

THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY,

1ST MARCH 2005, AT 10:30 A.M.:

MR. O'NEILL: Good morning, Mr. Chairman, Members of the Tribunal. Mr. Noel Smyth, please, could you return to the witness box.

CONTINUATION OF QUESTIONING OF MR. NOEL SMYTH

BY MR. O'NEILL AS FOLLOWS:

Q. 1 Good morning, Mr. Smyth.

A. Good morning.

Q. 2 On the last occasion upon which you were giving evidence before the Tribunal we were examining the circumstances in which the claim of Elangrove and Mr. Liam Lawlor against Mr. John Caldwell came to be resolved; isn't that so?

A. That's correct.

Q. 3 And you recollect that it was in August 1995, that you received information from Mr. Lawlor as a result of which you communicated with Mr. Sean Mooney setting out the terms under which you understood the letter of retraction of the claim against Mr. Caldwell was to be sent; isn't that so?

A. Correct.

Q. 4 And we see that document at page 2472 on screen. And it was being sent to Mr. Sean Mooney as the representative of Mr. Goodman, addressed to Mr. Mooney at Stokes Kennedy Crowley and dated the 4th of August 1995; isn't that so?

"I confirm that I have agreed to issue the enclosed letter to Binchy & Partners which is as yet in draft form. The basis of the issue of the letter is as follows."

And you set out there the terms that "a letter would be issued to Liam Lawlor who in turn would exchange it for the release of funds from Binchy & Partners

10:46:13 1 in respect of funds which they owed to him and to Elangrove. Liam would lodge
2 with Noel Smyth & Partners in our client account the sum of 100,000 pounds.
3 We hold that money on deposit to Liam's order pending the possible completion
4 of the Huntstown deal with McInerney. In the event of the Huntstown deal
10:46:32 5 proceeding, Elangrove and its beneficiaries would be included in the project
6 which would yield more than the proposed 110,000 pounds.
7

8 In the event of the Huntstown deal not proceeding Elangrove will receive
9 110,000 pounds plus interest, held to the order of Liam Lawlor as referred as 2
10:46:48 10 above.
11

12 The time frame is that the letter will be issued to Liam in the next day or so
13 subject only to approval from Binchy & Partners. The Huntstown deal should be
14 completed within the next six weeks before they release the funds to him.

10:47:04 15 Yours sincerely".
16

17 Really this letter was putting Mr. Mooney on notice of what had already been
18 agreed rather than seeking his confirmation that these terms were acceptable to
19 Mr. Goodman. Obviously there had been some resolution of the issue.

10:47:21 20 A. That would appear so, yes.

21 Q. 5 And once this letter issued you were expecting monies to come in if the terms
22 that were set out in the letter here were to be complied with. You've
23 indicated I think on the last occasion that no monies ever came in; isn't that
24 so?

10:47:39 25 A. That's correct.

26 Q. 6 Nor did you receive any instruction from Mr. Goodman to pursue it to the extent
27 of chasing up that 100,000 pounds; isn't that correct?

28 A. That's correct.

29 Q. 7 And I think you indicated also that you were unaware at this particular point
10:47:54 30 in time that Mr. Lawlor was himself negotiating with Mr. Caldwell to receive

- 10:48:02 1 350,000 pounds or 825,000 deutsche marks which he lodged to his account a
2 little over a month after this letter was written to Mr. Mooney; isn't that so?
- 3 A. That's so.
- 4 Q. 8 I think you were to learn at a later stage, as we see in 1997, that there had
10:48:22 5 been such an arrangement entered into between Mr. Caldwell and Mr. Lawlor;
6 isn't that right? This is the letter which is on draft form on your computer
7 as of the 3rd of March 1997, some two years or so after this event?
- 8 A. Yes.
- 9 Q. 9 It refers to there being a payment of 350,000 pounds made to Mr. Lawlor in the
10:48:45 10 context of his previous claim?
- 11 A. Yes, that was two years, as you say, subsequent to the event.
- 12 Q. 10 Yes. In the interim, had you had any dealings with Mr. Lawlor in relation to
13 the Coolamber lands or the likely satisfaction or otherwise of Mr. Goodman's
14 claim to recover 158,560 pounds?
- 10:49:10 15 A. No, not that I recall as of that time.
- 16 Q. 11 If we can look then to the letter on screen at page 2521, which is the letter
17 of the 3rd of March 1997. Again, it's a draft letter. And it's addressed
18 strictly private and confidential addressee only. Addressed to John Caldwell
19 in Binchys solicitors at 43 Fitzwilliam Place Dublin 2. The reference is to
10:49:38 20 Southfield limited and/or Vino Limited, Cara Limited, Sabre limited, Pentagon
21 Property Services Limited and Kenlin Developments Limited, our client Liam
22 Lawlor.
23
- 24 Just as regards the title of the various companies here, Mr. Smyth, was this
10:50:02 25 information identifying these companies, information which had been provided to
26 you by Mr. Lawlor in giving you his instruction or is it the case that you did
27 your own research to establish what the companies were that might be involved
28 in the land transactions in the areas identified by him to you?
- 29 A. At this recall I would say that that information would have been given to me by
10:50:26 30 Mr. Lawlor.

- 10:50:26 1 Q. 12 Right. Before dealing in depth with this letter. Have you a recollection of
2 receiving any back up documentation from Mr. Lawlor to support the claims which
3 he makes in this letter, anything, in other words, evidencing his ownership or
4 entitlement or shareholding to any one of the companies which are referred to
10:50:49 5 in the body of the letter itself?
6 A. No, I don't recall getting anything.
7 Q. 13 I think we'll see from the letter itself that the substance of his claim was
8 that he hadn't received formal documentation in relation to his shareholdings
9 in or interests in these entities but I'm just wondering whether or not he had
10:51:08 10 any other documentation which allowed him to instruct you as to exactly what
11 his claim was in respect of these entities?
12 A. Unfortunately, I don't recall. I assume that he gave me the names of the
13 companies because he had got them from whatever dealings he was having with the
14 other parties but I don't recall.
10:51:32 15 Q. 14 He, apparently, will say in his evidence that he did not know anything about
16 these entities by name but rather that you, through researches, whether in the
17 Land Registry or otherwise, came up with the names and he accepted them. Does
18 that accord with your recollection of events?
19 A. No, it does not accord with my recollection. My recollection is that I was
10:51:55 20 searching those companies, I would have some recall of going to that trouble.
21 Q. 15 Yes.
22 A. And I don't want to say anything negative. But, I mean, I don't believe that
23 I would have gone to a huge amount of trouble, given my previous experiences
24 where I'd said that this was a, very much a stop go transaction. That I could
10:52:18 25 never get to the bottom of it. Your instructions changed very quickly and I
26 doubt very much if I would have put a huge amount of energy into the searching
27 of companies.
28 Q. 16 Right.
29 A. Which this would probably have required.
10:52:31 30 Q. 17 Is there any particular reason why you did in fact accept instructions from

10:52:37 1 Mr. Lawlor in the circumstances that have been outlined already; where he had
2 negotiated a settlement of an issue in which he was to effectively pay to
3 Elangrove, who was also your client, the sum of 100,000 pounds or the proceeds
4 of the Huntstown deal if that had progressed, but had not done so. And was
10:52:59 5 obviously in breach of whatever agreement he had had with you. Because as I
6 understand your evidence, you had expected that once you had given him the
7 letter on behalf of Elangrove, which he in turn would give to Mr. Caldwell,
8 that you would receive the money as a matter of course from him; isn't that
9 correct?

10:53:17 10 A. That's so. I can't give you an explanation. I'm surprised that given my
11 recall of the previous events that I seem to be now going off again in other
12 project for him. But unfortunately I don't have an explanation for you.

13 Q. 18 I see. Well we'll just read the letter then.
14

10:53:35 15 "Dear Sirs, we refer to our letter of the 18th of August 1995 wherein we, on
16 behalf of our client, were instructed to on his behalf withdraw all claims and
17 allegations made against you and your partners in relation to the
18 above-mentioned matters, strictly on the basis that the same is now resolved
19 based on assurances and undertakings furnished to our client".

10:53:58 20
21 Now, did you have any recollection as of 1997 of there being assurances and
22 undertakings given by Mr. Caldwell to Mr. Lawlor other than that money would be
23 released, which would allow for the 100,000 pounds to be paid to your client?

24 A. No. My recall is that he was to get the 100,000, or more likely, that the
10:54:23 25 100,000 was to be passed to our client account, which didn't happen.

26 Q. 19 Yes. There's a reference here, as you'll see, to there being assurances and
27 undertakings furnished. Did you establish from Mr. Lawlor what it was over and
28 above the payment of money was to be given by way of assurance or otherwise?

29 A. I'd have to say that that would not be uncommon language that I might use as a
10:54:49 30 catchall phrase as opposed to actually having instructions to say that there

10:54:54 1 were assurance undertakings given.

2 Q. 20 I see. There are certain assurances then which are set out in the paragraph
3 below:

4

10:55:00 5 "Our client now informs us that he accepted certain assurances, representations
6 and your personal undertaking at the time in relation to the following matters:

7 A. That you would furnish him with a full and detailed account of all monies
8 received in relation to the Southfield/Vino transaction;

9

10:55:23 10 B. That he would receive in full and final settlement of his shareholdings and
11 his right in respect of the transaction 400,000 pounds.

12

13 We are further instructed that without prejudice to the validity or otherwise

14 of same subsequent meetings occurred between yourself and Mr. Lawlor, on

10:55:43 15 September 8th 1995 and October 2nd, 1996 and that under duress and under undue

16 influence, you insisted that the other interests which our client has in Cara

17 Limited, Sabre Limited, Kenlin Limited, Pentagon Property Services, the services

18 company than owns the underground services at Finnstown, Lucan, be assigned and

19 according to our instructions Our client was effectively forced to purport to

10:56:02 20 sign his right, title and interest in respect of those companies to you

21 personally without any consideration."

22

23 There's reference there, you'll see, Mr. Smyth, to there being two meetings

24 which took place. One September the 8th, which would have predated the

10:56:19 25 payment of will the 350,000 pounds probably by a week or so. And subsequently

26 October 1996, a year later, but about six months prior to this letter being

27 written. Mr. Lawlor was obviously in a position to fix those dates for you

28 for the purpose of writing this letter. Does that aid you in any way as to

29 your recollection as to what documentation Mr. Lawlor had in his possession at

10:56:48 30 the time when he was giving you the instructions to write these letters

- 10:56:51 1 A. I'm sorry, it doesn't.
- 2 Q. 21 You don't recollect him having a diary or a notebook or any other documentation
3 at the time?
- 4 A. No, I'm sorry.
- 10:57:00 5 Q. 22 He I see. The list of companies which is given here is the first of them is
6 Cara Limited. In fact, the company that owned the land in question or had an
7 interest in the option over the land in question was a company called Cara
8 Sports Limited rather than Cara Limited, which is I think a plc perhaps
9 associated with Aer Lingus or otherwise. But again, the name of it, you say,
10 is something that came to you from Mr. Lawlor; is that right?
- 11 A. Yes, it is.
- 12 Q. 23 The services company which owned the underground services at Finnstown I think
13 intended to relate to the Coolamber lands which were referred to as Finnstown
14 and that's Valley Holdings Limited, though you may not have known that the
15 time; is that right?
- 10:57:49 16 A. No, no.
- 17 Q. 24 To revert then to the letter:
18
19 "Our client further instructs us that you apparently using information which
10:57:56 20 you had obtained when acting for him on his behalf with ACC Bank and other
21 financial institutions to point out to our client that if he did not accept the
22 sum which you had proffered of not only the Southfield Vino transaction but
23 also in respect of the other companies, you would not release to him the sum of
24 350,000 pounds which he urgently required at that time to satisfy his
10:58:19 25 indebtedness to the banks in question".
26
27 Dis Mr. Lawlor at that point indicate to you that any part of the 350,000
28 pounds which he had received from Mr. Caldwell was in fact applied to meeting
29 the bank's liabilities or otherwise?
- 10:58:37 30 A. I'm speculating, I don't know. I know that he was under pressure at the time

10:58:43 1 of the incident where I was involved with the 100,000 from ACC Bank. And I
2 thought that that's why he needed the money urgently at that stage. So the
3 reference now to 350,000 is certainly greater than the money that I thought was
4 owed to the bank at that stage. So

10:59:08 5 Q. 25 Yes. I think ACC had agreed to take the net proceeds of the sale of the 23
6 acres around Somerton.

7 A. Right.

8 Q. 26 In satisfaction of their debt, which was greater, considerably, than that
9 amount.

10:59:25 10
11 "The above-mentioned letter". That's I think your letter we've seen it in its
12 draft form on the 4th of August 1995. But it's referred to earlier as the
13 18th of August 1995. So we assume that the letter you drafted on the 4th was
14 sent on the 18th. That was the letter which withdrew the claim.

10:59:46 15 A. I beg your pardon, yes.

16 Q. 27 The only copy available, in other words, is the draft rather than the one of
17 the 18th.

18 A. Okay.

19 Q. 28 "The above-mentioned letter was written to you agreeing to withdraw all
10:59:59 20 allegations was solely based on the fact that our client was satisfied that as
21 his solicitor, given that you were acting for him in his attempts to resolve
22 his difficulties with his bankers, that he could trust you to comply with your
23 undertaking the insurances given and therefore he instructed this form to cease
24 pursuing you and/or your partners for the alleged wrongdoing previously
11:00:22 25 complained of and for which proceedings had in fact been drafted".

26
27 Have you any recollection of Mr. Lawlor telling you at the time of the
28 settlement that he considered that Mr. Caldwell was acting as his solicitor in
29 that transaction at that time?

11:00:35 30 A. No I don't. But obviously the instructions were that Mr. Caldwell was dealing

11:00:41 1 for Mr. Lawlor with his bankers.

2 Q. 29 Yes.

3 A. That's the only place I could have got that information.

4 Q. 30 I see. "Our client is now very concerned that despite various attempts to have

11:00:53 5 this matter resolved directly or indirectly with yourself, he has been unable

6 to do so. The complaints which our client makes at this time are of such a

7 serious nature that he considers it would be best in this instance, rather than

8 initiate proceedings against you personally at this time, to make a complaint

9 under section 76 the Solicitor's Act 1960. As amended by section 17 of the

11:01:12 10 Solicitors Amendment Act 1994.

11

12 You will of course be aware that this necessitates our client making a

13 complaint to the disciplinary committee of the incorporated Law Society by

14 means of a sworn affidavit. We confirm that unless satisfactory proposals are

11:01:28 15 immediately received to A, remit in full the amount due to our client under the

16 Southfield/Vino heading.

17 B. Furnish a full account to this firm on behalf of your client all monies

18 received and account for same and C, undertake to provide the share

19 certificates of our client's shareholding in A, Cara Limited, Sabre limited,

11:01:46 20 Kenlin Developments Limited and an unnamed services company which owns the fowl

21 sewers to facilitate the drainage of the lands at Newcastle Road Lucan which

22 our client was entitled to a 25% shareholding of. Our client will proceed to

23 make the aforementioned complaint."

24

11:02:04 25 Have you any knowledge or recollection of him in fact bringing such a complaint

26 either by affidavit or otherwise?

27 A. No complaint was made.

28 Q. 31 "Our client is not aware of the companies referred to above or either in the

29 State or offshore entities without prejudice to the validity of same or

11:02:19 30 otherwise our client has not been furnished with a copy of a letter which he

11:02:24 1 indicates he was forced into executing at the handing over of the sum of
2 350,000 pounds purporting to renounce his rights, title and interest in
3 relation to all of these matters and a copy of that letter is requested now by
4 return."

11:02:41 5
6 Did Mr. Lawlor ever indicate to you whether or not he saw or signed more than
7 one letter in relation to the signing over of his rights or interests in any of
8 these properties?

9 A. I think the letter or this letter refers to just one letter. So I assume that
11:03:01 10 that's all that he probably signed.

11 Q. 32 "In the circumstances and given the seriousness of the allegation complained of
12 herein, we would ask you to respond positively within ten days failing which
13 our client will without further notice to you immediately initiate such
14 proceedings before the disciplinary Tribunal without further delay.

11:03:19 15
16 In view of the very serious allegations referred to above obliged if you would
17 ensure that all files, papers, documents in relation to the above-mentioned
18 transactions either in your own possession or of your client who may be
19 associated with you and/or Mr. Lawlor in relation to the transactions are
11:03:35 20 preserved as it will be our client's intention in the fullness of time to seek
21 an Order for Discovery against all of the papers in this matter. In the event
22 of it being necessary to initiate separate proceedings herein, our client would
23 also be obliged if you will, where you consider it appropriate put on notice
24 the firms of Miley & Miley Solicitors who were involved in the transaction
11:03:55 25 concerning Vino and Messrs Gore Grimes solicitors who were involved in the
26 transaction relating to Baldoyle of our client's position. Yours sincerely".
27

28 And we'll see here that this is an unsigned copy of this letter. And I think
29 it is the case that you do not have a recollection as to whether or not you
11:04:14 30 ever in fact sent out the letter from your firm to Mr. Caldwell; is that right?

- 11:04:19 1 A. That is correct. I -- again, I can only speculate that the letter may have
2 been drafted and given to Mr. Lawlor for approval because of the very serious
3 matters which were being referred to, with reference to the Law Society and
4 other details where our people are involved.
- 11:04:42 5 Q. 33 Mm-hmm.
- 6 A. I can't say that the letter was gone. But I would say that that's possible
7 that my practice is to hand it to the client for approval.
- 8 Q. 34 Do you know whether or not it was in fact Mr. Lawlor's intention ever to make a
9 complaint to the disciplinary committee or was this letter merely being
11:05:05 10 generated as part of negotiation or onward negotiation which he had with
11 Mr. Caldwell in relation to a dispute centred on these particular companies?
12 A. My sense of the time of what was happening was that Mr. Lawlor was not
13 interested in initiating any proceedings which were likely to get up in the
14 public domain.
- 11:05:28 15
16 So I would have said that the letter, even in the way that it's written in very
17 strong language, would probably have been done as a draft to then just, as
18 you've correctly stated, to use as a tool to negotiate Mr. Lawlor's position.
19 And I'm, again, as I said, I'm speculating. But my sense of where things were
11:05:57 20 at at the time, there was no question of making public litigation demands on
21 behalf of Mr. Lawlor.
- 22 Q. 35 Did you know whether or not it was the case that Mr. Lawlor had returned to
23 Binchy & Partners as a client of their's in the interim between 1995 and this
24 letter in 1997 in relation to Shearwater proceedings which were to take place
11:06:23 25 around that time?
26 A. I think more likely because the letter refers to Binchy & Partners handling
27 Mr. Lawlor's personal affairs which were at that time quite urgent with the
28 banks, I must have been aware that he was back with Binchy & Partners even
29 after the debacle in the previous years.
- 11:06:47 30 Q. 36 Right. So it would appear that he was happy to use Mr. Caldwell's firm for

11:06:53 1 his purposes when it suited, notwithstanding that he may have had these ongoing
2 disputes with Mr. Caldwell about the proceeds of the Coolamber lands, amongst
3 other issues?

4 A. I think that's fair. But I'd also probably must ask the question what was I
11:07:10 5 doing allow myself be used in the those circumstances. And unfortunately I
6 don't have any explanation for that either. Because he seems to be jumping
7 into my firm and then out of it. Unfortunately I can't offer an explanation.

8 Q. 37 Did Mr. Lawlor tell you that these were the only disputes which he had with
9 Mr. Caldwell or the only issues in which he was involved with Mr. Caldwell or
11:07:41 10 do you understand that this letter was being written specifically in relation
11 to these specific named companies rather than his dealings with Mr. Caldwell as
12 a whole?

13 A. Again, and I'm speculating. I think that Mr. Lawlor probably felt whatever
14 result he got on the previous occasion by "threatening to use me" against
11:08:11 15 Mr. Caldwell, that he had got a result. And now it looks like what he's done
16 is used a similar tactic where he's used or given me sufficient information
17 about some part of his business, given me the details. I drafted a letter and
18 it looks, at this remove at least, that all that was happening was that there
19 was no intention of reporting anybody to the Law Society or there was no
11:08:40 20 intention of issuing proceedings. But there was, obviously, some attempt to
21 use the threat of my firm acting against Mr. Caldwell as a basis for Mr. Lawlor
22 to carry out his negotiations.

23 Q. 38 Right, did Mr. Lawlor tell you at this time that in relation to the settlement
24 of issues in 1995 that he had used the facilities of David Morgan Whitehead &
11:09:09 25 Co, a Jersey firm of lawyers, and in particular Mr. David Morgan of that firm,
26 to structure the settlement of the issue which he had with Mr. Caldwell at that
27 time?

28 A. No. Never heard of him.

29 Q. 39 Is it a surprise to you to hear that that the settlement was structured in a
11:09:32 30 which in which documents were drafted in which would indicate that an entity

11:09:36 1 called Longwater Investments Limited, British Virgin Islands was seen to be a
2 company which extended a loan facility to Mr. Lawlor of 500,000 pounds sterling
3 against which the 350,000 Irish pounds was booked, to use the expression, as
4 part of that loan?

11:09:57 5 A. I have no knowledge of it at all.

6 Q. 40 Right. And do you know whether or not as a result of this letter whether there
7 were further successful negotiations or conclusion of the issues as between
8 Mr. Caldwell and Mr. Lawlor?

9 A. I have no knowledge of it either.

11:10:16 10 Q. 41 Did he ever come back to you, in other words, to say that letter worked or it
11 didn't work, whatever the case may be?

12 A. No, I have no recall of that either.

13 Q. 42 Did it simply die on the vine there as far as you are concerned?

14 A. I think so. As I say said, I think -- because I don't remember any follow-up.
11:10:37 15 And as I said, I don't remember ever carrying out any searches in relation to
16 these companies.

17 Q. 43 Yes.

18 A. I think the letter actually touches on the point that I didn't know if they
19 were on shore or offshore. If I carried out any searches in Ireland even I
11:10:54 20 would have been able to establish that fact.

21 Q. 44 Right. There is a documentation suggesting that Mr. Lawlor set up an entity
22 in Liechtenstein called the Rylton Foundation. And that he did so in
23 1997/1998. It was set up I should say in September 1996. Did he at any time
24 indicate to you that he intended to use that company or that foundation as the
11:11:29 25 entity which would hold the shareholdings if they came in, in relation to
26 either the Baldoyle lands or the other lands which are mentioned here?

27 A. No, he did not.

28 Q. 45 In giving you any instruction to write this letter did Mr. Lawlor ever indicate
29 to you the circumstances in which he came to have an interest in any one of
11:11:59 30 these companies, in other words, did he indicate that he had been an investor

- 11:12:05 1 or a consultant or any other description you might like to use which would
2 justify him claiming an interest in these companies?
- 3 A. No, he did not.
- 4 Q. 46 Is it the case that you were simply happy to take his instruction and prepare
11:12:22 5 this letter without enquiring into what exactly the nature of his supposed
6 holding in any of these companies was?
- 7 A. I think so. I think that -- and again if I may speculate. I don't
8 necessarily because what I saw happening on the last occasion that while there
9 may have been a falling out between Mr. Caldwell, Mr. Lawlor and going back to
11:12:51 10 the time that I first went into the bank where I thought that Mr. Caldwell,
11 Mr. Kennedy and Mr. Lawlor were in partnership. Writing this letter seemed to
12 be that the partners, for whatever reason, were falling in or out. And
13 therefore if somebody comes in and says I'm entitled to A, B, and C, will you
14 write and try and establish my interest. Until we actually would have got to
11:13:20 15 the stage of probably going with proceedings I wouldn't have said well you
16 better bring me in the files and various bits and pieces.
- 17 Q. 47 Right. I note that from the content of the letter here, whilst it's addressed
18 to Mr. Caldwell, there is reference equally to the fact that Mr. Caldwell or
19 those associated with him should have regard to the content of the letter.
11:13:42 20 Does that reflect a belief on your part on behalf of Mr. Lawlor at the time
21 that it was still Mr. Kennedy, Mr. Caldwell who were the parties who were
22 obliged to honour the commitment or was it solely directed, as far as you know,
23 towards Mr. Caldwell?
- 24 A. I don't know is the answer. But I suspect that the reason that I would have
11:14:04 25 mentioned anybody other than Mr. Caldwell was to try and throw a net over
26 everybody just in case there was other people there who hadn't been disclosed.
27 And I was trying to, I suppose, shift the responsibility on to Mr. Caldwell to
28 put other people on notice insofar as they had interests which either
29 Mr. Lawlor wasn't aware of or Mr. Lawlor hadn't instructed me about.
- 11:14:31 30 Q. 48 I see. Did Mr. Lawlor ever indicate to you that as a result of his

11:14:36 1 negotiations with Mr. Caldwell or others, he received a further payment of some
2 335,000 pounds which he intended to lodge to the account which he had opened,
3 the Landesbank in Liechtenstein?
4 A. I have no knowledge of it.

11:14:55 5 Q. 49 Did he at any later stage indicate to you that he had again sought the advices
6 and services of David Morgan Whitehead & Co. in order to structure his
7 resolution of dispute with Mr. Caldwell?
8 A. No knowledge of that either.

11:15:23 9 Q. 50 I see. We'll see that your firm I think is then contacted in 1999 subsequent
10 to the setting up of this Tribunal of Inquiry by Mr. Lawlor seeking the return
11 or the delivery to him of certain files; isn't that so?
12 A. Correct.

13 Q. 51 And I think that this was dealt with specifically by a member of your firm, a
14 partner in your firm, Mr. Ronan Hannigan rather than personally by you; is that
11:15:44 15 right?
16 A. At that stage I had taken leave of the practice and I'd gone with another
17 company, not in the legal business.

18 Q. 52 I see. But I think you are aware nonetheless of the documentation which was
19 generated in the relation to this and you are satisfied that what is recorded
11:16:02 20 in this documentation is an accurate representation from your firm's point of
21 view what have took place with regard to these files; is that so?
22 A. Oh, absolutely yes.

23 Q. 53 If we could look firstly to page 2857 which is a letter to will people Lawlor's
24 secretary Ann on the 26th of March 1999:
11:16:23 25
26 "Dear Ann, I refer to the above matter and enclose herewith for your attention
27 pro forma invoice in respect of the work undertaken by this firm, the fees in
28 respect of Elangrove Limited were in excess of 9,000 pounds. And as a note of
29 goodwill we have made an ex gratia reduction of 50% in respect of same. We
11:16:40 30 hope to have the file up from storage by Monday afternoon and will contact you

- 11:16:45 1 then. Kindest regards, yours sincerely".
2
3 The reference there to the top is to the High Court 1997 No. 4847P and
4 Elangrove Limited. We know that the Elangrove file didn't generate any
11:17:01 5 proceedings as such; isn't that so?
6 A. Correct.
7 Q. 54 And the High Court reference that is given here is to proceedings which were in
8 fact instituted but in relation to another matter in which Mr. Lawlor was one
9 of two Defendants, the other being Shearwater; is that right?
11:17:17 10 A. That's correct.
11 Q. 55 And I think those were proceedings for specific performance which had been
12 instituted by Mr. Patrick Murphy, to whom Mr. Lawlor had apparently agreed to
13 sell a portion of the 23 acres around Somerton. And that was a matter which
14 was subject to a legal challenge because the incoming owner of the property,
11:17:43 15 Mr. Dobson, was not happy to accept that his company was bound by this prior
16 commitment which had been given by Mr. Lawlor to Mr. Kennedy; isn't that so?
17 A. That's so.
18 Q. 56 Those proceedings again were proceedings which were ultimately compromised as
19 part of a global settlement which Mr. Lawlor had apparently with Mr. Dobson.
11:18:05 20 A. Correct.
21 Q. 57 And in those proceedings the interests of Mr. Lawlor were being represented
22 again by Binchy & Partners solicitors; is that correct?
23 A. That's correct.
24 Q. 58 So that it was in respect of these two files that this letter was written, they
11:18:20 25 are the only two identified files; is that right?
26 A. That's correct.
27 Q. 59 And the Elangrove here should be Elangrove the company that's been referred to
28 earlier?
29 A. That's correct.
11:18:30 30 Q. 60 The pro forma invoice then on page 2858, again shows title of two matters,

- 11:18:41 1 albeit reflecting what was on the letter heading but probably not accurately
2 reflecting the full title of either the High Court proceedings or the Elangrove
3 file; isn't that correct?
- 4 A. That's correct.
- 11:18:53 5 Q. 61 Can we take it from the fact that this letter was written seeking the payment
6 of the files and -- sorry. The return of the files by Mr. Lawlor and in
7 return prompting a fee note that there had not been a charge made to Elangrove
8 to this date in respect of the work that was done in an effort to recoup the
9 funds from Mr. Caldwell?
- 11:19:21 10 A. I think that's fair comment, yes.
- 11 Q. 62 Right. In other words, there wouldn't appear to have been a fee note
12 generated to Mr. Goodman that I can see?
- 13 A. No, I don't think so.
- 14 Q. 63 Right. Although, as we examined the documents on the last occasion the claim
11:19:41 15 as formulated was one which centred upon the claim for the 158,000 pounds for
16 interest etc. due to Elangrove rather than the advancement of Mr. Lawlor's own
17 claim for figures which varied from 100 to 375,000 pounds; isn't that correct?
- 18 A. Correct. But I think you have to take into account the recent claim by
19 Mr. Goodman wherein, where they show that the fee of some 14 or 15,000 pounds
11:20:15 20 was paid through Mobberley. And because in my mind Elangrove and Mobberley are
21 the same transaction, it's quite possible that one fee note generated for the
22 both transactions and this was a separate fee note addressed to Mr. Lawlor.
- 23 Q. 64 Well I think you probably would have reflected that in some way I think if you
24 were acting for two clients. You'd have some apportionment as to the work
11:20:41 25 between the two. I mean, this isn't 50%. 9,000 isn't 50% of the sum which
26 was being sought from Mr. Goodman.
- 27 A. I didn't generate this fee note. This is something that obviously Ronan
28 Hannigan decided to do. I mean, he wouldn't have picked up the phone and
29 consulted with me and say I'm going to charge Liam Lawlor a fee. I think it
11:21:07 30 may well be one of those cases where we might have taken a view or he may have

11:21:12 1 taken the view more correctly, that we are unlikely to get paid here so if
2 they're looking for the file let's try and generate a fee. As opposed to
3 having some cost accountant go through the file and say how much are we
4 actually owed.

11:21:27 5 Q. 65 We'll see from the next letter, at page 2859, that on the 29th of April of 1999
6 Mr. Hannigan was writing to Mr. Lawlor confirming that the files had been
7 collected from the office.

8
9 "Dear Liam, I refer to the above matter and in particular your recent visit to
11:21:44 10 the office to collect the above files. I refer in particular to our letter to
11 you of the 26th of March 1999, enclosing a fee note in respect of the work
12 undertaken by this firm on behalf your behalf. I would be obliged if you
13 would kindly put us in funds in order discharge the same in the sum of 5,445
14 pound. I await hearing from you are at your earliest convenience. Kindest
11:22:07 15 regards".

16
17 It appears, if this letter is accurate, that the files themselves were given to
18 Mr. Lawlor rather than copies of the files; isn't that correct?

19 A. That's correct.

11:22:16 20 Q. 66 And we'll see that there's a follow-up two months later, at page 2860:

21
22 "Dear Liam, I refer letter to the above letter and in particular our letter to
23 you of the 26th of March 1999, enclosing fee note in respect of work undertaken
24 by this firm on your behalf and our reminder letter thereto dated the 29th of
11:22:38 25 April 1999, to which we would not appear to have received a reply. We would
26 be obliged if would you kindly now put us in funds in order to discharge the
27 outstanding fees due in the sum of 5,445 pounds by return".

28
29 And I think there's again a follow-up to that on the 8th of May of 2000.

11:23:02 30 "Dear Liam, we refer to the above matter" -- that's sorry at page 2861 on

11:23:07 1 screen. "Dear Liam, we refer to the above matter and in particular our letter
2 to you of the 26th of March 1999 enclosing fee note in respect of work
3 undertaken by this firm on your behalf and our reminder letters thereto of the
4 29th of April 1999 and the 24th of June 1999 to which it would appear we have
11:23:26 5 not received any reply from you.

6
7 We would be obliged if you would kindly now put us in funds in order to
8 discharge the outstanding fees by return".
9

11:23:36 10 The next letter then is of the 5th of January 2001. That's at page 2862. And
11 in the interim Mr. Lawlor is the subject of orders of the Tribunal and indeed
12 subsequently of the High Court, requiring him to make discovery of
13 documentation. And that led to a circular letter, if I could describe it as
14 that, being sent to over 283 persons, one of whom was your firm. And this
11:24:11 15 apparently elicited this response from your firm, it reads:

16
17 "Dear Sirs", it's addressed to Delahunt solicitors who were at that time acting
18 on behalf of Mr. Lawlor. "We acknowledge receipt of your letter of the 21st
19 ult which was received here on the 3rd inst. As your client will recall, your
11:24:30 20 client collected all his files from this office in March 1999 on the basis of
21 his undertaking A, to furnish us with a copy of the files furnished to him and
22 in this regard we would be grateful to receive a copy of same. And B, to
23 furnish us with our agreed fees in the sum of 5,445 pounds.
24

11:24:48 25 We would be grateful if would you arrange for copies of the said files to be
26 furnished back to us together with discharge of the above-mentioned agreed fees
27 as per the undertakings. If we can assist any further please do not hesitate
28 it contact us".
29

11:25:03 30 I think you didn't get a reply from Delahunts and your firm then wrote to

11:25:08 1 Dermot P Coyne who came on as solicitor acting for Mr. Lawlor. We see on the
2 4th of July 2001 at page 2863 a letter to Mr. Coyne.
3
4 "Dear Sirs, we have been writing to Mr. Liam Lawlor and also to Mr. Brian
11:25:26 5 Delahunt of Delahunt solicitors of Phibsboro who we understood previously acted
6 for your client, we understand however that you are now acting for and on
7 behalf of Mr. Lawlor.
8
9 We would point out that your client collected all of his files from this office
11:25:38 10 in March 1999, when he undertook to have the files copied and return one full
11 copy of the files to this firm. We have received a request from the Tribunal
12 of Inquiry into Certain Planning Matters and Payments with respect of various
13 files, Elangrove Limited which we believe was part of the files handed over to
14 your client in March of 1999, when he personally called -- sorry - when he
11:26:03 15 personally collected the files at short notice insisting that they were
16 required to the Tribunal and when he gave various undertakings to this firm in
17 respect of same and the outstanding accounts and costs due to us.
18
19 We would be grateful if you would arrange for copies of all of the files to be
11:26:20 20 returned to us and in particular all files relating to Elangrove in order to
21 that we may be able to hand over to same to the Tribunal. We have been
22 requesting same for quite some time, both from your client directly and from
23 Delahunt solicitors. The Tribunal require the papers by Monday next the 9th
24 inst. Therefore we would require you to furnish us with copies of the files
11:26:41 25 by the latest close of business from 6th of July 2001.
26
27 We await hearing from you as a matter of urgency."
28
29 I don't think that that elicited a sponsor or indeed the files; isn't that so?
11:26:55 30 A. That's correct.

11:26:55 1 Q. 67 There was then a letter written to you personally at Noel Smyth & Partners.
2 We'll see at page 2864 on the 17th of February 2002.
3
4 "Dear Sirs, I refer to previous correspondence regarding the above.
11:27:13 5
6 As you are aware, I am under obligation by Order of the High Court and the
7 Tribunal of Inquiry into certain Planning Matters and Payments to complete my
8 final discovery by April 9th 2002. The High Court and the Chairman of the
9 Tribunal have particularly stressed it is not sufficient for me to inform the
11:27:30 10 parties that discovered material has already been made directly to the
11 Tribunal. They have stressed it is my obligation to secure any documents
12 which relate to myself directly from the parties involved.
13
14 In addition, any documentation received can have the further benefit of
11:27:44 15 assisting the recall of other documents which, while no longer in existence,
16 must be listed in schedule 2 of the final affidavit of discovery as these
17 events occurred quite some years ago. It is apparent from documentation
18 present in the affidavit by the Tribunal that you have access to some
19 documentation relevant to my affairs.
11:28:04 20
21 Your failure on the first instance to supply me with the documents discovered
22 directly to the Tribunal has resulted in the High Court and Supreme Court
23 reaching certain conclusions which could have been avoided presumably had, had
24 you complied with my request which I was seeking from you for forwarding to the
11:28:22 25 Tribunal.
26
27 I would appreciate if you would forward to me copies of all available
28 documentation in your possession relating to me as soon as possible, so that I
29 can meet my obligation to the Tribunal, to the court. Should you require any
11:28:36 30 further clarification or information kindly contact the undersigned or my

11:28:40 1 solicitor Dermot P Coyne".
2
3 I think in the interim between those two last pieces of correspondence you had
4 attended at an interview of the Tribunal of Inquiry and you had provided to the
11:28:52 5 Tribunal such documentation as you had, which was limited to the correspondence
6 which we've already read this morning together with the letter of the 3rd of
7 March 1997; isn't that so?
8 A. That's right.
9 Q. 68 And I think that whilst you had not retained that document in hard copy, it was
11:29:12 10 apparently capable of being reproduced by the operation of your computer system
11 as being a document on file; is that right?
12 A. That's correct.
13 Q. 69 So that it came into physical form as a document when that exercise was carried
14 out for the purpose of your interview with the Tribunal; is that correct?
11:29:32 15 A. Correct.
16 Q. 70 Do you believe that a copy of that would have been with the original Elangrove
17 file or was it going to be a separate file which might have been generated had
18 the claim in 1997 for shares and interests in the numbered and named companies
19 that are mentioned in it been progressed?
11:29:54 20 A. I don't know is the answer. I would have imagined that if the transaction, if
21 there was going to be a new case started we would have opened up an account and
22 we would have gone through the normal procedures. But there is no reference
23 of any of those in anything that we've seen. So I imagine that the letter was
24 probably put on to the Elangrove file and because it didn't progress anywhere
11:30:20 25 else it was left there.
26 Q. 71 Or it might be the case perhaps that because the draft wasn't approved or
27 otherwise by Mr. Lawlor that perhaps it never, a file was never opened?
28 A. A file wasn't probably opened but we would also in the normal course of events
29 also keep a hard copy of a letter on file. So I anticipate that it may well
11:30:44 30 have been on the Elangrove file, if it was filed any where.

11:30:48 1 Q. 72 I see. Your firm responded to the last letter on -- at page 2866 on the 6th
2 of March:
3
4 "I refer to letter of the 17th of February addressed to us from Mr. Lawlor with
11:31:02 5 some surprise. Firstly, we note that despite repeated requests that your
6 client continues to fail to comply with two basic undertakings that were given
7 to this firm by your client, namely A, your client's undertaking to discharge
8 our fees in the sum 5,445 pounds (euro equivalent given). B, your client's
9 undertaking to furnish this firm with copies of the documentation he collected
11:31:23 10 from this firm.
11
12 We are both disappointed and completely frustrated that your client has not
13 honoured these undertakings despite the fact that we went to very considerable
14 trouble to assist your client and also to assist the Tribunal.
11:31:36 15
16 With regard to your client's unfounded allegations that we have allegedly
17 failed to furnish documents with him. We would not only remind him of his
18 undertakings to this firm which have not been honoured, but that your client
19 specifically furnished an authority that any documents that we held were to be
11:31:52 20 sent to the Tribunal. We utterly reject your client's outrageous allegations
21 we, Mr. Goodman, or anybody else may in any way be responsible for your
22 client's own failures. At your request we have attempted to assist the
23 Tribunal in every way we can. It is every citizens duty and if you wish to
24 take copies please furnish us with consent of the representative of the
11:32:11 25 Tribunal to us to furnish you with any documents with we have already furnished
26 to the Tribunal and please ensure that you comply without further delay with
27 your outstanding undertakings as set out above."
28
29
11:32:27 30 Again, I don't believe that that ever resulted in either the files being

11:32:31 1 returned to you; isn't that so?

2 A. That's correct.

3 Q. 73 And you may be aware from the brief that Mr. Lawlor denies that he received the

4 files from you, that he ever had the Elangrove file, that he says that this was

11:32:46 5 the file of Mr. Goodman and it would be inconceivable that it would go to him,

6 that is his response?

7 A. I'm aware of his denial.

8 Q. 74 You're aware of all of that.

9 A. Yes.

11:32:59 10 Q. 75 What do you say they are inaccurate or otherwise?

11 A. They're inaccurate. Ronan Hannigan, whom I have spoken to and a girl who

12 handed the file out on the day to Mr. Lawlor to the best of their recollection,

13 both of the files were handed over. Mr. Hannigan certainly says that on the

14 day, he doesn't unfortunately have a clear recall but he believes he may have

11:33:28 15 spoken to either -- he certainly spoke to his secretary when she called him to

16 release the files. And he may even have spoken to Mr. Lawlor. But he

17 certainly is clearly of the view that he gave Maire, his secretary, the

18 permission to hand out those files.

19 I think the added thing that Ronan would say was that there was a precedent for

11:33:51 20 this event to occur. In a different module of the Tribunal there had been a

21 request one morning by the, I think it was either by Mr. Hanratty or Miss

22 Dillon, for documentation in relation to some tapes that we had made on behalf

23 of another part of your investigation. And the Tribunal rang up looking for

24 the information. And what had happened is that at that stage Mr. Hannigan had

11:34:22 25 suggested well we needed permission from the client and we needed time to make

26 copies. And the Tribunal on that occasion, now I'm not comparing the Tribunal

27 to Mr. Lawlor. The Tribunal on that occasion basically said there was no need

28 to be concerned, that once the Tribunal had said to hand over the documentation

29 then we were perfectly in order to do so. And indeed Miss Dillon came by our

11:34:47 30 office later that morning and picked up the documentation. Now, I'm not

11:34:53 1 comparing that with what happened with Mr. Lawlor but there was certainly in
2 Mr. Hannigan's mind, he would say that Mr. Lawlor appeared to be under some
3 pressure to deliver these files and to deliver this documentation. And it was
4 because of Mr. Hannigan's perception that he was under that pressure that the
11:35:13 5 files were handed over immediately.

6 Q. 76 Yes. In that other instance I think it was the case that the person in
7 question had been your client in that firm and it was with his permission that
8 the documents and tapes were being handed over?

9 A. Absolutely. I was only making the point, Mr. O'Neill, that because of the
11:35:33 10 fact that we were clearly comfortable with handing over anything to the
11 Tribunal once the Tribunal effectively said that we didn't need to be
12 concerned. I mean, we did receive copies back from you, obviously,
13 afterwards. I'm saying that when something was sought as a matter of urgency
14 then it was of course immediately handed over. We didn't wait to make copies,
11:35:54 15 or whatever. I'm saying that, I'm offering that not as an explanation of
16 what's happened, but as a clear recall as far as Mr. Hannigan is concerned,
17 that his view is that he cleared the files to be handed to Mr. Lawlor and, you
18 know, these letters weren't fabricated to cover up what might appear to be a
19 gaff in handing over the files, without their being copied.

11:36:24 20 Q. 77 Sure. The files that are referred to of course throughout this correspondence
21 are two in number. Firstly, the one that's referred to by its High Court
22 record reference number and not its title otherwise than that. And secondly,
23 the Elangrove file. And we'll see of course that Elangrove is an Irish company
24 separate and distinct from the Mobberley company which was the Isle of Man
11:36:48 25 company; isn't that right?

26 A. That's correct.

27 Q. 78 And the affairs of those two companies, though perhaps intended to be perhaps
28 overlapping to an extent in the event that the Bank of Nova Scotia had agreed
29 to assign its debt, were distinct from then on because the debt was not
11:37:13 30 assigned and the Mobberley documentation, could I suggest, was one that was

11:37:19 1 generated independently of the Elangrove assignment to Cork Company because it
2 was now dealing with, exclusively, the affairs of Mr. Goodman; isn't that
3 right?

4 A. Mobberley was --

11:37:33 5 Q. 79 Mobberley?

6 A. Yes, it was.

7 Q. 80 And in particular his banking affairs relating to an amount of 510,000 Irish
8 pounds or 475,000 pounds sterling -- 76,000 pounds sterling; isn't that right?

9 A. That's correct.

11:37:51 10 Q. 81 So there would be no circumstances in which there could be any confusion as to
11 whether or not Mr. Lawlor had any involvement with Mobberley, because on its
12 face there was nothing to connect Mr. Lawlor with Mobberley's files; isn't that
13 right?

14 A. That's correct.

11:38:07 15 Q. 82 But do you believe that Mobberley's files also went to Mr. Lawlor under the
16 heading of Elangrove/Mobberley?

17 A. I'm assuming that there was only one file kept for this transaction. I mean,
18 the transaction in -- this is a small piece of work in terms of where it
19 started from, the meeting with the bank, the letter of the 19th of December
11:38:34 20 where I write to the bank and basically make the offer to take an assignment of
21 the debt, and the bank writing back on the 30th of December basically saying
22 they're not interested in taking the assignment to Mobberley. So that from
23 there on in, as far as the Elangrove, all that really has happened is that the
24 Elangrove assignment then comes back from Goodman's company in January. But
11:39:04 25 Elangrove and the proposal that I was initiating at that stage effectively is
26 gone. The subsequent events that take place are the instructions that I
27 effectively give in relation to those monies are as a result of instructions
28 which I would have received from Sean Mooney to transfer the monies.

29 Q. 83 Mm-hmm.

11:39:27 30 A. So my point is that Elangrove and Mobberley were until, or if and when the bank

11:39:33 1 had agreed to make an assignment of it, they were effectively -- I would have
2 said that they were one file. So it's quite logical in my mind that there was
3 one file for that transaction. And I believe that the -- whatever was on the
4 Elangrove file, if there was reference to Mobberley on it or reference to the
11:39:54 5 letters to the bank, they would have been left on it.

6 Q. 84 But that would involve, I take it, somebody reading the file before it was
7 passed out to see whether or not it was Mr. Lawlor's file, because at best it
8 was a joint file; isn't that right?

9 A. Absolutely.

11:40:18 10 Q. 85 And it was joint to a point at which the parties had agreed that they would act
11 in unison in pursuing a particular claim?

12 A. Well if the correct procedures, I suppose, had been followed. First of all, I
13 should have approved. It was my file, it was my case. I should have
14 approved the release of the file and not Ronan Hannigan. I should have had
11:40:38 15 the opportunity of going through the file to see what was relevant as far as
16 Mr. Lawlor was concerned and what was relevant as far as Mr. Goodman was
17 concerned.

18 Q. 86 Yes.

19 A. In the event, unfortunately, that did not happen.

11:40:51 20 Q. 87 Now, since --

21
22 JUDGE FAHERTY: Just before you go on, there Mr. Smyth. You said earlier
23 that Mr. Hannigan had cleared the assignment to the land to Mr. Lawlor?

24 A. That's correct.

11:41:06 25
26 JUDGE FAHERTY: With whom had he cleared the files?

27 A. He hadn't cleared them with me. I was saying that he had cleared Maura, who
28 was his secretary, Ronan Hannigan wasn't in the office on the morning that
29 Mr. Lawlor came to collect the files.

11:41:17 30

11:41:17 1 JUDGE FAHERTY: Yes, I understand that. I understand that he would certainly
2 clear it with his secretary. He would have no authority to hand over
3 anything. In clearing it with Maura, do you know on what basis Mr. Hannigan
4 made the judgement call that the file could be handed over to Mr. Lawlor?

11:41:35 5 A. I believe that what Mr. Hannigan, was in Mr. Hannigan's mind was that he was
6 told by Mr. Lawlor that the files were required urgently by the Tribunal. And
7 he accepted Mr. Lawlor's affirmation that that's what effectively the files
8 were being taken for. And that there was no question, I suppose there was no
9 doubt in Mr. Hannigan's mind but that's exactly where the times would have
10 ended up. In the event that's not what has happened.

11
12 JUDGE FAHERTY: Do you know whether or not Mr. Hannigan would have perused the
13 file?

14 A. I don't know is the answer.

11:42:12 15
16 JUDGE FAHERTY: I mean, I don't know the indepth the workings of solicitors
17 offices. But we know from what you told us already that file would have been
18 created by you when Mr. Goodman retained you to look for the 158, 000.

19 A. Yes.

11:42:26 20
21 JUDGE FAHERTY: So I would have thought if it was a green file or whatever it
22 colour you used, that on the outside of it in black in, marker would have been
23 "Larry Goodman" or "Cork Company" or "Elangrove"; do you understand?

24 A. Yes.

11:42:40 25
26 JUDGE FAHERTY: And there would be a reference. Because there would have to
27 be some sort of an attendance note with you and Mr. Goodman; do you understand?

28 A. Yes, I do.

29
11:42:48 30 JUDGE FAHERTY: And we know at a certain point Mr. Lawlor joined issue with

11:42:53 1 Mr. Goodman on if you were going to go after Vino or Southfield or Mr. Caldwell
2 for monies there was a joint interest of monies as you said.
3 A. Yes.
4

11:43:01 5 JUDGE FAHERTY: That would have come at a later stage.
6 A. Yes.
7

8 JUDGE FAHERTY: I'm just wondering if there was only one file and you had this
9 sort of physical file, which obviously -- you say Mr. Lawlor got Mr. Lawlor
11:43:13 10 doesn't agree. At the very outset surely there would have been something to
11 put Mr. Hannigan on alert that perhaps some other people, including obviously
12 Mr. Goodman was involved in this file. From a physical point of view. I
13 just wondered?
14 A. Well I think that's a very fair question. But I think that if you look at
11:43:35 15 what's happened Mr. Hannigan writes to Mr. Lawlor and says that the files are
16 in storage and that they'll be available. I think he writes to him on a
17 Friday and says that the files will be available on a Monday. When the file
18 comes in on Monday Mr. Hannigan is not there and Mr. Lawlor appears in the
19 office looking for the files.
11:43:55 20

21 So I don't believe that Mr. Hannigan saw the files from the time that they came
22 in from -- and I'm speculating on this because I don't know. Mr. Hannigan can
23 give his own explanation if necessary but my understanding was that
24 Mr. Hannigan was not in the office, his secretary was. Mr. Lawlor showed up
11:44:13 25 for the files claiming they were required urgently by the Tribunal and the
26 files were handed to him. So nobody perused the files unfortunately. And
27 Elangrove was on the file. And I suspected that Maura, Ronan's secretary,
28 didn't go through the file or didn't -- well she certainly didn't take a copy
29 unfortunately.
11:44:40 30

11:44:40 1 JUDGE FAHERTY: It wouldn't be for the secretary I suggest to make a judgement
2 call. As I understand it you have already said that it was cleared --
3 Mr. Hannigan cleared it with her presumably.

4 A. That's correct.

11:44:56 5
6 JUDGE FAHERTY: But surely I would have thought somebody would have looked at
7 the file before you would handout the file to anybody.

8 A. Yes, in correct procedures yes, that should happen. But unfortunately people
9 make mistakes. I think this was just unfortunately a mistake.

11:45:07 10
11 JUDGE FAHERTY: There was no receipt obtained from Mr. Lawlor was there or any
12 acknowledgement in writing?

13 A. No.

11:45:13 15
16 JUDGE FAHERTY: Just to, again on office procedures. I mean, obviously
17 Mr. Hannigan knew at this stage even from whatever he knew, he knew that there
18 was money owed to the firm by Mr. Lawlor for 5,000 odd.

19 A. Yes.

11:45:27 20 JUDGE FAHERTY: Which was a fair fee outstanding.

21 A. I agree.

22
23 JUDGE FAHERTY: If the file goes it's very hard for you to back up a claim for
24 this maybe down the road. You see what I'm getting it at?

11:45:41 25 A. Absolutely.

26
27 JUDGE FAHERTY: I would have thought at the very least Mr. Lawlor if, as you
28 say, he did get the file to your belief would have been asked to have that
29 acknowledged in writing, so that at least if you were to pursue him only for
11:45:58 30 the money that there was a file that he'd obtained even for that reason.

11:46:01 1 A. I think that's absolutely reasonable. Except there's one overriding
2 consideration here, Mr. Hannigan, and it was certainly of the view that these
3 files were going nowhere except straight to the Tribunal. So there was no
4 question of being concerned about getting back the files, copying the files or
11:46:20 5 recovering our fees under them. And that's what he would basically say
6 unequivocally that that's the reason why the files were handed out without the
7 delay of copying them or being concerned about where they were going to. As
8 far as I would say that, again speculating what Mr. Hannigan says, that he
9 believed that Mr. Lawlor effectively was bringing the files to the Tribunal
11:46:42 10 because he was under an Order to do so.

11

12 JUDGE FAHERTY: Thank you. Sorry to have interrupted, Mr. O'Neill.

13

14 MR. O'NEILL: Judge. When you were last giving evidence, Mr. Smyth, we dealt
11:46:59 15 with a number of matters concerning the company, Mobberley, that we've just
16 mentioned a little earlier in the context of Elangrove. But Mobberley as a
17 company as you have indicated was a company which you set up effectively to
18 give effect to the intention that there would be two payments out, one of 160
19 to satisfy the Goodman International debt and the other of 350 to take out the
11:47:29 20 Bank of Nova Scotia loan and to surpland Mobberley for BNS; isn't that so?

21 A. Correct.

22 Q. 88 In the course of your evidence I put to you certain information which had
23 recently come to the Tribunal at the time you were giving evidence as to
24 subsequent disbursements from that fund, that is what became of the 350,000
11:47:57 25 which was left after the payment of the 160, you recollect that?

26 A. I recollect that.

27 Q. 89 And you are aware I think from having been furnished in the interim with a copy
28 of an additional statement which was made by Mr. Larry Goodman and provided to
29 the Tribunal. It was a document of the 24th of February 2005 that Mr. Goodman
11:48:20 30 has gone on to elaborate further on the company Mobberley; isn't that so?

- 11:48:25 1 A. That's so.
- 2 Q. 90 You're aware of that statement?
- 3 A. I am.
- 4 Q. 91 You will also be aware that when Mr. Goodman gave his evidence initially to the
- 11:48:34 5 Tribunal in December of last year, he indicated that he had no knowledge of the
- 6 company Mobberley Limited nor had he any knowledge or any intention of
- 7 investing a sum of 510,000 pounds to give effect to the project that was
- 8 referred to both in the call report of the 15th of November 1991 and the
- 9 subsequent letter from you of the 19th of December 1991 to Bank of Nova Scotia,
- 11:49:07 10 though I appreciate there are variations between those two documents; isn't
- 11 that so? But as regards the principle of his being involved in any way in a
- 12 scheme which would have involved putting up those funds that is 510,000, he
- 13 rejected that as a possibility saying that he never would have considered that?
- 14 A. I'm aware of that evidence.
- 11:49:28 15 Q. 92 You are aware of that to have been his evidence at the time. If we could just
- 16 perhaps turn to further elaborations that now appear in Mr. Goodman's latest
- 17 written statement to the Tribunal dealing with those issues. Firstly, at page
- 18 3544 in the centre paragraph he reiterates his position vis-a-vis the
- 19 acquisition of the debt of Cork Company.
- 11:49:56 20
- 21 He says "In due course because the assets of the Cork Company were assumed by
- 22 my trading company, Goodman International, at a point in time when the latter
- 23 was in examinership. I wished for reasons I have explained to the Tribunal to
- 24 acquire the debt from Cork Company in order to pursue Mr. Lawlor personally
- 11:50:15 25 without the attendant publicity of adding my name to the exercise I paid the
- 26 Cork Company for the assignment of the debt".
- 27
- 28 So again he is re-affirming here that he paid for it without reference to the
- 29 fact that he did so via your client account.
- 11:50:32 30 A. Yes.

11:50:32 1 Q. 93 You see that. And when he deals with the question of Mobberley then at page
2 3545 he says in the last paragraph on that page:

3
4 "The question of my knowledge of any company called Mobberley Limited was put
11:50:48 5 to me during the course of my giving evidence to this Tribunal on the 14th of
6 December. I had seen a reference to this company on correspondence between
7 Noel Smyth & Partners and the Bank of Nova Scotia, when it was apparent that
8 this company had something to do with Mr. Gerry Gannon. Mobberley meant
9 absolutely nothing to me. My solicitors are instructed to inform the Tribunal
11:51:12 10 of this, which they did by letter dated the 3rd of December 2004. This was my
11 genuine belief at the time."

12
13 If I could just stop at that point, Mr. Smyth. The information in relation to
14 the Mobberley involvement, its reference appears, as you know, in the brief of
11:51:36 15 documents which was circulated to the parties in October of 2004. And it
16 contained the reference to Mobberley which is in your letter of the 19th of
17 December, where you identify Mobberley as the company who hopefully would, with
18 the permission of the bank, take over the indebtedness and then move to effect
19 a call in, a call up of the loan and hopefully achieve effective control of the
20 land through that device.

21
22 At any time after October when that brief was circulated and prior to
23 Mr. Goodman giving his evidence on the 14th of December, were you contacted in
24 any way by him for an explanation as to what it was that was going on with
11:52:25 25 regard to meeting the Bank of Nova Scotia in 1991 because as you know, his
26 evidence subsequently was that he was unaware of your approach to the bank and
27 he didn't know of any intention to take out the loan in the manner which is set
28 out in the call report and your subsequent letter. Did he contact you at any
29 time between October 2004 and the giving of evidence on the 14th of December
11:52:52 30 2004 to seek clarification of what your role was in particular vis-a-vis

11:52:58 1 Mr. Gannon, which on one interpretation of the call report would indicate that
2 it was Mr. Gannon who was intending to go through this process rather than
3 Mr. Goodman; do you understand the question I'm asking you?
4 A. The question is did Mr. Goodman contact me about that?
11:53:14 5 Q. 94 Yes.
6 A. The answer is no.
7 Q. 95 Right. Did he ever seek from you an explanation, even now, as to why it was
8 that you went to the bank with this proposition, because as you'll see even now
9 he rejects that you did so with his knowledge or on his authority?
11:53:28 10 A. No.
11 Q. 96 I'll continue then with the statement of Mr. Goodman at page 3546. He goes on
12 to say:
13
14 "The Tribunal then informed my solicitors on the 7th of January that as a
11:53:42 15 result of information obtained by them from Noel Smyth, that the funds used
16 from for the purchase of the assignment from Cork had emanated from Rea
17 Brothers Isle of Man, otherwise Close Bank. This information had not been
18 given to me by Noel Smyth & Partners.
19
11:53:59 20 I did not believe that I had ever any connection with this bank and was unaware
21 of ever having had any deposit either directly or indirectly with the bank --
22 with that bank. I was never informed of the identity of the company Mobberley
23 Limited. And I was never aware that there was a deposit of these monies in an
24 account in the Isle of Man. In the light of the information that was now to
11:54:28 25 and emphasis on now, further inquiries were made of Noel Smyth & Partners.
26 However, in order to establish where the funds had been sourced to make the
27 deposit into Rea Brothers Isle of Man.
28
29 Only as a result of information then supplied to me by Noel Smyth & Co. who had
11:54:46 30 obtained banking documents from Rea Brothers was I informed, through Sean

11:54:52 1 Mooney, of the origin of that deposit, namely, the National Westminster Bank
2 Isle of Man. We only became aware of this because of the Rea Brothers
3 documentation. Unfortunately, that documentation does not identify from where
4 that money emanated. My solicitors informed the Tribunal of this on the 17th
11:55:12 5 of January."

6
7 Now firstly, what Mr. Goodman is saying here is that he was unaware, firstly,
8 that Mobberley had an account in the Isle of Man, he was unaware of Mobberley.
9 But that he was also, he says, unaware of there being money on deposit in the
11:55:33 10 Isle of Man. How is that compatible with your evidence, if it is compatible
11 with it, that you were receiving instructions not only to make withdrawals from
12 the deposit account in the Isle of Man but you also had monies received in that
13 account from Almud Establishment, which could only happen had you furnished
14 that information to those who with owed that money to Mr. Goodman and who were
11:56:08 15 going to effect that deposit; isn't that so?

16 A. Yes, but I think that what -- I'm not trying to interpret Mr. Goodman's
17 statement, but it seems to be that any instructions that I got and as I've
18 given evidence to, would have come from time to time from Sean Mooney as
19 opposed to Mr. Goodman directly.

11:56:32 20 Q. 97 Yes.

21 A. So if he says he didn't know that he had an account in the Isle of Man, I'm not
22 going to dispute that. I know that I set up the account and that they were
23 Mr. Goodman's monies that were put into it. And that I accepted instructions
24 from Mr. Goodman's authorised person who at that time was Sean Mooney.

11:57:00 25 Q. 98 If we just stop at that point for a moment because the monies that were put
26 into the account in the first instance were not put in by you; isn't that
27 right?

28 A. No, they were not.

29 Q. 99 So they were put in by Mr. Goodman, albeit through the agency of others perhaps
11:57:17 30 but not you?

- 11:57:19 1 A. Correct.
- 2 Q. 100 And you would expect that Mr. Goodman would be aware and be informed by those
- 3 to whom he had given the sum of 510,000 pounds that his funds were accounted
- 4 for in a particular way.
- 11:57:34 5 A. Yes.
- 6 Q. 101 And you can't see any reason therefore why, if Mr. Mooney is aware of Mobberley
- 7 holding these funds in the Isle of Man that he, Mr. Goodman, should not be
- 8 equally aware?
- 9 A. Well with respect, that's a matter for Mr. Mooney to say. I would have -- I
- 11:57:55 10 would have opened up the account or I would have told Mr. Mooney to transfer
- 11 the monies. But they were at all times Mr. Goodman's monies.
- 12 Q. 102 Yes. Of course they were Mr. Goodman's monies. But Mr. Goodman isn't going
- 13 to be deliberately kept out of the loop as regards knowledge as to where his
- 14 funds are?
- 11:58:18 15 A. That's fair comment.
- 16 Q. 103 So that, firstly, do you agree that Mr. Mooney was in fact aware of Mobberley's
- 17 existence?
- 18 A. Yes.
- 19 Q. 104 And that it held a bank account in the Isle of Man?
- 11:58:29 20 A. Yes.
- 21 Q. 105 And presumably since lodgements were made to that account in the first instance
- 22 the 510,000 pounds which we understand came through National Westminster Bank
- 23 at some point and secondly, the 93,000 odd sterling which came from Al mud
- 24 Establissement and was lodge in the 1992, that that information must have been
- 11:58:58 25 available to Mr. Mooney to allow him to direct those funds to be lodged to that
- 26 account?
- 27 A. Yes.
- 28
- 29 CHAIRMAN: It's twelve o'clock, Mr. O'Neill. So I will give the stenographer
- 11:59:17 30 a few minutes of a break. So we might rise for ten minutes.

11:59:39 1

2

THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK

3

AND RESUMED AS FOLLOWS:

4

12:18:04 5 Q. 106 MR. O'NEILL: Does it follow from your last evidence, Mr. Smyth, that had
6 Mr. Goodman chosen to ask Mr. Mooney about where the 510,000 pounds was he
7 would have been told or he could have been told?

8 A. Yes.

9 Q. 107 That it was in Mobberley and that it was awaiting his instruction and indeed it
10 was moved on his instruction both in and out of that account over a period of
11 some three and a half years; is that so?

12 A. Correct.

13 Q. 108 Now, you see in the statement, again at page 3546, that Mr. Goodman says:

14

12:18:39 15 "Only as a result of information then supplied to me". And the then is
16 referring to January of this year. In the first paragraph there. "Only as a
17 result of information then supplied to me by Noel Smyth & Co. who had obtained
18 banking documentation from Rea Brothers, was I informed through Sean Mooney of
19 the origin of that deposit, namely, the National Westminster Bank Isle of Man.

12:19:04 20 Your visit to the bank was over the weekend ending on the 17th of January;
21 isn't that right?

22 A. Correct.

23 Q. 109 And insofar then as we can date the knowledge, Mr. Goodman is here saying that
24 it was after that, that is as and from the 17th presumably of January 2005,
12:19:25 25 that he learned from documentation we you had obtained from Rea Brothers that
26 the origin of the deposit monies, that is the 510,000 Irish or 476,000 sterling
27 was the National Westminster Bank Isle of Man, that's what he says here?

28 A. Yes.

29 Q. 110 Can you recollect where it is or how it is that or firstly perhaps is it the
12:19:52 30 case that you informed Mr. Goodman or Mr. Mooney in 2005, that the source of

- 12:20:03 1 the funds to Rea Brothers was National Westminister Bank?
- 2 A. No, I didn't do that.
- 3 Q. 111 No.
- 4 A. I don't recall doing that.
- 12:20:12 5 Q. 112 Because of the documentation that you've discovered to the Tribunal there is no
6 reference at all to National Westminister Bank, much less to a specific
7 numbered account that we dealt with the last time that you were in evidence or
8 indeed to the fact that it was an account held to the, in the name of
9 Mr. Dudgeon or to the order of Mr. Dudgeon; isn't that so?
- 12:20:36 10 A. Correct.
- 11 Q. 113 Did you know at any time prior to perhaps learning of it in correspondence with
12 Mr. Goodman's solicitors that the monies had come in to the Rea brother's
13 account via National Westminister Bank in the Isle of Man?
- 14 A. No.
- 12:21:01 15 Q. 114 And what then is your source of that knowledge?
- 16 A. The knowledge that it came from National Westminister Bank.
- 17 Q. 115 Came through.
- 18 A. Well the source of that knowledge I would have said would be the letter from
19 Mr. Goodman's solicitors to us.
- 12:21:15 20 Q. 116 Right.
- 21 A. Confirming that's where the monies came from.
- 22 Q. 117 Right. Have you any idea as to why they attributed to you and your
23 attributing it to them as being the source of this knowledge?
- 24 A. I have nothing to offer, I can't say.
- 12:21:37 25 Q. 118 So insofar as Mr. Goodman says here that "we only became aware of this because
26 of the Rea Brothers documentation". You would dispute the accuracy of that
27 because it's not contained within the Rea Brothers documentation that you have
28 made available to the Tribunal?
- 29 A. Not that I've seen.
- 12:21:56 30 Q. 119 And you might just confirm that you have in fact provided to the Tribunal all

12:22:01 1 of the Rea Brothers documentation which you have obtained from Mr. Dudgeon upon
2 your visit to the Isle of Man?

3 A. Well the actual documentation, to be absolutely clear. Mr. Dudgeon didn't
4 have any documentation. The documentation we got if you recall --

12:22:17 5 Q. 120 It was from Crow Morgan, yeah. The documentation which had been generated
6 perhaps by Rea Brothers would be a more accurate way of putting it?

7 A. Yes.

8 Q. 121 But certainly insofar as there's a reference to Rea Brothers documentation.
9 We may take it that that's the Rea Brothers documentation which was forwarded
10 to Crow Morgan and in turn provided by Crow Morgan to you?

11 A. Correct.

12 Q. 122 Is that right?

13 A. Yes.

14 Q. 123 Did you exchange that documentation then with Mr. Goodman when you received it?

12:22:51 15 A. No, the documentation came straight here.

16 Q. 124 So it only came to the Tribunal?

17 A. Correct.

18 Q. 125 And not otherwise?

19 A. Yeah.

12:23:02 20 Q. 126 Mr. Goodman then goes on to say: "Unfortunately, that documentation does not
21 identify from where the money emanated". He's not referring here to where the
22 money emanated in to Rea Brothers account but rather where it emanated prior to
23 National Westminster Bank.

24 A. Yes.

12:23:21 25 Q. 127 It's the inference we draw from that.

26 A. Yes.

27 Q. 128 Now, at the end of that page then, Mr. Smyth, you'll see that Mr. Goodman
28 indicates what his present understanding is. "I now understand as a result of
29 the draft statement of Noel Smyth received by my solicitors on the 24th of
12:23:39 30 January undercover the of the Tribunal's letter of the same date, that the

12:23:43 1 account in Rea Brothers Isle of Man appears to have been used exclusively as a
2 deposit for funds furnished by me.

3
4 I had no direct involvement with this mechanism. I have no recollection of
12:23:56 5 ever having been involved with the mechanics of the movement of funds and was
6 on no occasion was either I or Sean Mooney informed that this was an account
7 named Mobberley Limited. Indeed, it is to be noted that Mr. Smyth confirms
8 that this was a shelf company of his and that it was he who gave instructions
9 in relation to the movement of funds out of that -- out of the account. The
12:24:24 10 name Mobberley was not known to me. Mr. Smyth has given evidence to the
11 effect that he did not inform me that he was buying an Isle of Man company.
12 The matter was further complicated and confused by the fact that the reference
13 to Mobberley in any of the papers furnished in relation to this were in the
14 context that it was related to Mr. Gannon and in some way connected with
12:24:45 15 Mr. Gannon and/or Mr. Smyth's relationship with Mr. Gannon."

16
17 As far as you're concerned, your relationship with Mr. Goodman was not confused
18 in any way by the fact that Mr. Gannon was present at the meeting in the Bank
19 of Nova Scotia in November of 1991. Is that right?

12:25:07 20 A. That's correct.

21 Q. 129 And whilst the reference to him being there was contained within the October
22 brief circulated to the parties, you've already confirmed I think that that did
23 not cause Mr. Goodman to question in any way the role that you had played to
24 that point in time, in relation to his affairs in the Isle of Man; is that
12:25:31 25 right?

26 A. Say that again.

27 Q. 130 In relation to his affairs in the Isle of Man, which the only ones that we know
28 of are and the only ones I'm specifically directing your mind to are those of
29 Mobberley?

12:25:45 30 A. Oh, yes, yes, yes.

- 12:25:46 1 Q. 131 There is never any question of --
- 2 A. No confusion, no.
- 3 Q. 132 No. You see, Mr. Goodman does say here that he's attributing this knowledge to
- 4 both himself and/or Sean Mooney. You see that? Where he says "I have no
- 12:26:03 5 recollection of ever being involved with the mechanics of the movement of the
- 6 funds and on no occasion was either I or Sean Mooney informed that this was an
- 7 account of Mobberley Limited" named Mobberley Limited.
- 8 A. I've read what he says. It's not my recollection of -- he would not have been
- 9 involved certainly in the mechanics because he wouldn't have picked up the
- 12:26:30 10 phone and said do, this, that and the other. I would have got that
- 11 instruction from Sean Mooney.
- 12 Q. 133 Well insofar then as he is attributing a lack of knowledge of the existence of
- 13 Mobberley to Mr. Mooney; do you reject that?
- 14 A. I don't reject that -- I wouldn't say that -- be careful here. I accept that
- 12:26:53 15 it was his money. I accept that the amount of money was transferred to the
- 16 Isle of Man. I accept that he may not have asked me the name of the company
- 17 Mobberley. And it may be fair to him to say that he never inquired as to what
- 18 or where the money was. I would find it difficult to accept that he didn't
- 19 know at some stage that the money was in the Isle of Man. But I do accept
- 12:27:21 20 that if he says he didn't know the name of the company, that would not be -- I
- 21 wouldn't be -- I wouldn't reject that because as I said it's not a detail that
- 22 maybe he wasn't interested in.
- 23 Q. 134 Sure.
- 24 A. Once the money was effectively under my control and that he had Sean Mooney in
- 12:27:39 25 a position to give me instructions to move it.
- 26 Q. 135 Yes. My question really was directed towards Mr. Sean Mooney's knowledge of
- 27 events rather than Mr. Goodman's. Assuming Mr. Goodman to have left the
- 28 detail of the administration of these funds to his agents, both yourself and
- 29 Mr. Mooney. Is it the case that as far as you are concerned Mr. Mooney was
- 12:28:04 30 aware of Mobberley and aware that it was an account in the Isle of Man and

- 12:28:08 1 aware that it was being used for the purposes that we've examined at some
2 length on the last Friday that you gave evidence?
- 3 A. I would accept that Mr. Mooney was aware that it was an Isle of Man company.
4 That the monies were transferred to the Isle of Man for the purposes that I
12:28:24 5 have given evidence on previously.
- 6 Q. 136 Mm-hmm.
- 7 A. And that he would have given my instructions to move that money from the Isle
8 of Man from time to time. What I wouldn't want to say because I am under oath
9 and I want to be clear what I am comfortable saying. I might not necessarily
12:28:43 10 have given him and said look, Mobberley is doing this or Mobberley is doing
11 that, but the fact that instructions had to be given to the Isle of Man or I
12 would have said I would have had to contact Albert Dudgeon or whoever in the
13 isle of man. It would have meant that whoever in my view, it would have known
14 that the money was in the Isle of Man but maybe if he didn't know the name
12:29:08 15 Mobberley I won't be surprised.
- 16 Q. 137 Well how could he lodge the Almud Establisment's funds without knowing the
17 account of Mobberley without knowing the number within the bank?
- 18 A. Well I would have given that information.
- 19 Q. 138 Yes. Well you if you did then he had the knowledge?
- 12:29:24 20 A. Fair comment.
- 21 Q. 139 You didn't make the lodgement for Almud Establisment?
- 22 A. No, no.
- 23 Q. 140 You believed it was done at the instance of Mr. Goodman, whether it was done
24 directly by him talking to Almud or whether it was Mr. Mooney talking to Almud,
12:29:39 25 somebody on that side, as opposed to you must have identified both the account
26 and the account number. Because I suggest that the bank would not have
27 received funds into an account merely by name. They would have to know the
28 number and the authority to receive those funds; isn't that so?
- 29 A. That's so.
- 12:29:57 30 Q. 141 So do you have any doubt then that Mr. Mooney at some point in time knew both

12:30:03 1 the account number and the bank, Rea Brothers or Close Bank, I'm not quite sure
2 when it might have changed its title. And the name of the account holder in
3 order to effect that transfer?

4 A. No, that's fair comment, I think he must have.

12:30:19 5 Q. 142 On the last occasion I did put to you the explanation insofar as Mr. Goodman's
6 knowledge of events was as of the present time, that is two weeks ago, as to
7 what had become of the funds, that is the 350,000 pounds. We went through the
8 four or so identified withdrawals and what have you. You you will have noted
9 having read the statement of Mr. Goodman that his statement is in accordance
10 with the content of the letter that I put to you in its redacted form on the
11 last occasion?

12 A. Yes.

13 Q. 143 Again, I take it that on reflection you have not been in a position to
14 ascertain or to have any recollection of any one of those individual transfers,
15 either of funds into or funds from that account; isn't that so?

16 A. No.

17 Q. 144 So again, other than saying that these were transfers which were effected by
18 you and the on the instruction of Mr. Mooney, you don't know what the purpose
19 of those transactions was?

12:31:34 20 A. No.

21 Q. 145 Finally, we'll see at page 3550 where Mr. Goodman goes on to say in the second
22 paragraph on that page:

23
24 "I had no knowledge whatsoever of Mr. Smyth's visit to the Bank of Nova Scotia.

12:32:05 25 If I had wished to purchase the security which he had from Southfield I would
26 have done so."

27
28 Now, I'm not sure what the reference to you is there. You didn't have any
29 security from Southfield or otherwise. Perhaps it might be which they had.

12:32:24 30

12:32:24 1 "If I had wished to purchase the security which they had there Southfield I
2 would have done so requesting" perhaps is the right. In any event, "given the
3 bank's then understanding of my position regarding Southfield and approach by
4 me would I believe have been successful.

12:32:41 5
6 Furthermore, to require the security as is suggested would have involved an
7 additional investment of 350,000 pounds plus stamp duty and other related
8 costs. Whereas the Tribunal has suggested that the amount of 476,000 pounds
9 sterling is 510,000 pounds Irish, which it is implied breaks down into two
10 component parts, namely, the 160,000 pounds for the Elangrove assignment and
11 the 350,000 pounds for the acquisition of the security from Bank of Nova Scotia
12 the computation being made by the Tribunal is simply a coincidence".
13

14 Firstly, can I ask you whether or not you have any doubt in your mind but that
12:33:23 15 the sum was structured to be received as two components, one, to fund the
16 Elangrove assignment and the other to be ready in the event that Bank of Nova
17 Scotia was prepared to take or to assign its debt?

18 A. No.

19 Q. 146 The suggestion by Mr. Goodman here that this is simply a coincidence would mean
12:33:49 20 that there has to be some other purpose for which Mr. Goodman saw fit to
21 transfer 510,000 pounds Irish to a bank account in the Isle of Man on the 16th
22 to 19th of December 1991.

23 A. I agree.

24 Q. 147 Yeah. Do you know of any circumstance at all in which he had entrusted you
12:34:15 25 with this monies other than for the purpose upon which you've already given
26 evidence?

27 A. No.

28 Q. 148 Do you know of any reason why at this point in time he should be making the
29 point that without giving any explanation, of course, as to why it was that you
12:34:31 30 received, when he say you, I mean Mobberley, received 510,000 pounds Irish

12:34:45 1 because that is the amount of the transaction if one translates sterling into
2 Irish pounds?
3 A. I have no explanation.
4 Q. 149 He concludes by saying "The first last thing he wished to do was to have any
12:34:54 5 further involvement with Mr. Lawlor or with these lands".
6
7 If that were the case Mr. Smyth, it would follow that if you were engaged, as
8 we know you were in the endeavour to acquire the position or the stand in the
9 shoes of Bank of Nova Scotia through the debt acquisition, that it would have
10 to be for somebody else; isn't that so?
11 A. Correct.
12 Q. 150 If that is so. And it's your evidence that that is not the case. That you
13 acted only on Mr. Goodman's behalf?
14 A. Absolutely.
12:35:34 15 Q. 151 Yeah. And do you know of any reason why he should be denying that go to the
16 Tribunal at this point in time?
17 A. No.
18 Q. 152 Do you think you left in him in any state of confusion or otherwise at any
19 stage as to what your dealings were with his monies?
12:35:48 20 A. No.
21 Q. 153 And had he sought at any point in time an explanation from you prior to his
22 giving evidence as to exactly what the position was about those funds, I take
23 it you would have been in a position to satisfy his requirement by telling him
24 what the position was?
12:36:04 25 A. Hopefully, yes.
26 Q. 154 I want it turn now, Mr. Smyth, if I may, to the circumstances in which the
27 information which is now available to the Tribunal has come through to the
28 Tribunal because it is a rather fragmented journey. And I want to examine that
29 with you in the context of the requests which have been made of you by the
12:36:28 30 Tribunal, and the Tribunal orders for discovery which have been made over time.

12:36:34 1
2 And I will be handing you a book of correspondence which I think will be --
3 these are all extracts from documents which you've seen either generated by
4 your firm in the main or letters from the Tribunal with the exception of
12:36:50 5 certain interposed pages where Mr. Goodman's solicitors have provided
6 information for joint circulation or the Tribunal has circulated both
7 Mr. Goodman's solicitors and yourselves in relation to matters that were common
8 to the interests of both of you.
9
12:37:08 10 If I might start with a letter on the 7th of September 2004. I'm not sure if
11 that's the first document in the booklet in front of you.
12 A. Yep.
13 Q. 155 This was a letter written to you on the 7th of September. It says "you have
14 furnished to the Tribunal a written narrative statement concerning your
12:37:29 15 involvement in the Coolamber lands on behalf of Laurence Goodman and Mr. Liam
16 Lawlor. It appears you also acted for Mr. Gannon and Mobberley Limited in
17 connection with the Coolamber lands."
18
19 Now, the basis of that letter being written to you, Mr. Smyth, was that the
12:37:43 20 Tribunal had received the call report documentation and the Bank of Nova Scotia
21 documentation which would appear, firstly, to identify a role which Mobberley
22 was to play. And secondly, which contained the reference to Mr. Gannon being
23 the person who had taken the assignment. So those two documents were the
24 trigger factor to this letter being written. And if we can just review what
12:38:10 25 the knowledge of the Tribunal was up to that date.
26
27 It had received from you a narrative statement in which you set out your
28 account of events. But in that narrative statement there was no indication by
29 you that the Elangrove payment, that's the 158,560 payment, which was used to
12:38:31 30 fund the assignment, that that had come through the accounts of Noel Smyth &

12:38:37 1 Partners in the Isle of Man; isn't that so?

2 A. Correct.

3 Q. 156 I should say, it came through the funds of Noel Smyth & Partners which had in

4 turn been funded from the Isle of Man rather than that you had an account

12:38:51 5 directly in the Isle of Man?

6 A. Yes.

7 Q. 157 Secondly, there was nothing in your statement about the fact that Mobberley

8 Limited had opened an Isle of Man account for the purpose of taking out the

9 Cork Company and also for taking an assignment of the BNS loan from Southfield?

12:39:11 10 A. That's correct.

11 Q. 158 That was not matter which had been dealt with in your narrative statement at

12 the time; isn't that right?

13 A. Correct.

14 Q. 159 And thirdly, your statement had not made any reference to the fact that

12:39:22 15 Mr. Gerry Gannon was present with you at the meeting at Bank of Nova Scotia at

16 which the take out proposal was discussed?

17 A. Correct.

18 Q. 160 And I think that in response to that letter we'll see in the next page at the

19 14th of September you write to the Tribunal:

12:39:51 20

21 "Dear Miss Howard, I'm enclosing copy letter which I have now sent to Gerry

22 Gannon. If you have other documents or papers which you think might assist my

23 recollection of this matter or furnish me with any details on how I may assist

24 I will be glad to hear from you".

12:40:05 25

26 And I think that accompanying that letter was the letter on the following page,

27 also the 14th of September.

28

29 Which was addressed to Mr. Gannon: "Dear Gerry, I am enclosing a copy letter

12:40:15 30 which he I received from the Tribunal of Inquiry into certain planning matters

12:40:19 1 etc..
2
3 I have no recall of acting for you in relation to this matter. I did in fact
4 act for another client on one aspect involving a complex transaction. Because
12:40:29 5 of the time and the fact that land was involved I may have sought your advice
6 or opinion or even questioned your possible interest in acquiring the lands but
7 I simply can't recall the matter even having been discussed with you.
8
9 In an effort however to assist the Tribunal and in order to give them an
12:40:47 10 adequate response I would be obliged for your assistance or if you have any
11 papers or can shed any light on the matter I would be grateful to hear from
12 you".
13
14 And I think that in response to your request of the 14th the Tribunal wrote to
12:41:00 15 you on the 15th enclosing documentation as follows:
16
17 "Dear Mr. Smyth, thank you for your letter of the 14th of September 2004.
18 Attached is a copy of documentation from the files of Scotia Bank Ireland
19 Limited which took over the business of the Irish branch of Bank of Nova
12:41:17 20 Scotia. You will see that these documents record events in November and
21 December 1991 involving inter alia you and Mr. Gannon. I should be obliged to
22 hear from you further in light of the enclosed documents my correspondence is
23 confidential etc."
24
12:41:35 25 So with this documentation I think you received the call report, the letter of
26 the 19th of December 1991 from you to the bank, a letter from Rory Egan to the
27 bank and a letter from the bank to Rory Egan and also a letter to Mr. John
28 Caldwell from the bank setting out the position that you had visited in the
29 company of Mr. Gannon etc.
12:41:59 30 A. Correct.

- 12:42:00 1 Q. 161 Isn't that right? And having considered that, you then responded on the 8th of
2 October 2004:
3
4 "Dear Miss Howard, thank you for your letter of the 15th of September which I
12:42:11 5 did not get an opportunity to see until return from travelling earlier this
6 week. There are a number of discrepancies which I think would be useful to
7 point out to the Tribunal both in relation to the attendance which you kindly
8 forwarded to me", I think that's the call report, "and the copy of
9 correspondence addressed to Mr. Caldwell from Mr. Peter McCabe from Scotia Bank
12:42:31 10 and from Mr. Rory Egan solicitors to the bank". And you identify a number of
11 matters which you say require correction.
12
13 You say in the body of the next paragraph "I indicated that our clients were
14 Mobberley Limited which I believe was an Isle of Man company specifically set
12:42:51 15 up for the purpose of taking a transfer of the loan then in favour of
16 Southfield. As Mr. Goodman had advanced 350,000 pounds in the first instance
17 in order for the transaction to take place. Again Mr. McCabe seems to have
18 got his wires crossed although I do recollect stating that the strategy would
19 be that in the event of the debt being assigned that the entity taking the
12:43:13 20 assignment would demand the loans from Southfield and that a receiver would be
21 put in place to realise the assets with the sole intention of ensuring that the
22 monies repaid to Goodman. This was the beginning and the end of the
23 proposal".
24
12:43:27 25 So as of the 8th of October 2004 certainly you were in a position to focus your
26 mind on the role that Mobberley was intended to play in relation to the
27 Coolamber land transaction; isn't that right?
28 A. Correct.
29 Q. 162 On the following page then you accepted:
12:43:56 30

12:43:56 1 "I readily accept that Mr. Gannon was me on the on the occasion of the 15th of
2 November as he has been referred to in the call report. I would however
3 submit at the time that I had been involved with Mr. Gannon in looking at a
4 number of matters and I certainly would have invited Mr. Gannon to the meeting
12:44:10 5 in the offices of the bank and I would have outlined to him the strategy
6 vis-a-vis appointing a receiver. It is plain however that as our proposal did
7 not meet with favour and until I had seen the correspondence now of the 26th of
8 November written to Rory Egan and the subsequent letter of even date also
9 written to John Caldwell by Mr. McCabe, I could not have known what was
12:44:34 10 happening into the background to add to the confusion. Further it's plain that
11 McCabe wrongly instructed his solicitors in relation to him. I indeed was
12 representing because in the letter from Rory Egan solicitors, it is indicated
13 that I was "apparently representing Mr. Gannon a builder". I do not quite
14 understand what Mr. Egan means when he states "Mr. Smyth stated that he
12:44:54 15 represented the majority shareholder but not the minority shareholder
16 Mr. Caldwell I think who had no knowledge of the meeting". You go on to say
17 "Neither Mr. Gannon nor Mr. Goodman were shareholders in Southfield, rather a
18 debt had occurred the details of which I have already disclosed to you and the
19 terms upon which I was instructed and tried to recover it".

12:45:15 20
21 Now, again to this point nothing had been indicated about Mobberley's financing
22 either in the Isle of Man or elsewhere; isn't that right?

23 A. Correct.

24 Q. 163 From the Tribunal's point of view. So that on the 8th of October 2004, the
12:45:30 25 same date, there was a letter sent to you by the Tribunal.

26
27 "Dear Mr. Smyth, I refer to my letter dated 15th of September 2004 and await
28 hearing from you as a matter of urgency, it now appears that the Coolamber
29 lands inquiry will commence on Tuesday the 9th of November 2004. Enclosed is
12:45:50 30 a copy cheque furnished -- two words missing here I think it should be to the

12:45:56 1 Tribunal by A&L Goodbody solicitors for Mr. Goodman. "It is stated that this
2 cheque represents payment to Cork Company by Elangrove Limited at the time when
3 Elangrove Limited took over the indebtedness from Southfield to Cork Company.
4 As you will see, this is a cheque drawn in your office and it is clearly
12:46:16 5 relevant to the Coolamber lands inquiry and to the Elangrove Limited aspect
6 thereof in particular".
7

8 This, I think it is the first mention that your account, that is your Noel
9 Smyth & Partners solicitors account, had been used to fund the acquisition of
12:46:34 10 the Elangrove interest; isn't that so?

11 A. Correct.

12 Q. 164 The Tribunal then went on to request an explanation:
13

14 "Please furnish a full explanation of your involvement in making the payment
12:46:45 15 represented by the attached cheque. Please identify the source of the funds
16 from which you made the payment, the reason it is made payable to Goodman
17 International, the identity of the persons from whom you took instructions in
18 relation to the payment and what those instructions were. I have asked A&L
19 Goodbody to confirm that their clients will not object to disclosure of this
12:47:05 20 information to the Tribunal.
21

22 I assume there will be no objection as they have confirmed that they have
23 sought documentation from you for the purpose of the Tribunal's inquiries.
24 Furthermore, the Tribunal will consider on the 12th of October 2004 whether or
12:47:18 25 not to make an Order requiring you to make discovery on oath of and to produce
26 to the Tribunal all documents and records in your possession, power or control
27 relating to the payment represented by the attached cheque.
28

29 On that date the Tribunal will also consider an Order against Bank of Ireland
12:47:35 30 requiring them to make discovery on oath and to produce to the Tribunal all

12:47:39 1 documents and records in their possession, power or procurement relating to the
2 payment represented by the attached cheque.

3
4 In this context relating includes records relating to the source of the funds
12:47:51 5 utilised to make the payment, whether represented by credit entries on a bank
6 statement or otherwise. If you wish to make any submission please do so".
7

8 It was clearly identified at that point that the Tribunal would want to know
9 the source of the funds. But at this time the Tribunal's knowledge was
10 limited to the funds being a Noel Smyth & Partners client account from which
11 158,560 pounds had come; isn't that right?

12 A. Correct.

13 Q. 165 You responded then three days later saying "Dear Miss Howard, thank you for
14 your letter of the 8th of October. I'm sending you under same cover reply to
12:48:36 15 the 15th of September. Thank you also for furnishing a copy of the cheque
16 from Noel Smyth & Partners which isle returning to you as it is illegible in
17 disclosing the full amount of the cheque. However, again to the best of my
18 recollection the background to this transaction was as follows.
19

12:48:51 20 1. A company Elangrove was set up on behalf of Mr. Goodman to take an
21 assignment of the debt in the sum of 350,000 pounds that he had effectively
22 given to Bank of Nova Scotia.
23

24 2. In order to perfect the assignment my recollection is that Mr. Goodman
12:49:09 25 caused Mobberley an Isle of Man company to be funded to the tune of 350,000
26 pounds plus costs.
27

28 3. On taking an assignment then of the debt from Cork Company Mr. Goodman's
29 private company, the money was then paid back to Goodman International.
12:49:26 30

12:49:26 1 Because the cheque used is more than 12 years old I do not have the ability to
2 put my hands on it, however I believe the above is an accurate reflection of
3 the events I think took place. All the instructions in relation to this
4 matter would have been given by Mr. Goodman and/or Mr. Sean Mooney his advisors
12:49:41 5 and no one else was involved.

6
7 When the transaction subsequently failed with bank of Bank of Nova Scotia and
8 an assignment of their debt was not taken Mobberley would have returned to
9 Mr. Goodman's company the money advanced for the purpose of taking the
12:49:55 10 assignment in the firsts place. I trust this is satisfactory etc".

11
12 Now, I think that that was your recollection at the time but I think inaccurate
13 in a number of ways as we see subsequently; isn't that right?

14 A. Yes.

12:50:08 15 Q. 166 Elangrove had not been set up for the purpose of taking an assignment of the
16 350,000 pounds debt, it had been set up for the purpose of taking the
17 assignment of the liability of Southfield to Elangrove; isn't that right?

18 A. Correct.

19 Q. 167 In relation to the Mobberley reference here, it was not funded to the tune of
12:50:33 20 350,000 but rather was funded to the tune of 510,000 pounds; isn't that right?

21 A. Correct.

22 Q. 168 On taking the assignment of the debt from Cork Company the money was then paid
23 back to Goodman International, that is correct in relation to the sum of
24 158,560 but not in relation to 350,000, which I think was what you had intended
12:50:59 25 to reflect here; isn't that so?

26 A. Correct.

27 Q. 169 You indicated there that because the cheque was more than 12 years old you
28 didn't have the ability put your hands on it. But we'll see that at a later
29 stage that was produced; isn't that so?

12:51:14 30 A. Correct.

- 12:51:15 1 Q. 170 The cheque. And equally, in the very end here where you say that Mobberley
2 would have returned to Mr. Goodman's company the money advanced for the purpose
3 of taking the assignment in the first place. As a consequence of the
4 assignment of the bank not having taken place. That again did not take place;
12:51:36 5 isn't that right?
6 A. Correct.
7 Q. 171 The Order which had been indicated to you as being one which the Tribunal would
8 consider making was in fact made on the 12th of October 2004. And you were
9 informed of that. And by letter of the same date which enclosed the Order and
12:51:59 10 also reinforced the fact that relating to includes records relating to the
11 source of the funds utilised to make the payment whether represented by credit
12 entries or on a bank statement or otherwise; isn't that so?
13 A. I beg your pardon?
14 Q. 172 The reference to relating to is again defined for the purpose of the Order in
12:52:23 15 the letter of the 12th of October which enclosed the Order to you. The
16 writer, Miss Howard, wrote to you saying "I refer to the above enclosed by way
17 of service the certified copy Order of the Tribunal dated today relating to
18 "includes records relating to the source of the funds utilised to make the
19 payment whether represented by credit entries on a bank statement or
12:52:49 20 otherwise."
21 A. Yes.
22 Q. 173 Do you see that?
23 A. Yes, I do.
24 Q. 174 So that it was -- your attention was again being drawn to the fact that it
12:52:58 25 wasn't sufficient merely to show that it had come out of a bank account but
26 rather the source of the funds for that particular were; isn't that correct?
27 A. Yes.
28 Q. 175 And again, as of that date the Tribunal was not aware that Mobberley had had
29 any role in that 158,000 pounds transaction?
12:53:19 30 A. Correct.

12:53:20 1 Q. 176 On the 18th of October then there is a letter sent to the Tribunal referring to
2 your earlier letter:

3
4 "I refer to my letter of the 11th of October last. I have now had the
12:53:35 5 opportunity of briefly reviewing the five large lever arch files and papers
6 which you sent to me in relation to the above-mentioned matter and as a result
7 of which I think it should be I now realised that I have intermixed two
8 transactions, and my letter of the 11th of October is incorrect for the
9 following reason.

12:53:57 10
11 The illegible cheque from Noel Smyth & Partners which I returned to you as
12 being illegible must have been for the sum of 158,560 pounds and not 350,000
13 pounds as I had incorrectly assumed in my letter of the 11th inst.

14
12:54:20 15 The mistake occurred because the assignment referred to the 158,560 pounds
16 being an assignment of the original debt whereas the 350,000 pounds referred to
17 a letter of comfort that Mr. Goodman had given to the bank. It is also plain
18 that the assignment was taken in the name of Elangrove and a copy of that
19 assignment has been furnish in the papers you gave to me. And my view is that
12:54:41 20 Mobberley would have been the company which would then be used to take the
21 proposed assignment of the Bank of Nova Scotia debt which as you were aware
22 never occurred.

23
24 I'm sorry for the confusion that I may have cause in the this matter.
12:54:54 25 However, as indicated A, the cheque which I was commenting on in my letter of
26 the 11th of October was illegible. And B, I did not have the file of papers
27 which you submitted to me which included the assignment which then of course
28 disclosed that the amount involved was 158,560 pounds. If I can be of further
29 assistance to the Tribunal please let me know".

12:55:19 30

12:55:19 1 You then in accordance with the Order of the 12th of October you provided an
2 affidavit of discovery and that was on the 25th of November.

3
4 "Dear Miss Howard, I refer to your letter of the 23rd of November in the above
12:55:36 5 regard. I attach herewith the affidavit of Mr. Noel Smyth and apologise for
6 error in furnishing same. I also attach herewith for your attention copy
7 ledger sheet referred to therein".

8
9 I think that that affidavit was the subject of comment by the Tribunal to you
12:55:56 10 on the 30th of November as indicated as follows:

11
12 "Dear Mr. Bermingham, I refer to your letter of the 25th of November and
13 affidavit of discovery enclosed herewith. The Tribunal is not satisfied that
14 your client has complied with the Order. From the first part of the first
12:56:12 15 schedule it appears that the only documents your client can produce in respect
16 of the payment of 158,560 pounds on the 29th of December 1991, are a copy of
17 the front of the cheque and a document described as "copy ledger sheet".
18 This being so, it is to the second schedule of the affidavit that the Tribunal
19 must turn in order to obtain relevant information from your client.

12:56:37 20
21 There is no proper listing in the second schedule however. Instead there is a
22 generic description of documents in form rejected by the Supreme Court in the
23 matter of this Tribunal and Mr. Liam Lawlor at reference 2002 three Irish
24 Reports page 62. The judgement set out the requirements of a properly drawn
12:56:58 25 second schedule which include a listing of each document which formerly
26 existed. The Supreme Court underlined the importance to a Tribunal Inquiry of
27 a properly drawn second schedule in furthering the investigation. The Tribunal
28 therefore directs that Mr. Smyth furnish a properly drawn affidavit of
29 discovery on or before the 7th of December 2004. I am also to inform you that
12:57:19 30 it is likely that Mr. Smyth will be examined on his compliance with the Order."

12:57:25 1
2 I think that in addition to the deficiency which is highlighted here Mr. Smyth,
3 it was the case that there was no reference in the documentation which was
4 discovered here to the fact that the funds had come in through Mobberley and
12:57:39 5 Rea Brothers though that was obviously the source of the 158,560 pounds which
6 had come in to your client account; isn't that so?

7 A. That's correct.

8 Q. 177 Now, on the 1st of December then 2004 the Tribunal also wrote to you,
9 Mr. Bermingham in your office:

12:58:01 10
11 "I refer to my letter of yesterday in relation to Mr. Smyth's compliance with
12 the Order. The document described in the affidavit of discovery as a ledger
13 sheet appears to be an extract from a cheque payments journal of your firm.
14 The Tribunal requires that is you give a full description of the documents so
12:58:17 15 that it is clear to all considering the affidavit of discovery, what is being
16 produced and that this may be recorded in evidence in public hearings in due
17 course. The following matters arise in respect of the cheque journals sheet."

18
19 And there are a number of queries raised in relation to that one document.
12:58:37 20 They include firstly "A, copy cheque journal sheet furnished is not a clear
21 copy. Please furnish a clear copy by return.

22
23 At line 11 there is an entry which out of date sequence for cheque number 4824.
24 This is the cheque of which you furnished a copy of the front to the Tribunal
12:58:55 25 that. Is the 158,560 pounds cheque.

26
27 Please furnish a copy of the back immediately. Bank have of Ireland have said
28 that the original of all cheques and any other debit dockets referable to your
29 client account were returned to your firm by the bank.

12:59:12 30

12:59:12 1 C, please explain why the date on the 158,560 pounds cheque and the relevant
2 cheque journal entry appears to have been over written.
3
4 Please explain the entry Mobberley Limited NF E 13 - L in the discount column.
12:59:27 5 Please confirm the names and current addresses of each person who made an entry
6 in the cheque journal in respect of the 158,560 pounds cheque. The cheque at
7 line 13 dated 20th of December 1991 numbered 4826 paid to Bank of Ireland and
8 apparently in the sum of 159,947 pounds appears to be related to the 158,560
9 pounds cheque.
12:59:54 10
11 Please furnish details of the transaction to which the 159,947 cheque relates.
12 Please include an explanation of the correlation between the two cheques.
13 Please furnish the name and address of all persons who made entries in the
14 cheque journal in respect of that cheque. Please include an explanation in
13:00:14 15 respect of that cheque for what appears to be Elangrove Mobberley Limited.
16
17 Please confirm whether there is any relation between the foregoing and the
18 cheque in the sum of 70,000 pounds paid to Gannon Homes Limited on the 23rd of
19 December 1991. Please explain whether any other entry appearing on the single
13:00:33 20 sheet of the cheque journal furnished to the Tribunal is relevant to the
21 158,560 pounds cheque or the 159,947 pounds cheque or any other matters
22 relating the Coolamber lands.
23
24 The following details ought to have been included in the narrative statement of
13:00:53 25 Mr. Smyth. Mr. Smyth will be closely examined of his involvement and the
26 involvement of your firm in the Coolamber lands including and in particular the
27 matters set out above. The Tribunal requests a supplemental narrative
28 statement from Mr. Smyth containing all of the foregoing details together with
29 any other matter of which he is aware of in respect of the Coolamber lands
13:01:14 30 including any financial dealings with the Coolamber lands. Please ensure in

13:01:17 1 this context that Mr. Smyth furnishes all information available to him in
2 respect of the formation and activities of Mobberley Limited throughout its
3 existence.

4
13:01:29 5 I am directed to draw your attention to the fact that what Mr. Smyth has been
6 asked to do voluntarily in terms of a narrative statement and what he is
7 compelled to do in terms of discovery and production of documents is to furnish
8 all available information and documentation concerning the Coolamber lands.

9
13:01:45 10 The Tribunal has had to revert to you on a number of occasions to obtain
11 further information and/or further documentation which is not satisfactory from
12 the point of view of the Tribunal. As you are no doubt aware, examination of
13 a witness before the Tribunal may where necessary include an examination of the
14 witness as to compliance with any Order of the Tribunal in respect of discovery
15 and production of documents as the Coolamber land enquiry is scheduled to
16 commence Tuesday 7th of December. Please deal with the above matters by
17 return".

18
19 And there's a further letter then on the 6th of December.

13:02:19 20
21 CHAIRMAN: Mr. O'Neill, it's just gone one o'clock. So we'll rise until two
22 o'clock.

23
24 MR. O'NEILL: Two o'clock.

13:02:49 25
26 **THE TRIBUNAL THEN ADJOURNED FOR LUNCH.**

27
28
29
30

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

13:03:04 1
2
3 Q. 178 MR. O'NEILL: Just before the lunch break, Mr. Smyth, we were dealing with the
4 letter of the 1st of December 2004, which was seeking from you, amongst other
14:02:42 5 things, a detailed narrative in relation to the affairs of Mobberley from its
6 inception to date. And I was referring to the fact that on the 6th of December
7 the Tribunal wrote to you. And on this occasion they enclosed a letter which
8 had been sent to the Tribunal from Mr. Goodman's solicitors, A&L Goodbody.
9 That letter of the 6th reads:

14:03:07 10
11 "I refer to the above matter and attach a letter 3rd of December 2004 received
12 from A&L Goodbody. I represent Mr. Goodman and I also refer to my letter of
13 30th of November and the 1st of December concerning the information documents
14 furnished to the Tribunal by Mr. Smyth to date.

14:03:24 15
16 It's clear that the information and documentation previously furnished by
17 Mr. Smyth to the Tribunal is incomplete. The Tribunal's file of
18 correspondence shows the many attempts the Tribunal has made to have Mr. Smyth
19 furnish full and detailed particulars of the events relating to the Coolamber
14:03:48 20 lands in which he was involved. I await hearing from you as a matter of
21 urgency."

22
23 On the next page you will see A&L Goodbody's letter to the Tribunal. It's a
24 letter of the 3rd of December. And here it reads as follows:

14:03:53 25
26 "Dear Miss Howard. We are at a complete loss to understand why it is alleged
27 that there is further evidence that Mr. Goodman is in a position to produce to
28 the Tribunal.

29
14:04:02 30 1. Mr. Goodman beneficially owned the entire share capital of Elangrove, a

14:04:06 1 shelf company produced by Mr. Noel Smyth and accordingly when Elangrove took
2 the assignment on the 6th of January 1992 this constituted, effectively the
3 personal assumption of the debt by Mr. Goodman. There is no other documentary
4 evidence on this. There were no declarations of trust.

14:04:23 5
6 2. Mr. Goodman has already explained that he is unable to vouch the funding
7 of Elangrove. He has no documents to assist the Tribunal in this regard.

8
9 3. Mr. Goodman has had no connection with Mobberley Limited and we suggest
14:04:36 10 that this matter be taken up with Mr. Smyth.

11
12 4. The role of Mr. Smyth in the transaction leading to the payment of his
13 client account cheque by Goodman International does not with respect need to be
14 explained. He was instructed by Mr. Goodman to repay to Goodman International
14:04:54 15 the amount under discussion. Despite exhaustive searches made by Mr. Goodman
16 and by Goodman International in relation to these matters, there are no other
17 documents within their power of procurement. This fact has been sworn by
18 Mr. Goodman and with respect there is nothing further he can do to advance
19 matters. Mr. Noel Smyth has been asked by Mr. Goodman to facilitate the
14:05:15 20 Tribunal in every respect on several occasions. Yours sincerely".

21
22 Now, in that you'll note from point No. 3, Mr. Smyth, that it is specifically
23 stated there that Mr. Goodman has no connection with Mobberley Limited and a
24 suggestion is that the matter would be taken up with Mr. Smyth.

14:05:36 25
26 You, of course, would have been in a position to tell Mr. Goodman had he
27 pursued that inquiry directly with you that Mobberley was in fact the vehicle
28 which had been used to implement his wishes through Mr. Mooney in relation to
29 the 510,000 pounds which was lodged to that account; isn't that so?

14:05:55 30 A. Correct.

14:05:57 1 Q. 179 Again, as the solicitor acting on behalf of Mr. Goodman he could have called
2 upon you to produce documents and they were within his power or procurement
3 insofar as your file with the exception of your attendances perhaps, remained
4 the property of the client rather than yourself; isn't that right?

14:06:16 5 A. Correct.

6 Q. 180 I take it, therefore, that had there been a formal request made to you other
7 than a suggestion here that the Tribunal deal directly with you by Mr. Goodman,
8 that you would have complied with that had Mr. Goodman requested you to do so,
9 you would have given him the information?

14:06:34 10 A. Yes.

11 Q. 181 The next document I'd like to refer to then is a document of the 6th of
12 December. Again, it's a letter from your firm to Miss Howard.

13
14 "Dear Miss Howard, thank you for area letter of the 30th. We have since
15 spoken to our client concerning the Tribunal's response to the said affidavit.
16 Our client as, he has from the outset, is most anxious to further assist and
17 facilitate the Tribunal in any way he reasonably can. Our client was asked to
18 make discovery of all records power or control in relation to the payment
19 represented by a cheque of 158,560 pounds dated the 29th of December 1991 drawn
14:07:31 20 on the account of Noel Smyth and Partners. This he has done.

21
22 Our client has contacted the bank and this firm to ascertain what documents if,
23 any, are held going back to 199 1, which is nearly 13 years ago. But no
24 further documents were available to our client. We had received copy Bank of
14:07:50 25 Ireland statements from you. Unfortunately the copies were illegible. We
26 would be most grateful for a set of clear copies as soon as possible to try and
27 assist you with your inquiries and if you hold any other relevant bank
28 statements we would also be grateful for the same by return".
29

14:08:08 30 Of course the bank statements that are being referred to here are your own bank

14:08:12 1 statements or your firm's I should say

2 A. Yes.

3 Q. 182 And just as they were made available to the Tribunal on foot of Tribunal orders

4 they would have been available to your office had they pursued that line of

14:08:23 5 inquiry with Bank of Ireland; isn't that so?

6 A. Yes.

7 Q. 183 But that inquiry was not made apparently as of this date, which was the 6th of

8 December?

9 A. Correct.

14:08:38 10 Q. 184 Although information had been sought for some months prior to that. There

11 then is a request that the Tribunal would give some guidance as to the matters

12 to be dealt with in the second schedule as there's no way in which you with any

13 degree of certainty could list the documents which you had in your possession

14 relating to the payment. And then your belief is that there were individual

14:08:56 15 documents which are set out here. The Tribunal responds -- there is a letter

16 then from your firm again on the 8th of December. This was received by the

17 Tribunal on the 13th of December with enclosures.

18

19 It elaborates by way of reply to the queries which were raised on the 1st of

14:09:38 20 December in paragraphs A to J in relation to clear copies of documentation and

21 explanations by way of clarification for the fact that dates were superimposed

22 on cheques and matters of that nature.

23 A. Correct.

24 Q. 185 At the very end of it you will note that Mr. Bermingham states:

14:10:00 25

26 "We are instructed that there simply are no further documents of which our

27 clients are aware of at this time. That the Tribunal's requirements in

28 relation to the revised affidavit of discovery have been addressed and we await

29 hearing from you."

14:10:13 30

14:10:13 1 Again, to this point and we're now the 8th of December, there still has been no
2 discovery of the documentation from the Isle of Man, that's the Crow Morgan
3 documentation, which related to the Mobberley account nor any other Mobberley
4 documentation discovered; isn't that right?

14:10:31 5 A. No, that's not correct. On the 6th of December, phone calls were placed by me
6 personally to Crow Morgan and to Rea Brothers or to Close Bank.

7 Q. 186 Yes.

8 A. And letters were then sent to the banks in question and to Crow Morgan
9 requesting them to give any information that they had in relation to a
10 belief -- I think that was the letter of the 6th of December.

14:10:53 11 Q. 187 Yes.

12 A. In relation to Mobberley. Because that now in effect was going to be becoming
13 more involved in the picture. I would say at this stage that we had spent a
14 considerable amount of time in the first number of days in December and I think
15 the Tribunal were furnished with copies of the documents that we had. The
16 difficulty with the bank because we had a cheque of 158,560 but on our ledger
17 card it showed a cheque of 159,000. And there seemed to have been some
18 confusion as to whether they were two cheques or whatever. Because as we had
19 said to you, we had very limited amount of documentation.

14:11:39 20
21 We were forced -- not forced, we were required to bring in Caplin Meehan. And
22 I believe that the Tribunal also put in to Caplin Meehan for information. And
23 then subsequently they also asked Caplin Meehan to effectively, or gave them an
24 order to locate this particular amount of money. So therefore with respect I
14:12:02 25 would say that for the first part of the investigation we'd spent a
26 considerable amount of time trying to identify this 158,600. And then with
27 when we, on the 6th of December we then started looking at the Mobberley
28 transaction.

29 Q. 188 Yes. I don't think that's inconsistent for the moment with what I had said to
14:12:25 30 you, namely --

- 14:12:26 1 A. It's not. I'm just amplifying the point that you're making.
- 2 Q. 189 Sure. What I did specifically drew your attention to was the letter from
- 3 Mr. Bermingham which was dated the 8th of December had indicated "we are
- 4 instructed there simply are no further documents of which our client is aware
- 14:12:44 5 of at this time. And the Tribunal's requirements in relation to the revised
- 6 affidavit of discovery have been addressed."
- 7
- 8 Now, there's no qualification in that saying we are now embarking upon a course
- 9 of communication with entities either in the Isle of Man or otherwise to
- 14:13:01 10 supplement the affidavit. It really is --
- 11 A. That's a fair comment. I have to say in our own defence, I mean, this is an
- 12 evolving piece of information without a file thirteen years on and with -- and
- 13 what you say is correct. I don't for a moment dispute that that is what we
- 14 have said that there were no further documentation. And probably would have
- 14:13:24 15 been better from, certainly from my point of view, had we at that stage said
- 16 and by the way we're looking in other directions as well but we didn't.
- 17 Q. 190 Right. But certainly could I suggest to you that it's indicative of the
- 18 approach that was taken initially, and that was to respond to the queries which
- 19 were put by the Tribunal to offering limited information. It may have been
- 14:13:55 20 the information which was available physically in your office at the time but
- 21 there was no evidence to this point in time of any active pursuit on your
- 22 behalf to pursue Mobberley, for example, which you must have been aware of in
- 23 July of two 2004, at least, as being the company which was involved in this
- 24 transaction. Yet you didn't make any inquiries in the Isle of Man at that
- 14:14:16 25 point time to establish whether there was a documentary trail; did you
- 26 appreciate that?
- 27 A. Yeah, I accept that.
- 28 Q. 191 The trigger points, can I put them, have all been trigger points which have
- 29 been raised by the Tribunal where it, for example, draws your attention to the
- 14:14:33 30 similarity between the two amounts of the cheques, the 159,997 as opposed to

14:14:40 1 the 158,560, it then goes to inquire what is the connection? These are
2 matters, in other words, which are being prompted by the request of the
3 Tribunal to you rather than matters which are being generated by your own
4 reflections on the events; isn't that so?

14:14:58 5 A. That's fair comment. I accept that.

6 Q. 192 The Tribunal has been engaged as you will see and know from the correspondence
7 that has passed from your firm and the Tribunal for well over, well almost five
8 months now, to deal with the matter which really should have been dealt with,
9 in my respectful submission to the Tribunal and to you, within a very brief
10 period of time had you sat down and worked out what did I do in this
11 transaction and if so where am I likely to find the evidential documentation
12 that stands up my account of events; do you understand?

13 A. I accept that as a fair criticism.

14 Q. 193 Sure. It was on the 10th of December, for example, that the documentation
15 becomes available to you which was the original cheque documentation and bank
16 documentation where Mr. Bermingham writes to the Tribunal as follows:

17
18 "I am now enclosing certain relevant documentation which has just come to light
19 overnight following extensive searches and inquiries with various parties
14:16:09 20 including banks and the practice accountants Noel Smyth & Partners accounts
21 system in 1991 was transferred from a manual Kalamazoo system to a computer
22 system. Both systems were left in operation overlapping the transition period.
23 We believed and Noel Smyth was advised based on previous searches, that were
24 requested to be carried out by accounts Kalamazoo documentation with the
14:16:36 25 exception of the cheque journal, a sheet from which had been previously
26 produced had been destroyed. It was since discovered just last night, that
27 some of the records were partially still in existence in terms of certain Bank
28 of Ireland reconciliations for the period 1991. This documentation was
29 retrieved morning and Noel Smyth requested that our accountants to attend at
14:16:56 30 our office to provide a simple account of the transaction etc."

- 14:17:00 1
2 And then we see that attached to that letter there were six documents which
3 included the original cheque, the original cancelled cheque, which was one
4 which the amounts had been put in error I think, the cheque for the 159,000,
14:17:19 5 the Bank of Ireland accounts for the period in question the lodgement records
6 and an extract of a nominal lodger sheet for client reconciliation for the
7 period December 1991 to the 31st of December 1991.
8
9 So this material comes to the Tribunal I think for the first time at that
14:17:40 10 point; isn't that right?
11 A. Absolutely.
12 Q. 194 And again we see then if we move to January of the following year in the
13 interim I should say Mr. Goodman has given his evidence on oath on the issues.
14 And I take it you either followed or were made aware by your solicitors of the
14:18:00 15 material evidence that he, Mr. Goodman, and Mr. Mooney were giving in relation
16 to your involvement; is that so?
17 A. I was aware of it, yes.
18 Q. 195 Sure. I mean, I note that you didn't seek to challenge in any way
19 Mr. Goodman's account of events or Mr. Mooney's recollection of events when
14:18:17 20 they were giving evidence about their knowledge of Mobberley, for example, or
21 of the transactions which surrounded the payments?
22 A. They were giving their evidence, it was a matter for them. I was going to
23 give my evidence and I thought it was then a matter for me. So I didn't
24 challenge them, no.
14:18:36 25 Q. 196 There is this as you will appreciate, this very obvious conflict on a number of
26 major issues between yourself and your then former client Mr. Goodman, as to
27 the circumstances in which these payments came to be administered through you;
28 isn't that correct?
29 A. Correct.
14:19:00 30 Q. 197 And you, at the same time, have not felt it necessary to challenge

- 14:19:00 1 Mr. Goodman's account of events, even to correct it?
- 2 A. Well I have corrected them insofar as any questions you've asked I've answered.
- 3 Insofar as I have needed to correct anything that he has said I've done so.
- 4 If I am incorrect in that is the incorrect approach, well, then, please advise
- 14:19:16 5 me. But I was assuming that the way to deal with the matter was to give me
- 6 evidence on the basis of how I saw the matter as opposed to how either
- 7 Mr. Mooney or Mr. Goodman recollected it.
- 8 Q. 198 Right. Certainly it's not for the Tribunal of course to advise you as to what
- 9 approach you should take it's matter for you.
- 14:19:36 10 A. Of course, absolutely.
- 11 Q. 199 I'm just raising questions on the record as to what exactly it is. You've
- 12 elected to pursue an approach which indicates that you will put forward on oath
- 13 your account of events and it's a matter for the Tribunal to accept that?
- 14 A. Well I think that's -- I would have said in -- to be clear. From my point of
- 14:20:00 15 view, if you give evidence then it's up to the, as you do on behalf of the
- 16 Tribunal, to test that evidence.
- 17 Q. 200 Yes.
- 18 A. And also for people to cross-examine me. Rather than for me to come in and
- 19 start challenging people. I didn't see that as my role but if I'm wrong about
- 14:20:18 20 that, then I apologise.
- 21 Q. 201 It's not requiring an apology from me certainly. I'm just asking you why it
- 22 is you didn't avail of the opportunity which you had?
- 23 A. With respect, again, I thought this was the opportunity to deal with the
- 24 matter. But I could be wrong about that.
- 14:20:33 25 Q. 202 We'll see on the 11th of January 2005 there was a letter from the Tribunal to
- 26 Mr. Bermingham. It reads as follows:
- 27
- 28 "As you are aware, the Tribunal has been endeavouring to obtain details of the
- 29 transactions in which Mr. Smyth and Mr. Sean Mooney advised Mr. Laurence
- 14:20:50 30 Goodman and in which Mr. Smyth advised or assisted Mr. Gannon. And in the

14:20:54 1 course of which monies passed through the client account and office account of
2 your office held at Bank of Ireland, Lower Baggot Street. Whereas Mr. Goodman
3 has stated that through Mr. Smyth he funded the assignment to Elangrove
4 Limited. It appears that Mobberley Limited an Isle of Man company which was
14:21:13 5 the client of your office provided the funds and/or centrally involved in the
6 provision of the funds.

7
8 Mr. Goodman denies any involvement in or knowledge of this company.
9 Mr. Goodman suggests that Mr. Smyth has such knowledge but to date very limited
14:21:29 10 information has been furnished by Mr. Smyth. Notwithstanding repeated requests
11 and the making of an order for discovery and production against Smyth regarding
12 the assignment and related transactions. Mr. Smyth has informed the Tribunal
13 that Mobberley Limited was set up for the purpose of his removing the liability
14 of Cork Company through the assignment of Elangrove.

14:21:49 15
16 As you are aware, Bank of Ireland has now produced records from its
17 International Treasury Division showing N & A Mobberley Limited as it's
18 customer in the transfers from the Isle of Man to your client account dated the
19 20th of December 1991, that's for 159,997 Irish pounds and to the 15th of
14:22:09 20 January 1992, 106,266.93 respectively.

21
22 In your records the reference is to Mobberley Limited. The Bank of Ireland
23 records show that the funds came from Rea Brothers in the Isle of Man. Rea
24 brothers is the short name for Close Bank Isle of Man. So accordingly, in the
14:22:32 25 circumstances the Tribunal request that Mr. Smyth's further narrative statement
26 be furnished immediately that it includes the explanation previously sought in
27 respect of the Elangrove assignment and Mobberley Limited as well as details of
28 N & A Mobberley Limited and Mr. Smyth's dealings with Rea Brothers in this and
29 any other transaction.

14:22:49 30

14:22:49 1 2. Mr. Smyth is obliged to furnish forthwith a final supplemental affidavit
2 of discovery to which you refer in your letter of the 10th of December. The
3 Tribunal will not prepare a list of the relevant records or settle a draft
4 affidavit. The affidavit is to be in the format prescribed in form 10
14:23:10 5 appendix C of the Superior Courts and the relevant records are clearly defined
6 within the order. And then notice is given of there being specific orders
7 considered in relation to Mobberley as against three parties, that's yourself
8 and your firm, Bank of Ireland and Moore Stephen Caplin Meehan, your
9 accountants.

14:23:34 10
11 The reference to NA Mobberley there was subsequently dropped. It apparently
12 was the reference point in the printout which indicates name and address of the
13 company rather than N and A Mobberley, so that was amended to read Mobberley.
14

14:23:50 15 That's responded to two days later by Mr. Bermingham. And I think it's,
16 firstly, we see in the second paragraph that Mr. Smyth is revising -- is
17 finalising a revised statement. He is dealing with the matters arising from
18 documents retrieved in recent weeks made available to him by the Tribunal. We
19 understand from a conversation with Bank of Ireland that further correspondence
14:24:18 20 was in the course of being dispatched to us. Noel Smyth would like to have
21 sight of these before concluding his statement to ensure its completeness.
22

23 A supplemental revised affidavit of discovery has been prepared on receipt of
24 further bank documents if any, same will be sworn and delivered to you. We
14:24:34 25 note that the Tribunal is considering making further orders on Friday the 14th
26 of January 2005. We have no comments, save as to say full and exhaustive
27 searches have been made in our offices and in our archives and no further
28 documents have been found other than those set out in the supplemental
29 affidavit of Noel Smyth.

14:24:54 30

14:24:54 1 Again, Mr. Smyth, I have to draw your attention to the fact that the Mobberley
2 documents to this point in time haven't been discovered in any way. And whilst
3 Mr. Bermingham here raises the fact of his having carried out searches within
4 the office of Noel Smyth. It does appear that there was documentation
14:25:15 5 available, firstly in, the accountants office which came in later in the day.
6 And subsequently as we see Mobberley documents come in at later point in time;
7 isn't that so?

8 A. That's correct.

9 Q. 203 On the letter then of the 13th of July in the middle paragraph third paragraph
14:25:39 10 thereof the Tribunal writes to Mr. Bermingham saying:
11
12 "It's noted you have no objection to the making of the proposed orders. As no
13 other person is effected by the proposed order against your firm Mobberley
14 Limited having been dissolved. The Tribunal will proceed to make the order as
14:25:54 15 it is now apparent that the formation, existence and affairs of Mobberley
16 Limited must be fully investigated and that the documents and possession or
17 control of Mr. Smyth, his servants or agents within or outside the jurisdiction
18 are relevant to the investigation.

19
14:26:08 20 It's not clear why you believe that your firm has already conducted a search
21 for such records. Furthermore, you have not furnished proof of or the results
22 of a search including your dealings with third parties or the results thereof.
23 Clearly, it is assumed that Mr. Smyth and his advisors are aware of the extent
24 of the obligations arising on foot of the order for discovery and production of
14:26:30 25 the 12th of October 2004 and any order made in respect of Mobberley Limited".
26

27 And again attention drawn to the fact that you will be examined in relation it
28 that.

29
14:26:42 30 The Orders were duly made on the 13th of January. And I think that shortly

14:26:50 1 thereafter perhaps the day following, which is Friday the 14th of January, I
2 think you went to the Isle of Man; is that so?

3 A. Correct.

4 Q. 204 And we see reference to that on the 17th of January -- 2005 where
14:27:03 5 Mr. Bermingham writes to the Tribunal.
6
7 "We refer to recent correspondence in particular your inquiries relating to Rea
8 Brothers Isle of Man Limited now Close Bank and specifically your inquiries in
9 relation to Mobberley Limited. Requests had been made on the telephone and in
14:27:20 10 writing to secure information from both Close Brothers and Messrs. Crow Morgan
11 chartered accountants in the Isle of Man in relation to Mobberley Limited.
12
13 When no information was forthcoming our Mr. Smyth travelled on Friday to the
14 Isle of Man and met with Mr. Albert Dudgeon of Close Brothers bankers and also
14:27:39 15 with Mr. Michael Crow of Messrs. Crow Morgan. Mr. Dudgeon informed our Mr.
16 Smyth that despite diligent searches that is there was no record of Mobberley
17 Limited on the bank's system and will be writing to us now to this effect. He
18 advised that under Manx's law the banks are only required to keep records for a
19 maximum of seven years after the account has been closed. This account was
14:28:02 20 closed in 1995, hence the lack of information.
21
22 Mr. Michael Crow of Crow Morgan chartered accountants was however able to
23 furnish Mr. Smyth with all his papers on the operation of the company account
24 and a copy of that file is now enclosed for your attention."

14:28:17 25
26 The following page then. "He was unable to locate at the time the company
27 secretarial file, which he says would have contained information of a
28 secretarial nature. He will try to retrieve that file and once it is
29 available it will be couriered to your office, on receipt of the same we will
14:28:31 30 of course forward to you. The information on the enclosed papers confirms

14:28:36 1 that Mobberley Limited account was opened in 1991. That 475,994.50 was lodged
2 to the Mobberley Limited account on the 18th of December 1991.
3
4 That a transfer equivalent to 160,000 Irish pounds was transferred from the
14:28:59 5 account on the 20th of December 1991. It is also plain that when the proposed
6 assignment of the debt from Bank of Nova Scotia did not proceed the surplus
7 monies in the account were then distributed on instruction for other purposes
8 wholly unrelated to the Coolamber properties or any matters directly or
9 indirectly relating thereto. Our Mr. Smyth, unequivocally confirms that none
14:29:19 10 of these payments/disbursements were made to Mr. Gannon, his servants or agents
11 or unrelated companies."
12
13 If we can go back on that paragraph there, this I think was the first occasion
14 upon which it was noted to the Tribunal that it was a sum of 475,994.50 that
14:29:42 15 was involved in the Mobberley transaction; isn't that so?
16 A. Correct.
17 Q. 205 To that point, the evidence of Mr. Mooney and the evidence of Mr. Goodman was
18 that the funding of the take out of the Elangrove assignment was achieved by
19 the payment of 158,560 pounds. And no greater sums were referred to as having
14:30:07 20 been involved in that process; isn't that right?
21 A. Correct.
22 Q. 206 So this then indicates the fact that there is this more substantial sum here
23 and the last paragraph I read indicates that the writer believes that it's
24 plain that the proposed assignment of the debt did not proceed and that the
14:30:29 25 surplus monies in the account were then disbursed on instructions for purposes
26 which are wholly unrelated to the properties or any matter directly or
27 indirectly related thereto.
28
29 That is a conclusion of Mr. Bermingham's. I take it that he reached after
14:30:48 30 discussion with you?

- 14:30:48 1 A. Yes.
- 2 Q. 207 But again, your knowledge of what these funds was used for is limited in effect
- 3 to being told by Mr. Mooney, that a particular transaction should be effected
- 4 through you and the bank rather than knowing what the transaction is, isn't
- 14:31:04 5 that so?
- 6 A. That's so.
- 7 Q. 208 I mean, I mean, you don't know whether the 200,000 dollars, for example, which
- 8 is put through Baybank went to any particular individual or entity save what
- 9 has been indicated in a solicitor's letter from the solicitor representing
- 14:31:23 10 Mr. Goodman; isn't that so?
- 11 A. That's so.
- 12 Q. 209 The Tribunal pursued its inquiries and you'll see that the next letter in the
- 13 sequence here is a letter of the 17th of January 2005. It's from A&L Goodbody
- 14 solicitors to the Tribunal:
- 14:31:45 15
- 16 "Dear Miss Howard, thank you for your letter of the 14th of January which I
- 17 received this morning the 17th. Our investigations are continuing to date.
- 18 We have established that a transfer was made to National Westminster Bank
- 19 Douglas, Isle of Man, in the sum of 476,000 Irish pounds on the 16th of
- 14:32:04 20 December 1991. This was transferred to account No. 238821 for the attention
- 21 of Albert Dudgeon. This is not my client's account. Accordingly he has no
- 22 documents that might assist the Tribunal in this regard. We understand that
- 23 the 160,000 pounds Irish transferred to Noel Smyth and partners came from these
- 24 funds. Yours sincerely".
- 14:32:25 25
- 26 Now, it is in relation to that particular transfer I think that we see the
- 27 reference in Mr. Goodman's latest statement of the 24th of February 2005 where
- 28 he says that is you were the source of the information that allows him to
- 29 conclude, that National Westminster Bank was a conduit to the monies and to
- 14:32:49 30 the Rea Brothers bank. But I think you indicated this morning that you know

- 14:32:54 1 nothing of that account number or of that bank or that it was used to transfer
2 that sum which you will see is distinct from the initial opening balance to the
3 account in Rea Brothers, in that it is 5.50 sterling short of this amount which
4 went into National Westminster Bank.
- 14:33:13 5 A. Yes. I mean, I know Albert Dudgeon because I would have given him Albert
6 Dudgeon's name, but, yes, I know nothing about Nat West.
- 7 Q. 210 Yes. So you, therefore, have no knowledge of how it was that the monies are
8 said by Mr. Goodman's solicitors have been routed through National Westminster
9 Bank in Douglas before they came to Rea Brothers account which of course is one
10 that you controlled at Mr. Mooney's direction?
- 14:33:38 11 A. That's correct. But the query had been raised with Albert Dudgeon.
- 12 Q. 211 Mm-hmm.
- 13 A. Again last week following the last time I gave evidence.
- 14 Q. 212 Yes.
- 14:33:55 15 A. As to whether or not he would confirm that their clearing bank in the Isle of
16 Man, who their clearing bank was and their clearing bank is Nat West. So if I
17 had given Albert Dudgeon's account or Albert Dudgeon's name in Rea Brothers.
18 In order for the funds to get to Rea Brothers they would have had to have gone
19 through Nat West. I'm saying that on information I have now as opposed to --
14:34:21 20 that's just for completeness as to what my level of information is now.
- 21 Q. 213 Sure. But you did not have that knowledge in 1991?
- 22 A. No, no. No, no.
- 23 Q. 214 And therefore, the transaction was effected through National Westminster Bank
24 to a numbered account of which you were unaware, the number of this account
14:34:37 25 here I take it is something you are unaware of?
- 26 A. Unaware of yes.
- 27 Q. 215 And this information did not come as of January 2005 to Messrs. A&L Goodbody
28 through you.
- 29 A. No.
- 14:34:49 30 Q. 216 Do you know if Mr. Sean Mooney has a direct link with Crow Morgan that would

14:35:00 1 allow them to give him this information or ...

2 A. With Rea brothers?

3 Q. 217 Yeah.

4 A. I don't know. I don't think so. I think that he would have at all times

14:35:13 5 utilised me to give -- to carry out the instructions.

6 Q. 218 I know that's for the payment on. But I'm talking about the payment into Rea

7 Brothers which obviously must have come from him as well?

8 A. No, I would have thought that Mr. Mooney would have always gone through me to,

9 if he was lodging monies into the account, of taking monies out of the account

14:35:32 10 I would have assumed that he would have come through me.

11 Q. 219 Well he couldn't have done so in relation to this 476,000 because you weren't

12 aware that National Westminster Bank was the clearing bank?

13 A. With respect, I think there's a point here that you're missing.

14 Q. 220 Sure.

14:35:49 15 A. I think that what happened is that Sean Mooney would have asked me for the

16 information in relation to where the monies were to be transferred.

17 Q. 221 Yeah.

18 A. I would have said Rea Brothers in the Isle of Man and given him the Rea

19 Brothers or whatever account or I certainly would have given him Albert

14:36:07 20 Dudgeon's name.

21 Q. 222 Yes.

22 A. Now, in order to effect those funds, Rea Brothers could not have accepted the

23 monies in directly themselves. So therefore whoever was making the transfer,

24 whatever bank was making the transfer on Mr. Goodman's behalf, I believe, would

14:36:23 25 have had to have been told by Rea Brothers or their clearing banks as to where

26 they wanted to receive the monies.

27 Q. 223 Yes.

28 A. And while -- and this is pure speculation and I'm offering it just as that.

29 Rea Brothers couldn't have -- I mean, Sean Mooney couldn't have arranged or

14:36:41 30 whoever was doing it presumably Sean, couldn't have arranged to transfer the

14:36:47 1 monies from wherever they were located directly in to Rea Brothers without
2 going through a clearing bank.

3 Q. 224 Yes.

4 A. And I'm saying that while Nat West is the clearing bank, it's not necessarily
14:36:59 5 so that the monies originated in Nat West.

6 Q. 225 Sure.

7 A. That's the point I want to make clear.

8 Q. 226 Yes. So no, I wasn't suggesting that the origin of the funds was necessarily
9 Nat West. But rather that Nat West was the conduit bank within Isle of Man
14:37:18 10 which allowed Mr. Goodman's funds to be transmitted into Rea Brothers.

11 A. Yes. I'm also making the point, if I may say, that it doesn't necessarily
12 follow that because I gave Sean Mooney the name of Rea Brothers, that he would
13 have had the name of Nat West. Because ultimately if he gave instructions to,
14 for example, Bank of Ireland, to transfer money to Rea Brothers, unless he got
14:37:42 15 in the middle of the two banks what would have, well in my experience what
16 would happen is that the banks would talk to each other.
17

18 The Bank of Ireland could have been talking to Rea Brothers. Again, I have no
19 evidence of saying that but that's what the normal course would be. That you
14:37:58 20 wouldn't have the client where you are transferring monies either by sprint or
21 telex or whatever they were doing on the day, that you would not get involved.
22 You would tell the bank and the bank would then route them and that's why Nat
23 West would have come into the picture.

24 Q. 227 Sure. As regards your involvement with the imparting of the information about
14:38:18 25 Mr. Dudgeon having this numbered account in Nat West. That was information
26 which was not available to you and you could not have been the source of
27 passing on that information to Mr. Mooney; isn't that so?

28 A. I would have passed Mr. Dudgeon's name on to him and Rea Brothers on to him.
29 But other than that I wouldn't have had anything to do with Nat West or
14:38:36 30 clearing banks or anything like that.

- 14:38:38 1 Q. 228 Or the account number, I suggest?
- 2 A. No.
- 3 Q. 229 No. So insofar as there is information contained in this document of the 17th
- 4 of January 2005, that is the letter which you see before you from A&L Goodbody?
- 14:38:57 5 A. Yes.
- 6 Q. 230 That is not information which you provided to A&L Goodbody because you didn't
- 7 have it within your own knowledge?
- 8 A. No.
- 9 Q. 231 The Tribunal obviously -- because of the fact it's receiving this information
- 14:39:14 10 in the manner in which it was receiving it, determined that it was appropriate
- 11 to find out where the disbursements of the funds that came in to the account
- 12 went to. And on the 18th of January 2005 there was a letter to Mr. Bermingham.
- 13
- 14 If we look to the fourth paragraph of that it says: "Your client's voluntary
- 14:39:41 15 narrative statement is awaited. I understood from Miss Kerrigan it would be
- 16 receive no later than yesterday. Clearly, it must include an elucidation of
- 17 the matter summarised in your letter, for example in relation to the following
- 18 and quotes Mr. Bermingham's letter "it's also clear that when the proposed
- 19 assignment of the debt from Bank of Nova Scotia did not proceed the surplus
- 14:40:01 20 monies in the account were then disbursed on instructions for other purposes
- 21 wholly unrelated to the Coolamber properties or matters directly or indirectly
- 22 relating thereto. In his narrative statement Mr. Smyth should confirm the
- 23 instructions he received from whom he received the instructions, on whose
- 24 benefit or whose behalf the instructions were given, the amount of monies
- 14:40:23 25 dispersed, the amount of each dispersements to where the monies were dispersed.
- 26 It is a matter for the Tribunal to consider whether or not events were as you
- 27 have stated wholly unrelated to the Coolamber properties or any matters
- 28 correctly or indirectly related thereto".
- 29
- 14:40:42 30 Could I just perhaps refer to the last quotes there. It had been the point of

14:40:47 1 the case until this point that it was indicated in October of 2004 that when
2 the proposal did not proceed, that is the Bank of Nova Scotia proposal did not
3 proceed, the monies were returned to Mr. Goodman.

4 A. That was my recollection then, yes.

14:41:08 5 Q. 232 But that in fact was not the case. As we see here, having sight of the Rea
6 documentation, it was evident that there were transactions to third parties?

7 A. Correct.

8 Q. 233 Isn't that right? You then made the supplemental affidavit of discovery to the
9 order regarding the 158,560 pounds payment. And you also made the affidavit of
10 discovery in relation to the Mobberley payment; isn't that right?

11 A. Yes.

12 Q. 234 And it's in relation to the Mobberley payment that you indicate that the
13 original file, Elangrove Limited, Mobberley Limited is not in my possession,
14 power or procurement because it was given to Liam Lawlor in March 1999?

14:42:01 15 A. Correct.

16 Q. 235 That's your best recollection of what it was. Although you did not see the
17 physical file that left and you can't say whether or not the Mobberley
18 documentation was in fact contained within it; isn't that the so?

19 A. That's correct.

14:42:16 20 Q. 236 Equally I think in this affidavit I think there is no specific discovery of any
21 notifications which were received from Mr. Sean Mooney to you about the
22 transfer instructions for those funds?

23 A. Correct. There are none.

24 Q. 237 There are none. And is that because they were not taken down or what happened
25 to them?

26 A. I don't know.

27 Q. 238 I mean in, the normal course I think you've indicated to us that somebody is
28 getting in touch with you and giving you an instruction with regard to a
29 financial transaction you will inevitably note it and ensure that obviously
14:43:03 30 such matters as account numbers and precise figures are matters which you can't

14:43:08 1 trust really your recollection to implement; isn't that right?

2 A. Correct.

3 Q. 239 So normally they would be retained by you?

4 A. Yes.

14:43:15 5 Q. 240 Where do you think they were or what became of them?

6 A. I honestly don't know.

7 Q. 241 Do you think they constituted the Mobberley file or were they independent of

8 that? Were you keeping a financial file, in other words, for Rea Brothers

9 transactions in the context of Mobberley independent from any other

14:43:33 10 documentation?

11 A. It would not be my practice to do that. It would be my practice to put any

12 notes or attendances on to the same file. But, you know, I don't know what I

13 did to be quite honest.

14 Q. 242 Did you ever confirm it back to Mr. Mooney when you'd received an instruction

14:43:55 15 from him did you say -- because obviously he wasn't a person who was in receipt

16 of the bank statements in Mobberley as far as we know, isn't that right?

17 A. Correct.

18 Q. 243 Initially, they were retained by Crow Morgan in the Isle of Man. You didn't

19 bring them into this jurisdiction either?

14:44:08 20 A. No.

21 Q. 244 So what kind of confirmation would he get that his instructions had been

22 implemented by you? Would you --

23 A. Probably none.

24 Q. 245 I see. On the 11th of February then we'll see that the Tribunal again wrote

14:44:27 25 to Mr. Bermingham. And in the third paragraph of the letter it says:

26

27 "It's clear that the transactions conducted by Mr. Smyth on behalf of

28 Mr. Goodman were with third parties who are named on the records produced by

29 Crow Morgan. There is no evidence of any efforts by Mr. Smyth whether on his

14:44:43 30 own behalf or on behalf of Mr. Goodman in endeavouring to retrieve records from

14:44:48 1 any of these parties in respect of the transactions. There's no evidence of
2 efforts to trace the onward movement of the funds received into the Bank of
3 Ireland accounts of your firm. No evidence of efforts to trace back to the
4 source of the monies moved out of the Mobberley account by your firm on the
14:45:05 5 18th of May of 1992.

6
7 The Tribunal is now obliged to seek through other channels to obtain
8 information in relation to these transactions. There is no doubt that
9 Mr. Smyth by virtue of his role is in a position to seek to procure documents
14:45:22 10 in he relation to Mobberley Limited and has in fact done this in respect of the
11 Crow Morgan documents. The Tribunal is concerned to note that Mr. Smyth has
12 not sought to contact any of the persons or legal entities with whom Mobberley
13 Limited conducted transactions to ascertain the extent of available
14 documentation in respect of those transactions."

14:45:41 15
16 I think that in response to that letter on the 15th of February Mr. Bermingham
17 replied:

18
19 "Dear Miss Howard, further to your letter of the 11th of October as you are
14:45:52 20 fully aware we do not act for Mr. Goodman. We attach hereto a copy of our
21 letter to A&L Goodbody in relation to same. Our client has made all inquiries
22 in relation to the onward movement of Mobberley funds in Noel Smyth & Partners
23 account with Bank of Ireland to date no further information is available. In
24 addition, our client has procured and sought to procure all documents available
14:46:18 25 to him to the Tribunal of Inquiry in accordance with the orders made".

26
27 That enclosed a letter to A&L Goodbody which is dated the 14th of February and
28 reads as follows. "We refer to a letter from the Tribunal dated 11th of
29 February as copied to you, in relation to the account details of Mobberley
14:46:37 30 Limited which were furnished to Mr. Noel Smyth from Crow Morgan company

14:46:42 1 secretary.

2

3 Our understanding was that the Tribunal was making inquiries into the said
4 account through your office who are acting for Mr. Goodman. The Tribunal has
14:46:51 5 raised the issue of contact with the various parties named in the bank accounts
6 of Mobberley Limited asking for an explanation of the payment/lodgement with
7 which they were involved.

8

9 It is our belief that this office is not in a position to correspond with such
14:47:06 10 third parties. The proper person to undertake such correspondence would be
11 Mr. Goodman himself or your office on his behalf. Based on your letter of the
12 2nd of February two this firm such inquiries are being made".

13

14 I'm not quite sure what that sentence means, it doesn't seem to make sense.

14:47:24 15 A. It doesn't make sense to me either.

16 Q. 246 No. But if we can look then to the letters which are referred by
17 Mr. Bermingham. That's a letter of the 2nd of February 2005 from A&L
18 Goodbody.

19

14:47:41 20 And in that it says "As you are aware, I act for Larry Goodman who is providing
21 assistance to the above Tribunal in relation to the module they called the
22 Coolamber lands. We have been asked to explain the transfers out of the
23 Mobberley account between the 20th of December 1991 and the 30th of September
24 1992, the Mobberley account as you are aware was an account within the control
14:48:03 25 of Noel Smyth & Partners and it may be that you will be able to assist
26 Mr. Goodman and identify the purpose of each of the payments".

27

28 And then there is a short presse of the various payments that we have dealt
29 with earlier. But certainly nothing in the nature of documentation to support
14:48:22 30 what the payments were for rather than to list them in the manner that is said

14:48:27 1 here.

2

3 "We are, as you will appreciate, under extreme pressure from the Tribunal to

4 provide an explanation for the above payments. In the circumstances we would

14:48:35 5 be grateful you would give this your most urgent attention and refer to us as

6 soon as possible".

7

8 Your firm had in fact replied to that letter the following day. Indicating

9 as we see on the 3rd of February 2005. "As you will have been instructed by

14:48:49 10 your client, funds were lodged by him, his servants or agents, into an account

11 held by Mobberley Limited in the Isle of Man. Mr. Sean Mooney on behalf of

12 your client gave instructions to our client to disburse monies from that

13 account from time to time.

14

14:49:09 15 We hold very limited files or records for that period and all such relevant

16 files, papers and documents held or procured have been furnished to the

17 Tribunal."

18

19 "And assumably copied to you on behalf of your client. In addition to the

14:49:26 20 matters raised in your letter we respond as follows". And you list then your

21 recollection insofar as you had any recollection of those events which really

22 doesn't add to the sum of knowledge of what took place; isn't that right?

23 A. Correct.

24 Q. 247 So you simply didn't know. So here there was a position where you were

14:49:51 25 indicating that as far as you're concerned the pursuit of the information

26 sought by the Tribunal from you, was essentially a matter for Mr. Goodman's

27 solicitors to proceed with because you, as Mobberley were acting only in an

28 agency capacity for Mr. Goodman in your transactions which resulted in payments

29 to third parties; is that the position?

14:50:16 30 A. Yes.

- 14:50:18 1 Q. 248 And equally, they were indicating to you that this was an account which was in
2 your power or control and therefore it might be a that you would be able to
3 assist Mr. Goodman to identify the purposes of the payments. Now, obviously,
4 unless these payments were made for your purposes the person who knew and knows
14:50:40 5 what the purpose of the payments as opposed to the fact of the payments is
6 Mr. Goodman and his representatives; isn't that so?
- 7 A. That's my view.
- 8 Q. 249 And with the exception perhaps of one figure of 15,000 pounds or thereabouts
9 which is attributed by Mr. Goodman to possibly being a payment to you for fees,
14:51:00 10 which I don't think you can confirm yet?
- 11 A. No.
- 12 Q. 250 Isn't that right? You don't know what the other payments were for; isn't that
13 right?
- 14 A. I don't.
- 14:51:07 15 Q. 251 Certainly from the Tribunal's point of view the position now is a number of
16 entities are identified as being possible recipients of those funds. Some
17 indeed are not identified at all for example. The transaction in relation to
18 the 200,000 dollars is described as a transaction connected with an aircraft.
19 But it's not identified as to whose aircraft it is, when it was paid or why it
14:51:39 20 was paid or anything of that nature; isn't that right?
- 21 A. Correct.
- 22 Q. 252 But you have no records yourself in relation to that?
- 23 A. No.
- 24 Q. 253 Other than perhaps the Crow Morgan documentation which records that they
14:51:54 25 implemented your instruction?
- 26 A. Correct.
- 27 Q. 254 But obviously if such a payment was made it was made in the course of a
28 transaction which is likely it have generated documentation both by way of an
29 invoice, by way of a fee advice or a payment to the entity involved, by way of
14:52:15 30 a receipt, if necessary, any other form of acknowledgement; isn't that so, at a

- 14:52:22 1 minimum?
- 2 A. Yes, I would I would expect that.
- 3 Q. 255 Who was in control of those documents as far as you're concerned?
- 4 A. I haven't thought about it. But I would have said that if the debt was a debt
- 14:52:35 5 of Mr. Goodman's and he was using Mobberley to facilitate the payment it's
- 6 Mr. Goodman's debt and they're Mr. Goodman's documents.
- 7
- 8 Mobberley did not engage certainly on my watch, which is the time that I was
- 9 looking after the monies, any services from any aircraft or from anybody else.
- 14:53:01 10 So therefore there wouldn't have been an invoice to Mobberley or anything like
- 11 that. So I wouldn't have received any documentation or Mobberley more
- 12 correctly wouldn't have received documentation.
- 13 Q. 256 Well it remains then the position as of today's date that as far as you are
- 14 concerned there may well be documentation which was generated in relation to
- 14:53:25 15 the expenditure of the 350,000 pounds which is over and above the 160,000
- 16 pounds which can be accounted for, which you cannot acquire for the Tribunal?
- 17 A. No.
- 18 Q. 257 The movement of the funds, I take it, being as we see solely through the Rea
- 19 account, the Rea Brothers account that the has been discovered?
- 14:53:56 20 A. Correct.
- 21 Q. 258 And the only documentation which you would have received, you say isn't that
- 22 documentation -- sorry. That information which translated itself into your
- 23 instruction to Rea Brothers?
- 24 A. Correct.
- 14:54:11 25 Q. 259 You receive nod written instruction or documentation or acknowledgement of any
- 26 kind from Mr. Goodman or any representative of his nor did you give them any
- 27 acknowledgement or receipt of instructions in relation to this transaction?
- 28 A. Correct.
- 29 Q. 260 All right. There may be other questions to be put.
- 14:54:44 30

14:54:44 1 CHAIRMAN: Mr. Finlay, do you want to ask Mr. Smyth anything?

2

3 MR. FINLAY: Thank you very much, Chairman, I have no questions for Mr. Smyth.

4

14:54:44 5 CHAIRMAN: Mr. Gleeson, do you want to cross-examine?

6

7 MR. GLEESON: Yes. Thank you, Mr. Chairman. John

8

9 **THE WITNESS WAS QUESTIONED BY MR. JOHN GLEESON AS FOLLOWS:**

14:54:51 10

11 Q. 261 MR. GLEESON: Mr. Smyth, I act for Mr. Goodman and Mr. Sean Mooney, as you are
12 probably aware. And I just have a small number of questions for you. can you
13 cast your mind back, Mr. Smyth, to the autumn of 1991 when you were retained by
14 Mr. Goodman to recover this debt. Would you agree that in that period the
15 Goodman Group was going through a particularly busy time having come out of
16 examinership the previous year?

14:55:16 15

17 A. Yes.

18 Q. 262 And were you aware at the time there was a very strict agreement between and
19 the creditor banks of those companies -- under which the companies were
20 operating?

14:55:37 20

21 A. I would have been aware of it, yes.

22 Q. 263 And Mr. Goodman himself would have had, to put it mildly, an extremely full
23 agenda in 1991, for the purpose of bringing his companies back to where they
24 were before the examinership?

14:55:55 25

A. I accept that, yes.

26 Q. 264 And insofar as you were retained as his solicitor to recover this debt, would
27 you agree with me that Mr. Goodman was not involved in the detail of how you
28 went about implementing that retainer?

29 A. I accept that, yes.

14:56:19 30

Q. 265 And therefore, he mightn't have been aware of, for example, of discussions that

14:56:24 1 you would have had or of meetings that you might have had in the course of your
2 retainer for that purpose?

3 A. Yes, I accept that.

4 Q. 266 I think Mr. Goodman himself in his direct evidence informed the Tribunal that
14:56:38 5 there wouldn't be telephone contact between you and him unless the sky was
6 falling in?

7 A. Fair comment.

8 Q. 267 Would you accept that in its general sense?

9 A. Yes, I would.

14:56:49 10 Q. 268 Yes. And can I ask you in relation to the Mobberley account. Is it possible
11 then, Mr. Smyth, that you didn't mention the Mobberley account to Mr. Goodman
12 himself?

13 A. Yes.

14 Q. 269 And any instructions that you would have received in relation to the Mobberley
14:57:16 15 account from implemented by you directly with the bank in the Isle of Man;
16 isn't that so?

17 A. Correct.

18 Q. 270 Yes. Now, in your statement, Mr. Smyth, furnished to the Tribunal in January
19 of this year in relation to the payments that were made out of the Mobberley
14:57:42 20 account. I just want to recall what you stated to the Tribunal, and that's at
21 paragraph 14 of your statement, furnished I think on the 24th of January of
22 this year.

23

24 And in relation to those payments what you say towards the end of the statement
14:58:01 25 is as follows; "however, I am satisfied that they had nothing to do with the
26 Southfield debt or anything connected with the affairs of Southfield or any
27 related matter because, since I was involved in trying to recover that debt for
28 Mr. Goodman, I believe that any payments relevant to that matter would ring a
29 bell with me. I do not recognise any of the other movements on the Mobberley
14:58:21 30 account and do not associate them in any way with the Southfield matter".

14:58:26 1
2 MR. O'NEILL: That's page 3232.
3
4 MR. GLEESON: Yes. I take it that is still your position in relation to
14:58:33 5 those payments, Mr. Smyth?
6 A. It is.
7 Q. 271 Yes. So nothing that we have seen in relation to the payments out of that
8 account would cause you to believe that they have anything to do with the
9 affairs of Southfield; isn't that so, Mr. Smyth?
14:58:50 10 A. Correct.
11 Q. 272 Yes. Now, can I ask you to deal briefly with the meeting which you had with
12 the Bank of Nova Scotia in November of 1991. And can I again suggest to you
13 that this is not a meeting that you would have notified Mr. Goodman of in
14 advance?
14:59:15 15 A. Correct.
16 Q. 273 And is it possible that you mightn't have told Mr. Mooney about this meeting
17 either?
18 A. I certainly wouldn't have spoken to Mr. Goodman. I couldn't fairly say that I
19 hadn't said something to Sean Mooney about the meeting.
14:59:34 20 Q. 274 Yes. Is it possible --
21 A. I wouldn't go that far.
22 Q. 275 Yes. Is it possible that you might not have?
23 A. Oh, sorry, I beg your pardon. Sorry, the question is -- I may not have. I
24 beg your pardon.
14:59:50 25 Q. 276 In relation to the proposal that you were floating at the time, Mr. Smyth,
26 which was that an assignment would be taken of the debt of the Bank of Nova
27 Scotia for the purpose of appointing a receiver. Will you agree with me
28 firstly, that the role of a receiver appointed by a bank under a standard
29 banking debenture would be simply to satisfy the debt out of the secured asset
15:00:27 30 or charged asset?

- 15:00:28 1 A. Yes.
- 2 Q. 277 And so if the security of the bank was assigned, say, to Mr. Goodman or one of
3 his companies, he would be in no different a position to the bank itself under
4 the terms of its security; isn't that right?
- 15:00:49 5 A. In a Jesuistic sense, yes. But with respect, in the real world what happens
6 is that if you threaten to put a receiver into a company over somebody's
7 assets, then the mere threat of the appointment of the receiver is usually
8 enough for people to recognise that they have to come to heel. And I would
9 certainly have felt that the mere fact of being in a position to appoint a
15:01:16 10 receiver would have been enough to bring about a circumstance whereby the debt
11 which I was trying to recover would then have to have been repaid.
- 12 Q. 278 Yes.
- 13 A. So, yes, the answer is you appoint a receiver, by Mr. Goodman or Mobberley or
14 the bank would have had the same effect.
- 15:01:40 15 Q. 279 But isn't it correct to say that as a matter of law a person who owns a charge
16 over property and who appoints a receiver is not by virtue of that appointment
17 getting into the business of developing land?
- 18 A. I would accept that, yes.
- 19 Q. 280 I think that suggestion was put to you by Mr. O'Neill that in some way this
15:02:04 20 could be viewed as a mechanism whereby the person taking the assignment could
21 get into the business of developing land?
- 22 A. I didn't remember Mr. O'Neill putting it quite that way to me.
- 23 Q. 281 Yes.
- 24 A. I thought he was more concerned about whether the appointment of a receiver put
15:02:24 25 Mr. Goodman's position into possession or control of the asset stronger than
26 just paying off the debt. Because I think one of the suggestions during that
27 examination was if Mr. Goodman was so concerned about his 350,000 debt at that
28 time why didn't he just go and pay it off to the bank. And I think my response
29 was in reality you wouldn't do that. You would want to get value and put
15:02:57 30 yourself into a position whereby you could then bring some pressure to bare on

15:03:02 1 the person who owed the money to the bank. And if you took the assignment then
2 they owed the money to you. So I'm not sure what you're saying and what
3 Mr. O'Neill says are two different points. I took them as two different
4 points.

15:03:21 5 Q. 282 In any event a receiver appointed under a debenture of this kind, his powers
6 would be strictly limited to the terms of that debenture and the powers were
7 cited there; isn't that right?

8 A. Absolutely.

9 Q. 283 In the ordinary course of events the ultimate power of the receiver is to sell
10 the property and to realise the debt; isn't that right?

11 A. Oh, yes, yes.

12 Q. 284 And can I ask you Mr. Smyth, having regard to the knowledge that you have did
13 Mr. Goodman at any point in time have any beneficial interest in the Coolamber
14 lands?

15:03:54 15 A. No, not to my knowledge.

16 Q. 285 And was it ever part of your retainer by Mr. Goodman that he would seek to
17 acquire a beneficial interest in the lands at Coolamber?

18 A. No, he never did.

19 Q. 286 Thank you, Mr. Smyth.

15:04:08 20 A. Okay.

21

22 CHAIRMAN: Thank you.

23

24 **THE WITNESS WAS QUESTIONED BY MR. O'MOORE AS FOLLOWS:**

15:04:12 25

26 Q. 287 Mr. Smyth, if you can see around the screen --

27 A. Sorry, I beg your pardon.

28 Q. 288 I represent Mr. Gannon.

29 A. Yes.

15:04:17 30 Q. 289 I just want to ask you a short number of questions in relation to your

- 15:04:20 1 evidence. I'm just trying to make sense in as much as we can understand it of
2 what happened around November 1991 and any subsequent involvement that
3 Mr. Gannon may be thought to have had in all of these transactions. In 1991
4 as I understand it your relationship with Mr. Gannon essentially pivoted around
15:04:44 5 the Airfield lands and development of those lands, is that correct?
- 6 A. Correct.
- 7 Q. 290 And that had been ongoing, I think since early 1990 at the latest; isn't that
8 correct?
- 9 A. Yes.
- 15:04:51 10 Q. 291 That was to be a significant development and as I understand it Gannon Homes
11 were providing services for yourself as the developer; is that so?
- 12 A. Correct.
- 13 Q. 292 And under the ordinary course of things you were paying Gannon Homes on and off
14 for the services provided by them?
- 15:05:06 15 A. Correct.
- 16 Q. 293 Including their retention of architects and engineers and the like; is that
17 correct?
- 18 A. Correct.
- 19 Q. 294 And I don't know if you're aware of that, Mr. Smyth, but the day before
15:05:17 20 Christmas Eve 1991, the 23rd of December, there was a payment recorded to
21 Gannon Homes Ltd of 70,000 pounds from your firm. Do you know anything about
22 that payment?
- 23 A. Yes, I could.
- 24 Q. 295 Could you tell us about it, what was it for or what was it about?
- 15:05:38 25 A. I believe as part of a larger invoice for 90,000 which had been -- was for
26 architectural and other services. Whatever -- the day-to-day running of the
27 actual site in Airfield was run by Gannon Homes. As architectural,
28 engineering and other fees came up for payment, we would have been invoiced
29 from time to time and that 70,000 was part of that payment.
- 15:06:00 30 Q. 296 Without going into it in tremendous detail to make it absolutely clear, that

- 15:06:04 1 payment has nothing to do with Mobberley or Elangrove or Southfield; does it?
- 2 A. Absolutely nothing.
- 3 Q. 297 And if we could then move on to those companies. Again, to achieve clarity on
- 4 this. Mr. Gannon had nothing to do with Mobberley; isn't that right?
- 15:06:22 5 A. Nothing.
- 6 Q. 298 I mean, if you look at the call report, it's page 1512 if that could be just
- 7 put up. It's a document I think with which you are well familiar Mr. Smyth,
- 8 if we look at the third paragraph of that it says; "Smyth said that Gannon has
- 9 already paid off the Goodman international loan and is now owed 167,000 pounds
- 15:06:43 10 by Southfield". It's immaterial to Mr. Gannon how this arose, whose mistake
- 11 it was, that statement is absolutely wrong; isn't it?
- 12 A. Absolutely.
- 13 Q. 299 It's wrong in two very significant ways. First of all, at that point in time
- 14 nobody had paid off the Goodman International loan; isn't that right?
- 15:06:59 15 A. Correct.
- 16 Q. 300 And there is no dispute whatsoever about that. Secondly, that whenever it was
- 17 paid off, it was paid off I think by common consent with Goodman monies, not
- 18 with Gannon monies; isn't that right?
- 19 A. Correct.
- 15:07:11 20 Q. 301 So clearly either you expressed yourself poorly or perhaps you expressed
- 21 yourself precisely and it was taken down incorrectly by Mr. McCabe, either way
- 22 that's just a mistake, isn't that right?
- 23 A. Absolutely.
- 24 Q. 302 What is not a mistake of course is the statement as you said in your direct
- 15:07:27 25 evidence to Mr. O'Neill, that you made it quite clear to the bank that you were
- 26 representing Mr. Goodman and not Mr. Gannon?
- 27 A. Yes.
- 28 Q. 303 And if we could have on the screen page 1570, that's your letter of the 19th of
- 29 December. This is the only document authored by you at the time in respect of
- 15:07:44 30 your dealings with the bank, isn't that right?

- 15:07:46 1 A. Correct.
- 2 Q. 304 And the second page, this may be where the confusion originated. You say "at
3 that time I indicated our clients, Mobberley Limited, were interested in
4 acquiring an assignment to the bank's loan in relation to this property". And,
15:07:58 5 if you go to the second last paragraph "as I indicated to you", that's to Mr.
6 McCabe of the bank, "previously, our clients have taken a formal assignment of
7 the debt from Goodman International of Southill".
8
9 Now, of course the only persons who ever paid off the sums due to Goodman
15:08:19 10 International were the Goodman interests through Elangrove with Goodman money;
11 isn't that right?
- 12 A. That's correct.
- 13 Q. 305 So that couldn't refer to Mr. Gannon. As a matter of fact, no matter what was
14 understood at the time?
- 15:08:30 15 A. No, it couldn't.
- 16 Q. 306 Mr. Gannon has nothing to do with Mobberley, good, bad or indifferent; isn't
17 that right, Mr. Smyth?
- 18 A. Absolutely nothing.
- 19 Q. 307 Could I just ask you on another theme. It's a related theme. Mr. Gannon's
15:08:44 20 presence at the meeting, I think Mr. O'Neill very fairly put to you in your
21 direct evidence the week before last, Mr. Gannon's position on that. He
22 doesn't recollect, doesn't believe he was at it, but sees two documents in
23 particular linking him with that meeting. One is the call report and the
24 other is your letter of the previous day, the 14th of November, you are aware
15:09:04 25 of both of those documents Mr. Smyth?
- 26 A. I am.
- 27 Q. 308 And I don't want to go into some sort of long exploration whether it was there
28 or not you would agree with me that the capacity that on your evidence he
29 attended the meeting was not as your client and your letter of the 14th of
15:09:20 30 November 1991 signed as it was by you, Noel Smyth of Noel Smyth and Partners,

15:09:25 1 in no way indicates that he was your client.

2 A. No.

3 Q. 309 Mr. Gannon never gave instructions to you in respect of that transaction at

4 all?

15:09:32 5 A. No.

6 Q. 310 And in as much as any of the documents or indeed your memory suggests

7 Mr. Gannon had an involvement, that involvement appears to be an absolute

8 peripheral one; isn't that right?

9 A. It was.

15:09:43 10 Q. 311 It doesn't appear to have been sustained beyond -- well if he was at the

11 meeting at all, he doesn't pop up again in any shape or form in your

12 recollection of events thereafter?

13 A. No.

14 Q. 312 Thanks, Mr. Smyth.

15:09:56 15

16 CHAIRMAN: Mr. Gleeson, do you want?

17

18 MR. M. GLEESON: I have no questions, thank you very much?

19

15:10:04 20 CHAIRMAN: Do you want to ask anything?

21

22 MR. O'NEILL: No.

23

24 CHAIRMAN: All right. That concludes your evidence.

15:10:09 25 A. Thank you very much, Chairman.

26

27 CHAIRMAN: We will adjourn now until half ten tomorrow.

28

29 **THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,**

15:10:52 30 **WEDNESDAY 2ND MARCH 2005, AT 10:30 A.M..**

15:10:59 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30