

10:11:15 1 **THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY, 28TH JANUARY**  
2 **2005, AT 10:30 A.M.:**

3

4

CHAIRMAN: Good morning, Mr. O'Neill.

10:40:00 5

6

MR. O'NEILL: Good morning.

7

8

MR. O'NEILL: Mr. Gannon, please?

9

10:40:00 10

**CONTINUATION OF QUESTIONING OF MR. GERRY GANNON**

11

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

12

13

CHAIRMAN: Good morning, Mr. Gannon

14

A. Good morning. Your Honour, can I just say one thing before I start? I might

10:40:00 15

have misled you a little bit on my telephone conversation. As you know, I

16

only got this yesterday. I said that Mr. Smyth never represented me. That is

17

not true, Noel Smyth & Partners represented me, but Noel Smith as a solicitor

18

never represented me. Noel Smyth & Partners does represent me and it's

19

Coleman Birmingham who I use in Noel Smyth & Partners.

10:40:01 20

21

CHAIRMAN: All right, thank you.

22

23

MR. O'NEILL: Yes. I was going to deal, Mr. Gannon, with the point where we

24

had left off yesterday. And that's where we had outlined in detail, in fact

10:40:01 25

word by word, all of the correspondence which had passed as between yourself

26

and the Tribunal, between the Tribunal and your solicitors and yourself, in

27

connection with the information that you had provided to the Tribunal from the

28

commencement of your engagement with the Tribunal on the 8th of September of

29

last year, up until the present day; isn't that right?

10:40:03 30

A. Yeah.

10:40:03 1 Q. 1 And in the course of that there were three sources of information to the  
2 Tribunal from you. There was the telephone conversation that you've just  
3 mentioned, there was the written communication from your solicitor which set  
4 out your position and there was your written statement which followed upon  
10:40:03 5 that; isn't that so?

6 A. That's correct.

7 Q. 2 And we read each of those documents. And if we leave aside for the moment the  
8 telephone conversation. Is it the case that all of the information that you  
9 have provided to the Tribunal, firstly, represents, as far as you know, all of  
10 your knowledge of the matter that was raised with you, that is, any possible  
11 involvement in the Coolamber project by means of a take out of any indebtedness  
12 of Mr. Goodman's or otherwise?

13 A. Yes.

14 Q. 3 And if I might revert then to the telephone conversation and the manner in  
10:40:04 15 which it was reflected, subsequently, in the attendance of the solicitor to the  
16 Tribunal, which we opened, and which subsequently found itself the subject  
17 matter of a letter which was written to your solicitor. That's the letter of  
18 the 15th of September 2004.

19  
10:40:05 20 There were, in essence, a number of matters which were discussed at the  
21 meeting -- sorry, in the telephone conversation and one was that you had not  
22 bought nor were you interested in buying any lands in Lucan apart from some  
23 project put to you by Mr. Liam McGonagle, a deceased solicitor, which related  
24 to the Airlie Stud lands; is that right?

10:40:07 25 A. That's right.

26 Q. 4 Secondly, you indicated in the body of that, you might if you wish look at the  
27 letter if it assists you in this regard. You said that at the time, this is  
28 in relation to the suggestion that was put to the Tribunal and in turn put to  
29 you, that in 1991 you were interested in acquiring the lands, that is the  
10:40:07 30 Coolamber lands, or at least taking over the Bank of Nova Scotia debt.

- 10:40:08 1 A. Sorry, say that again?
- 2 Q. 5 There is a reference in the attendance and it's reflected in the letter of the  
3 15th of September that the solicitor to the Tribunal indicated to you that it  
4 had been suggested to the Tribunal that you had an interest in these lands in  
10:40:08 5 1991 or that at least you were interested in taking over the Bank of Nova  
6 Scotia debt, and it goes on to record your response to that. The record of  
7 your response to that was that you did not have the funds to do any such thing  
8 in 1991 and that all you were doing around that time was taking options on  
9 lands.
- 10:40:19 10 A. That's correct.
- 11 Q. 6 I think that accurately reflects what you indicated to the Tribunal; isn't that  
12 so?
- 13 A. That's correct.
- 14 Q. 7 Is that also true or is that something you'd like to modify in any way? The  
10:40:32 15 suggestion you're putting to the solicitor to the Tribunal when she asked you  
16 about the acquisition of these lands was to say by way of repost; "I wasn't  
17 interested in those lands at the time, I didn't have funds, I was only in a  
18 financial position to acquire options"; is that an accurate statement of your  
19 accounts at that time?
- 10:40:53 20 A. Yes.
- 21 Q. 8 Fine. The other, you went on I think to elaborate somewhat on that if we move  
22 down through the attendance. It's recorded that "he said he had no money of  
23 his own at that time and didn't have negotiations with any bank to acquire such  
24 money." So it went on I think to deal with the question of your possibly  
10:41:14 25 borrowing money to finance such a transaction by your saying "not only did I  
26 not have the money myself, I was only buying options but I wasn't in a position  
27 or certainly wasn't going to raise finance for such a project." Is that, that  
28 also accurately reflect the position?
- 29 A. Can you repeat that again?
- 10:41:34 30 Q. 9 I can. In the attendance it is recorded that as follows, the he is you. "He

- 10:41:41 1 said he had no money of his own at that time and he did not have negotiations  
2 with any bank to acquire such money."
- 3 A. That's correct.
- 4 Q. 10 So that I was putting to you that that is intended to reflect, firstly, that  
10:41:58 5 you didn't have your own money but secondly that you didn't go to any bank or  
6 wouldn't consider going to a bank to finance such a project?
- 7 A. Well I never went to any bank.
- 8 Q. 11 Sure.
- 9 A. To finance anything on the Coolamber lands.
- 10:42:09 10 Q. 12 And this was being said in the context of half a million pounds being involved  
11 in the project that had been indicated to the Tribunal, that's why your  
12 response was tailored in that way, because that sum was so great, at that  
13 time, that you didn't have the money to do it and you wouldn't have borrowed  
14 the money to do it; is that a fair representation of what was recorded?
- 10:42:33 15 A. Yes.
- 16 Q. 13 The third matter which was raised in that letter and it's a matter of which  
17 you've clarified this morning in your response, is that and it's at the top of  
18 the next page, you say "Mr. Gannon said he was never represented by Noel Smyth  
19 and that Michael Foy of your office acted for him until his retirement.  
10:42:51 20 Mr. James Foy of your office now acts for Mr. Gannon. As far as he could  
21 recall, his only involvement with Noel Smyth was in relation to a joint venture  
22 at Airfield, this could have been in the early 1990s."  
23  
24 I think that probably accurately reflects what you indicated; is that so?
- 10:43:10 25 A. Well when I say the 1990s, I had other dealings with Noel Smyth. But after  
26 1990, '97/'98 but still in the same area.
- 27 Q. 14 Sure. What you were being asked about specifically at this time was in  
28 relation to your dealings with Mr. Noel Smyth in 1991, around the time when the  
29 bank finance was there?
- 10:43:33 30 A. That is correct, that is what --

10:43:35 1 Q. 15 Right. And I think you understood that what was being asked of you at the time  
2 was what your relationship was with Mr. Noel Smyth in 1991 or thereabouts  
3 because of the information that had been provided to the bank, to the Tribunal  
4 that Mr. Smyth was apparently representing himself as representing your  
10:43:58 5 interests, if one accepts the documents as accurate; is that so?  
6 A. That's correct.  
7 Q. 16 Yeah. And it was in response to that that you addressed the status or the  
8 relationship which you had with Mr. Noel Smyth in 1991.  
9 A. Yes, that's correct. But, I mean, when I got the letter from the Tribunal I  
10:44:19 10 didn't have a clue what it was about, quite honest.  
11 Q. 17 So --  
12 A. And in this conversation that's why I rang up to find out what it was about.  
13 Q. 18 Sure.  
14 A. That's the answers I got so --  
10:44:31 15 Q. 19 Sure. The letters which we read yesterday into the record, are those of the  
16 2nd of September and the 7th of September. And they indicate, I suggest,  
17 clearly, that the Tribunal was seeking to inquire into a possible involvement  
18 of yours in relation to the Coolamber Finnstown lands, which would have  
19 involved you in a proposal, either to acquire the lands or to take out the  
10:45:01 20 interest of the lender bank; isn't that so?  
21 A. That's right.  
22 Q. 20 And it was as a result of reading and considering those letters that you  
23 followed it up with a telephone call to the Tribunal and the Tribunal's  
24 solicitor responded to that by returning your call and the details then which  
10:45:22 25 we see recorded in this letter, and indeed in the earlier attendances that we  
26 have seen, were the subject -- were the basis or the subject of the discussion  
27 which took place between yourself and Miss Howard at that time; isn't that so?  
28 A. That's correct.  
29 Q. 21 And if we look to those documents, I don't know that it's necessary to go  
10:45:41 30 through them again line by line. But they clearly indicated to you and you

10:45:46 1 appreciated from the conversation you had with Miss Howard that what was  
2 suggested, firstly, was that Bank of Nova Scotia or Scotia Bank was involved in  
3 the transaction; isn't that right?

4 A. That's right.

10:45:59 5 Q. 22 So the bank was specifically named. It was indicated to you that it had been  
6 suggested to the Tribunal that you and Mr. Smyth were engaged together, he  
7 representing you; isn't that right?

8 A. That's correct.

9 Q. 23 And that was a matter which you were capable of analysing at the time as to  
10:46:22 10 whether it was correct or otherwise. And that in the course of some  
11 negotiations with that bank that it had been proposed that you would take out  
12 the loan which was due to Mr -- due to the bank and also would payoff an  
13 indebtedness of Mr. Goodman's. All those were matters which were canvassed,  
14 discussed between you at the meeting; isn't that right?

10:46:48 15 A. At the meeting?

16 Q. 24 Sorry, at the telephone conversation which took place with the solicitor.  
17 They're all recorded there individually.

18 A. Yes.

19 Q. 25 And it was in that context that your relationship between, with Mr. Noel Smyth  
10:47:01 20 in 1991 became the subject or the focus of your response; isn't that right?

21 A. That's correct.

22 Q. 26 Because, as we see from your statement subsequently, you say that you'd nothing  
23 at all to do with this deal. And therefore, when it came to giving information  
24 to the Tribunal about Mr. Smyth at that time, you did so in the way that is  
10:47:25 25 recorded here in the letter which went to your solicitor, that is that  
26 "Mr. Gannon said he was never represented by Noel Smyth, that Michael Foy of  
27 your office acted for him until his retirement. Mr. James Foy of your office  
28 now acts for Mr. Gannon."  
29

10:47:44 30 In that I think you intended to convey that Mr. Smyth was not your conveyancing

- 10:47:49 1 solicitor in your land transactions and that indeed he hadn't negotiated land  
2 transactions on your behalf, insofar as you needed a solicitor for your land  
3 transactions in 1991 it was Mr. Foy, that is Mr. Michael Foy, who dealt with  
4 you; isn't that right?
- 10:48:10 5 A. That's correct or Coleman Birmingham in Noel Smith's office.
- 6 Q. 27 I mean did you distinguish, did you seek in your own mind in making the  
7 response you did to Miss Howard at the time, to suggest that you were making a  
8 differentiation between a member of the firm of Noel Smyth & Partners and  
9 Mr. Noel Smyth himself?
- 10:48:34 10 A. Yes.
- 11 Q. 28 You intended to do that deliberately; is that right?
- 12 A. Noel Smyth & Partners I would have regarded different than Noel Smyth.
- 13 Q. 29 But in the context of --
- 14 A. In other words, I'm dealing with one of the partners rather than Noel Smyth as  
10:48:50 15 such.
- 16 Q. 30 Yes. You didn't distinguish between Mr. Foy being Mr. Foy of Smith Foy & Co.  
17 in advancing your information to the Tribunal about who was dealing with you  
18 and your conveyancing issues?
- 19 A. No.
- 10:49:13 20 Q. 31 No. But in relation to the office of Noel Smyth & Partners acting for you.  
21 What had been put to you by Miss Howard in the conversation she had with you  
22 was that the Tribunal believed that Mr. Smyth was acting for you in  
23 negotiations with the bank. Is there any reason why you refrained from  
24 indicating that Noel Smyth & Partners may well have acted for you at that time  
10:49:44 25 in relation to banking affairs, if that is the position?
- 26 A. In relation to the Coolamber lands?
- 27 Q. 32 No, no, in relation to any lands. I think you were reinforcing your denial of  
28 any involvement with Mr. Smyth in the Coolamber lands by saying not only  
29 does -- did I have nothing to do with the Coolamber lands but I go further and  
10:50:07 30 I say that Mr. Smyth had no dealings with me whatsoever in relation to lands.

10:50:14 1 My lands solicitor was Mr. Michael Foy. That is what you intended to convey,  
2 certainly that's the impression, I think you would accept, that would be the  
3 only interpretation which could reasonably be drawn from what you'd said to the  
4 Tribunal at the time; do you agree with that?

10:50:32 5 A. Yes.

6 Q. 33 I see. It is the position apparently that the firm of Noel Smyth & Partners  
7 dealt with you around that time in relation to land transactions; is that so?

8 A. Yes.

9 Q. 34 And obviously, in the light of that it may be necessary for the Tribunal to  
10 inquire into those particular transactions, as you know, the Tribunal has  
11 refrained from making any order for discovery. But Mr. Smyth is the subject  
12 of an order for discovery and has provided documentation to the Tribunal, some  
13 part of which, I think, has been furnished to you in recent days, immediately  
14 after it having been discovered to the Tribunal; isn't that so?

10:51:19 15 A. That's so.

16 Q. 35 So that other than to correct those details in relation to the previous  
17 involvement or sorry, the then possible involvement of Mr. Smyth's firm, you  
18 adopt the accuracy of everything else that's said; isn't that so? I'll turn  
19 now, Mr. Gannon, to deal with the documentation which was generated in 1991,  
20 and which gave rise to the inquiry which was made of you by the Tribunal. And  
21 this is the documentation in the first instance which was furnished to you with  
22 the letter of the 15th of September 2004. That is the four documents which  
23 came from the bank and from the solicitors.

24  
10:52:17 25 We'll see them on screen in sequence. Firstly, as document 1512. That is  
26 the call report that I mentioned yesterday, but did not read the contents of.  
27 I now intend to deal with the details of that call report.

28  
29 It is on the subject of Southfield. "Contacts Noel Smyth solicitor, Gerry  
10:52:38 30 Gannon builder, officers Peter McCabe senior manager credit, Alan Perry credit

10:52:45 1 officer, date 15th November 1991.

2

3 At the request of Smyth we met the above to discuss a potential take out of the  
4 Southfield facility. Smyth was cautious about imparting too much information.

10:52:57 5 He had copies of our letters of offer to Southfield, Larry Goodman's letter of  
6 comfort and appeared to be privy to all aspects of the planning situation.

7

8 He said that he was an unusual solicitor who only worked on difficult  
9 situations. It appears he approached Goodman to see if he could find a way

10:53:15 10 out of his (Goodman's) difficulties with Southfield. He said Goodman had used

11 Goodman International Limited money to provide a loan of 167,000 pounds to

12 Southfield and has given BNS," that's Bank of Nova Scotia, "a comfort letter

13 supporting our 350,000 pounds loan. Goodman wants to get out of these

14 liabilities.

10:53:39 15

16 Smyth said that Gannon had already paid off the Goodman International loan and

17 is now owed 167,000 pounds by Southfield. He would be willing to take an

18 assignment of our loan and our security so that he is owed a total of 517,000

19 pounds by Southfield. Smyth said that Gannon would intend to demand the loans

10:54:01 20 from Southfield and when they can't repay he will appoint a receiver and

21 realise the asset. We are unsure whether or not Goodman is aware of this

22 strategy.

23

24 We informed Smyth that in normal circumstances it was not the policy of the

10:54:16 25 bank to sell loans. In the event that we were requested by Southfield to

26 accept money from a third party in repayment of its loan we would consider

27 doing so.

28

29 With regard to the assignment of the mortgage, Smyth waffled on about why he

10:54:29 30 wanted it done this way, rather than for BNS to release its charge and have

10:54:35 1 Gannon take a new charge. We asked if saving stamp duty had anything to do  
2 with it and Smyth said no, but if any significant savings were available he  
3 would be willing to share 50/50 with BNS.

4  
10:54:45 5 He also informed us that Goodman is not a shareholder in Southfield, despite  
6 the fact that we always assumed this to be so. We have written confirmation  
7 from Larry Goodman that he is beneficial owner of 100% of the company's shares.  
8 He said a solicitor, presumably John Caldwell, a well known political figure  
9 and another individual were owners. We said we would check this out, we would  
10:55:07 10 find out about the stamp duties and would come back to Smyth early next week  
11 with our response. He is ready to move as soon as we are."

12  
13 And that was signed by "Peter A McCabe," who was the senior manager credit in  
14 the bank at that time.

10:55:23 15  
16 The next document that was provided to you on the 15th of September was a  
17 letter of the 26th of November 1991 from Rory Egan. And that is at page 1520  
18 on screen.

19  
10:55:35 20 Which reads as follows: "Dear Peter. I refer to our telephone conversation  
21 yesterday. You informed me that Noel Smyth, solicitor, apparently  
22 representing Mr. Gannon, a builder, met with you at the bank and produced the  
23 loan documentation (security of facility letter and mortgage) for your bank's  
24 advance to Southfield Limited. Mr. Smyth stated that he represented the  
10:56:00 25 majority shareholder but not the minority shareholder, Mr. Caldwell I think,  
26 who had no knowledge of the meeting.

27  
28 I believe that Mr. Smyth proposed that the bank would assign the benefit of its  
29 security to his clients and requested that you revert with your bank's decision  
10:56:16 30 on his proposal.

10:56:17 1  
2 Obviously, an important consideration of confidentiality now arises. Before  
3 disclosing to Mr. Smyth any information about the loan, you ought obtain  
4 Southfield's written consent and so inform Mr. Smyth. At the same time, I  
10:56:34 5 think it would be as well to inform Southfield's solicitors, with whom you have  
6 dealt with in the past of the approach, and request that the bank be authorised  
7 in the writing to discuss the matter with Mr. Smyth. Yours sincerely. Rory  
8 Egan."

10:56:49 10 You may or may not know, Mr. Gannon, that Mr. Egan was the solicitor who was  
11 acting for the bank in relation to the advancement of the loan facility which  
12 was secured on the Coolamber lands. And that was a debt of some 350,000  
13 pounds. And it was a debt which was current as of 1991, the period when this  
14 letter is being written.

10:57:13 15  
16 The next letter that I will refer you to again is a letter circulated to you on  
17 the 15th of September of last year. And it's at page 1521. And this is a  
18 letter from the Bank of Nova Scotia to Mr. John Caldwell. It's dated the 26th  
19 of November 1991.

10:57:32 20  
21 It reads "We recently had a visit from a Mr. Noel Smyth, solicitor, accompanied  
22 by a Mr. Gannon, a builder. Mr. Smyth said that he was representing Mr. Larry  
23 Goodman and with a view to removing Mr. Goodman's liability to the bank, on  
24 foot of his letter of comfort, he had a proposal to put to us. The proposal  
10:57:53 25 revolved around Mr. Gannon repaying Southfield's loan to the bank and taking an  
26 assignment of our charge on the property.

27  
28 Although Mr. Smyth had copies of several Southfield documents (including the  
29 bank's letter of offer to the company) he did not have any authorisation from  
10:58:10 30 Southfield to discuss the relationship with the bank. We explained that we

10:58:15 1 would have to respect the standard client/banker confidentiality and without a  
2 written instruction from Southfield we could give him no information on our  
3 client.

10:58:25 5 If Mr. Smyth is genuinely acting on behalf of Southfield we would be obliged to  
6 receive your written instruction that we may divulge information to him.

7  
8 On another point, we have not heard back from Mr. Tiernan, we are getting  
9 extremely concerned of the matter of paying the interest arrears is being put  
10 on the long finger by Southfield. You have already -- we have already  
11 informed you of our intention to take action on this unless the interest  
12 arrears are cleared immediately. The situation continues to deteriorate and  
13 in the absence of a response from you we will proceed to commence this action  
14 to protect our interests. Yours sincerely signed Peter A McCabe, senior  
10:59:04 15 manager of credit."

16  
17 The fourth document that accompanied the letter to you of the 15th of September  
18 2004, was a letter from Mr. Noel Smyth of Noel Smyth & Partners. We'll see  
19 that at page 1570 on screen.

10:59:18 20  
21 It's dated the 19th of December 1991. A rather crucial date. And it is  
22 addressed to Peter A McCabe senior manager credit, Bank of Nova Scotia, Canada  
23 House at 65/68 St. Stephen's Green, Dublin 2.

10:59:40 25 It reads "Re Southfield Property Company Limited and Bank of Nova Scotia.

26  
27 Dear Mr. McCabe, I refer to my recent meeting with your good self and your  
28 colleague Mr. Alan T Perry in relation to the above-mentioned property." I  
29 should stop at this point, Mr. Gannon, and say there was in fact only one  
10:59:57 30 meeting at that time between those parties, that is Mr. Smyth and the bank.

11:00:02 1 And that that meeting is the meeting of the 15th of November that we referred  
2 to earlier, the first of the series of documents that were opened to you. And  
3 whilst Mr. Smyth is referring to this as a recent meeting. In fact, it was a  
4 meeting which took place one month and four days prior to this subsequent  
11:00:21 5 letter. Just to put that in context.

6  
7 He then goes on to say "at that time I indicated our clients, Mobberley  
8 Limited, were interested in acquiring an assignment of the bank's loan in  
9 relation to this property. I indicated that in the event of such an  
11:00:38 10 assignment taking place, we would be prepared to discharge the interest due  
11 up-to-date in relation to the loan and to take over an assignment of the bank's  
12 security in this regard, as a further indication of our intentions in relation  
13 to this matter pending the bank's decision.

14  
11:00:57 15 I have requested our bankers to transfer to Bank of Nova Scotia in Dublin the  
16 sum of 350,000 pounds and I would be obliged if you would arrange, at this  
17 point in time, to let me have an account number for Elangrove Limited, your  
18 accounts sorting code and any other relevant information in order that I can  
19 arrange for the transfer of 350,000 pounds to be put on deposit in the bank  
11:01:22 20 pending a reply to this letter.

21  
22 Obviously, the making of a deposit in your bank in no way presumes that the  
23 bank are or may be interested in pursuing this matter further with our clients.  
24 However, on the possibility that an agreement can be reached, the lodging of  
11:01:38 25 the funds is a bona fide expression of our client's interest in pursuing this  
26 matter further.

27  
28 As I indicated to you previously, our clients have taken a formal assignment of  
29 the debt due to Goodman International from Southill Property Limited so that  
11:01:56 30 Southill Property Co. Limited is now indebted to our client in the sum of

- 11:02:01 1 158,000 pounds approximately, for which we will be looking for repayment in due  
2 course. We look forward to hearing from you by return."  
3  
4 And on the following page, 1571, he merely signs off Noel Smyth of Noel Smyth &  
11:02:17 5 Partners.  
6  
7 Those four documents were documents which were available to you as and from the  
8 15th of September of last year; isn't that right?  
9 A. That's correct.
- 11:02:29 10 Q. 36 And immediately prior to that you had the information which had been exchanged  
11 in Miss Howard's telephone conversation with you and you had the letters of the  
12 2nd and the 7th of September, which didn't contain all of the detail which is  
13 encompassed in the four letters that I've just read; isn't that right?  
14 A. That's right.
- 11:02:52 15 Q. 37 But you were able, in your telephone response of the 8th of September, to  
16 reject straight away any involvement of yourself in this transaction; isn't  
17 that right?  
18 A. That's correct.
- 19 Q. 38 And as and from the 15th of September when you had considered all of this  
11:03:13 20 documentation, you were again in a position to roundly reject any involvement  
21 or suggestion of involvement by you in the project; isn't that right?  
22 A. That's right.
- 23 Q. 39 And that resulted in the written statement which was given to you, given by you  
24 to the Tribunal; isn't that right?  
11:03:34 25 A. That's right.
- 26 Q. 40 That was intended in fact to address all of these issues. And I think you  
27 would agree with me, Mr. Gannon, that there appears to be a huge mystery as to  
28 what exactly took place in any dealings that Mr. Noel Smyth had with the Bank  
29 of Nova Scotia commencing from the 15th of November of 1991; isn't that so?  
11:04:01 30 A. That's so, yeah.

- 11:04:02 1 Q. 41 And in particular, the claimed or apparent or supposed involvement of you in  
2 the project; isn't that right?
- 3 A. That's correct.
- 4 Q. 42 And fundamental, I think, to your approach to the Tribunal has been your belief  
11:04:19 5 that you did not, at any time, have any dealings with Bank of Nova Scotia. And  
6 in particular, you're not the person who might have attended any meeting which  
7 took place on the 15th of November; isn't that so?
- 8 A. I have no recollection of going to any meeting in Bank of Nova Scotia.
- 9 Q. 43 Well, we'll just put your statement on screen and we'll go through the detail  
11:04:49 10 of it. It's at page 2796 in the documentation furnished.  
11  
12 It says in paragraph 1, "I say that I was not involved, at any time, in  
13 discussions or negotiations concerning the possible purchase of the Coolamber  
14 lands or of any debt owed to Mr. Goodman by Southfield as referred to in the  
11:05:21 15 letter of the 2nd of September 2004 from the solicitor to the Tribunal in late  
16 1991 or at any other time.  
17  
18 2. I have not had any involvement in the Coolamber lands at any time.  
19  
11:05:34 20 3. I further say that no company or companies owned or controlled by me were  
21 involved in any discussions or negotiations concerning the possible acquisition  
22 of the Coolamber lands.  
23  
24 4. I have no recollection of attending a meeting in the Bank of Nova Scotia  
11:05:49 25 on the 15th of November 1991, as is suggested by the call report furnished to  
26 me by the solicitor to the Tribunal. I have no knowledge or recollection of  
27 the various matters referred to in this call report. I say that I did not, as  
28 suggested by the call report, payoff a Goodman International loan, nor was I  
29 ever owed the sum of 167,000 pounds by Southfield as suggested in the document.  
11:06:15 30 I have no knowledge of nor did I ever agree or discussion the taking of the

11:06:20 1 assignment of any loan or security from the Bank of Nova Scotia concerning  
2 Southfield. I did not at any stage instruct Mr. Noel Smyth solicitor to seek  
3 advice John P Traynor BL concerning any matter. I have no knowledge,  
4 recollection or understanding of any of the matters referred to in  
11:06:37 5 Mr. Traynor's letter to Mr. Noel Smyth dated the 2nd of June 1994 as furnished  
6 to my solicitors by the solicitor for the Tribunal."  
7  
8 In your response to me this morning now you indicate that you have no  
9 recollection of there being a meeting at the Bank of Nova Scotia. Am I to  
11:06:59 10 take it that there may well have been a meeting but you can't recall it?  
11 A. Well it's what I said in my statement, I have no recollection of it.  
12 Q. 44 I'm asking you to explain what you mean by having no recollection of it. Are  
13 you saying that it may have happened but you cannot recall it. Or are you  
14 saying that you did not have any dealings with the Bank of Nova Scotia much  
11:07:19 15 less attend at their premises on the 15th of November?  
16 A. Well I never had no dealings with the Bank of Nova Scotia.  
17 Q. 45 Right.  
18 A. In any shape, way or form.  
19 Q. 46 By dealings I mean even attending at their office to suggest the purchasing out  
11:07:33 20 of a loan, which is the subject matter of the attendance or call report which  
21 you have dealt with in your statement by rejecting that any dealings with you  
22 and the bank are reflected in that document?  
23 A. Yeah but, as I say in my statement, I have no recollection of attending the  
24 meeting in the Bank of Nova Scotia.  
11:07:52 25 Q. 47 Right. Do you think, on reflection, and in having seen the documentation,  
26 having seen the correspondence that passed between the parties, that is between  
27 Mr. Smyth and the bank, the attendance, the internal documentation within the  
28 bank, and the references to you in the documents which emanated from the bank  
29 to Mr. John Caldwell and from the bank's solicitor to the bank itself, do you  
11:08:20 30 think that you may have been involved in the transaction in the manner

- 11:08:24 1 described in the call report?
- 2 A. No.
- 3 Q. 48 No. In the very recent past, as you know, Mr. Smyth was the subject of an  
4 order for discovery in relation to his dealings with you. And in the course of  
11:08:42 5 that discovery he furnished to the Tribunal a large volume of documentation,  
6 which is currently under analysis by the Tribunal, it having been received only  
7 this week. But in the course of that documentation there appears to be a  
8 communication with you, which we'll see at page 3240.  
9
- 11:09:03 10 And this is a copy, an office copy, of a letter which reads as follows "It's  
11 dated the 14th of November 1991, addressed to Gerry Gannon Esquire at Gannon  
12 Homes, 68 Amiens Street, Dublin 1." Which I take it was your address in 1991;  
13 was it?
- 14 A. That's correct.
- 11:09:26 15 Q. 49 "Dear Gerry, I have set up a meeting on Friday for 11 o'clock for Bank of Nova  
16 Scotia with Alan Perry and Peter McCabe in order to deal with this matter.  
17  
18 Perhaps you could meet here on Friday morning and go over together -- sorry and  
19 go over together to discuss this matter and to take it further with them."
- 11:09:50 20  
21 Have you any recollection of receiving such a document, Mr. Gannon?
- 22 A. No. The first time I've seen it. I've no recollection of seeing the  
23 document, but when you gave it to me it's the first time I've seen it. I've no  
24 recollection of seeing it.
- 11:10:06 25 Q. 50 Sure. Do you have any reason to believe that Mr. Smyth would have written the  
26 letter in these terms to you, either in 1991, on the date which appears on the  
27 face of the document, or subsequently, if he did not have proposal and dealing  
28 with you in connection with a meeting which was to take place at Bank of Nova  
29 Scotia on Friday the 15th of November 1991?
- 11:10:36 30 A. Can you repeat that, please?

- 11:10:42 1 Q. 51 Do you have any reason to believe that Mr. Noel Smyth would have drafted a  
2 letter in the terms that we see on screen at page 3240, which shows the date  
3 the 14th of November 1991, if he hadn't in fact set up a meeting for Friday the  
4 15th of November 1991 at Bank of Nova Scotia with Mr. Perry and Mr. McCabe to  
11:11:12 5 discuss the details of the project?  
6 A. I have no -- like, I've no reason to believe the letter. Are you saying the  
7 letter isn't genuine or --  
8 Q. 52 No, I'm asking you whether or not you have any reason to believe that it is not  
9 genuine?  
11:11:28 10 A. No, not what's there.  
11 Q. 53 So the probabilities are then, although you cannot recollect this meeting --  
12 sorry, although you cannot recollect receipt of this letter, you accept the  
13 probabilities are that it was written to you and that you did receive it?  
14 A. Well probably, but at that stage I'd say that November, the meeting on the  
11:11:51 15 15th, the following day was it?  
16 Q. 54 That's right.  
17 A. Like, in 1991 the amount of time I would have spent in an office would have  
18 been very minimum. And for a letter to be given to me on the 14th and for a  
19 meeting on the 15th would have been unusual. The letter is there. I don't  
11:12:09 20 know, you give it to me. That's --  
21 Q. 55 It is correct, of course, to say that the Tribunal gave it to you. But the  
22 Tribunal received it in turn from Mr. Noel Smyth. And Mr. Noel Smyth has  
23 indicated that he did not act for you in a transaction whereby you intended to  
24 take out the interests of Mr. Goodman in relation to the Coolamber lands; isn't  
11:12:36 25 that so?  
26 A. That's so, yeah.  
27 Q. 56 If that is so, that letter appears to run contrary to that; isn't that so?  
28 A. That's so, yeah.  
29 Q. 57 Right. And equally, insofar as you're in a position to indicate to the  
11:12:49 30 Tribunal that you did not have any intention to acquire lands in Lucan in 1991,

11:12:58 1 in particular in connection with the Coolamber lands. If this letter is true  
2 it certainly indicates that there was a proposal which was going to be  
3 discussed by you and by Mr. Smyth in advance of your attending at a meeting at  
4 the bank on the same day at 11 o'clock, to deal with an acquisition proposal  
11:13:21 5 for the lands; isn't that so?  
6 A. That's correct.  
7 Q. 58 Well --  
8 A. Why you I never, as I said before, I never had any dealings in Coolamber land.  
9 Q. 59 That is entirely inconsistent, I have to suggest to you Mr. Gannon, with what  
11:13:39 10 is discussed here. Because the dealing which you were being asked about by  
11 the Tribunal, was a dealing which the Tribunal was aware did not appear to have  
12 ever have been implemented, in the sense that the proposal that was advanced in  
13 the call report of the 15th of November 1991, which involved the bank assigning  
14 its debt to another party, was not a transaction which came to pass because the  
11:14:09 15 Tribunal is aware from the bank's rejection of that proposal contained in the  
16 documentation, that the intended plan of Mr. Noel Smyth was never implemented;  
17 do you understand?  
18 A. Right.  
19 Q. 60 So when you say you had no dealing with Coolamber, it is of course correct to  
11:14:31 20 say that you did not conclude any dealing with Coolamber which resulted in you  
21 having an interest in the land because the bank did not assign the debt to you  
22 in that format. But it is not correct to say that you did not have a dealing  
23 with the land if you were discussing the matter of a possible acquisition of  
24 those lands via the mechanism set out in the call report with your solicitor;  
11:14:58 25 do you understand?  
26 A. Yeah.  
27 Q. 61 If -- I take it you would accept, Mr. Gannon, that if you were meeting with  
28 your solicitor, Mr. Noel Smyth, to discuss this matter on the morning of the  
29 15th of November 1991, you had a dealing with the Coolamber land; isn't that  
11:15:22 30 so?

11:15:23 1  
2 MR. O'MOORE: Sorry, that pre supposes that Mr. Smyth was Mr. Gannon's  
3 solicitor, which is an essential pre supposition in that question.  
4

11:15:33 5 CHAIRMAN: If you look at the letter. Mr. Gannon may or may not have  
6 received the letter if he was not in his office on that day. But the letter  
7 assumes that Mr. Smyth was acting for him in some shape or form or had some  
8 relationship with him in some shape or form, which assumes that a particular --  
9 that the matter which was to be the subject of the meeting with the bank, it  
11:15:59 10 assumes that this is a matter that was known to Mr. Gannon when this letter is  
11 written because the letter says, in order to -- asking Mr. Gannon -- saying  
12 we'll set up a meeting to deal with this matter and then asking Mr. Gannon to  
13 come over on Friday to discuss this matter. So it assumes also that there had  
14 been some discussion or contact between Noel Smyth. So I don't understand how  
11:16:27 15 it can be submitted or suggested that Mr. Smyth -- unless Mr. Smyth has made up  
16 all of this correspondence. How can it be suggested that Mr. Smyth was not in  
17 some way acting for Mr. Gannon?  
18

19 MR. O'MOORE: Well Sir, I don't know if you are aware of Mr. Smyth's most  
11:16:43 20 recent statement of Monday of this week where he deals with this meeting. And  
21 he says that "I met with the Bank of Nova Scotia to discuss this proposal. I  
22 have no detailed recollection of the meeting but from correspondence produced  
23 to me in recent months, it appears that the meeting took place on the 15th of  
24 November 1991. I do not recollect whether or not Mr. Gerry Gannon was at the  
11:17:03 25 meeting. Mr. Gannon was a builder for whom I acted from time to time. But  
26 insofar as I'm aware, he had no connection with Mr. Goodman or the affairs of  
27 Southfield." And then he goes on to say that he attended the meeting in his  
28 capacity as Mr. Goodman's solicitor. And suggests that Mr. Gannon may have  
29 been present for the purpose of giving him advice about the value of the land.

11:17:25 30

11:17:25 1 CHAIRMAN: Yes. I accept that. But you said a few moments ago, you said  
2 sorry, that pre supposes that Mr. Smyth is Mr. Gannon's solicitor.

3

4 MR. O'MOORE: Yes.

11:17:37 5

6 CHAIRMAN: But, I mean, what else can we assume from the letter from  
7 Mr. Smyth? He may not have been a solicitor in relation to any particular, or  
8 in relation to all his business. But what else can we assume or take it or  
9 what else -- how else can we take this letter?

11:17:57 10

11 MR. O'MOORE: Well --

12

13 CHAIRMAN: Assuming it was written by Mr. Smyth. Whether or not Mr. Gannon,  
14 there was some relationship there between Mr. Smyth and Mr. Gannon.

11:18:07 15 Mr. Gannon said this morning that he had no dealings with Mr. Smyth as a  
16 solicitor.

17

18 MR. O'MOORE: Yes.

19

11:18:14 20 CHAIRMAN: At this time.

21

22 MR. O'MOORE: As his solicitor.

23

24 CHAIRMAN: Dealt with somebody else in his office solicitor.

11:18:18 25

26 MR. O'MOORE: That's correct, Mr. Birmingham. He said he no dealings with  
27 Mr. Smyth as his solicitor, he said Mr. Smyth never acted as his solicitor,  
28 though another partner in the firm did, but --

29

11:18:27 30 CHAIRMAN: How else can that letter be interpreted? This letter, if

11:18:32 1 Mr. Smyth, assuming Mr. Smyth didn't make it up --

2

3 MR. O'MOORE: I'm sorry if I'm frustrating Members of the Tribunal or annoying  
4 them in some way.

11:18:41 5

6 CHAIRMAN: You're not.

7

8 MR. O'MOORE: The question that Mr. O'Neill asked pre supposed that. It was  
9 an essential part of the question that Mr. Gannon was attending Mr. Smyth as  
10 his client. That Mr. Smyth was acting as a solicitor in the transaction. I

11 want to point out that is an assumption, it's an assumption which runs contrary  
12 to Mr. Gannon's evidence and it's an assumption which appears to run contrary  
13 to Mr. Smyth's statement. If this letter is correct and you, Chairman, are  
14 quite correct to point out that is in itself a supposition. If this letter is

11:19:12 15 right, let's say it was written at the time and so on and delivered to  
16 Mr. Gannon, it suggests a meeting but it does not suggest the capacity of the  
17 meeting, and that is the only point that I am making, but it is an important  
18 point.

19

11:19:21 20 MR. O'NEILL: The matter, I think, is dealt with by the fact that the  
21 signatory to the letter is Mr. Noel Smyth who is signing as a solicitor of Noel  
22 Smyth & Partners. It is not a personal letter which is being written to the  
23 parties. It is evident, it comes from a solicitor's file as has been

24 discovered to the Tribunal. And it identifies the capacity in which Mr. Smyth

11:19:44 25 was dealing with Mr. Gannon. Now, is it the case, Mr. Gannon, that despite  
26 what you said this morning about Mr. Noel Smyth acting for you as a solicitor  
27 through -- sorry Smyth and Partners acting for you as solicitors at this time  
28 that Mr. Noel Smyth did not act for you as a solicitor at this time, despite  
29 the fact that he writes to you from that firm and signs himself off as Noel

11:20:14 30 Smyth, Noel Smyth & Partners?

- 11:20:16 1 A. That would be correct.
- 2 Q. 62 And so you have a recollection, do you, of this particular relationship that  
3 existed between yourself and Mr. Noel Smyth in the context of Coolamber in  
4 November of 1991, which allows you to say that whilst Mr. Smyth is a solicitor  
11:20:40 5 and was writing to me as a solicitor he was not my solicitor, is that what  
6 you're saying?
- 7 A. No, I have no recollection of the Coolamber lands, of dealing with the  
8 Coolamber lands at all, nor of any dealings with the Coolamber lands.  
9
- 11:20:51 10 CHAIRMAN: Mr. Gannon, you are being asked about -- forget about the Coolamber  
11 lands. You said this morning to us when we sat that Mr. Noel Smyth did not  
12 act for you in any capacity as a solicitor in 1991. That you had dealings  
13 with him subsequently but not at this time. That you did deal with a  
14 solicitor employed in his office. So forget about the Coolamber lands. Is  
11:21:16 15 it still your case that in November of 1991, Mr. Smyth would not have,  
16 personally, would not have been writing to you in any shape or form from his  
17 office, as this letter suggests he was. Forget about Coolamber lands. About  
18 anything?
- 19 A. No, he could be writing me as Noel Smyth.
- 11:21:38 20
- 21 CHAIRMAN: But you said this morning that Noel Smyth was not acting as your  
22 solicitor in 1991.
- 23 A. He could be writing on a personal basis, I'm saying, not as --  
24
- 11:21:47 25 CHAIRMAN: When you say personal basis, are you saying sort of as a friend  
26 or, I mean, we all know what we're -- a solicitor acts for a client in the  
27 sense that he represents the client's interest in some legal issue, whether  
28 it's in relation to court or land or the purchase of land or so on. That's,  
29 as I understood your statement this morning, that Mr. Smyth in no way acted for  
11:22:14 30 you in any shape or form as a solicitor in November 1991. Now, this letter

11:22:21 1 would suggest that he was acting for you in some shape or form in relation to  
2 some issue. And I'm not suggesting that it necessarily means the Coolamber  
3 lands. But that he was, there was some solicitor/client relationship there.  
4

11:22:39 5 Now, is it your evidence that you had no such dealings with him about any issue  
6 in 1991?  
7 A. In relation to anything?  
8

9 CHAIRMAN: In relation to any matter, relating to your business or your  
11:22:54 10 personal affairs? That are you still saying that Mr. Smyth did not act for you  
11 as a solicitor in any shape or form?  
12 A. To the best of my knowledge, no.  
13

14 CHAIRMAN: So if he was writing to you, a letter of this nature then, this  
11:23:11 15 comes as a complete surprise to you that he would have been writing to you,  
16 apparently as a solicitor?  
17 A. Yes.  
18

19 CHAIRMAN: Because you had no dealings with him at all in 1991?  
11:23:22 20 A. No, not -- like as Noel Smyth & Partners, with Noel direct.  
21

22 CHAIRMAN: Well are you saying that he did not act for you at all as a  
23 solicitor in 1991?  
24 A. No. Not to the best of my knowledge.  
11:23:39 25

26 CHAIRMAN: But -- and -- well are you saying that you had business dealings  
27 with him?  
28 A. Yes, I said that, around 1991, yes.  
29

11:23:47 30 CHAIRMAN: Which had nothing to do with him representing you or looking after

- 11:23:50 1 your affairs or giving you legal advice?
- 2 A. Not to the best of my knowledge, no.
- 3
- 4 MR. O'NEILL: But even in the knowledge that you have now today, Mr. Gannon,
- 11:24:01 5 where you can marry the letter that is on screen, that is that at 3240, with
- 6 the attendance at the bank, which is recorded in the call report at 1512.
- 7 Isn't it abundantly clear that the matter which was the subject matter of the
- 8 letter of the 14th of November 1991, was the Coolamber lands and the
- 9 involvement of the two bank officials, Mr. Perry and Mr. McCabe, with those
- 11:24:33 10 lands; isn't that absolutely abundantly clear?
- 11 A. Absolutely, yeah.
- 12 Q. 63 Right. And the Tribunal, I think, could therefore properly infer from that,
- 13 that you did discuss with Mr. Smyth, prior to the 14th of November 1991, the
- 14 question of dealing with Bank of Nova Scotia in connection with the Coolamber
- 11:24:59 15 lands?
- 16 A. Well, I have no recollection of it but, of discussion of anything of the
- 17 Coolamber lands with Mr. Smyth.
- 18 Q. 64 But having received on the 15th of September 1991, the detailed documentation,
- 19 the four pages of documentation, should that not or could that not have been an
- 11:25:21 20 aid memoire to you, a trigger to your memory to allow you to say "I had
- 21 forgotten about this but I now remember that I did have some dealing with
- 22 Mr. Smyth in connection with Coolamber, it came to nothing. I had other
- 23 business to deal with, I simply forgot about it. But these documents bring to
- 24 mind that there was in fact a discussion between us." Wouldn't that be the
- 11:25:47 25 normal thing that would occur in the event that what might have been a
- 26 relatively minor matter at the time for you, since it did not come to fruition,
- 27 you say, that this would have been the trigger mechanism which would have
- 28 allowed you to identify your involvement here; isn't that right?
- 29 A. That'd be correct, but it didn't.
- 11:26:09 30 Q. 65 It didn't. Is there any explanation that you can offer to the Tribunal for

- 11:26:13 1 the fact that it didn't so trigger your interest or your recollection?
- 2 A. Well I don't believe I was at the meeting.
- 3 Q. 66 You don't believe you were at the meeting. Well, I mean, that paints another
- 4 scenario as to why it is that there is a letter written to you, which you
- 11:26:34 5 apparently are prepared to accept probably reached you at some point?
- 6 A. Yes.
- 7 Q. 67 It deals with, we have now agreed, the Coolamber lands. And despite its
- 8 content where it says that two things are to happen; there's to be a meeting at
- 9 the bank with the two named officials, who we know met with two persons on that
- 11:26:59 10 day, and there was to be a meeting in advance of that with Mr. Noel Smyth
- 11 between yourself and himself. Allowing for that letter to exist, how could
- 12 it be that if there is a record of a meeting taking place on that day, at which
- 13 two persons are said to attend, that that -- and one of them is named as you,
- 14 that that person is not you. What circumstances could that arise?
- 11:27:25 15 A. I don't know. I have no idea. But if I was in at that stage, being, getting
- 16 a loan of half a million pounds, I think that was the figures mentioned.
- 17 Q. 68 It doesn't follow you were getting a loan of that money.
- 18 A. I'd have to get half a million pounds. Is that correct?
- 19 Q. 69 Yes.
- 11:27:46 20 A. Well I think I would have remembered that.
- 21 Q. 70 But, I mean, do you dispute that there was a meeting in the bank?
- 22 A. No.
- 23 Q. 71 No. And would you accept, given the memorandum that's there, that two people
- 24 turned up at it and one of them was Noel Smyth?
- 11:28:08 25 A. Yes. Well I can't answer that because I don't know. I don't believe that --
- 26 I've no recollection of being at the meeting and if I had I'd tell you. I
- 27 have no difficulty about that.
- 28 Q. 72 Well people often forget individual meetings, Mr. Gannon, particularly where
- 29 they have taken place a long time ago. But where there is a memorandum of the
- 11:28:30 30 meeting carried out by somebody else and where there are other persons

- 11:28:34 1 obviously present at the meeting, both on the opposite side if I might call it  
2 that, the bank, but also on the side of the person making the representation,  
3 in this case Mr. Smyth. It generally is something that between the parties  
4 they can recollect having occurred; isn't that right?
- 11:28:53 5 A. It's --
- 6 Q. 73 But you have maintained from the very beginning a position that you knew  
7 nothing about Coolamber and subsequently when the details of this meeting are  
8 furnished to you, you maintain that you were not at the meeting. I mean, is  
9 that because you had committed yourself in advance of seeing this documentation  
11:29:14 10 to the fact that you had no involvement whatsoever in the deal and having  
11 adopted that position you maintain that position, notwithstanding the  
12 documentary material here which suggests otherwise?
- 13 A. No, that wouldn't be true.
- 14 Q. 74 That's not true?
- 11:29:34 15 A. No.
- 16 Q. 75 I see.
- 17 A. Like, I don't think I would have adopted that position first day ever. If I  
18 was there I would have told you I was there. I have no recollection of ever  
19 being there. That's --
- 11:29:47 20 Q. 76 Yes. The letters of the 2nd and the 7th of September do not make the case  
21 that you were there. They indicate that there's a suggestion that  
22 representations were made on your behalf to acquire this debt. But they do  
23 not make specific reference to there being a meeting at the bank or an  
24 attendance of that meeting at the bank. They were merely asking you for your  
11:30:10 25 account in the first instance. They then follow that up with the details  
26 which we see the four pages referring to you; isn't that right?
- 27 A. Sorry, say that again?
- 28 Q. 77 The four pages which make specific reference to there being a meeting at the  
29 bank were not enclosed with the Tribunal's initial letter to you of the 2nd of  
11:30:29 30 September or the reminder letter of the 7th of September. They accompanied

11:30:35 1 the letter of the 15th of September, which was written after you had already  
2 committed yourself to Miss Howard, by saying that you did not know anything  
3 about the Coolamber lands and you did not have any financial involvement. It  
4 was after that that you had sight of this documentation, that is the letters  
11:30:55 5 which appear, if they are true, to place you in the bank and having your  
6 position represented by Mr. Smyth. Do you see that? And I was putting to you  
7 a possible explanation for your position in which you have rejected, and that  
8 was that because you had adopted a position in your initial response to the  
9 Tribunal you felt that you had to maintain that position, notwithstanding the  
11:31:26 10 documentation that subsequently came to you and you have rejected that?  
11 A. Yes, if I had any recollection of being there I would tell you.  
12 Q. 78 Right.  
13 A. I have no -- like, I have nothing to hide. If I was there I would have told  
14 you. I have no recollection of ever being at that meeting. If I was there I  
11:31:41 15 would tell you I was there, I mean to say, the minutes in the meetings said I  
16 never opened my mouth. I've never gone into a bank meeting in my life that I  
17 never said a word. Normally if I go to a bank meeting I obviously talk. If  
18 I'm borrowing money I talk at a meeting. I sat at that meeting like a dummy  
19 and never opened my mouth.  
11:32:02 20 Q. 79 What is said.  
21 A. According to the files.  
22 Q. 80 That leads you to conclude that the bank officials, in making their record of  
23 the meeting, must be mistaken insofar as the person at the meeting was  
24 yourself. It must have been somebody else with Mr. Smyth.  
11:32:18 25 A. I never said that. I don't know who was at the meeting. I have no  
26 recollection of being at the meeting. If I was at the meeting I'd have told  
27 the Tribunal I was at the meeting. I have no nothing to hide from the  
28 Tribunal.  
29 Q. 81 I'm trying to tease this matter out with you, as you'll understand Mr. Gannon,  
11:32:31 30 because there is this apparently huge conflict that we see from the

11:32:35 1 documentation, which on the one point makes specific references to your  
2 presence and to the purpose of your being there and to your denial of ever  
3 being there. There is immutable --

4 A. No I have no recollection. If I was at the meeting and I had recollection of  
11:32:52 5 being at the meeting, I would tell you I'd been at the meeting. I mean, I've  
6 nothing to hide about it. I'd tell you straight out. I'm under oath here.  
7 I've nothing to hide about it, if I was at the meeting I'd tell you I was at  
8 the meeting, there's no great mystery in it. I see all the papers in front of  
9 me, the simplest thing is for me to tell you I was at the meeting and that  
11:33:12 10 would be the end of it. I have no recollection of ever being at the meeting.

11  
12 CHAIRMAN: Mr. Gannon, you also -- you are going a bit far, you're saying,  
13 which is fair enough, you don't have a recollection. It is a long time ago.  
14 You say that even -- you go further than that because you look at the content  
11:33:30 15 of the bank's call report and you say that that looking at that seems to  
16 confirm in your mind that you weren't there because you wouldn't have sat  
17 silent.

18 A. But, Your Honour, I deal with a lot of banks.

19  
11:33:46 20 CHAIRMAN: Uh-huh.

21 A. And I don't think I've ever gone into a bank meeting that I sat in the corner.

22  
23 CHAIRMAN: That's as I understand it. You're saying on the one hand that you  
24 don't recollect, but even you go further than that. You say that having  
11:33:59 25 looked at the report prepared by the bank that it doesn't even look like it's  
26 you or sound like it's you because you didn't say anything.

27 A. If I was at a meet meeting and any bank manager knows me, I would be asking  
28 questions about what lending money and what's going on, the whole thing.  
29 According to this I sat there like a dummy in the corner.

11:34:19 30

11:34:19 1 CHAIRMAN: And you think that tends to confirm, in your mind anyway, that you  
2 weren't there.

3 A. Absolutely.  
4

11:34:24 5 JUDGE FAHERTY: Are you distinguishing, Mr. Gannon, about being at bank  
6 meetings where you are looking to borrow money, that you tell us that you would  
7 be vocal and would be asking about rates and things like that, is it?

8 A. If I went into a meeting, Your Honour, I would certainly inquire something  
9 about the meeting, I presume. I don't think I'd sit there actually and say  
11:34:45 10 nothing.  
11

12 JUDGE FAHERTY: Yes, but in your ordinary course of dealings when you would  
13 have gone to deal with banks, would you always have been in attendance with  
14 somebody else?

11:34:55 15 A. No.  
16

17 JUDGE FAHERTY: So could it be the case that if there was somebody with you  
18 acting in some capacity for you that perhaps that person would do the running?

19 A. No.  
11:35:06 20

21 JUDGE FAHERTY: Because it's not suggested, I think, in the correspondence, in  
22 the call report, I haven't it before me now, that you were looking to borrow  
23 money. I think the suggestion was, that you were, the suggestion being put  
24 forward according to Mr. McCabe, is that the attendees at the meeting with  
11:35:22 25 Mr. Perry and Mr. McCabe were seeking to take an assignment of the Southfield  
26 loan. It wasn't a case where you were in asking the bank for money.

27 A. I understand that.  
28

29 JUDGE FAHERTY: I just want you to be. Your answer suggests that if you said  
11:35:37 30 you were in banks looking for funds, that you'd be vocal, etc, etc. This was

11:35:42 1 not, as I understand it, Mr. O'Neill will correct me, that's not the scenario  
2 that was painted by Mr. McCabe's call report; do you understand?  
3 A. Yes, I do, Your Honour, yeah.  
4

11:35:52 5 JUDGE FAHERTY: So perhaps --  
6  
7 JUDGE KEYS: Mr. Gannon. If you could approach it from another angle and say  
8 if you weren't at that meeting. Doesn't that suggest then that Mr. McCabe,  
9 Peter McCabe senior manager, Mr. Noel Smyth, and Mr. Alan Perry, who was the  
11:36:10 10 credit officer, through correspondence, now maybe the wrong word is to say  
11 conspire, but has made up a story to implement you with the Coolamber lands.  
12 Wouldn't that be the effect of it?  
13 A. Well if I thought --  
14

11:36:27 15 CHAIRMAN: If you were not at that meeting, doesn't that have the effect of  
16 saying that Mr. McCabe and Mr. Smyth and Mr. Perry have decided to implement  
17 you with the Coolamber lands? Isn't that the logical conclusion to come to?  
18 A. Well I --  
19

11:36:45 20 JUDGE KEYS: Would you agree with me on that?  
21 A. Yes. I have no recollection.  
22

23 JUDGE KEYS: Isn't it highly improbable that Peter McCabe, senior manager of a  
24 bank, Mr. Noel Smyth, a leader solicitor, and Mr. Alan Perry would do something  
11:36:59 25 like that?  
26 A. Absolutely.  
27

28 JUDGE KEYS: So therefore, isn't it more probable then that you were at the  
29 meeting, but you have no recollection of it? Isn't that the more likely, a  
11:37:09 30 more probable conclusion one can come to?

11:37:12 1 A. With all that in front of me, yes, Your Honour, yes.  
2  
3 JUDGE KEYS: Thank you.  
4

11:37:17 5 MR. O'MOORE: Just on that point now. Judge Keys might recollect that Mr.  
6 McCabe and Mr. Perry in their evidence, said that they had no recollection of  
7 Mr. Gannon being there.  
8

9 JUDGE KEYS: That is so. Well, then it's Mr. Smyth who is the prime  
11:37:30 10 conspirator, if that's the case.  
11

12 MR. O'MOORE: I don't want to throw around words like conspirator.  
13

14 JUDGE KEYS: Use whatever you like.

11:37:37 15

16 MR. O'MOORE: Can I use this phrase? That it's quite clear that the only  
17 means of knowledge that either Mr. Perry or Mr. McCabe had was the introduction  
18 by Mr. Smyth. It's also very clear, sir, from Mr. McCabe's evidence that he  
19 -- I will make submissions at the end of the day rather than interrupt the  
11:37:54 20 examination.  
21

22 MR. O'NEILL: The probabilities you accept, Mr. Gannon, are that, in the light  
23 of the correspondence that there was a person at this meeting who was  
24 represented, at least, as being Mr. Gerry Gannon; isn't this so?

11:38:10 25 A. That's correct.

26 Q. 82 And you have no reason to believe or to suspect, I take it, that Mr. Smyth, who  
27 had written to you the day before this letter, before this meeting, would have  
28 turned up at the meeting with somebody other than you; isn't that right?

29 A. That's correct.

11:38:28 30 Q. 83 You've no reason to believe that?

- 11:38:30 1 A. No.
- 2 Q. 84 So the probabilities are then that you were in fact at the meeting, although
- 3 you do not have a recollection of it and therefore you're not in a position to
- 4 either contradict the content of the call report or to recall any of the detail
- 11:38:45 5 of it; isn't that right?
- 6 A. That would be the summing of it, yes.
- 7 Q. 85 So that in principle, the call report is probably a relatively accurate account
- 8 of the matter or proposal which was being advanced to the bank at that time?
- 9 A. That would be correct.
- 11:39:08 10 Q. 86 And obviously, if we proceed on the basis that you were at the meeting but
- 11 you've no recollection of it and that you were at the meeting throughout the
- 12 meeting, rather than appearing at the beginning and leaving. You equally have
- 13 no recollection of being brought to a meeting solely for the purpose of
- 14 offering advices to the bankers as to what the possible value of those lands
- 11:39:34 15 might be, either on the open market or otherwise; isn't that right?
- 16 A. That's correct.
- 17 Q. 87 And I think in your experience in dealing with banks, you would not expect a
- 18 bank, if it was seeking a valuation of lands, to adopt the valuation which
- 19 might be put on those lands by a party who himself was trying to acquire an
- 11:39:59 20 interest in them; isn't that right?
- 21 A. Well the bank normally gets their own valuers.
- 22 Q. 88 Exactly, they would get their own valuers. But more particularly, they would
- 23 not be particularly concerned and would the not place any weight on a value of
- 24 the lands which was being advanced by a person who was seeking to acquire those
- 11:40:18 25 lands for their own purposes; isn't that right?
- 26 A. That would be quite so.
- 27 Q. 89 Right. So insofar as it might be suggested that you were there either as an
- 28 onlooker, an observer of events or that you merely happened to be there because
- 29 of other business that you were going to deal with later independently with
- 11:40:38 30 Mr. Smyth, they are all unlikely scenarios; isn't that right?

- 11:40:42 1 A. That's right.
- 2 Q. 90 You wouldn't expect to be brought to business meetings by a solicitor unless  
3 they were involving you or your companies; isn't that right?
- 4 A. That would be correct.
- 11:40:54 5 Q. 91 You see, I have to suggest to you that what in fact took place at that meeting  
6 is what is reflected in the call report. From the bank's point of view  
7 somebody was coming in as a white knight, if I can describe it as that, to give  
8 them the funds which would allow them to satisfy the indebtedness and exposure  
9 of the bank, by receiving, in full, the capital sum which was due on foot of  
11:41:23 10 the loan and thereby allow the loan to pass from them. Isn't that what the  
11 document says?
- 12 A. That's what it says.
- 13 Q. 92 Right. And the bank itself would have no, I take it, personal or corporate  
14 advantage in misrepresenting what took place at this meeting because, for a  
11:41:42 15 start, it wasn't a meeting with the borrower, it was a meeting with an entirely  
16 outside party and wouldn't influence the bank's position vis-a-vis the  
17 recouping of its own debt from its own client; isn't that right?
- 18 A. That's right.
- 19 Q. 93 Right. The Tribunal, Mr. Gannon, will seek your assistance in relation to  
11:42:15 20 endeavouring to establish whether or not the proposal which is contained within  
21 this call report of the 15th of November, was in fact a proposal which was put  
22 in place to an extent by Mr. Smyth and by the parties whom he was representing.
- 23 A. Can you repeat that? I don't understand that.
- 24 Q. 94 The Tribunal will be seeking your assistance, insofar as you can assist the  
11:42:42 25 Tribunal, in relation to the question of whether or not Mr. Smyth put in place  
26 the proposal which he's outlined in his correspondence and in the call report.  
27 The call report envisaged two things, as we'll see.  
28  
29 It envisaged that there had been a loan from Goodman International to  
11:43:09 30 Mr. Goodman --

11:43:09 1 A. Sorry, can I just?

2 Q. 95 Yes?

3 A. Is it coming up on the screen?

4 Q. 96 Yes, I can put it on the screen for you. It's 1512.

11:43:18 5

6 In this call report the bank officials recorded what their understanding was of

7 the proposal which was being put to them at the meeting by Mr. Smyth at which

8 they say you were also present.

9

11:43:32 10 If you look to the third paragraph or the second paragraph thereof he says "he

11 said Goodman had used Goodman International Limited money to provide a loan of

12 167,000 pounds to Southfield and has given Bank of Nova Scotia a comfort letter

13 supporting our 350,000 pounds loan. Goodman wants to get out of these

14 liabilities.

11:43:56 15

16 Smyth said that Gannon has already paid off the Goodman International loan."

17 That would appear to indicate that the 167,000 pounds that was advanced by

18 Mr. Goodman to Southfield, had been repaid by you to Mr. Goodman. That's what

19 it suggests.

11:44:18 20 A. That's untrue.

21 Q. 97 And "And it is now owed 167,000." In other words, it was saying that you,

22 Mr. Gannon, were standing in the shoes of Mr. Goodman vis-a-vis this loan.

23 Because he, Mr. Goodman, had given the money to Southfield. You had paid

24 Mr. Goodman the amount of the loan that Southfield owed, and therefore, you

11:44:41 25 were standing in Mr. Goodman's position vis-a-vis Southfield. Do you

26 understand what was being proposed?

27 A. Yes.

28 Q. 98 And I have heard you saying that it is untrue.

29 A. That's also untrue.

11:44:53 30 Q. 99 Yeah. The proposal then reflected here is that "he," and by that I mean, I

11:44:59 1 assume that they are referring to you, "that Mr. Gannon would be willing to  
2 take an assignment of our loan," that is the bank's loan "and our security so  
3 that he is owed a total of 517,000 by Southfield." I think you can understand  
4 what that proposal meant. The bank was owed 350,000, that was its only

11:45:22 5 interest at that point in time. What was suggested here was that you were  
6 going to advance 350,000 to the bank so that you would stand, not only in the  
7 shoes of Mr. Goodman, but also in the shoes of the bank vis-a-vis Southfield;  
8 do you understand?

9 A. Yes.

11:45:38 10 Q. 100 And that again I take it is something which you say is untrue.

11 A. Absolutely.

12 Q. 101 Right. And the purpose of that exercise it seems, is then dealt with a little  
13 later, where Mr. Smyth is said to have indicated to the bank that "Gannon would  
14 intend to demand the loans from Southfield and when they can't repay he will  
11:45:59 15 appoint a receiver and realise the asset. We are unsure whether or not  
16 Goodman is aware of that strategy -- this strategy." I should say.

17  
18 So the underlying purpose of the proposal which was being advanced, according  
19 to the bank officials, by Mr. Smyth, in your presence, was that for 517,000  
11:46:26 20 pounds of expenditure, you would find yourself in the position of being the de  
21 facto owner of the Coolamber lands through the method of appointing a receiver  
22 over the debt of Southfield. And you probably can understand the logical  
23 sequence in which that would happen. It was known to Mr. Smyth, at that time,  
24 that the interest on this loan was not being paid by Mr. Goodman because  
11:46:54 25 Mr. Goodman had ceased to pay interest in 1990, upon the involvement of the  
26 examiner of the Goodman Group.

27  
28 The interest, apparently, as of this date was not being paid to the bank, it  
29 was owed 22,000 pounds and had been since November -- since September of 1991.

11:47:18 30 The interest was not being served.

11:47:21 1  
2 The inference that I take it anybody could draw from that was that the  
3 borrower, Southfield, would not be in a position to resist a call by the lender  
4 of the 350,000 pounds for the return of those monies, if there had been a  
11:47:39 5 default in the terms of the loan agreement; you understand?  
6 A. Yes.  
7 Q. 102 And obviously, as you're aware from borrowing money from banks, any breach of  
8 the loan facility, which includes the obligation to pay interest when interest  
9 is due, can trigger a call by the bank to call in the full capital sum, even  
11:48:00 10 though the term loan may well be for, as it was in this case, December 1992  
11 rather than November 1991; isn't that so?  
12 A. That's so.  
13 Q. 103 So whoever had that knowledge could legitimately believe that if they found  
14 themselves in a position of standing in the shoes of the bank, they would be at  
11:48:22 15 the advantage of being able to acquire these lands without going through the  
16 process of buying them from Southfield for whatever Southfield was asking, but  
17 by acquiring the lands through the process of appointing a receiver who would  
18 then distribute those lands in favour of the creditors; isn't that so?  
19 A. That's correct. It certainly wasn't me, I had no knowledge of it.  
11:48:47 20 Q. 104 But it is indicated in the call report that this was explained to the bank  
21 officials. And it follows, therefore, that if you were at the meeting you must  
22 have appreciated that this was the proposal which was being advanced by  
23 Mr. Smyth at the time?  
24 A. Yes. I see that, yeah.  
11:49:08 25 Q. 105 Yes. Now, there appears to be a modification of that plan that was first  
26 outlined at the meeting in November 1991, which we see from the letter of the  
27 19th of December 1991 from Mr. Smyth. And if we put that on screen at page  
28 1570.  
29  
11:49:32 30 We'll see that there is no reference to you personally. There are references

- 11:49:39 1 to a number of corporate entities. The first of them is a company called  
2 Mobberley Limited, which is referred to in the letter as "our clients". And  
3 then further down there is a request to open a bank account. And that bank  
4 account would be opened for Elangrove Limited. Do you see that?
- 11:50:02 5 A. Yes, I do.
- 6 Q. 106 And as we see from this letter, Mr. Smyth is advancing to the bank, at this  
7 point, a proposal which goes further than that which had been offered at the  
8 meeting in November. He's in effect offering to put a back-to-back facility  
9 on deposit with the bank, so that they might consider the proposal which had  
11:50:33 10 been made in November in a favourable light from the point of view of his  
11 clients, identified as Mobberley; you see that?
- 12 A. I do, yeah.
- 13 Q. 107 And I take it, having read the letter and you've had it for some time, that you  
14 would agree that that was the purpose of the further information which was  
11:50:51 15 being given to the bank. The man was putting his money where his mouth was;  
16 isn't that right?
- 17 A. Absolutely, yeah.
- 18 Q. 108 Now, we know that the question of involvement of Mr. Smyth in this transaction  
19 had already been pronounced upon by the bank's solicitor, Mr. Rory Egan, in  
11:51:18 20 dealing with the bank, Mr. McCabe, on the 26th of November, approximately three  
21 and a half weeks before Mr. Smyth's renewed approaches; isn't that right?
- 22 A. That's correct.
- 23 Q. 109 And we know from the evidence of the bank officials that they had decided in  
24 principle that it was not a matter that they could deal with, because unless  
11:51:41 25 they had the consent of their actual client, Southfield, to deal with this  
26 party they were not in a position to assign the loan. And we'll see that  
27 whilst the bank had adopted that position, they had not communicated that  
28 information to Mr. Smyth prior to his letter of the 19th of December; do you  
29 understand?
- 11:52:06 30 A. Yes.

11:52:07 1 Q. 110 They had neither confirmed their position vis-a-vis investigating the stamp  
2 duty issue, as they had suggested in the letter -- sorry, in the meeting note.  
3 Nor had they got back to him to reject the proposal. But we see from the  
4 document at page 1582 on screen, that on the 30th of December 1992, they  
11:52:36 5 formally rejected his proposal in the following terms. Sorry, the reference  
6 to 1992 there is an error, it should be 1991, it's a typographical error. The  
7 typist typing this on the 30th of December 1991 was somewhat ahead of herself  
8 and put in '92 instead of '91 here.  
9

11:52:58 10 The letter reads "Dear Mr. Smyth, I refer to our meeting of the 15th of  
11 November 1991 and to your letter dated December 19th 1991, relating to our  
12 above named client" that's Southfield Property Company. "At that meeting we  
13 informed you that we were not in a position to discuss our client's affairs  
14 without our client's permission. Southfield subsequently informed us not to  
11:53:24 15 discuss their banking relationship with any third party.  
16

17 We understand you have a copy of our facility letter to Southfield. You will  
18 be aware from this letter, that we do not have rights of assignment of our debt  
19 and would have to be so requested by our client before proceeding. In the  
11:53:43 20 light of this, your comments relating to the take over of Southfield's debt are  
21 somewhat surprising, since the company, according to our information, is not in  
22 negotiation with any party with a view to assigning debts. You will  
23 appreciate that without our client's permission we cannot discuss this matter  
24 further with you. I would suggest that you contact Mr. John Caldwell (Binchy  
11:54:09 25 and Partners), a director of the company, and discuss it with him.  
26

27 In relation to your placing a deposit with the bank, we have no difficulties  
28 accepting a deposit from any party, provided of course that we are satisfied  
29 with the source of such deposit. Any deposit accepted by us from you or your  
11:54:28 30 clients will have no relationship with our client, Southfield, in any manner.

11:54:33 1 In the event that you wish to place a deposit with the bank we will require a  
2 bank reference on your client and details from your client on their letterhead  
3 stating who can operate the account and to what amount they can operate, how  
4 many signatures are required and sample signatures. The deposit can be placed  
11:54:51 5 directly through any bank into Bank of Nova Scotia's account in the Central  
6 Bank. If you would like any further information please call me. Yours  
7 sincerely."

8  
9 That effectively brought to a close, Mr. Gannon, the proposal which had been  
11:55:06 10 discussed in November, at the meeting on the 15th of November, for a take out  
11 of the Southfield interest; do you understand that?

12 A. Yes.

13 Q. 111 And it would appear, certainly from this documentation and indeed from what we  
14 know from the other correspondence which is in the brief, that it would appear  
11:55:28 15 that Mr. John Caldwell, who was a director of Southfield, was not one of the  
16 parties who was aware of the intention of whoever it was, to take out the  
17 Southfield interest in these lands by means of the taking over of the bank  
18 debt; isn't that so?

19 A. That's so.

11:55:49 20 Q. 112 Right. Even at this point, Mr. Gannon, have you any recollection as to who it  
21 was, was the instigator of the proposal which would involve the take out of the  
22 bank debt? You say it's not you. Even at this point in time, having reviewed  
23 all of the documents which you have available to you in the brief and in  
24 particular the documentation surrounding this particular period, have you any  
11:56:20 25 idea of who it was who was behind the move to take out Southfield, by going  
26 over their heads to the bank and taking out the loan and foreclosing on that  
27 loan?

28 A. I have no idea whatsoever. If I did have I'd tell you.

29 Q. 113 Now, I indicated to you a little earlier that the Tribunal will be going  
11:56:46 30 through some financial documentation generated around this time by Mr. Noel

11:56:53 1 Smyth in the context of the company Mobberley Limited, which you'll see  
2 referred to in the document which was immediately on screen before the last  
3 document. And as to any dealings which you had with that company and/or its  
4 bankers, a company called Rea Brothers, otherwise Close Bank, in the Isle of  
11:57:15 5 Man.

6  
7 CHAIRMAN: It might be a useful time then to take a ten minute break.

8  
9 MR. O'NEILL: We'll take a ten minute break, Mr. Gannon.

11:57:39 10  
11 **THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED**  
12 **AS FOLLOWS:**

13  
14 MR. O'NEILL: Mr. Gannon, in the documentation that we were considering this  
12:16:28 15 morning there are two documents that are particularly relevant. The first  
16 being the call report, you know that one, that's the 15th of November, the  
17 bank's document. And the subsequent elaboration or perhaps alteration of that  
18 in Mr. Smyth's letter of the 19th of December. In the first of those  
19 documents, the call report, the person who is identified as having the  
12:16:57 20 intention to implement the take over process that we've already analysed, is  
21 identified as you personally; isn't that so?

22 A. That's right.

23 Q. 114 I appreciate you say that Mr. Smyth was wrong in advancing that if he did;  
24 isn't that so? Because that was not your intention you say or do you say that?

12:17:15 25 A. Just repeat that?

26 Q. 115 If Mr. Smyth put forward the proposition which we see in the call report, and I  
27 won't go through its various phases. But if he did so, do you say he did not  
28 do so on your authority?

29 A. Not on my authority, no.

12:17:33 30 Q. 116 No. Because you don't know of such a scheme even now; is that right?

- 12:17:38 1 A. No.
- 2 Q. 117 And do to the best of your recollection it never was your intention to  
3 implement such a scheme; is that right?
- 4 A. I never got involved in any of them schemes in my life.
- 12:17:49 5 Q. 118 Right. But you are unaware of this particular scheme as far as you are  
6 concerned?
- 7 A. As far as I'm concerned.
- 8 Q. 119 We see in the second document that I referred to, that is the letter of the  
9 19th of December 1991, which is at page 1570.
- 12:18:07 10  
11 Mr. Smyth identifies the company as "Mobberley Limited as our clients."  
12 You'll see that on the second paragraph of page 1570, "at the time I indicated  
13 our clients, Mobberley Limited, were interested in acquiring an assignment of  
14 the bank's loan in relation to the property."
- 12:18:29 15  
16 Now, it is the position that the bank did not record any involvement by any  
17 company called Mobberley when they were preparing their report on the 15th of  
18 November. But in this document Mr. Noel Smyth is indicating that at the time,  
19 that is at the time of the 15th of November, he indicated that Mobberley  
20 Limited was his client; do you understand what he's saying here?
- 12:18:52 21 A. Yes.
- 22 Q. 120 So if he did so indicate that, the bank officials nonetheless took it down as  
23 your interest, Mr. Gannon's interest, because they don't identify Mobberley in  
24 the call report; isn't that right?
- 12:19:11 25 A. Yes.
- 26 Q. 121 So Mr. Smyth, in effect, is saying in this letter that Mobberley is Mr. Gannon;  
27 isn't that so? That's what he's saying.
- 28 A. That's what he is saying and that is untrue.
- 29 Q. 122 And that is untrue?
- 12:19:22 30 A. Yes.

12:19:23 1 Q. 123 Now, obviously the Tribunal has endeavoured to establish what precisely this is  
2 in relation to, given that it involves the Coolamber lands and has made orders  
3 for discovery in relation to Mr. Smyth which has produced certain  
4 documentation, all of which has been furnished to you to date, save the  
12:19:47 5 documentation received earlier this week, which is in the course of being  
6 analysed to see whether it is material.

7  
8 But the documents which I now intend to put to you are documents which have  
9 come through to the Tribunal through the avenue of discovery, from Mr. Smyth,  
12:20:07 10 from the Bank of Ireland, against whom orders were made in relation to accounts  
11 which involved the transaction of the funds which we will see appearing in  
12 Mr. Smyth's accounts. And they are with a view to establishing who is  
13 Mobberley? And whether or not it is the company that was promoting the take  
14 out of the Southfield lands in the manner described by Mr. Smyth in the call  
12:20:31 15 report of the 15th of November.

16  
17 So I'd ask you, firstly, to look at a document which is at page 3256.

18  
19 If we can turn that, please? Now, this document is difficult to decipher,  
12:20:58 20 Mr. Gannon. For that reason we have typed beneath it where you see "Tribunal  
21 transcription". In typed format we have the content which is in manuscript in  
22 the document above, and you may take it what is in the typed transcript is an  
23 accurate reflection of the three entries that are referred to there. So I  
24 intend to work off the typed entries rather than trying to decipher the  
12:21:31 25 manuscript, if you understand?

26 A. In other words who, you put a typed, you've typed out this --

27 Q. 124 We've typed out what was there in manuscript because they are very poor copies  
28 of it, but you may take it that it is an accurate transcription of what is  
29 contained in the document.

12:21:47 30 A. Okay.

12:21:47 1 Q. 125 Now, the document firstly, is a cheque journal. And it's a cheque journal of  
2 the cheques which were written by Noel Smyth & Partners solicitors within the  
3 period in December 1991, which is the subject at the moment of our inquiry.  
4

12:22:06 5 And the data that we see in relation to the transactions which is set forth in  
6 the typed addendum to the original here at the base of it, contains firstly,  
7 the date, secondly the cheque number, thirdly, the name of the party to whom  
8 the cheque was made out. Fourthly, the amount of the cheque. And fifthly,  
9 the description which is entered by the accountant against that individual  
12:22:37 10 cheque in the cheque journal; do you understand?

11 A. Yeah.

12 Q. 126 So we will be looking at, on this document, three cheques. And they are dated  
13 the 23rd of December 1991, the 20th of December 1991 and the 23rd of December  
14 1991.

12:23:06 15  
16 Now, I should point out that the first of those cheques appears to be in date  
17 sequence three days before the second cheque in line there; you see that?

18 A. Yeah.

19 Q. 127 And that is because the cheque is written in now as being the 23rd, although it  
12:23:24 20 is in a sequence of cheques which was written on the 20th. So there is an  
21 over imprint of the letter 3 over the 0 that was there originally. And we will  
22 see that in the original cheques which are on the following page and I'll get  
23 to that in a moment. But I'm just explaining that to you because it qualifies  
24 the exact description of the cheque as it appears in the journal here.

12:23:50 25  
26 The first cheque, as I say, which bears the date 23rd, was originally written  
27 on the to 20th apparently or dated the 20th. And it is made out to Goodman  
28 International. And it's made out for a sum of 158,560 pounds. And it is  
29 entered in the cheque journal of Mr. Smyth against the name Mobberley Limited;  
12:24:26 30 you see that?

12:24:26 1 A. Yes.

2 Q. 128 As you will recall from the document written, that is the letter of Mr. Smyth,  
3 written on the 19th of December, he identified Mobberley as being the company  
4 which was going to take out the Coolamber lands in the event that the bank was  
12:24:39 5 prepared to sign over its debt or assign its debt to that company; isn't that  
6 so?

7 A. Yes.

8 Q. 129 And it is the entity Mobberley which he says he referred to at the meeting of  
9 the 15th of December, at which your name was identified as the person who was  
12:24:55 10 involved; do you understand?

11 A. Yes.

12 Q. 130 So in this cheque journal, following it through, the logical conclusion to draw  
13 from that would be that Mobberley, that is yourself, according to what was said  
14 by Mr. Smyth, and I of course appreciate your --

12:25:17 15 A. Sorry, I'm not Mobberley.

16 Q. 131 I know. That's what I'm saying. I appreciate entirely what you are say that  
17 you are not Mobberley. But in the sequence of events that I have described  
18 where Mr. Smyth is the author of the document where he says his clients are  
19 Mobberley?

12:25:36 20 A. That is not me.

21 Q. 132 I appreciate that. And where he says that he indicated that at the meeting on  
22 the 15th of November where you were identified, it is obvious that at the time  
23 of the writing of this cheque, Mr. Smyth was indicating to Bank of Nova Scotia,  
24 at least, that you were Mobberley. I'm not asking you to agree with whether  
12:25:59 25 that is accurate or not as regards being truthful. But that is the position  
26 that was adopted by Mr. Smyth, for better or for worse; isn't that so?

27 A. That's not true.

28 Q. 133 I appreciate that. And I appreciate that that is your response to the query.  
29 But the record of the transaction that we see here, is one which was prepared  
12:26:21 30 by the staff in Noel Smyth's office. At a time one day after the letter was

12:26:28 1 written by Mr. Smyth, in which Mr. Smyth was in effect identifying you as  
2 Mobberley, rightly or wrongly; isn't that so?

3 A. Yes.

4 Q. 134 It's just to understand the sequence of the documents.

12:26:41 5 A. That's what it says, yes.

6 Q. 135 Because in this journal entry we'll see that Mobberley, a company, is described  
7 as being the party against whom this cheque is referenced; do you understand?

8 A. Yes.

9 Q. 136 And if we go immediately beneath that then we'll see the 20th of December,  
10 cheque No. 4826, is a cheque made out to Bank of Ireland for 159,997 pounds.  
11 And against that cheque we see the reference Elangrove/Mobberley Limited; you  
12 see that?

13 A. Yeah.

14 Q. 137 And again, the day before that entry, when that cheque was written, Mr. Smyth  
12:27:33 15 was writing to the bank in connection with Elangrove/Mobberley, asking that the  
16 bank would set up an account into which the sum of 350,000 pounds could be  
17 lodged as a sign of the bona fides of his clients in advancing their take out  
18 procedure; isn't that right?

19 A. Sorry, can you repeat that?

12:27:50 20 Q. 138 In the letter of the 19th of December, Mr. Smyth was writing to the bank asking  
21 them to extend the facility to him of opening a deposit account --

22 A. Oh, yes.

23 Q. 139 -- into which 350,000 pounds could be lodged, effectively as a back-to-back --

24 A. Yes.

12:28:07 25 Q. 140 -- meeting the debt as a sign of the bona fides; isn't that correct?

26 A. That's correct.

27 Q. 141 And again, it is in relation to Elangrove and Mobberley that the reference is  
28 there to the Bank of Ireland cheque, written on the 20th of December 1991, for  
29 159,997 pounds; isn't that so? And the third journal entry here which is  
12:28:34 30 relevant, is one on the 23rd of December 1991, and that's cheque No. 4830. And

- 12:28:43 1 the payee there is identified as Gannon Homes Limited. The amount is shown as  
2 70,000 pounds. And the reference given to that is L 10 - 10 perhaps hyphen 8;  
3 do you see that?
- 4 A. Yes.
- 12:29:01 5 Q. 142 Now, we'll examine the money trail in relation to each of these three cheques,  
6 which we see in the cheque journal here. But can you tell me at this point in  
7 time, if you've any recollection of any transaction in the 23rd of December  
8 1991, or immediately thereafter extending into January of 1992, whereby Noel  
9 Smyth and Partners were paying you 70,000 pounds?
- 12:29:34 10 A. Well, I was involved in Airfield around that time.
- 11 Q. 143 Airfield?
- 12 A. Yes, as I said to the Tribunal already, with Noel Smyth. He owned land over  
13 there which I was working on. And he obviously gave me cheques from time to  
14 time. Now, I don't know exactly what dates he gave me the cheques. But I'm  
12:29:56 15 just surprised that -- this is coming out of Noel Smyth & Partners?
- 16 Q. 144 Yes, this is the cheque journal of Noel Smyth & Partners prepared for the month  
17 of December and --
- 18 A. Right. Well the work -- I was working for was Livingstone Property Co.  
19 Limited.
- 12:30:16 20 Q. 145 Livingstone Property Co. Limited, and in that company was Mr. Smyth a partner  
21 of your's in the venture, was he a solicitor acting for you in the venture, was  
22 he both or was he --
- 23 A. No, he owned the land.
- 24 Q. 146 He was the land owner; is that right?
- 12:30:31 25 A. Yeah.
- 26 Q. 147 And what was your role in relation to that?
- 27 A. He was employing the architects, engineers, all of that kind of stuff, grounds  
28 work.
- 29 Q. 148 And what were you employing them for?
- 12:30:43 30 A. For the land in Airfield.

- 12:30:44 1 Q. 149 But were you building on the land in Airfield?
- 2 A. No, we were, at that stage, he'd bought the land.
- 3 Q. 150 Yes?
- 4 A. And I was on management on the overall site.
- 12:30:55 5 Q. 151 In the capacity of being the project manager; is that right?
- 6 A. Yeah, exactly.
- 7 Q. 152 We may have to of course inquire into that. But it doesn't seem to be
- 8 immediately material to this transaction unless you believe that this 70,000
- 9 pounds was paid to you at this time, in connection with your project management
- 12:31:17 10 role; was it?
- 11 A. I don't actually know but I just assume it might be.
- 12 Q. 153 It may be. If it was being paid to you as project manager, is there any reason
- 13 why it would be paid to Gannon Homes Limited?
- 14 A. Gannon Homes Limited would have been the project managers. That's why the
- 12:31:34 15 cheque would have been made out to Gannon Homes. But it would not have been
- 16 from -- it would have come from his company rather than from Noel Smyth &
- 17 Partners, I would have thought.
- 18 Q. 154 Okay. So then you don't have a recollection of having a dealing with Noel
- 19 Smyth & Partners solicitors which resulted in that firm writing a cheque on its
- 12:31:56 20 practice account to you in the sum of 70,000 pounds?
- 21 A. No, what they done inside in their internal stuff, I wouldn't have a clue.
- 22 Q. 155 Sure. But you would be the recipient of a cheque which would show on the face
- 23 of it Noel Smyth & Partners, solicitors, isn't that right? Because that is the
- 24 format of their cheques.
- 12:32:18 25 A. Livingstone Properties would be the on the cheque.
- 26 Q. 156 That would be the one that you would normally have got. That cheque then
- 27 would find itself accounted for in the cheque journal of Livingstone Properties
- 28 Limited and not in the cheque journal of Noel Smyth & Partners, solicitors.
- 29 A. That would be correct.
- 12:32:37 30 Q. 157 What we are asking you about now is in relation to a cheque which was a cheque

12:32:48 1 drawn on the account of Noel Smyth & Partners solicitors, in Bank of Ireland,  
2 on the 23rd of December 1991. And I'm asking you whether, at this point in  
3 time, you can recollect any circumstances in which that firm of solicitors was  
4 paying you 70,000 pounds as of that date?

12:33:02 5 A. No.

6 Q. 158 And do you know of any reason why they would be paying you money which might  
7 have originated in an account in the Isle of Man, for example, through a  
8 banking institution called Rea Brothers or Close Bank Limited?

9 A. None whatsoever.

12:33:20 10 Q. 159 Fine. The next document I'd ask you to look at, Mr. Gannon, is at page 2903.  
11 And we see this by reference to the earlier synopsis, which was the cheque  
12 journal.

13  
14 We see here three cheques. The first of which I mentioned to you earlier, as  
12:33:46 15 being the first in sequence there, that was the cheque which bore the date the  
16 23rd of December 1991, but which was perhaps originally written on the 20th.  
17 I mentioned that; do you see that?

18 A. Yeah.

19 Q. 160 Its cheque No. is 4824 and it's for a sum of 158,560 pounds and it's made  
12:34:14 20 payable to Goodman International. And the Tribunal has been told this is a sum  
21 which represented the indebtedness of Southfield Limited to Mr. Goodman's  
22 company, Cork Company Limited, and comprised 94,000 pounds of interest which  
23 had been incurred on the Southfield loan between December of 1987 and June of  
24 1990. That the balance then was made up of a payment of 50,000 pounds, which  
12:34:46 25 was made to Mr. Liam Lawlor's company or Mr. Lawlor APL Limited in February  
26 1988 and 12,513 pounds which was payable by way of a stamp duty payment made in  
27 August of 1988. That's how the 158,560 pounds is made up. And it equally, as  
28 you will be aware, is the sum which was mentioned in the second letter --  
29 sorry, in the first letter of Mr. Noel Smyth to the bank on the 19th of  
12:35:24 30 December, where he talks of a figure of in and around 158,000 pounds being due

12:35:29 1 to Mr. Goodman; do you understand?

2 A. Yes.

3 Q. 161 The next cheque then beneath that, is the cheque also of the 20th of December.

4 And it's made payable to Bank of Ireland in the sum of 159,997 pounds. And

12:35:52 5 that sum apparently, with the addition of 3 pounds to it, makes 160,000 pounds,

6 which was a sum which was transferred, apparently, from the bank in the Isle of

7 Man, Rea Brothers Limited, to the account of Mr. Noel Smyth and was used to

8 fund the payment above it of 158,560 pounds to Larry Goodman. We'll see, we

9 can trace that through the documentation. I'll just take you through that.

12:36:28 10

11 The next document in sequence is No. 2991. And this is a statement of account

12 of the office account of Noel Smyth & Partners for the month of December. And

13 if you look to the item for the 20th of December, the third item down, it is a

14 sum of 159,997 pounds. And it is a credit coming in to the office account,

12:37:09 15 current account of Noel Smyth & Partners; you see that?

16

17 The next document is at page 2916. And again, this is an account of Noel

18 Smyth & Partners solicitors. But on this occasion it is the clients account,

19 current account, as opposed to the office account, current account. These are

12:37:44 20 the monies of the clients of Mr. Smyth. And we'll see that there is a transfer

21 on the 20th of December, by way of lodgement -- sorry. Immediately below the

22 lodgement, an account transfer of 159,997 pounds. And that reflects the

23 transfer into this account of the money which had been transferred initially

24 into the office account; do you see that?

12:38:16 25 A. Uh-huh.

26 Q. 162 Now, once that money arrived in the office account of Noel Smyth & Partners and

27 left that account to the client's account, a cheque was written on the client's

28 account, which we see referred to at page 2917.

29

12:38:36 30 At the very top there, at the 23rd of December, we'll see cheque No. 4826 for

12:38:49 1 159,997 pounds; right? And that cheque is dated the 23rd in this account as  
2 having cleared into the account on that date; you see that?

3 A. Yeah.

4 Q. 163 And if we refer back to the document at page --

12:39:10 5  
6 CHAIRMAN: I'm just wondering was that last -- that didn't seem to correspond.  
7 What's on the screen now doesn't seem to correspond with what you've just said.

8  
9 MR. O'NEILL: Oh, I beg your pardon. You should have on screen page No.  
12:39:24 10 2917. Sorry. 2917.

11  
12 CHAIRMAN: That is 2917. There is no figure there over 100,000.

13  
14 MR. O'NEILL: Well certainly my hard copy with the Tribunal brief number on  
12:39:41 15 it. I can have it photocopied again unless there are two entries in the  
16 system. Yes. I think we'll have to scan that. Just bear with me a moment,  
17 Mr. Gannon.

18  
19 Yes, that document that's on screen now, I don't know if it's, is it legible to  
12:41:35 20 you, Mr. Gannon? We have a hard copy if you wish to see it.

21 A. That's okay.

22 Q. 164 It's account statement No. 592. And it's the 23rd of December 1991. And  
23 you'll see that the first entry there against the 23rd of December, is a cheque  
24 No. 4826 recorded as being in the sum of 159,997 pounds. And if we move from  
12:42:08 25 that to the document earlier on screen showing the cheques themselves, you'll  
26 see that is the cheque at page 2903.

27  
28 The second cheque down there No. 4826, is the cheque to the Bank of Ireland; do  
29 you see that?

12:42:35 30 A. Yes.

12:42:35 1 Q. 165 So the cheque in the Bank of Ireland is cashed in this account on the 23rd of  
2 December. But if we revert to page 2916, we'll see in the immediately earlier  
3 statement which should be No. 591, that on the 23rd of December the second  
4 lodgement down to that account is a sum of 160,060 pounds and 2 pence; do you  
12:43:20 5 see that? It's the third item up from the bottom.

6 A. Yes, yes.

7 Q. 166 Now, that lodgement represents, apparently, the deposit interest which was  
8 earned on the monies in question which were taken out and put on deposit for a  
9 day or a day and a half, as far as I can see. And that is confirmed in a  
12:43:45 10 lodgement record produced by the bank which we see on page 2905.

11  
12 Which is lodgement record of the sum of 159,997 pounds. And beneath it we see  
13 the 160,060 pounds and 2 pence. So this is the bank's deposit record or  
14 lodgement record of having received a cheque for 157,997 pounds. They had it  
12:44:34 15 on deposit and the deposit translated into 160,000, which is then shown in the  
16 account as a lodgement, that's the sequence of how it occurred.

17  
18 So that those funds indicate that Goodman International, in being paid that sum  
19 of 158,560 pounds was funded by a lodgement of 159,997 pounds, which was made  
12:45:12 20 to Noel Smyth's office account on the 20th of December. And we will see the  
21 source as to how that occurred in the next series of documents on screen.

22  
23 If we look, first, to the document at page 3241. If we can turn that, please?  
24 This is a document produced by Rea Brothers Isle of Man Limited which is also  
12:45:45 25 known as Close Bank Limited. It's a statement sent to Mobberley Limited of  
26 its pound sterling premium account. And you'll see that the account details  
27 are that, on the 5th of December of that month there was a zero opening  
28 balance, so there was no money in the account as of that time. But on the  
29 19th of December of 1991 there was a lodgement or a credit to that account of  
12:46:22 30 475,994 pounds and 50 pence sterling. And as we know, that date, the 19th of

12:46:35 1 December, was the date upon which Mr. Smyth wrote his letter to the bank in  
2 relation to the lodgement of 350,000 pounds on behalf of his client, Mobberley,  
3 in Bank of Nova Scotia if they were prepared give him the number for Elangrove;  
4 you understand? The sum of 475,994 pounds and 50 pence represented an Irish  
12:47:08 5 punt equivalent, on that day, of 510,028 pounds 10 pence which is a calculation  
6 based on the rate of exchange of 1 Irish pound, that is 1.0715 Irish pounds  
7 equalling 1 pound sterling. Now, you'll see that, on the 20th, there is an  
8 entry which is a withdrawal from that account of 149,362 pounds and 58 pence;  
9 you see that?

12:47:57 10 A. Yeah.

11 Q. 167 And the narrative against that, is that it is 168,000 Irish pounds to Noel  
12 Smyth & Partners. And in fact, the figure 168,000 is in error. And it should  
13 read 160,000, as we'll see on the next document generated in relation to this  
14 exchange.

12:48:27 15  
16 Now, once that 160,000 pounds Irish left the account, it left in the account a  
17 balance of 350,028 pounds and 10 pence Irish in the account; you see that?  
18 Which is 28 pounds and 10 pence more than the sum that Mr. Smyth was writing to  
19 the bank on the same day as being the funds which he had available on behalf of  
12:48:54 20 his clients Mobberley Limited to lodge to the account in Bank of Nova Scotia as  
21 a sign of his bona fides on behalf of his client. And in the hope that they  
22 would transfer the loan of Southfield to his clients; do you understand?

23 A. Yes.

24 Q. 168 The next document on screen is at page 3245. And this is the foreign exchange  
12:49:23 25 advice note prepared by Rea Brothers. And you'll see that it confirms the  
26 following foreign exchange deal with you valued 20th of December 1991.  
27 Purchase from you English pounds sterling 149,323.38 at an exchange rate of  
28 1.0715. Sale to you Irish pounds 160,000 pounds. Charges; 39.20. And then a  
29 balance of 149,362.58 coming out of the account.

12:50:08 30

12:50:08 1 That, I think, clarifies the apparent error on the face of the earlier document  
2 about the sum being 168,000. It wasn't. It was 160,000.  
3  
4 The sum then of 160,000 pounds in Irish pounds was in the Rea account or was in  
12:50:33 5 Rea bank as of the time of that transaction. And we'll see from the next  
6 document, which I'll put on screen, at page 2992. That these monies or that an  
7 equivalent sum, I should say, at the same time, came to the account of Noel  
8 Smyth & Partners via Bank of Ireland, whose computer record this is of a  
9 transaction. We'll see at the very top, on the left-hand side, beneath  
12:51:18 10 "customer out" it says "Rea ourselves." Moving across to "customer out" it  
11 gives a bank account number. "Rea/Noel Smyth & Partners clients account."  
12 Sorry, it may not be "Rea" but certainly it's "Noel Smyth & Partners clients  
13 account."  
14  
12:51:46 15 On the line beneath that then working from left to right, you will see a sum in  
16 Irish pounds of "159,997" pounds; you see that?  
17 A. Uh-huh.  
18 Q. 169 And if you move across you'll see that that represented 160,000 pounds from Rea  
19 Brothers, Douglas, Isle of Man. Translating as 159,997 Irish pounds to Bank of  
12:52:32 20 Ireland, Baggot Street. And if you go down about four lines beneath that you  
21 will see as regards details of payment the name "Mobberley Limited."  
22  
23 So, I think we can conclude that the monies which were in the Mobberley's  
24 account which equated to a sum of in or about 500,000 pounds, lodged as of the  
12:53:01 25 19th of December, had from them 160,000 pounds taken, transferred from Rea  
26 Brothers/Mobberley account to Bank of Ireland, through the international  
27 system, the 160,000 pounds has a deduction of three pounds for the transaction  
28 and therefore it translates into a lodgement figure of 159,997 pounds. And  
29 that sum, I suggest, represents the monies which were paid to Goodman  
12:53:42 30 International by the cheque for No. 4824. The funds to fund that originated

12:53:54 1 out of the Rea Brothers account of Mobberley Limited.

2

3 Now, the Tribunal has been told in the course of the evidence of Mr. Larry

4 Goodman, that the sum of 158,560 pounds was sourced by him from his private

12:54:23 5 assets, was sent through a method that he does not know at this point in time,

6 to Mr. Noel Smyth, so that Mr. Smyth could write a cheque for 158,560 pounds

7 which would be used as the consideration in an assignment of the Southfield

8 debt. The Southfield debt was to be assigned for that sum of 158,560 pounds

9 to a company called Elangrove Limited. And Elangrove Limited was, therefore,

12:55:07 10 to become the owner of the debt or to stand in the shoes of Mr. Larry Goodman's

11 former company, Cork Limited, which had advanced the monies. The Tribunal is

12 told that these monies, which came from Mr. Smyth's account by means of the

13 cheque to bank -- from Bank of Ireland to Goodman International, satisfied the

14 indebtedness of Goodman International, which is the parent, which had given the

12:55:49 15 money which Mr. Goodman in turn had given to Southfield.

16

17 Tying that in with the proposal which was expressed in the letter written by

18 Mr. Noel Smyth on the 19th of December of 1991. That was the 158,000 pounds

19 which was discussed in that letter as having been the monies which were taken

12:56:06 20 by Mobberley or by his clients, more accurately, in consideration of a payment

21 for that sum.

22

23 So, if that evidence is correct, it would appear that Mr. Goodman's monies were

24 channelled to Mr. Smyth, through an account in the Isle of Man, in the name of

12:56:30 25 Mobberley, which was held in Rea Brothers; do you understand?

26 A. Yeah.

27 Q. 170 Equally, Mr. Smyth, in his correspondence with the bank, is appearing to

28 indicate that Mobberley was one and the same as the party with whom he had made

29 the initial proposal to the bank in November, and that was you, although you

12:56:53 30 reject that as being true; isn't that so?

- 12:56:55 1 A. That's absolutely incorrect.
- 2 Q. 171 Yeah. Now, we dealt a little earlier with there being a cheque which was  
3 written to Gannon Homes Limited for 70,000 pounds. And I want to try and trace  
4 the route through which that 70,000 pounds was dealt with. We saw it in the  
12:57:19 5 first instance, on the cheque journal, where it was the last of the three items  
6 which are shown on document 3256, as being the 23rd of December 1991, "cheque  
7 No. 4830. Payee: Gannon Homes Limited. Amount: 70,000. Reference; L10 -  
8 80."  
9
- 12:57:50 10 We'll see at page 3255, if we can turn that, please? This is a document which  
11 has been provided to the Tribunal by Noel Smyth & Partners as part of the  
12 discovery process. The blanking out of documentation or the redacting of the  
13 information has been carried out by Noel Smyth & Partners. The Tribunal,  
14 therefore, is not aware of the other transactions that are listed here or the  
12:58:26 15 amounts of them. But it follows since they are redacted that Mr. Smyth or  
16 Smyth, Noel Smyth & Partners believe that these other references do not relate  
17 to the 70,000 pound transaction to you, which is the subject of an order; do  
18 you understand?
- 19 A. Okay, yeah. This is a year later?
- 12:58:51 20 Q. 172 This is not a year later, no. This is 1991.
- 21 A. Oh, no, sorry, it's not. It was 1992?
- 22 Q. 173 Yeah. It refers to a December 31st, 70,000 pounds.
- 23 A. Sorry, yes. Yes, sorry.
- 24 Q. 174 Now, that is a record of the client deposit savings account; right?
- 12:59:17 25 A. Right.
- 26 Q. 175 And you'll see that from that account, on that date, the 31st of December,  
27 70,000 pounds is taken.
- 28 A. Yes.
- 29 Q. 176 We'll see on the next document, at page 2921. This is now the current account  
12:59:35 30 of the same firm, Noel Smyth & Partners. The client's current account. So

12:59:42 1 the money which had been on deposit for clients is taken out and put in the  
2 current account obviously to meet a liability which is coming in; do you  
3 understand?

4 A. This is the current account here is it?

12:59:56 5 Q. 177 This is the current account in front of you now. Sorry, it should be 2921.  
6 Unfortunately, it seems our sequencing is --

7

8 CHAIRMAN: All right. It's probably a useful time to break anyway. It's

9 just gone one o'clock, so we'll rise until two o'clock.

13:00:26 10

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

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

**CONTINUATION OF QUESTIONING OF MR. GERRY GANNON**

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

MR. O'NEILL: Before lunch, Mr. Gannon, we were going through the documentation generated in the bank accounts of Noel Smyth & Partners in connection with the 70,000 pounds which we're endeavouring to link or relate to the entry which was in the cheque journal of Noel Smyth & Partners showing that a cheque No. 4830 in the sum of 70,000 pounds was shown as a payment to Gannon Homes.

And the first document we looked at was page 3255, which is a statement of the no. 2 client deposit savings account of Noel Smyth & Partners. And the only unredacted item there is the 70,000 pounds which is shown against the 31st of December of 1991. And it's shown as an account transfer. Which means that it transfers within the Bank of Ireland group, by reason of that description. And we'll see that it finds itself or an equivalent sum finds itself in the accounts, again, of Noel Smyth solicitors. But on this occasion the client's account current account as opposed to deposit account. And that occurs on the same date, the 31st of December, at page 2920.

The first item there as against the date, the 31st of December, is an account transfer for 70,000; do you see that? And correspondingly in the debit side then there is a cheque. Unfortunately they don't give us the cheque number but there is a cheque payment out of 70,000 pounds on that date. Which would appear to suggest that clients monies on deposit in the account are taken out in anticipation of meeting the liability, to meet the 70,000 pounds cheque; you see that?

14:08:14 1 Now, this transaction, that is the dealing with the 70,000 pounds in the client  
2 account, is the subject of an in-house bank -- sorry, in house Noel Smyth &  
3 Partners reconciliation of the accounts for the month of December of 1991 and  
4 we'll find that at page 2924.

14:08:44 5  
6 And if we could turn that, please? At the very top you'll see it's recited as  
7 being "Bank of Ireland client account reconciliation December 1991. Details  
8 requested from 30th of November 1991 to end," I think that's to year end.  
9 Beneath that it says "nominal ledger sheet."

14:09:11 10  
11 And I think if we move down to the fifth item on the date column for the 23rd  
12 of December 1991 -- sorry, it's the sixth item, 23rd of December 1991 there's a  
13 reference "RCT," which is intended I think to reflect receipt reference No.  
14 4161. And it says "Sterling lodgement re payment to Gannon Homes." And if we  
14:09:45 15 move across the column then we'll see in the debit column we'll see "70,000  
16 pounds."

17  
18 Now, I believe that the reference to debit here means that in the context of  
19 Noel Smyth & Partners, their clients monies or the monies of their customers,  
14:10:09 20 not their own. So that a credit to Noel Smyth is in fact a debit otherwise.  
21 The 70,000 which is shown here as coming in by way of a sterling lodgement is  
22 treated as a debit because that is the client's money, not Noel Smyth's money.  
23 Therefore it's a debit to Noel Smyth. It would be a credit if the client had  
24 his own bank account.

14:10:37 25 A. So that's money coming into the account?

26 Q. 178 Exactly. This is money, in other words, which is coming into the account of  
27 Noel Smyth but is treated as a debit there because it's not Noel Smyth's money,  
28 it's money that is going to Noel Smyth's client, it's his client's money.

29 A. Okay.

14:10:57 30 Q. 179 Apparently internal banking documentation would show the same references if you

14:11:02 1 were a customer of the bank, the monies would be shown as debits to the bank  
2 even though they were credits to you. So we're told.

3 A. Okay.

4 Q. 180 Your accountant no doubt would be able to explain this to you. I'm just  
14:11:17 5 taking you through the documentation because that is how it has been explained.

6 A. Then, Mr. O'Neill, what's the other 70 on the right-hand side?

7 Q. 181 The other 70 on the right-hand side then is intended to reflect the contract to  
8 that credit. In other words, that is the money that is meant to be going out  
9 which has been received in; do you understand? So if we look to the narrative  
14:11:42 10 in respect of both of those payments, the first narrative says receipt, that's  
11 "RCT, 4161; sterling lodgement re payment to Gannon Homes." That is intended  
12 to reflect monies entitled to come into the account in the amount of 70,000  
13 pounds. And the purpose for which those funds were received is then recorded  
14 in the next document here, which is 24th of December 1991, cheque "CHQ 4830  
14:12:21 15 payment to Gannon Homes, Gannon Homes Limited." And if you follow that across  
16 to the line where there is a credit you'll see the sum of 70,000 pounds is  
17 there.

18 A. That's credited back into the account again?

19 Q. 182 Well it's not strictly speaking, I suppose, a credit back to the account.  
14:12:41 20 What it is meant to reflect is the contra transaction to the receipt of the  
21 monies into the account from Noel Smyth and sons from an outside source. It  
22 is then paid out to you. One is effectively --

23 A. The money in the account still remains 212,000.

24 Q. 183 Yes.

14:13:00 25 A. It still remains 212,000 after that day.

26 Q. 184 That's right.

27 A. So like the money went in and went out. It didn't stay out.

28 Q. 185 No. We'll see as we work down through the document that the lodgement of the  
29 70,000 pounds is reversed in this nominal lodgement. In the second last entry  
14:13:19 30 on the page. If all had been well the first two entries that we've looked at

- 14:13:28 1 would mean that there would be an accounting for that payment. But as you  
2 progress down through the document you will see that on the 31st of December  
3 1991 there is a reference to a "sterling lodgement from Rea Brothers of 70,000  
4 pounds;" you see that? It's the third last entry up from the bottom of the  
14:13:50 5 line there.
- 6 A. Yeah, that's not referenced to Gannon Homes though.
- 7 Q. 186 We'll see exactly what that is now in a moment. "Sterling lodgement from Rea  
8 Brothers 70,000 pounds." That then is moved across the line to be reflected as  
9 "74,365 pounds and 95 pence." And you'll see that that comes off the "212,000  
14:14:21 10 pounds" which is there, which has been inflated or whatever it might be by the  
11 payment of 70,000 to you, which is earlier reflected further up in the column.
- 12 A. Sorry, Mr. O'Neill. Sorry. Am I allowed question?
- 13 Q. 187 Of course, yes. Certainly you can ask me and I'll try and clarify it. But  
14 perhaps I'll take you through it first and I'll put to you what the accounting  
14:14:52 15 information that we have is and that might --
- 16 A. Okay, fine, sorry.
- 17 Q. 188 Not at all. It might eliminate the necessity for us to debate the issue. I  
18 believe it isn't a matter of debate. This account as reflected here --
- 19 A. It just odds a bit odd to me. I'm not an accountant.
- 14:15:10 20 Q. 189 Nor I, I'm happy to say. The document, if we look to the payment to Gannon  
21 Homes Limited, that is in the debit column of "70,000 pounds."
- 22 A. So you're saying that's coming in?
- 23 Q. 190 If you see that as coming in. Right? And if you then move down to the last  
24 70,000 pounds in the credit side; you see that?
- 14:15:34 25 A. Yeah.
- 26 Q. 191 70,000 against the reference receipt -- sorry "reverse deposit lodgement;" you  
27 see that?
- 28 A. Sorry?
- 29 Q. 192 The second last line. If you follow?
- 14:15:48 30 A. Oh, yes, yes, yes.

14:15:49 1 Q. 193 You see that?  
2 A. Yes.  
3 Q. 194 Our information is that that credit of 70,000, which is shown under the heading  
4 "credit," is in fact a debit from the point of view of you, the customer,  
14:16:02 5 though it shows --  
6 A. Mr. O'Neill, how do you know that's me?  
7 Q. 195 Sorry, because that's what we are being told, that it is you. By, Noel Smyth &  
8 Partners say that this credit account indicates that the monies that were paid  
9 to you by way of that cheque were funded by this sterling amount to Gannon  
14:16:23 10 Homes. I'll just go through --  
11 A. Sorry, I fail to understand.  
12 Q. 196 I'll just go through it with you again just so that I will put to you fairly  
13 what the --  
14 A. Can we just agree on one thing. That the payment to Gannon Homes on the first  
14:16:38 15 amount, this is a credit you're saying which is debit on top; is that correct?  
16 Q. 197 This is shown as a debit which should be a credit to you. It's a debit  
17 against Noel Smyth but it's a credit to you.  
18 A. This is really a credit.  
19 Q. 198 This should be a credit to you.  
14:16:53 20 A. And the next 70 on the right-hand side is what?  
21 Q. 199 The next 70 is the interest which is intended to be reflected by the fact that  
22 the cheque was written for 70,000 pounds, cheque No. 4830, and that then would  
23 cancel out the 70 in the immediate, in the other column. That is what was  
24 intended to have taken place if everything happened as it should. But if you  
14:17:17 25 move down in the credit column --  
26 A. Sorry, Mr. O'Neill.  
27 Q. 200 I'll finish first, Mr. Gannon, because we may never agree on it but at least  
28 we'll have it on the transcript?  
29 A. All I can see here is 70 going in and 70 going out and the same figure remained  
14:17:33 30 in here.

14:17:33 1 Q. 201 Exactly. That would be fine if one of them wasn't reversed, and one of them  
2 was reversed. And the reverse is recorded in the second last line entry where  
3 it says "reverse deposit lodgement". And if you go across to the credit side  
4 you'll see "70,000 pounds" is reversed as a lodgement.

14:17:53 5  
6 Now, that reverse is a reverse of the lodgement which is reflected as the debit  
7 in the column for the 24th of December. In other words, the sterling  
8 lodgement payment to Gannon Homes of 70,000 pounds has been reversed on the  
9 31st by the entry, second last there, in the sum of 70,000.

14:18:18 10  
11 Now, I'll just move on from that to the next entry then.  
12  
13 The next entry says "sterling lodgement from Rea Brothers 70,000" on the 31st  
14 of December 1991. And if you move across to the debit side that shows what the  
14:18:38 15 credit to the customer would be, the debit to Noel Smyth but the credit to the  
16 customer would be "74,385 pounds and 95 pence." Beside that there is an  
17 "asterisk" and the words "OS" which means that that sum was outstanding or due  
18 on the account for the purpose of reconciliation at the month's end. So that  
19 the account carried forward a number of items.

14:19:11 20  
21 If you look to the top left hand corner you will see cheque payments which were  
22 made, which are outstanding cheque payments. Those cheques, in other words,  
23 hadn't been paid out though they were cheques written within the period. And  
24 if you move to the right-hand side you'll see outstanding lodgements for  
14:19:31 25 December 1991. These were the sums which were to come into the account so as  
26 to effect the balance which is reflected at the end where it says "balance as  
27 per statement 1,612.63, less outstanding cheques, add outstanding lodgements."  
28 So that's the accounting exercise which is performed on this document.  
29

14:19:58 30 In the outstanding lodgements, that is monies which are expected to be lodged

14:20:05 1 into in the account subsequent to December, is the sum of 74,385 pounds and 95  
2 pence, which is the third item up from the bottom on the outstanding lodgements  
3 reference on screen.

4 A. Can I request you one question?

14:20:22 5 Q. 202 You may.

6 A. Am I supposed to have got 74,385 pounds or am I supposed to have got 70,000  
7 sterling?

8 Q. 203 You're supposed to have got 70.

9 A. 70,000 Sterling?

14:20:35 10 Q. 204 70,000 Irish. The Rea Brothers instruction apparently was such that Rea  
11 Brothers, on being instructed to send over 70 sent over 70,000 sterling. The  
12 70,000 sterling translated into 74,385 pounds and 95 pence and out of that sum  
13 there had already been a transfer of 70,000 pounds from the client deposit  
14 account to meet your payment. So the client account had to be reimbursed by  
15 the monies 74,000 pounds. And that's why it's shown as outstanding.

16 A. So on the 23rd of December 1991.

17 Q. 205 Yes.

18 A. At that stage I did not receive 70,000 pounds.

19 Q. 206 No, you didn't. But they had written a cheque in your favour.

14:21:29 20 A. Can I just finish, Mr. O'Neill. I did not receive 70,000 pounds. So what  
21 you're telling me is that on the 31st of December of that same year --

22 Q. 207 Yes.

23 A. -- I received 70,000 pounds out of the 74,385, is that, does that --

24 Q. 208 No.

14:21:45 25 A. I see 70,000 sorry.

26 Q. 209 The 74,385 pounds and 95 pence didn't come into the account until the 9th of  
27 January --

28 A. Did I put it in or take it out?

29 Q. 210 It came from Rea Brothers in the Isle of Man to meet the cheque of 70,000 which  
14:22:06 30 was made payable to you. That is the sequence of events as the Tribunal

- 14:22:12 1 understands it from the explanations which have been given by the persons who  
2 prepared this document, Noel Smyth & Partners, whose document it is.
- 3 A. It just seems very funny to me that a cheque for 70,000 comes out, goes back  
4 in.
- 14:22:28 5 Q. 211 Well it doesn't go back in. This is an accounting exercise.
- 6 A. This is not a bank statement.
- 7 Q. 212 This is not a bank statement. It's a nominal ledger where the accountant goes  
8 through the bank statements and he works out what the liabilities are, incurred  
9 in that month, by means of cheques drawn on the client account in that month.
- 14:22:49 10 A. So you have not got a cheque with my name on it saying that I got 70,000.
- 11 Q. 213 We do not have the cheque because we have not sought discovery from you of your  
12 accounts.
- 13 A. I have no troubling giving it to you if I have it.
- 14 Q. 214 Which of course we will pursue. I am just trying to trace for you --
- 14:23:10 15 A. I'm just trying to understand. You're saying Gannon Homes got this money.  
16 I'm just trying to understand, what you're saying is that this money came from  
17 Rea to Noel Smyth and then to me. Is that what you're telling me?
- 18 Q. 215 The money came -- the cheque was written to you in the sum of 70,000 pounds in  
19 advance of the money actually being received from Rea Brothers. The cheque  
14:23:36 20 was written on the client account of Noel Smyth & Partners. It was then  
21 treated by the accountants as being a cheque which was written within the month  
22 and therefore would have to have a contra.
- 23 A. But the cheque didn't come direct from Rea to me.
- 24 Q. 216 No, it's not a Rea cheque.
- 14:23:57 25 A. I thought you were telling me that this cheque came from an Isle of Man company  
26 to me.
- 27 Q. 217 No. But the source of the funds which were used to meet the cheque, in other  
28 words, to contra the expenditure to you, the incoming funds came from the Rea  
29 Brothers in the Isle of Man to meet the 70,000 pounds, which was being paid to  
14:24:17 30 you by means of Noel Smyth's cheque. That is what the sequence of events

14:24:23 1 indicates. So the cancellations, in other words, just to --

2 A. The cancellation.

3 Q. 218 You may wish to take advice on it of course. And it's likely, in the knowledge

4 that you have indicated now, that there is correspondence and you confirm that

14:24:39 5 there's correspondence in 1991 which touched upon the bank meetings. The

6 question of discovery will be considered and it's probable --

7 A. It just seems very odd to me, Mr. O'Neill. You've showed me all of the

8 cheques for all of these other companies, all of these foreign bank accounts

9 and everything else. And you have a cheque here for me, supposed to have gone

14:25:01 10 to me for 70,000 and I haven't seen it.

11 Q. 219 Yes. You may rest assured, Mr. Gannon, that if that cheque was provided to us

12 by Noel Smyth, who the subject of an order for discovery. And if it had been

13 discovered to us we would produce it to you. And there is an ongoing inquiry

14 into that matter. I am just seeking to establish, insofar as the Tribunal has

14:25:26 15 been provided with documents to date, that the apparent source of the 70,000

16 pounds cheque is the Rea Brothers money.

17

18 I'll move on to where we can see where that Rea Brothers money comes from and

19 you may be able to assist us as to whether or not you know of that entity --

14:25:50 20

21 MR. O'MOORE: Just before Mr. O'Neill does that. I wonder if I can just say

22 two things very briefly. Firstly, it's quite clear that Mr. O'Neill has the

23 advantage of an explanation of this document. I must say neither Mr. O'Neill

24 or I are accountants, an explanation is very helpful as to what the movements

14:26:06 25 involved and it may help the witness if that account given by Noel Smyth's &

26 Partners could be passed on to us. We haven't seen that explanation of the

27 document. The second thing, is that Mr. O'Neill referred to correspondence of

28 the bank about meetings and so on. I'm not quite sure if that was said.

29

14:26:23 30 I just want to make is very clear to the Tribunal. Mr. Gannon's riding

14:26:29 1 instructions to us has been, that any document relevant to anything the  
2 Tribunal is looking after will be given if an order for discovery is made or if  
3 it's sought to be volunteered that's available to the Tribunal. You will be  
4 aware that two orders for discovery have been made and which we have been asked  
14:26:44 5 to consent to and we have done so readily within quite tight time limits. It  
6 may help to move things on if I was to say, that any document in relation to  
7 the 70,000 pounds cheque made out to Gannon Homes, any other transactions  
8 Mr. Birmingham might have handled at the time or thereafter any of that can be  
9 made available to the Tribunal in a relatively short amount of time.

14:27:06 10  
11 CHAIRMAN: Mr. O'Neill, just to assist Mr. Gannon. Is it correct that the  
12 net effect of all those entries, and Mr. Gannon obviously and his own advisors  
13 will have an opportunity to consider the actual entries in due course. But  
14 that the net effect of those entries for the month of December is that 70,000  
14:27:30 15 appears to go to Mr. Gannon's company?

16  
17 MR. O'NEILL: Yes. The cheque, as we see in the cheque journal, the cheque  
18 is made out to Gannon Homes Limited.

19  
14:27:40 20 CHAIRMAN: All right. And it would appear that the funds for that cheque came  
21 from Rea Brothers in the Isle of Man. The 74 odd thousand.

22  
23 MR. O'NEILL: The reimbursement of the payment --

24  
14:27:55 25 CHAIRMAN: Yes.

26  
27 MR. O'NEILL: So if I could perhaps take it in stages. This document appears  
28 to indicate that there is a cheque written to Mr. Gannon, to Gannon's company,  
29 Gannon Homes Limited. That cheque, the existence of that cheque is recorded  
14:28:10 30 in the cheque payments journal prepared by Noel Smyth & Partners. It gives

14:28:16 1 the cheque number as cheque 4830, a cheque for 70,000 pounds.

2

3 That then requires accounting treatment within the month of December when one  
4 is addressing a nominal ledger reconciliation, which is what this document is.

14:28:35 5 It doesn't necessarily involve, it doesn't necessarily mean that all of the  
6 transactions have taken place within the period.

7

8 CHAIRMAN: It assumes that there's a 74 odd thousand sum coming from the Isle  
9 of Man.

14:28:51 10

11 MR. O'NEILL: Exactly. To meet a shortfall --

12

13 CHAIRMAN: But it hasn't landed into the account.

14

14:28:51 15 MR. O'NEILL: It's carrying forward a 74,000 pounds shortfall which is created  
16 by the fact that there has been a payment out on the 31st of December, a  
17 transfer from the -- sorry, a transfer from the deposit client account, which  
18 is the very last entry on the 31st of December. But that has not been  
19 satisfied from the fund which was reversed, that is the deposit which is  
14:29:23 20 referred to earlier as "sterling lodgement payment to Mr. Gannon, to Gannon  
21 Homes." Right? Was to be followed by the actual payment. The actual  
22 payment record is then stated to be here. But the incoming funds did not come  
23 as intended. And that is reflected, as I understand it, by the carrying  
24 forward of the 74,385 pounds lodgement.

14:29:54 25

26 Now, can I say, firstly, that the document that's prepared here is not prepared  
27 in December. It's prepared in January at a later stage reconciling the  
28 accounts of a month earlier. And it does so and is able to give the sterling  
29 equivalent of 70,000 pounds down to the penny because the accountant preparing  
14:30:19 30 the document, in all probability, had available to him the bank account for the

14:30:26 1 following month which showed how the 70,000 sterling translated into precisely  
2 that amount in punts. And we will see that on the next document.

3  
4 CHAIRMAN: We also know from the cheque journal, that there's a cheque written  
14:30:43 5 to Gannon Homes for 70,000.

6  
7 MR. O'NEILL: Yes.

8  
9 CHAIRMAN: Mr. Gannon, as I understand it, appears not to know anything about  
14:30:52 10 that cheque, is that right?

11 A. Sorry, Your Honour. When I seen the Gannon Homes, 70, and then put back into  
12 the account again it obviously is a bit confusing.

13  
14 MR. O'NEILL: If I might say. The net effect, as the Chairman was enquiring  
14:31:07 15 as to what this document records, is that, as of the 31st of December 1991, the  
16 Noel Smyth client account was out-of-pocket or short 70,000 pounds, which had  
17 been paid to Mr. Gannon and which would have to be accounted for by means of a  
18 subsequent payment from Rea Brothers because the initial Rea sterling account  
19 had been reversed.

14:31:35 20 A. Sorry, Mr. O'Neill. Can I just say.

21  
22 MR. O'NEILL: You may not agree with that, Mr. Gannon.

23 A. Why are you saying a paid to Gannon's? We have no evidence at the present  
24 moment in time that I ever got the 70,000 pounds.

14:31:49 25  
26 MR. O'NEILL: The evidence is, that there is a cheque journal prepared by Noel  
27 Smyth & Partners which we see on page 3256, which says that on the 23rd of  
28 December 1991, cheque No. 4830, was payable to Gannon Homes in the sum of  
29 70,000 pounds.

14:32:08 30

14:32:08 1 Now, that is the document which forms the basis of the accounting  
2 reconciliation which appears on the page that's on screen, at 2924. And what  
3 the reconciliation does is to establish whether though each of those  
4 transactions came to fruition or whether there are outstanding matters which  
14:32:31 5 exist. And one of the outstanding matters which exists here, according to the  
6 analysis of this document, is that the original 70,000, which was referred to  
7 as being a debit but was intended to reflect monies received by way of a  
8 sterling lodgement payable to Gannon Homes, was not in fact received and  
9 consequently because that was reversed on the 31st of December there was an  
14:33:01 10 indebtedness which had to be resolved in favour of the account, which would  
11 mean that a source of funds intended to reflect the sterling lodgement, which  
12 has been reversed, would have to come from another source. And that came from  
13 the other source on the 9th of January in the form of 70,000 pounds sterling,  
14 which was translated into this precise sum of 74,385.95. And that is the sum  
14:33:31 15 which is reflecting the monies which were debited against the payment which had  
16 been made of 70,000 pounds on foot of the cheque to Gannon Homes Limited.  
17 That's as best as I can understand it.  
18 A. Did you say that came in on the 9th of January?  
19 Q. 220 It did yeah.  
14:33:52 20 A. It has here that it came in on the 31st of the 12th.  
21 Q. 221 No, this isn't a bank statement. This is a reconciliation. What the  
22 reconciliation says is that the amount is outstanding. The "OS" indicates  
23 outstanding.  
24  
14:34:15 25 CHAIRMAN: It's going to come in.  
26  
27 MR. O'NEILL: It's going to come in.  
28  
29 CHAIRMAN: In the January --  
14:34:15 30 A. Just so I can get my head around --

14:34:16 1  
2 CHAIRMAN: In January the money is shown to have arrived. In December when  
3 it's being prepared it's, the person preparing it knows the money's coming in  
4 but it hasn't arrived. It arrives in January.

14:34:26 5 A. When am I supposed to have got it? In January.  
6  
7 MR. O'NEILL: Only you can tell us that.

8 A. I can't actually.  
9

14:34:33 10 CHAIRMAN: The other thing that Mr. Gannon should just -- on the 23rd of  
11 December there's a cheque journal entry indicating that Mr. Smyth writes a  
12 cheque to you for 70,000, to Gannon Homes Limited. Now, that's the state of  
13 play at the moment.

14 A. That's the second cheque I got?

14:34:53 15  
16 CHAIRMAN: No, no, this is the one cheque.  
17

18 CHAIRMAN: The other accounts show how the internal accounts in Noel Smyth's  
19 office deals with it. But we know from the cheque journal on the 23rd of  
14:35:05 20 December that a cheque is written to you or to Gannon Homes Limited for 70,000.  
21 Now, it doesn't prove that --

22 A. Yes.  
23

24 CHAIRMAN: It doesn't prove that you got the cheque or that the cheque was  
14:35:17 25 cashed or anything of that nature. So that's --  
26

27 JUDGE FAHERTY: We also know that the client account on the 20th or whatever  
28 date it was. The money was taken from the deposit client account, lodged to  
29 the client, to the current account, upon which the cheque was written.  
14:35:35 30

14:35:35 1 MR. O'NEILL: Yes. The date of the transfer was the 31st of December. It  
2 transferred out of the savings account. It went into the -- as we saw on the  
3 first document which was redacted by Noel Smyth. It came out of the savings  
4 account. It was lodged to the current account where it would naturally be  
14:36:01 5 meeting a cheque for that amount. As we see at 2920, on the 31st, there's the  
6 cheque of 70,000. So you may take it that if this is the transaction,  
7 Mr. Gannon, that sum was debited from the account of, at Bank of Ireland of  
8 Noel Smyth on the 30th.

9 A. 30th of December?

14:36:28 10 Q. 222 31st, I should say, of December, having come into the account on the 30th.  
11 You see the two entries on the very top of the page 2920. The 70,000 came out  
12 of the deposit, it was lodged to the current account, client account, it met a  
13 cheque for 70,000 pounds, the only cheque that we see in the month in question  
14 is the cheque of 70,000 to Gannon Homes. So you may take it that it appears  
14:37:00 15 and of course we don't have the cheque yet. It appears that the Gannon Homes  
16 cheque was paid out of the account on the 31st of December. Now, as of the  
17 31st of December when we look to the document which is the accountant's  
18 reconciliation, we see that there is a carry forward of an indebtedness in  
19 favour of Noel Smyth & Partners of 74,000 and odd pounds. And that  
14:37:28 20 indebtedness is, reflects the fact that credit had been given for a sterling  
21 transfer which was cancelled, and therefore did not take effect. And the  
22 subsequent payment which comes on the 9th of January is the amount which was  
23 used to satisfy that ongoing liability.  
24

14:37:52 25 Now, that is the position. We will look to the next document, 2917, which  
26 shows the money, that is the 74,385 pounds and 95 pence being lodged to the  
27 client current account in Noel Smyth & Partners on the 9th of January of 1992.  
28 That payment, in effect, should cancel the carry forward of the indebtedness to  
29 Noel Smyth & Partners. And the source of those monies is stated as being Rea  
14:38:30 30 Brothers, "IO" equals Isle of Man and we will see that the documentation in the

14:38:36 1 Isle of Man from Rea Brothers, identifies -- or I should say the documentation  
2 in the Bank of Ireland which reflects the transfer from Rea Brothers indicates  
3 how those monies came into that account.

4 A. Sorry, Mr. O'Neill. I'm sorry for holding up the Tribunal but --

14:38:57 5 Q. 223 You're not causing any problem.

6 A. This is just puzzling me. You're telling me now that on the 10th of January.

7 Q. 224 9th.

8 A. 9th of January that money came in from wherever this company is supposed to be.

9 Q. 225 Rea Brothers, Isle of Man. It's a bank.

14:39:14 10 A. Then you are saying that I then got the cheque on the 10th of January, is that  
11 what you're telling me now?

12 Q. 226 No, we're saying that the cheque that was given to you was honoured -- sorry.  
13 The cheque which was written in favour of Gannon Homes Limited by Noel Smyth &  
14 Partners.

14:39:26 15 A. Didn't go to the bank until the 10th --

16 Q. 227 Wait a minute. Was written on the 24th, I believe, of December. Sorry.  
17 23rd of December.  
18  
19 MR. O'MOORE: 23rd of December.

14:39:42 20  
21 MR. O'NEILL: That cheque was presented at the bank and honoured on the 31st  
22 of December. 31st of December.

23 A. Right.

24 Q. 228 And as a result of it being presented, the bank paid out 70,000 pounds. When  
14:39:54 25 they did so the effect of that within the client account of Noel Smyth &  
26 Partners, was to leave the client account of Noel Smyth & Partners deficient in  
27 the sum of 70,000 pounds because a lodgement which was intended to be used to  
28 meet that cheque, which was to be a sterling lodgement, was not made. And  
29 therefore, to reflect the fact that that was not made an entry was made in the  
14:40:23 30 journal, the nominal journal entry to say that 74,300 and odd pounds was due on

14:40:34 1 foot of the payment.

2 A. Mr. O'Neill, sorry, can I ask you just two very simple questions? I don't want

3 to bore you or anything else. Your Honour, I'm sorry about this. Am I

4 supposed to have got this cheque on the 24th of the 12th of 1991?

14:40:51 5 Q. 229 23rd or 24th.

6 A. I was supposed to have physically got this cheque, is that correct?

7 Q. 230 I can't tell you that?

8 A. Sorry, Gannon Homes.

9 Q. 231 It's made payable to Gannon Homes. It's written by a firm of solicitors.

14:41:04 10 They enter it in a sequence of cheques. It is in a sequence of cheques, which

11 suggests that it was in fact written on that day. And that your firm was the

12 payee.

13 A. Right. But you don't know whether I got it or not?

14

14:41:17 15 JUDGE FAHERTY: Well somebody as of the 31st of December 1991 had the benefit

16 of it because it left the client account. Noel Smyth & Partners client

17 current account. We've seen that in the bank documentation that 70,000 was

18 debited from that account. So as of the 31st of December, somebody had the

19 benefit of that cheque that was written to Gannon Homes, as I understand it.

14:41:40 20

21 MR. O'NEILL: Yes. So either you cashed it, Mr. Gannon, or your firm Gannon

22 Homes cashed it. Or some other person managed to cash a cheque which was made

23 out in favour of your company. They are the three scenarios --

24 A. Can I just ask a fourth scenario. Why did it take until 31st of December to

14:41:57 25 the 9th of January -- the 10th of January for the cheque to hit the bank?

26 Q. 232 The cheque didn't hit the bank. It had hit the bank on the 31st of December

27 and was paid for by monies which had been transferred --

28 A. Sorry, this screen up here. Is this different?

29 Q. 233 No.

14:42:13 30

14:42:13 1 MR. O'MOORE: Mr. Gannon is looking at another entry of 70,000 pounds which is  
2 entry of the debit of the 10th of January on screen. I think there has to be  
3 some account given for the fact that this is all entirely new to Mr. Gannon and  
4 a number of the documents --

14:42:30 5  
6 CHAIRMAN: In fairness, there's no difficulty if you want to, if it's  
7 necessary to revisit --

8 A. I'm sorry, I'm looking at the wrong screen. I'm sorry.

9  
14:42:41 10 CHAIRMAN: The 74,000 that you see there of the credit on the 9th of January.  
11 It's our understanding that arrived, albeit a bit late, to meet the cheque that  
12 was cashed on the 31st. So it's coming in nine days later. But that's the  
13 money that comes in, albeit late, to meet the cheque that is cashed on the 31st  
14 of December; do you follow?

14:43:08 15 A. Right.

16  
17 MR. O'MOORE: If I could just make this suggestion to the witness as much as  
18 the Tribunal. Clearly, a number of the documents, I think, including one that  
19 Mr. O'Neill either averted to or was to go to quite soon, arrived as recently  
14:43:20 20 as this morning. We've made no issue about that, we're happy to let the  
21 examination proceed, but I think it's inevitable that we might have to have a  
22 bit of time after the direct examination finishes to look at this.

23  
24 CHAIRMAN: It's preferable that Mr. Gannon is taken through the evidence as we  
14:43:35 25 have it at the moment and then if, there's no difficulty next week if it's  
26 necessary for Mr --

27  
28 MR. O'MOORE: I appreciate that. Thank you.

29  
14:43:49 30 MR. O'NEILL: The document, I think, which is on screen should be page 2917.

14:43:54 1 And we see in that, the reference to the "Rea Brothers IO," which is  
2 abbreviated for Isle of Man, account. And the 74,385.95. You may take it,  
3 Mr. Gannon as I'm sure you know , that international rates of exchange vary on  
4 a daily basis and often indeed on a number of times in the course of a day.  
14:44:23 5 That this particular sum meets exactly the amount which is shown in the nominal  
6 ledger balance for the month of December 1991. And so we may take it that the  
7 accountancy staff who were preparing Mr. Smyth's account were able to enter in  
8 the December account, a figure which corresponds exactly to the Rea Brothers  
9 lodgement, because they had this document available to them to allow them to  
14:44:55 10 calculate the value of the 70,000 pounds sterling indebtedness at that time.  
11 A. Then, Mr. O'Neill, sorry, Your Honour. Well then why didn't they pay me the  
12 74,000?  
13 Q. 234 Because the cheque was for 70,000 Irish not 70,000 sterling.  
14 A. Why didn't they give me the balance of the money.  
14:45:14 15 Q. 235 The cheque was for 70,000 Irish pounds.  
16 A. Sorry.  
17 Q. 236 That a cheque was presented in the bank and 70,000 pounds Irish was paid in  
18 respect of it.  
19 A. I thought you said it was 70,000 sterling.  
14:45:26 20 Q. 237 No, the cheque is an account, as you can appreciate, with Mr. Noel Smyth's  
21 solicitor's client bank account in the Irish bank, the Bank of Ireland is an  
22 Irish pound account and not a sterling account. And the sum of 70,000 pounds  
23 on cheque No. 4830 was 70,000 Irish pounds. And that was the cheque which was  
24 honoured on the 31st of December, presumably, by paying the payee shown on the  
14:45:56 25 cheque the sum of 70,000 pounds.  
26  
27 If we move on now to see where the Rea Brothers money came from, as regards  
28 identifying an account holder there, we move to document 3254.  
29  
14:46:13 30 And this document indicates in the top left hand corner that "Rea Brothers Isle

14:46:21 1 of Man Limited" is the entity sending the money. The money is going to the  
2 account of "Noel Smyth & Partners." The amount of the debit is "GB pounds  
3 70,000." The Irish punt equivalent of that is "74,385.55." It's going to  
4 "Bank of Ireland in Baggot Street." And the person who is sending the money is  
14:46:57 5 a company called "Lontano SA" which the Tribunal is told, translates as "far  
6 away" in Spanish, and it may well be. But do you know of any company called  
7 Lontano SA, Mr. Gannon, who might have owed you 70,000 pounds sterling or  
8 anything approaching that sum in 1992?

9 A. First I've ever heard of it, Mr. O'Neill.

14:47:30 10 Q. 238 Do you know of any circumstances in which a sterling amount was due to you to  
11 be payable through Noel Smyth & Partners in 1991 or 1992?

12 A. No.

13 Q. 239 Do you have any account with the Nat West Bank in the Isle of Man?

14 A. No.

14:47:55 15 Q. 240 Do you know of any reason why --

16 A. Or any of my companies. Either mine, myself or my companies have no account.

17 Q. 241 Are or any trust or any arrangement with Mr. Noel Smyth that he would keep  
18 monies of your's abroad in Rea Brothers Isle of Man or any other location to be  
19 called upon when needed?

14:48:18 20 A. No, neither myself, my family, any of my companies ever had bank accounts. Or  
21 gave Noel Smyth money to put anywhere for me.

22 Q. 242 Right. If it is the case that Lontano SA, that's the equivalent of "limited"  
23 in Spanish, I understand is "Societe Anonym" in French. If that company paid  
24 you any money, have you any reason as to why it is that that company would have  
14:48:51 25 paid you money through Mr. Smyth?

26 A. As I said, I've never heard of the company until now. I would have no reason  
27 whatsoever why they would have paid me money.

28 Q. 243 Right. The funds in question, that is the monies which were lodged to the  
29 account of Rea Brothers Limited, under the name Mobberley. As I indicated to  
14:49:16 30 you earlier, amounted to some 510,000 pounds, which would be sufficient to

14:49:22 1 allow for a 160,000 pounds payment to be made to Ireland to meet the liability  
2 to Mr. Larry Goodman of 158,560 pounds and to leave a balance in the account of  
3 350,000 pounds, which could be used for the purpose of a lodgement with BNS,  
4 that's Bank of Nova Scotia. But which we know was not lodged to Bank of Nova  
14:49:50 5 Scotia. That is the scene, I'm just setting out for the you the sequence of  
6 how one comes to the figure of 510,000 and what one can assume is left in the  
7 account after the payment of the 160,000 pounds to Mr. Smyth.

8  
9 It seems to follow then that there was 350,000 pounds left in the Mobberley  
14:50:17 10 account. And there was a cheque outstanding of 158,560 pounds which was to be  
11 paid out of Mr. Noel Smyth's account to Goodman International.

12  
13 We will see from Mr. Noel Smyth's account now at page 2918, that again in  
14 January of 1992, on the 15th of January, there is a payment by Mobberley  
14:51:02 15 Limited, the company which we have referred to earlier, in the sum of 106,000  
16 pounds, 106,266 pounds 93 pence, into the client's account of Noel Smyth &  
17 Partners; you see that?

18 A. Yes.

19 Q. 244 And immediately before the entry of that amount there is standing in the  
14:51:19 20 account a sum of 31,004 pounds and 4 pence; you see that?

21 A. Yes.

22 Q. 245 The Mobberley attributed lodgement of 106,266 pounds represents the sterling  
23 equivalent of 100,000 pounds sterling as of that date. And we'll see that  
24 that sum of 100,000 pounds or 106,000 Irish pounds again comes from the  
14:51:54 25 Mobberley account in Rea Brothers in the Isle of Man. We see that at page  
26 2994.

27  
28 We'll see again in the top left hand corner that Mobberley Limited are the  
29 parties who are described as the customer out, sending out the money. The  
14:52:20 30 money is going to the account of Noel Smyth & Partners. The sum is a sterling

14:52:26 1 sum, "GBP, 100,000 pounds." It translates as 106,266 pounds and 93 pence.  
2 And that is yet another Rea Brothers payment.  
3  
4 Now, I think we have established from the letter which was sent to Mr. Smyth  
14:52:58 5 towards the end of 1993, the 30th of December 1993 in fact, his proposal to  
6 spend the 350,000 pounds by lodging it to the account of BNS was an  
7 unacceptable proposal to them and therefore the necessity of putting up 350,000  
8 pounds for that project no longer was extant. The sum of 158,560 pounds could  
9 be met by the transfer of the 160,000 pounds which had been made on the 19th of  
14:53:38 10 December, unless that money was spent elsewhere. And the call was made, for  
11 some reason, to seek another 106,000 pounds. And we saw from the document that  
12 shows the lodgement of the 106,000 pounds into the account of Mr. Smyth that  
13 any cheque which might have been lodged as of that date, the 15th of January  
14 and extending back to the 13th of January and before, would not have been met  
14:54:16 15 had it been lodged to this account. Because there was insufficient funds in  
16 the account to meet a cheque for 158,560 pounds. The cheque, as we know, was  
17 a cheque which was written on the 20th of December of 1991. It was redated  
18 the 23rd of December 1991. But we see from the face of the document that it  
19 wasn't presented to the bank in Dundalk, until almost a month later. When we  
14:54:55 20 see at page 2903, that it was produced at the Allied Irish Banks Plc at the  
21 Ardee suboffice at Clanbrassil Street, Dundalk on the 18th of January of 1992.  
22  
23 As I say, had it been produced in the bank any time prior to that, in January,  
24 it would not have been met. And therefore, one can assume that the 100,000  
14:55:21 25 pounds sterling which came from Rea Brothers Limited was partly to finance the  
26 meeting of that particular cheque. The cheque itself we see at page 2912, was  
27 debited to the account on the 22nd of January of 1992. You see that on screen  
28 as the 3rd debit down from the top there, on Noel Smyth's solicitor's current  
29 account; you see that? In fact, the lodgement of that cheque on the 21st even  
14:56:16 30 would have ensured that it was not met because there was only a sum of 115,605

14:56:24 1 pounds and 52 pence standing in that account as of that date. And three  
2 individual sums of 22,000, 19,200 and 45,000 were lodged to the account so that  
3 there would be funds available to meet the cheque. Or certainly as a  
4 consequence of that there were funds available to meet the cheque which had  
14:56:46 5 been written a month beforehand.  
6

7 The 106,000 pounds Irish, as I say, emanated from the account of Mobberley  
8 Limited and it was lodged to Mr. Smyth's account. So it would appear and  
9 finally, I should just show where that 100,000 comes from, on page 3251. The  
14:57:25 10 statement of Rea Brothers Isle of Man to Mobberley records that on the 14th of  
11 January Noel Smyth & Partners were the recipients of a 100,000 pounds sterling  
12 from the account, leaving a balance then of 227,758 pounds sterling.  
13

14 It would appear, therefore, from that review of the financial documentation,  
14:58:01 15 Mr. Gannon, that Mr. Smyth's offer to the bank of the 19th of December 1991,  
16 was one which he could have given immediate effect to by the use of funds which  
17 had been lodged that day to the Mobberley account in Rea Brothers Isle of Man  
18 bank; isn't that so?

19 A. That's correct.

14:58:27 20 Q. 246 And it is your evidence to the Tribunal, I take it, that you knew nothing of  
21 that, it's not your account, Mr. Smyth, insofar as he may have indicated that  
22 you had any connection with Mobberley Limited was erroneous, wrong in doing so?

23 A. Absolutely. Nothing to do with it whatsoever.

24 Q. 247 You will be aware, I think, because you deal with it in your statement, that  
14:58:58 25 there was a subsequent reference, some three years after these events, to your  
26 possible involvement in the Coolamber lands. In a letter which was written by  
27 Mr. John Trainor barrister to Noel Smyth & Partners on the 2nd of June 1994,  
28 which we see at page 2253, where the parties are referred to as Southill  
29 Property Limited, Gerrard Gannon and Elangrove Limited; isn't that so? And I  
14:59:31 30 think you explain in your statement that you have no reason to believe that you

- 14:59:36 1 ever sought the advices of Mr. Trainor, counsel, or that you were never advised  
2 of this by Mr. Smyth and you don't know why your name has been used in  
3 connection with Southill, although as we know that's a miss description of  
4 Southfield.
- 14:59:55 5 A. Right, I didn't know that. I gave no instructions to Mr. Taylor (sic) or  
6 anybody else about Southfield or Southill.
- 7 Q. 248 Yes. The Coolamber property, and in particular Mr. Goodman's interests or  
8 otherwise in the Coolamber property, were the subject of a detailed exchange  
9 between Mr. Noel Smyth solicitor, acting on behalf of Elangrove Limited, and  
10 also Mr. Liam Lawlor, from 1994 onwards. Did you have any knowledge of the  
11 fact that Mr. Liam Lawlor, in 1994 and thereafter, was seeking to recover  
12 monies from Mr. John Caldwell arising out of the Coolamber transaction?
- 15:00:34 13 A. None whatsoever.
- 14 Q. 249 Did you know anything of Mr. Larry Goodman's involvement, one way or the other,  
15 in the lands at Coolamber, either in 1991 or at any time thereafter, until you  
16 received documentation from the Tribunal?
- 15:01:03 17 A. None whatsoever. I didn't meet Larry Goodman until a year ago.
- 18 Q. 250 Right. In relation to Mr. Liam Lawlor. Had you any business or commercial  
19 dealings with Mr. Liam Lawlor, either from 1987 onwards, that is the date of  
20 acquisition of the Coolamber lands, until the present date?
- 15:01:34 21 A. None.
- 22 Q. 251 No commercial dealings whatsoever?
- 23 A. None whatsoever.
- 24 Q. 252 And has Mr. Lawlor, at any time, made any proposals to you to involve yourself  
25 in transactions with him or otherwise?
- 15:01:48 26 A. None.
- 27 Q. 253 Has he ever indicated to you that he would wish you to be involved with  
28 Mr. Noel Smyth and himself in any business or financial transaction?
- 29 A. None.
- 15:02:05 30 Q. 254 The Tribunal received documentation from, in its discovery, I have to say, in

15:02:12 1 relation to the Coolamber lands which included a communication from Noel Smyth  
2 & Partners to a Mr. Sean Mooney of Stokes Kennedy Crowley, who was the  
3 representative and advisor of Mr. Larry Goodman. I'm not sure if you know Mr.  
4 Mooney or not?

15:02:31 5 A. No.

6 Q. 255 And that document is on screen at page 2472, and it's a document which was  
7 created in August 1995. And it is in relation to Elangrove. And as we know,  
8 Elangrove Limited is the company which took the assignment of the debt of Cork  
9 Company from, on behalf of Elangrove, which was a debt created by Mr. Goodman  
10 through Cork Company and financed the interest payments on the Coolamber lands.

11  
12 The letter reads "Dear Sean" this is from Noel Smyth "I confirm that I have  
13 agreed to issue the enclosed letter to Binchy and Partners which is as yet in  
14 draft form. The basis of the issue of the letter is as follows.

15:03:26 15  
16 1. I will issue the letter to Liam Lawlor who will exchange it for a release  
17 of funds from Binchy and Partners in respect of the funds which they owe to him  
18 and Elangrove.

15:03:38 20 2. Liam will lodge with Noel Smyth & Partners in our client account on  
21 deposit, the sum of 100,000 pounds.

22  
23 We will hold that money on deposit to Liam's order pending the possible  
24 completion of the Huntstown deal with McInerney.

15:03:56 25  
26 In the event of the Huntstown deal proceeding, Elangrove and its beneficiaries  
27 will be included in the project which will yield more than the proposed  
28 100,000," presumably pounds.

29  
15:04:15 30 "5. In the event of the Huntstown deal not proceeding, Elangrove will receive

15:04:15 1 the 100,000 pounds plus interest, held to the order of Liam Lawlor as referred  
2 to at 2 above.

3  
4 The time frame is that the letter will be issued to Liam in the next day or so  
15:04:26 5 subject only to approval from Binchy and Partners. The Huntstown deal should  
6 be completed within the next six weeks. Liam would have to hand over the  
7 letter to Binchys before they release the funds to him. Yours sincerely. Noel  
8 Smyth."

9  
15:04:40 10 That letter, Mr. Gannon, was written in the context of a claim which was being  
11 brought, at that time, by Mr. Smyth on behalf of Elangrove and on behalf of  
12 Liam Lawlor against Mr. John Caldwell. Claiming that Mr. John Caldwell had  
13 withheld monies from Mr. Lawlor which were properly due to him arising from the  
14 Coolamber lands. And also that there were monies due to Elangrove by reason of  
15:05:13 15 the fact that the Coolamber lands had been sold on to a company Vino Properties  
16 Limited without reference to Mr. Goodman who was the party who had advanced the  
17 158,570 pounds or rather 157,560 pounds in interest and other payments.

18  
19 And this letter is written in the context of those proceedings being settled.  
15:05:41 20 The terms, apparently, being proposed here, were that in order to settle the  
21 matter Mr. Lawlor would produce to Mr. Caldwell a letter which obviated or  
22 retracted any allegations of wrongdoing against Mr. Caldwell or his partners in  
23 Binchys. And in return for receiving that letter, Mr. Lawlor would produce  
24 100,000 pounds which he believed or was believed would come from monies which  
15:06:19 25 Mr. Caldwell owed him. That 100,000 pounds would then be produced to Noel  
26 Smyth & Partners at item 2, where it would be placed in a client account on  
27 deposit. Mr. Smyth would keep that money on deposit until the completion of a  
28 deal. The deal being the Huntstown deal with McInerney. And in the event  
29 that the Huntstown deal had gone through, it was anticipated that the parties  
15:06:51 30 would benefit to a greater extent than the 100,000 pounds. But in the event

15:06:56 1 that they were unsuccessful in that deal, then the 100,000 pounds that was  
2 standing in the deposit account of Mr. Smyth, would be forfeit from Mr. Lawlor  
3 and would go instead to Elangrove. That is what is proposed here. I'm just  
4 going through that document with you.

15:07:18 5  
6 Now, did you, at any time, have an interest in Elangrove?

7 A. No.

8 Q. 256 Did you have any interest in a deal which would involve Huntstown and  
9 Mr. Lawlor and Mr. Smyth resolving an issue with McInerneys?

15:07:36 10 A. No.

11 Q. 257 Did you ever meet with or discuss with Mr. Lawlor, anything to do with the  
12 Huntstown lands of McInerneys?

13 A. No.

14 Q. 258 Did he ever arrange to meet you and to go to Huntstown and to discuss the  
15 matter with the McInerneys?

16 A. No.

15:07:52 17 Q. 259 You'll see a document No. 2469, on the 18th of July 1995. Mr. Liam Lawlor  
18 faxed the following document to Mr. Noel Smyth on the subject of Mr. Amby  
19 McInerney. "I have arranged a meeting for yourself and Gerry Gannon at 5 p.m.  
15:08:23 20 this afternoon at Huntstown House. I hope this time suits your itinerary,  
21 please give me a call and he gives his phone number. Regards Liam A Lawlor."

22  
23 You will see in manuscript, somebody has written on the side of that, "Navan  
24 Road, towards Clonsilla. See if Gannon" -- and I'm afraid I can't interpret  
15:08:50 25 the next word -- "go past Blanchardstown Shopping Centre." If one started  
26 perhaps at the bottom, beneath Mr. Liam Lawlor's signature it says, "Phibsboro  
27 to Navan Road. Keep on new Navan Road towards Blanchardstown" presumably.  
28 "Bypass Castleknock and Blanchardstown. Come to a roundabout, keep straight  
29 on, Halfway House on the right. Keep on motorway. Another roundabout,  
15:09:17 30 straight through" -- repeated then -- "another roundabout, straight through"

15:09:20 1 and then perhaps "Navan Road towards Clonsilla. See if Gannon will go" --  
2 whatever -- "past Blanchardstown Shopping Centre."

3  
4 This document certainly on its face would appear to indicate that Mr. Liam  
15:09:38 5 Lawlor had arranged a meeting between himself, yourself and Mr. Noel Smyth to  
6 take place at Mr. Ambrose McInerney's home, which at that point was located in  
7 Blanchardstown, rather in Huntstown, which was on the outskirts of  
8 Blanchardstown. And we know that those lands were subsequently sold and  
9 developed.

15:10:10 10  
11 Does this document bring to mind any dealings which you had with Mr. Liam  
12 Lawlor in connection with this transaction?

13 A. Yeah, I did go to that meeting.

14 Q. 260 Fine.

15:10:26 15 A. I met Mr. Smyth at the house. To the best of my knowledge Liam Lawlor wasn't  
16 there at the time. It was a very short meeting. We discussed with  
17 Mr. McInerney -- McInerney about his land. We had tea with him and he said  
18 that he wasn't interested in selling at that stage. And we chatted about a few  
19 things he had out in Tallaght, sorry, up in Sandymount, Sandyford, sorry, and I  
15:11:01 20 left. And I never heard a thing about it from that day to this.

21 Q. 261 That meeting, I take it, took place in or around July of 1995; is that right?

22 A. That's correct, that's what the --

23 Q. 262 And it concerned Huntstown; isn't that correct?

24 A. That's correct.

15:11:28 25 Q. 263 And it was directed towards a possible deal in relation to Huntstown which  
26 would involve yourself and Mr. Noel Smyth; isn't that so?

27 A. We were enquiring whether the land was for sale or not first, that's why we  
28 were out there.

29 Q. 264 But is the whole reason for that meeting, the fact that Liam Lawlor had been  
15:11:47 30 operating to set up that meeting with a view to your advancing your property

- 15:11:54 1 interests by acquiring the lands and that a spin-off of that would be that if  
2 that deal went through he would get a payment which would be in excess of  
3 100,000 pounds or so and could be brought into play in the resolution of the  
4 Elangrove dispute, which seems to be referred to in the letter that we've dealt  
15:12:16 5 with just immediately before dealing with this?
- 6 A. I honestly had no knowledge of any dispute that Liam Lawlor had with Noel Smyth  
7 or anybody else at that stage. I mean, my thing to go there was probably in  
8 an advisory capacity on it. I don't think that the stage that -- I felt that  
9 the land was a long time from being developed. I was only there in the  
15:12:38 10 capacity of advising Noel Smyth and I just told him that. But I did not know  
11 about any dispute going on between Noel Smyth, Liam Lawlor or anybody else.  
12 The letter you showed me before this was the first time I've seen that.
- 13 Q. 265 And I take it that you equally had no knowledge of Mr. Liam Lawlor being the  
14 person who was involved in setting up this transaction; is that right?
- 15:13:02 15 A. In Huntstown? No.
- 16 Q. 266 Was Mr. Lawlor a person who you met either socially or otherwise on a frequent  
17 basis?
- 18 A. No.
- 19 Q. 267 No.
- 15:13:22 20 A. I probably met him three times in my life.
- 21 Q. 268 Do you know whether he would contact you on either of your two mobile phone  
22 numbers or your land lines at the time?
- 23 A. Well he might have done, it's 1990.
- 24 Q. 269 Have you any reason it believe as to what it was he would be contacting you  
15:13:44 25 about?
- 26 A. Not really.
- 27 Q. 270 Well do you know if he did or didn't contact you by phone on your telephone  
28 line?
- 29 A. Well I wouldn't have thought so. He might have made the call looking for me  
15:13:56 30 but --

15:13:57 1 Q. 271 But what would he be ringing you about?

2 A. At this stage I have no idea. It would be very unusual for him to ring me.

3 Q. 272 But it happened nonetheless; is that right?

4 A. No, I didn't say that. I said it would be very unusual if he did ring me. I

15:14:15 5 don't know whether he rang me or not. I have no recollection of him ringing

6 me.

7 Q. 273 I see. Thank you. Obviously for the moment, Mr. Gannon, we are going to

8 have to regroup on the issue of just what exactly the documentation shows and

9 what documentation you may have to reflect your involvement in any of the

15:14:43 10 transactions that we're examining in view of the information that is learnt.

11

12 So if you would answer any questions that any of the other parties may have to

13 put to you.

14

15:14:54 15 CHAIRMAN: Mr. Miley, do you want to ask a question?

16

17 MR. MILEY: No, thank you, Judge, I have no questions.

18

19 CHAIRMAN: Mr. O'Moore?

15:15:02 20

21 MR. O'MOORE: I thought I made my position very clear. A lot of this is new

22 and we're going to have to have a look at it over a short period of time.

23

24 But just two outstanding things. First of all, Sir, Mr. O'Neill has drawn a

15:15:14 25 lot and put up explanations that he has got about the Noel Smyth statements.

26 If they exist in statement form or in any form, it would be only fair for us to

27 see them.

28

29 And the last thing, I must say, I'm befuddled by, is the rather loaded and

15:15:31 30 heavy statement or questions by Mr. O'Neill about contacts from Mr. Gannon to

15:15:46 1 Mr. Lawlor or vice versa on Mr. Gannon's two mobile phones. If the Tribunal  
2 has evidence to the effect that there was such contact we should have been  
3 notified of it. If it's going to be put to Mr. Gannon that there was such  
4 contact, that should be done now.

15:15:52 5  
6 MR. O'NEILL: I merely asked the witness whether or not Mr. Lawlor was in  
7 contact with him.

8 A. I don't have two mobile phones anyways.

9 Q. 274 Sorry?

15:16:03 10 A. I don't have two mobile phones.

11 Q. 275 The documentation which the Tribunal has, merely indicates this is the personal  
12 telephone book of Mr. Liam Lawlor. It contains Mr. Gannon's name, his --  
13 sorry, there are three numbers in all. Only one is a mobile but there are two  
14 land lines and that is the basis of my asking questions as to whether or not --

15:16:32 15  
16 CHAIRMAN: Okay. What about the other matter raised by Mr. O'Moore as to  
17 documentation that he is seeking.

18  
19 MR. O'NEILL: All of the documentation that is available to the Tribunal on  
15:16:46 20 the issue has been furnished to Mr. O'Moore, save correspondence which has  
21 passed between Mr. Noel Smyth and his office and the Tribunal, which is ongoing  
22 correspondence between the solicitors. The matter is as yet unresolved as to  
23 precisely what --

15:17:07 25 CHAIRMAN: There are statements, any statements made by --

26  
27 MR. O'NEILL: No, no, the interpretation of the document. That is the  
28 interpretation of the nominal ledger document, is an interpretation reached by  
29 me, following consultation with our in-house accountants. It is not an  
15:17:24 30 explanation furnished by others. Obviously, explanations furnished by others

15:17:30 1 may be material, insofar as they are the explanation of the person preparing  
2 the document itself. And we are or will seek a detailed explanation from that  
3 person as to how he came -- how he or she came to prepare that document. And  
4 in the event of getting a statement from that person, it will be circulated to  
15:17:51 5 Mr. Gannon and to other affected parties.

6  
7 MR. O'MOORE: I therefore understand that the interpretation placed on these  
8 documents, which you've spent most of the time between 2 and 3 dealing with, is  
9 in fact Mr. O'Neill's interpretation in conjunction with another professional  
15:18:06 10 advising the Tribunal.

11  
12 MR. O'NEILL: That's so.

13  
14 MR. O'MOORE: It's not sourced at all in Mr. Smyth's office, and the analysis  
15:18:13 15 is simply their analysis, I understand that now. And the second thing is --

16  
17 MR. O'NEILL: Sorry, I didn't say --

18  
19 CHAIRMAN: It comes from the documents. The documents come from Mr. Smyth's  
15:18:24 20 office.

21  
22 MR. O'MOORE: I understand that, but that's all that comes from Mr. Smyth's  
23 office.

24  
15:18:28 25 MR. O'NEILL: There has been correspondence between Mr. Smyth's office, Mr.  
26 Smyth's solicitor and the Tribunal. Which is ongoing correspondence, which has  
27 not resolved the issue as to what precisely the chain of events is. And it is  
28 correct to say that what has been put to the witness is a sequence of events,  
29 evidenced by the documentation which is currently in the possession of the  
15:18:53 30 Tribunal and my interpretation, guided by the professional advices of our

15:18:57 1 in-house accountants, as to what this document means. And it is, that  
2 interpretation has been reached by reference to the correspondence which has  
3 passed to the documentation and to the experience of the accountant who is  
4 advising us.

15:19:14 5  
6 It is being advanced as being the probable chain of events. The parties who  
7 know what the chain of events are, are not the Tribunal, not myself, nor the  
8 in-house accountants. It is those parties who dealt with the transactions.  
9 Until we have full statements from those parties we can only cross-examine a  
10 witness or examine a witness on the basis of what we have and what the logical  
11 or obvious inference to be drawn from documents is. And I put if no further  
12 than that.

13  
14 MR. O'MOORE: Well we'll explore that in correspondence. I don't want to  
15 take up the Tribunal's time on that.

15:19:50 16  
17 Secondly, with regard to Mr. Lawlor's phone book. I do want to put down a  
18 marker that it's unfortunate that questions were put to Mr. Gannon in a very  
19 ominous way, arising out of a document not disclosed to us during the course of  
20 preparation for this evidence. It seems likely Mr. Gannon will be back and we  
21 might be able to deal with it then.

15:20:09 22  
23 CHAIRMAN: It's not a question as to whether it was simply drawn out of the  
24 hat. It's prompted by the letter, which is still on screen. It's prompted  
25 by the entire involvement of Mr. Smyth, who was also involved with Mr. Lawlor.  
26 It's not just a question drawn out of a hat.

27  
28 MR. O'MOORE: I'm not suggesting it was, Chairman. I'm saying this --

29  
15:20:46 30 CHAIRMAN: The one, maybe that's going too far. One possible reading of this

15:20:47 1 particular document that's on screen or one possible assumption might be, that  
2 there had been contact between Mr. Lawlor and Mr. Gannon. So it was -- I  
3 mean, it was a reasonable question to ask, well was there contact by phone?  
4 Mr. Gannon says he didn't make contact with Mr. Lawlor in relation to this  
15:21:05 5 meeting. That he only met him three times, I think, approximately. And there  
6 was nothing unreasonable about asking was there telephone contact beyond that.  
7

8 MR. O'MOORE: I don't want to make a mountain out of a mole hill. Could I  
9 just say one thing in relation to that, Sir. I agree entirely with your  
15:21:20 10 analysis. The question was clearly one that was thought up before, it wasn't  
11 taken out of a hat or pulled out of the air. It was a question thought up  
12 before the session began. If a question was to be asked, which is in some way  
13 grounded in documents available to the Tribunal and not to us, the documents  
14 should have been shared to us before the evidence commenced. That's all I  
15:21:38 15 say.

16  
17 Obviously the construction on the document put by Mr. O'Neill, this is the  
18 question asked of Mr. Gannon, was that, doesn't this show there was a meeting  
19 between Mr. Lawlor, Mr. Smyth and Mr. Gannon. That that's the question  
15:21:50 20 actually put by Mr. O'Neill and if that's the construction he took of the  
21 document, any document that was relevant to that should have been disclosed to  
22 us beforehand.

23  
24 CHAIRMAN: It wasn't necessarily relevant. The phone numbers come from --  
15:22:02 25 that's a reference to Mr. Lawlor's notebook.

26  
27 MR. O'MOORE: It's a reference to Mr. Lawlor's notebook, yes.

28  
29 CHAIRMAN: Yes.

15:22:10 30

15:22:10 1 MR. O'MOORE: As I say, I don't want to make --

2

3 CHAIRMAN: It was simply, Mr. Gannon was being probed as to the extent of any

4 contact he had with Mr. Lawlor. And that probing came as a result of the

15:22:26 5 involvement of Mr. Smyth and Mr. Lawlor on the one hand and the reference to

6 Mr. Gannon, Mr. Lawlor and Mr. Smyth in this particular document.

7

8 MR. O'MOORE: All I'm saying, Chairman. As I say, I don't want to make a

9 mountain out of a mole hill, that the probing was based on a document that Mr.

15:22:43 10 O'Neill had available to him, that wasn't disclosed to us. That's all I'm

11 saying.

12

13 CHAIRMAN: That's this document?

14

15:22:48 15 MR. O'MOORE: No, that's the phone records of Mr. Lawlor or the notebook of

16 Mr. Lawlor and if it's relevant, can I just put it this way, Chairman. If

17 it's relevant to the examination of Mr. Gannon, we should have seen it before

18 the examination began. That's all I'm saying, I think that's a fairly basic

19 statement of our entitlement under fair procedures.

15:23:06 20

21 MR. O'NEILL: May I say, Chairman, the suggestion that the questions are put

22 in a way that is ominous is one that I reject entirely. There is no

23 suggestion that the questions are intended to be ominous in their meaning or

24 effect. They are direct questions put, I suggest, as a reasonable response to

15:23:29 25 the responses which have been given by Mr. Gannon to the questions which have

26 been put to him over the course of the day. In an effort to resolve what is a

27 very, very considerable mystery to the Tribunal and I'm sure to any onlooker or

28 listener to these events where he has apparently a number of connections with

29 him, recorded in documentation over a period of time, with which he rejects any

15:23:57 30 connection whatsoever in his initial responses to the Tribunal, and which have

15:24:03 1 required him to be examined in considerable detail on these issues.

2

3 And it, I suggest, is making very much a mountain out of a mole hill. Because

4 I merely asked the witness as to whether or not he had had telephone

15:24:19 5 communications with Mr. Lawlor in the context of the transactions which we have

6 dealt with today.

7

8 CHAIRMAN: I think many witnesses have been asked something similar. Anyway,

9 we will adjourn, will Mr. Gannon come back on Tuesday?

15:24:36 10

11 MR. O'NEILL: I'm not sure if Mr. Gannon will have had an opportunity,

12 firstly, of considering the discovery orders which will be notified to him and

13 in respect of which he will be entitled to make submissions before Tuesday.

14

15:24:49 15 CHAIRMAN: All right.

16

17 MR. O'NEILL: And I think if we left it so that we would contact, we would

18 agree mutually acceptable dates for the resumption of his evidence.

19

15:25:00 20 CHAIRMAN: All right.

21

22 MR. O'MOORE: Yes, that seems to make sense, Chairman.

23

24 CHAIRMAN: There's no other witness. There was a Mr. O'Connor.

15:25:13 25

26 MR. O'NEILL: No, we have alerted Mr. O'Connor to the fact that we were

27 running somewhat late.

28

29 CHAIRMAN: Okay.

15:25:45 30

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**THE TRIBUNAL THEN ADJOURNED UNTIL TUESDAY, 1ST FEBRUARY 2005,**

**AT 10:30 A.M.**