

THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY,

9TH NOVEMBER 2004, AT 10:30 A.M.:

10:18:39 1
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4 MR. FITZSIMON: Good morning, Chairman. Just before you begin. Just to say
11:04:25 5 I'm here today, for the past five years we've been coming here to give
6 evidence and to cooperate with the Tribunal, and indeed, have travelled
7 thousands of miles to do so, so I feel it would be remiss if I didn't attend
8 here this morning, after such a long period. Despite your letter not to
9 attend.

11:04:42 10
11 CHAIRMAN: Thank you very much.
12

13 MR. FITZSIMON: It's for that reason, sir
14

11:04:45 15 CHAIRMAN: Thank you. This is the ruling of the Tribunal in relation to the
16 application of, for costs on behalf of Joseph Murphy Structural Engineers,
17 which I will refer to as JMSE, its associated companies, directors, officers
18 and auditor.
19

11:05:03 20 The applicants were granted legal representation by the Tribunal on the 2nd of
21 February 1998 and were represented collectively by Senior and Junior Counsel
22 and solicitors, Fitzsimon Redmond.
23

24 Altogether, the applicants gave in evidence in public for approximately 35 days
11:05:21 25 and an additional 14 days were engaged in taking evidence on commission from
26 Mr. Murphy Joseph Senior, now deceased, in Guernsey, Channel Islands. An
27 additional 4 days were taken up with the reading of the evidence of the late
28 Joseph Murphy senior into the public record of the Tribunal. No estimate of
29 costs claimed has been submitted to the Tribunal but undoubtedly the costs in
11:05:41 30 question are very substantial. It is a matter for the Taxing Master of the

11:05:46 1 High Court to determine the amount of any costs awarded to any party by the
2 Tribunal.
3
4 The Applicant's legal representatives participated fully in the public hearings
11:05:58 5 in the Gogarty Module of the Tribunal and their clients involvement in the
6 matters inquired into was reported upon by the Tribunal in it's Second Interim
7 Report. In addition Mr. Joseph Murphy Junior and Mr. Frank Reynolds
8 activities were also the subject of adverse findings by the Tribunal in its
9 Third Interim Report.
11:06:16 10
11 On the issue of cooperation with the Tribunal. Findings of obstructing and
12 hindering the Tribunal were made and I will summarise these as follows.
13
14 Mr. Joseph Murphy Senior, now deceased, Second Interim Report.
11:06:30 15 "A. Failing to give a truthful account of the circumstances of which the
16 Murphy north Dublin lands came to be sold.
17 B. Failing to give a truthful account of the circumstances in which Mr. James
18 Gogarty came to attend the meeting at Mr. Burke's home in June 1989, at which
19 paid money by JMSE.
11:06:49 20 C. Failing to give a truthful account as to the circumstances in which JMSE's
21 money came to be paid to Mr. Burke on his instructions and with his authority.
22 D. Failing to provide proper discovery to the Tribunal in breach of an order
23 for discovery made against him.
24 E. Falsely claiming that he had no bank accounts in Ireland from 1976 onwards,
11:07:12 25 when he knew this to be untrue.
26 F. Colluding with Mr. Joseph Murphy Junior, Mr. Frank Reynolds and Mr. Roger
27 Copsy to give a false account of the role played by Mr. James Gogarty in
28 connection with the Murphy's North Dublin lands and his knowledge of the
29 participation proposal advanced by Mr. Michael Bailey in relation thereto."
11:07:34 30

11:07:34 1 Mr. Joseph Murphy Junior. Second Interim Report.
2 "A. Failing to give a truthful account of the circumstances in which he came
3 to attend a meeting at the home of Mr. Burke in June 1989, at which he handed
4 to Mr. Burke a sum of not less than 30,000 pounds.

11:07:52 5 B. Failing to give a truthful account of his dealings with Mr. Michael Bailey
6 with regard to the participation proposal, in which it was envisaged that
7 Mr. Michael Bailey would receive 50% of the value of the Murphy's North Dublin
8 lands in return for procuring planning permission and building bylaw approval
9 in respect thereof.

11:08:09 10 C. Giving a false account of the involvement of Mr. James Gogarty. From the
11 sale of the Murphy's lands and the role played by him in connection with the
12 payment of JMSE monies to Mr. Burke.

13 D. Giving of false account of his dealings with Mr. Michael Bailey,
14 subsequent to the publication of the Sunday Business Post articles.

11:08:35 15 E. Falsely constructing an alibi which was untrue."
16
17 Third Interim Report.

18 "A. Failing to give a truthful account of the circumstances in which he came
19 to pay Mr. George Redmond a sum of not less than 12,246 pounds, for devising
11:08:48 20 the strategy that resulted in the Forest Road service charges and levies being
21 fixed at their 1983 level in respect of any similar development taking place
22 within two years of the 21st of June 1988.

23 B. Failing to give a truthful account of the circumstances in which he came to
24 pay Mr. George Redmond 15,000 pounds at the Clontarf Castle Hotel in July
11:09:14 25 1989."
26

27 Mr. Roger Copsey, Financial Director, JMSE. Second Interim Report.

28 "A. Giving a false account of his involvement in the assembly of the funds
29 paid by JMSE to Mr. Burke.

11:09:30 30 B. Falsely attributing a role to Mr. Gogarty in the payment of monies to

11:09:31 1 Mr. Burke, which Mr. Gogarty had not exercised.

2 C. Failing to give a truthful account in his dealings with Mr. Joseph Murphy

3 Junior, Mr. Joseph Murphy Senior, Mr. Joseph Murphy Junior and Mr. Frank

4 Reynolds in relation to the payment of JMSE's monies to Mr. Burke.

11:09:49 5 D. Failing to provide the Tribunal with a true explanation for the accounting

6 entries made in the books of JMSE and Grafton, in relation to the monies paid

7 to Mr. Burke."

8

9 Mr. Frank Reynolds, Managing Director, JMSE. Second Interim Report.

11:10:05 10 "A. Failing to give a truthful account of his involvement in the assembly of

11 funds which were paid to Mr. Burke by JMSE.

12 B. Falsely ascribing to Mr. Gogarty, a role in the payment of monies to

13 Mr. Burke which he knew to be untrue.

14 C. Failing to give a truthful account of his dealings with Mr. Michael Bailey.

11:10:24 15 D. Failing to give a truthful account of the steps taken by him, subsequent to

16 the publication of the Gogarty allegations in the Sunday Business Post editions

17 of the 30th of March and the 6th of April 1996.

18 E. Colluding with Mr. Joseph Murphy Senior, Mr. Joseph Murphy Junior and Mr.

19 Roger Copey to present a false account to the Tribunal of the role played by

11:10:45 20 Mr. James Gogarty and the payment of JMSE monies to Mr. Ray Burke."

21

22 Third Interim Report.

23 "A. Failing to acknowledge that he attended a meeting at the Clontarf Castle

24 Hotel, where a payment of 15,000 pounds was paid by Mr. George Redmond to

11:11:01 25 Mr. Joseph Murphy Junior in his presence and in the presence of Mr. Michael

26 Bailey and Mr. James Gogarty."

27

28 Mr. Tim O'Keefe, Financial Controller, JMSE.

29 "A. Failing to give a truthful account of his knowledge of the payment of

11:11:14 30 monies by JMSE to Mr. Burke.

11:11:17 1 B. Giving an explanation of his accounting entries and the preparation of the
2 Grafton/Reliable cash balance document which he knew to be false."

3
4 Mr. John Bates. Auditor of the Murphy Irish companies. Second Interim
11:11:34 5 Report.

6 "A. Failing to give a truthful account of his reasons for treating the payment
7 of 30,000 pounds, the funds of Grafton Construction Company Limited, as
8 payments involving lands enhancement expenditure in the documents prepared by
9 him in connection with the annual return of Grafton Construction Company
11:11:52 10 Limited to the year end of 31st May 1990."

11
12 In relation to the substantive matters which were investigated by the Tribunal,
13 the late Mr. Joseph Murphy Senior, Mr. Joseph Murphy Junior, Mr. Roger Copsey
14 and Mr. Frank Reynolds were found to have knowingly engaged in or assisted
11:12:11 15 corruption. Adverse findings on substantive issues, but of a less serious
16 nature, were also found as against Mr. Tim O'Keefe and Mr. John Bates.

17
18 Both written and oral submissions have been made on the Applicant's behalf in
19 support of their application for costs, and I have fully considered these,
11:12:30 20 together with the submissions made on behalf of the Minister for Finance and
21 the Attorney General acting on behalf of the public interest.

22
23 In his oral submissions, Mrs. Cush Senior Counsel for the applicants contended,
24 that while obviously adverse findings were made against his clients, some
11:12:46 25 issues dealt with by the Tribunal and which involved his clients, produced in
26 effect, neutral or even positive findings relating their involvement with the
27 Tribunal, and that in respect of some matters the applicants positively
28 assisted the Tribunal.

29
11:13:01 30 In particular Mr. Cush highlighted the extensive discovery of documents by the

11:13:07 1 applicants and in respect of which he suggested no complaint was made by the
2 Tribunal. In fact, this is incorrect, as an adverse finding was made against
3 the late Mr. Joseph Murphy Senior in that he was found to have failed to
4 provide proper discovery to the Tribunal in breach of an order for discovery
11:13:25 5 made against him. However, leaving that aside and having regard to the
6 extensive discovery that was in fact made by the applicants. It is certainly
7 not unreasonable for Mr. Cush to emphasise the substantial compliance with the
8 Tribunal discovery requirements by his clients over a prolonged period of time.
9

11:13:43 10 The issue I have to consider is whether, having regard to the entire of the
11 relationship between the applicants and the Tribunal, the case can reasonably
12 be made on behalf of the applicants that the instances of cooperation on the
13 applicants part were such as would enable me to, for good reason, exclude or
14 separate them from the very serious adverse findings relating to cooperation
11:14:08 15 that were found by the Tribunal in both the Second and Third Interim Reports.
16

17 The mere fact that an Applicant for costs may have cooperate in the respect of
18 some issues, cannot be viewed as positive in terms of his behaviour, if the
19 overall thrust of his involvement with the Tribunal was to have been knowingly
11:14:32 20 untruthful, obstructive and misleading.
21

22 The Applicants, were between them, found to have knowingly given false evidence
23 and in the case of the late Mr. Joseph Murphy Senior, Mr. Joseph Murphy Junior,
24 Mr. Frank Reynolds and Mr. Roger Copsey, to have colluded with each other to
11:14:48 25 mislead the Tribunal. I must accept these findings and I have to assume that
26 they were properly and fairly made by the Tribunal.
27

28 Taken as a whole, the adverse findings of obstructing and hindering the
29 Tribunal made against the Applicants were so serious, so extensive and so far
11:15:04 30 reaching, as to clearly leave any reasonable person considering them to the

11:15:09 1 conclusion that the individuals concerned, particularly those I've named in the
2 proceeding paragraph, were intent from the outset in ensuring that the Tribunal
3 would not find the truth. To put it more simply, the conduct of the
4 Applicants and their dealings with the Tribunal was unlawful and disreputable
11:15:26 5 and amounts to a fundamental disregard for the very purpose of the Tribunal and
6 their legal duty to cooperate with it.

7
8 In spite of the serious findings of corruption on the part of some of the
9 Applicants, I would have considered awarding them a portion of their costs had
11:15:42 10 they chosen to fully and honestly cooperate with the Tribunal. I am firmly of
11 the view that there should be a strong incentive for a party to cooperate with
12 the Tribunal, and that any party who fully cooperates with the Tribunal by
13 giving a truthful account of their knowledge of the events under inquiry, can
14 reasonably expect to recover at least a significant portion of his or her
11:16:04 15 costs, notwithstanding adverse findings on substantive issues such as
16 corruption.

17
18 In all the circumstances, therefore, I do not believe it would be appropriate
19 to award any costs to the applicants, and I therefore refuse their application.
11:16:22 20 Thank you.

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22 **THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,**
23 **WEDNESDAY, 10TH NOVEMBER 2004, AT 10:30 A.M.:**