25 would suggest the opportunity was open for him to do so, in the letter from
26 Mr. Harker?
- 27 A. That Mr. Holland --
- 28 Q. 168 He didn't in fact contact you, although he had been provided with your
29 telephone number.
- 30 A. I have no recollection of ever talking with Mr. Holland.

1 Q. 169 Right. Now, we see that you were pursuing your inquiries of Mr. Harker to
2 obtain the trust deed on the 8th of the 12th 1993 at page 2060, you write to
3 say that:

4
5 "I am still awaiting the Declaration of Trust from Mr. Holland of Jackson Way
6 Properties Limited."

7
8 Your last communications to him had been in November and obviously matters
9 couldn't rest, so if the revenue queries were not being responded to and the
10 deed was not being provided, isn't that correct?

11 A. That is true, yes.

12 Q. 170 Mr. Holland wrote to Mr. Harker on a date in December we see at page 1173. In
13 which he says:

14
15 "Thank you for your letter of the 25th November. I am making the necessary
16 arrangements to have the appropriate Declaration of Trust drafted and executed
17 by Jackson Way Properties Limited.

18
19 I have ascertained that a 50p stamp is required and I shall arrange to have the
20 document stamped."

21
22 Now firstly that's a confirmation that Mr. Holland, that as of that date in
23 December, maybe the 3rd December, there seems to be a punch hole very close to
24 the date itself, that certainly as of the beginning of December, the
25 Declaration of Trust that would be necessary to effect the registration of
26 Jackson Way as the owner of the lands in Carrickmines had yet to be executed,
27 indeed to be drafted, isn't that right?

28 A. That's right.

29 Q. 171 Now you did in fact receive a Declaration of Trust from Fishers, we see at
30 page 2064, a letter from you to Mr. Harker saying:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

"I enclose herewith a copy Declaration of Trust received from Fishers, Surveyors and Property Managers.

I enclose same herewith for your perusal, prior to lodging same with the Stamps Adjudication Office, in response to their query of the 4th October last".

I take it that your file confirms you sent over the draft that you had received, isn't that right?

A. Yes.

Q. 172 The Revenue Commissioners apparently were still awaiting this document in February of the following year, because we see at page 1426, that on the 22nd February 1994 you were written to in the following terms:

"Your letter of the 6th January '94 refers.

It is noted that the deed is dated 3rd of the 7th '93 and the Declaration of Trust is dated 4th of the 8th '93 and was not stamped until 7th of the 12th '93.

Please explain why the property was taken by the nominee as previously requested.

Please have the Declaration of Trust adjudged duly stamped by the UK Stamps Office.

Declaration of Trust is enclosed herewith."

I think we'll see the Declaration of Trust that they enclosed to you, which you had provided to them at page 1430.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

Here this Declaration of Trust differs from those we have seen so far because there is, fixed to it, the stamp of the Irish Revenue for 50P, isn't that so?

A. The English Revenue.

Q. 173 Is this the English Revenue?

CHAIRMAN: There's a crown on it.

Q. 174 It has an English Revenue Stamp of 50P.

A. That's right.

Q. 175 In all other respects it is the document we considered earlier, is that right?

A. That's right.

Q. 176 So that we may take it from this, that the Declaration of Trust in this format found itself with the Irish Revenue, as a genuine document evidencing that on the 4th of August 1993 the signatories to this document had that day affixed the common seal of the company and signed the document.

A. That is correct, yes.

Q. 177 Which was untrue.

A. That is right.

Q. 178 The Revenue, in addition to seeking the document to be stamped, also had inquiries as to why it was that there was a nominee in the circumstances which appeared from the documents lodged, isn't that so?

A. That is right.

Q. 179 And you forwarded this correspondence to Mr. Harker on the 24th February 1994 at reference 1428, page 1428. You say:

"Dear Rod, I enclose herewith a copy letter received from the Revenue Commissioners dated 22nd February, together with the therein referred to Declaration of Trust and await your reply thereto."

Mr. Harker took some time to consider this, but he came back to you on the 1st

1 March 1994 with his proposed response to the Revenue at page 1432.

2

3 Here he says as follows:

4

5 "I refer to your letter of the 24th February and to our telephone conversation
6 earlier today.

7

8 I enclose a letter addressed to the Stamps Adjudication Office which (I hope)
9 deals with their query as to why the property was taken by the nominee. If you
10 don't think this will be sufficient please let me know and I can try again. I
11 have today written to Mr. Holland of Jackson Way Properties Limited and
12 requested that (if at all possible) he has the deed adjudged, duly stamped and
13 then return the Declaration of Trust direct to you.

14

15 If there are any queries please do not hesitate to contact me."

16

17 Do you have any recollection at this point, Mr. Friel, of a telephone
18 conversation having taken place with Mr. Harker on the 1st March 1994, where
19 the anticipated or planned response to the Revenue's queries, relating to an
20 explanation for why this property was taken by a nominee was considered?

21 A. I'm afraid I don't.

22 Q. 180 In the document certainly, Mr. Harker seems to ask for your advice as to
23 whether or not the intended response was one which you thought might be
24 sufficient?

25 A. That would seem to suggest itself, yes.

26 Q. 181 Does that suggest that there were a range of possible responses that could be
27 made to this query and that he was proposing that one of a number of responses
28 would be the appropriate one at this point in time?

29 A. It would.

30

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

CHAIRMAN: It's just one o'clock, so we'll rise until two o'clock.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

1 **THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:**

2
3 MR. O'NEILL: Mr. Friel, this morning we were dealing with the response which
4 was to be delivered to the Revenue Commissioners in reply to their query as to
5 why it was, that there was a nominee company involved, isn't that so?

6 A. That's right.

7 Q. 182 And we were dealing with a letter where the, Mr. Harker had indicated that he
8 was in discussion with you about it. He was proposing a particular form of
9 reply and asking your opinion of it and we can see that document at page 1433.

10
11 This is the intended reply which went to the Revenue Commissioners. It's of
12 the 1st march 1994. It reads as follows:

13
14 "Dear Sirs, I refer to your letter dated February 22nd 1994, addressed to my
15 solicitor Frank Friel & Company.

16
17 I apologise for not having addressed your query as to why the property was
18 taken by the nominee. Maskani Management Limited is incorporated in the Isle
19 of Man. Renzenbrinck Investments Incorporated is incorporated in Panama. The
20 beneficiaries considered it would be more convenient for the property to be
21 registered in the name of a single English company rather than in the name of
22 two companies from two different countries.

23
24 I trust you will find the above information of assistance, yours faithfully, RP
25 Harker"

26
27 So this is offered as the explanation for Jackson Way coming into the picture,
28 isn't that right?

29 A. It is yes.

30 Q. 183 It is stated here that it is for the convenience of these two entities, one in

- 1 the Isle of Man and one in Panama , isn't that right?
- 2 A. That is correct.
- 3 Q. 184 I think it is correct to say that the Panamanian entity here, Renzenbrinck
4 Investments Incorporated, was never a company which had any contact with you at
5 any time in connection with these lands, isn't that right?
- 6 A. That is correct.
- 7 Q. 185 May we take it that it was an external company in Panama that it was a nominee
8 company?
- 9 A. Yes.
- 10 Q. 186 And therefore it could neither be inconvenienced nor inconvenienced because as
11 much as it was, was an address, isn't that right?
- 12 A. That is correct.
- 13 Q. 187 Similarly in relation to Maskani, I suggest, that it was a company as we can
14 see, that was dealing in a nominee capacity in relation to the property, isn't
15 that correct?
- 16 A. That is right, yes.
- 17 Q. 188 And the reasons for Jackson Way's involvement were not to inconvenience, to
18 convenience these parties, but rather to serve another purpose for them, isn't
19 that so?
- 20 A. Yes.
- 21 Q. 189 Ultimately you were in a position to deliver a Declaration of Trust to the Land
22 Commission, we see it at page 1403.
- 23 A. To the Revenue Commission.
- 24 Q. 190 I beg your pardon, to the Revenue Commissioners. At 1403, we see that it
25 differs only from the last one in that it is now stamped by, there are two
26 additional stamps and presentation record as well, isn't that so?
- 27 A. That's right.
- 28 Q. 191 Now having delivered this document, I think your registration of the lands in
29 the name of Jackson Way Properties proceeded to a point that on the 5th July
30 1994 Jackson Way Properties Limited a limited liability company, care of Frank

1 Friel & Company solicitors, Merton, 11 Dundrum Road, Dublin 14, was shown on
2 the Folio as full owner, isn't that right?

3 A. That is correct.

4 Q. 192 The registration of that company as the owner of these lands, Mr. Friel, I
5 suggest to you, involved a total of five documents, both a declarations and
6 otherwise, and if I just run through them briefly with you.

7

8 Firstly, there was a transfer from Mr. Tracey to Paisley Park Investments
9 Limited, which was dated the 5th June 1991.

10 A. Yes.

11 Q. 193 There was a purported, a declaration purporting to distribute in specie --

12 A. Pardon me. From Paisley to Jackson Way?

13 Q. 194 No, I'm talking now about, just going back over the history of documents,
14 perhaps that you dealt with through your office which had the effect, the
15 cumulative?

16 A. Certainly.

17 Q. 195 The effect of which was that as of the 5th July 1994, Jackson Way became the
18 owner.

19 A. Yes.

20 Q. 196 I suppose more correctly, to bridge the gap between the ownership of Mr. Tracey
21 and the registration of Jackson Way Properties, there are a number of essential
22 documents and we dealt with all of them I think, I will just outline them for
23 you in date order and see if we agree with them.

24

25 Firstly, there is the transfer from Tracey to Paisley Park Investments.

26 A. That's correct.

27 Q. 197 Which was dated 5th June 1991.

28 A. That is correct.

29 Q. 198 There was a declaration purporting to distribute in specie to Jackson Way dated
30 the 20th May 1993.

- 1 A. Yes that would be with the second.
- 2 Q. 199 Yes?
- 3 A. Lodgement, yes.
- 4 Q. 200 There was an application for Land Registry consent which was acceded to, made
5 by Jackson Way on the 1st of July 1993. I should say, sworn by Mr. Holland on
6 the 1st July 1993.
- 7 A. Again that would be with the second application.
- 8 Q. 201 Yes. There was the transfer of the 30th July 1993, executed by Paisley Park
9 Investments, Mr. Harker is liquidator and Jackson Way Properties Limited.
- 10 A. Again that's the second one, yes.
- 11 Q. 202 And then finally there was the Declaration of Trust which shows on it's face
12 the date the 4th of August 1993, isn't that so?
- 13 A. I don't think the Declaration of Trust of would be lodged in the Land Registry.
- 14 Q. 203 Possibly not but it was one of the documents that was generated in the course
15 of satisfying the Irish --
- 16 A. For satisfying the Registry Commissioners, yes. But it wouldn't have been
17 lodged in the Land Registry.
- 18 Q. 204 It wouldn't have been lodged in the Land Registry.
- 19 A. There are some other documents as well in addition to that if you want to --
- 20 Q. 205 Are there any crucial documents?
- 21 A. Just a declaration in the first transfer, or the first dealing, the transfer of
22 Family Home Protection Act Declaration of Mr. and Mrs. Tracey. There was a
23 declaration of Robert A Tracey, I don't know what that might have been about
24 and the Section 45 consent that you--
- 25 Q. 206 The earlier one.
- 26 A. The earlier one, that's right, and the Certificate of Incorporation, memo and
27 art of Paisley Park, that was the first one.
- 28
- 29 Then for the second one the transfer of Section 45, Certificate of
30 Incorporation of Jackson Way Properties and the original Land Certificate.

- 1 Q. 207 Right. Each of the documents that I opened to you in my question, that is the
2 five documents commencing with the transfer from Tracey to Paisley Park
3 Investments followed by the declaration of the distribution in specie to
4 Jackson Way the application under Section 45 on form NQ1 signed by Mr. Holland
5 on the 1st of July 1993, the transfer deed of the 30th of July 1993, between
6 Paisley Park, Mr. Harker and Jackson Way, and the Declaration of Trust which
7 shows on it's face the date the 4th of the 8th 1993, were all documents which
8 were false documents, isn't that right, for the reasons that we have gone
9 through over the past day and a half?
- 10 A. That is correct.
- 11 Q. 208 Isn't that so?
- 12 A. That is correct.
- 13 Q. 209 And those documents were in the main presented to you by others essentially
14 coming to you from Mr. Harker, the liquidator of this company, in the Isle of
15 Man, isn't that so?
- 16 A. That is right.
- 17 Q. 210 Now whilst you had dealings with Mr. Harker in relation to the documentation,
18 the registration of the lands in question, I think it is correct to say that
19 you also had some contact with Mr. Nicholas Morgan the solicitor in Jersey?
- 20 A. I was, yeah. I had a telephone call from him, that was the only -- I didn't
21 think, I never heard of the person until I refreshed, going through the file
22 again.
- 23 Q. 211 Yes. We saw in the documentation opened yesterday that one of the aspirations
24 which Mr. Morgan had at the time of his initial dealings with Mr. Holland was
25 that locally, i.e. in Carrickmines, it would be indicated that an English
26 company was now the owner of the lands.
- 27 A. Yes.
- 28 Q. 212 In contra distinction to the position in which pertained to that time, that it
29 was an Isle of Man company involved, isn't that right?
- 30 A. That's right.

1 Q. 213 There seemed to be an anxiety to make a distance between Paisley Park
2 Investments and Jackson Way, isn't that right?

3 A. It would appear so, yes.

4 Q. 214 And obviously the connection between those two entities was not one which was
5 readily discernible by checking any of the records available publicly, isn't
6 that so?

7 A. That is correct.

8 Q. 215 And in addition to the documentary trail indicating these two entities being
9 separate, there was also a conscious effort made to try and ensure locally that
10 there was such a distinction between these entities, isn't that right?

11 A. It would appear so, yes.

12 Q. 216 And amongst those stages or steps I suggest, was a document which was created
13 under which a Mr. Charles Caldwell became a person entitled to graze on the
14 lands, isn't that right?

15 A. That is correct.

16 Q. 217 Mr. Caldwell as I understand it, is the father of Mr. John Caldwell.

17 A. That is correct.

18 Q. 218 I will just put that document on screen if I may, it's page 2027.

19

20 This is a document which reads as follows:

21

22 "I Charles Caldwell of Westlands House, Woodbrook Downs, Shankill in the County
23 of Dublin, hereby propose to take, during the season ending 30 day of September
24 1993 for the agistment and depasturage by a horse-mare only and not by way of
25 tenancy the grazing of that part of the townland of Carrickmines Great, Barony
26 of Rathdown in County of Dublin and lately held by the said Charles Caldwell,
27 containing one acre or thereabouts and to pay the sum of 100 pounds to Paisley
28 Park Investments Limited in liquidation or it's agent the said Charles Caldwell
29 keeping the gates, piers, fences and drains in order and being responsible for
30 the animal."

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

What was the purpose of this document do you know Mr. Friel?

A. The purpose was just to keep a horse on part of that.

Q. 219 Well obviously that is it's nominal or stated purpose, but did you think it was necessary for this company Paisley Park to have entered into an arrangement, if it was the case that Mr. John Caldwell was the owner or part owner, 50 per cent owner of this property, was there any reality in making his father enter into an agistment and depasturage agreement or was it to suggest that there was an explanation for Mr. Caldwell's occasional physical presence on the lands which could be explained by reference to this depasturage grazing agreement, do you know?

A. I don't really know, no. There was a similar one with another party.

Q. 220 Of course. But there was no connection between that other party and Mr. Caldwell.

A. That is correct.

Q. 221 It was an arms length transaction about which Mr. Sands, the witness who is in the Book of Evidence, or in the Book of Statements to give evidence, will deal with in due course.

A. I see.

Q. 222 He was an occupier of some 13 or 14 acres around his home which adjoined the Jackson Way lands and he was renting that for a period.

So in any event, this document here, that I have just referred to is one which you sent to Mr. John Caldwell on the 14th of October 1993, you see at page 2226. Sorry, 2026.

Agistment agreement "Dear John" I am not quite sure what the first word is it's blurred on our copy.

A. "As requested".

Q. 223 "As requested, please find herewith agreement for signature, kind regards."

- 1
- 2 The agreement, if signed of course, didn't make sense because it was allowing
- 3 the person, Mr. Caldwell, to graze a horse for the season ending 30th September
- 4 1993, but he was only going to sign it in October of 1993, the period had
- 5 already elapsed. 2027.
- 6 A. There is another one besides that.
- 7 Q. 224 Subsequent one amending that?
- 8 A. That would not appear to be one that I prepared.
- 9 Q. 225 Well who sent it to you, if you didn't prepare it?
- 10 A. I don't know. I never received one. I prepared --
- 11 Q. 226 Do you have the document which is on screen, that is the one at page 2027 in
- 12 your file, it seems that our analysis of your file reveals it at page, well the
- 13 332 on your file, if you numbered the pages. Which you may not have done of
- 14 course, but this has come --
- 15 A. Has it come from my file.
- 16 Q. 227 Yes.
- 17 A. Well then I must take it that it is there, but I can't locate it here, but I
- 18 have another one, I don't know whether you --
- 19 Q. 228 If it qualifies the present one, of course you may refer to it.
- 20 A. Pardon me .
- 21 Q. 229 If it qualifies the detail of the document that's on screen, of course you may
- 22 refer to it.
- 23 A. It seems to me exactly the same terms only it doesn't -- it seems to be the
- 24 same only it's dated blank day of blank 1993, as opposed to 9th day of October
- 25 and signed by Charles Caldwell in the presence of John Caldwell.
- 26 Q. 230 Right, and does it run from the 30th September 1993?
- 27 A. It, no the 30th of September 1994.
- 28 Q. 231 '94.
- 29 A. Mm-hmm.
- 30 Q. 232 I see. So whatever document you sent out, if it did go out in the form we see

1 on screen it was amended before the signature to replace the 30th September '93
2 with '94 and then signed by both Messrs Caldwell?

3 A. It was, that's right. Ending on the -- yeah I am just confusing myself, it
4 says ending on 30th September 1994.

5 Q. 233 Yes which dealt with the anomaly which appeared on the face of the document.

6 A. Mm-hmm.

7 Q. 234 You say you had only one attendance by telephone from Mr. Nicholas Morgan, I
8 think we see that at page 2062, which was a telephone, note of telephone
9 memorandum or attendance on Friday 10th December 1993.

10

11 Re Paisley Park Investments:

12

13 "Nick Morgan phoned from Jersey re Paisley Park Investments.

14

15 He instructed me to let the lands again to the Sands", this is the other
16 holding we spoke of just a moment ago "Subject to the following:

17

18 That they are to vacate the lands for a period of one week, they can nominate
19 the week that they wish to vacate them for. In this regard, I advised Mr.
20 Morgan that vacating the land for one week, i.e. temporary break, is
21 disregarded under Irish law. However, he stated he was advised by his Irish
22 solicitors in relation to same and instructed me to proceed as he had
23 instructed me."

24

25 Did he confide to you who those Irish solicitors were, who were acting for him
26 or in what capacity they were acting?

27 A. I can't recall that now.

28 Q. 235 "That the letter was to be subject, that in the event of a compulsory purchase
29 order being served they should immediately vacate the premises. They may pay
30 the rent 6 months in arrears and in the event of their having to vacate the

1 premises they would pay a pro rata rent for the time they had occupied the
2 premises."

3

4 Did he explain to you whether there were any plans to compulsory acquire at
5 that point?

6 A. Not that I can think.

7 Q. 236 He gave you contact numbers at which you can contact him.

8 A. That is right.

9 Q. 237 But you didn't have occasion to contact him subsequently.

10 A. No.

11 Q. 238 Did he ever explain to you the capacity in which he could give you instructions
12 as regards the letting of the lands?

13 A. No.

14 Q. 239 At this point in time Paisley Park is still in liquidation, the lands had not
15 been registered in the name of Jackson Way Properties, isn't that so?

16 A. That's correct.

17 Q. 240 And therefore his involvement must have been through Paisley Park Investments
18 or the company's behind Paisley Park Investments.

19 A. It must have been.

20 Q. 241 And just to reiterate in relation to Mr. Jim Kennedy, you did not know that he
21 was a party to the Paisley Park company or that he was believed by others to be
22 the principal and beneficial owner of that entity?

23 A. I was not aware, as I said yesterday, I was not aware that he was involved
24 with this and I had never met this man.

25 Q. 242 I see. Thank you Mr. Friel.

26

27 CHAIRMAN: Mr. Miley, do you want to ask any questions?

28

29 MR. MILEY: Yes, Judge, quite a number of questions, I am in a little bit of

30 difficulty because I haven't got Mr. Finlay with me, you may remember he raised

1 this with you on Tuesday evening. If it were possible I would like to postpone
2 the cross-examination to another date. I had thought Mr. Sheedy would be here
3 and could step in but, as I look around, I don't see him.

4

5 CHAIRMAN: In -- I mean obviously if Mr. Friel was to be brought back for, to
6 be asked a couple of questions that's one thing, but if it was, if it was to
7 be -- subjected to a lengthy cross-examination obviously --

8

9 MR. MILEY: Judge, but I do expect it could be quite lengthy. A lot of what
10 has been raised in his direct examination. Some of them are quite fundamental
11 issues which were not dealt with in his statement, and indeed have come to me
12 as a complete surprise to me, and I think there would be some areas upon which
13 some detailed instructions would be required in order to deal with the
14 cross-examination.

15

16 CHAIRMAN: Would you, in consultation with Mr. Finlay, indicate to the
17 Tribunal in correspondence, the sort of areas that you want to deal with in
18 cross-examination?

19

20 MR. MILEY: Certainly Judge. But I think, the problem is, I think that
21 Mr. Finlay has started a case in the High Court, a couple of days ago, that I
22 believe is scheduled to run for about another two weeks, so it might be
23 difficult to get access to him. I could -- I mean I could certainly do that,
24 but well in advance of when I think that the hearings will resume, but I would
25 be reluctant to commit to doing it in the next couple of weeks.

26

27 CHAIRMAN: Well we had hoped we would be finished with Mr. Friel today so, and
28 we won't be resuming this particular module before the end of April, early May
29 at the earliest. So I think what might be done, is perhaps in the next two to
30 three weeks, if you would write, either consult with Mr. Finlay --

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

MR. MILEY: Yes, if I leave it on the basis by the first week, the end of the first week in March, and if I am in difficulty I might get onto the Tribunal team.

CHAIRMAN: Yes. And indicate the sort of areas that you want to cover in cross-examination.

MR. MILEY: Yes. I mean it is largely in relation to the interpretation of the documents and that.

CHAIRMAN: And the approximate length of time the cross-examination will take, these are things that wouldn't arise obviously if you were going into cross-examination now, but if --

MR. MILEY: I take the point and I will give it our best efforts.

CHAIRMAN: All right. Is there anybody else?

CHAIRMAN: Well Mr. Friel, we had hoped that we would be finished with you today, but you may have to come back at some date in the future. And the Tribunal will let you know and thank you very much for your attendance.

THE WITNESS THEN WITHDREW.

CHAIRMAN: Thank you Mr. Friel.

That concludes the business of today.

MR. O'NEILL: It does Sir, it was not intended to commence upon the

1 examination of Mr. Sheedy and then perhaps have to break in mid-evidence and
2 come back in May, so it was felt appropriate that he would be deferred until
3 following the resumption of this module, rather than take his evidence
4 piecemeal and accordingly there is no further evidence to be lead today.

5
6 CHAIRMAN: All right. Well unless otherwise indicated the Tribunal intends
7 sitting again in public on Tuesday 2nd March, when a new module of inquiry will
8 commence. It's anticipated that the first phase of that new module, that's the
9 first phase of two phases, will conclude towards the end of April or early in
10 May, at which time it is hoped at this stage to resume the, this Carrickmines 2
11 module. Which is likely to run for during the summer months.

12
13 All right. So we'll rise until 10.30 or adjourn until 10.30 on the 2nd March.

14
15 **THE TRIBUNAL THEN ADJOURNED UNTIL TUESDAY,**

16 **2ND MARCH 2004 AT 10.30 AM.**

17
18
19
20
21
22
23
24
25
26
27
28
29
30