

DECISION 19/7/99.

Application Re Discovery

This is an application for discovery of certain categories of documents from the Murphy Group. The application arises in the following way;

By letter dated 6th of July 1999 Messrs. McCann Fitzgerald, Solicitors for Mr. James Gogarty, sought discovery of certain categories of documents from the Murphy Group.

By letters of the 13th of July 1999 the Tribunal gave notice to JMSE Limited of my intention to consider making orders for discovery in relation to the documents set out in the schedule attached to the letters of the 13th of July 1999. These categories of documents scheduled to the letters of the 13th of July 1999 are in the main, the categories of documents described by Messrs. McCann Fitzgerald in their letter to the Tribunal of the 6th of July 1999.

Mr. Cooney argued that effectively what is happening here is that the Tribunal legal team are making an application for discovery for and on behalf of Mr. James Gogarty.

Any party before this Tribunal is entitled to draw to the attention of the Tribunal documents or categories of documents which it says are relevant to the issues before the Tribunal. It is then for me to decide whether those documents are or might be relevant to the issues before me and on that basis to decide whether to make an Order for Discovery. The deciding factor in making an Order for Discovery is relevance. If the documents are relevant, or might be relevant, then it matters not a whit who brought the existence of the documents, or the possibility of the existence of the documents, to the attention of the Tribunal. In making a decision about the categories of documents sought, I am not favouring any party who has been granted representation before me. I am basing my decision entirely on whether the documents are relevant or not. Mr. Cooney did not contend that any of the documents were irrelevant. I will now proceed to deal with each of the categories of documents:-

1. All documents in relation to the Isle of Man proceedings taken by Liam Conroy (deceased)

Decision:

These documents are relevant because it is contended that the motivation for the proposed sale

of the lands lots 1 to 6 in the Terms of Reference was the Isle of Man litigation. I therefore propose to make an Order for Discovery in respect of these documents.

2. All documents in relation to the negotiation conclusion and implementation of the agreement between Lajos Holdings Limited and James Gogarty as formalised in the agreement in writing dated 3 October 1989.

Decision:

Mr. Gogarty's status within the Murphy Group during the period of the negotiations for the sale of land and at the time of the handing over of the monies to Raphael Burke may be material, and may establish his status within the company at that time. I consider these documents to be relevant. I am therefore making an Order for Discovery in relation to these documents.

3. All communications or records of communications between the Murphy Group and Michael Bailey/Thomas Bailey/Bovale Developments Limited.

Decision:

Communications or records of communications between Thomas Bailey, Michael Bailey and Bovale Limited and the Murphy Group could be relevant to the matters before the Tribunal because the Murphy Group were the vendors of the land in question and Mr. Michael Bailey and Mr. Thomas Bailey the purchasers of the lands. In addition it has been alleged that there were a number of meetings between Mr. Michael Bailey and on occasion Mr. Thomas Bailey and members of the Murphy Group prior to the meeting at the house of Mr. Raphael Burke. These documents, would be relevant to matters being inquired into by the Tribunal. I therefore propose to make an order for Discovery in respect of these documents.

I propose to limit the Order for Discovery of this category of documents to communications or records of communications between the 1st of January 1989 and the 23rd of December 1989 being the date of the

signing of the contracts of purchase. The documents that should be discovered in this category are;

Telephone records

Fax records

Appointment diaries of Mr. Roger Copsey, Mr. Frank Reynolds, Mr. Joseph Murphy Junior and Joseph Murphy Senior for that period.

4. File of Joseph Murphy Junior re James Gogarty referred to in the evidence of Mr. Dermot Ahern.

Decision:

Mr. Dermot Ahern TD gave evidence that Joseph Murphy Junior had in his possession a substantial file concerning James Gogarty when he met him in June and July 1997. The sole purpose of that meeting was to establish whether or not funds had been paid to Mr. Raphael Burke by JMSE or any related company. In my view, if Mr. Joseph Murphy Junior considered the file sufficiently relevant to bring to these meetings then it must be relevant to the issues being inquired into by the Tribunal. I propose to make an order for Discovery in relation to this file, Joseph Murphy Junior to swear the affidavit.

5. Any memoranda made by Joseph Murphy Junior of his meeting with Mr. Dermot Ahern TD or his telephone conversations with Mr. Ahern on the 10th of September 1997.

Decision:

The purpose of the meetings in June and July 1997 and the telephone conversations on the 10th of September 1997 was to discuss the alleged payment of monies to Mr. Raphael Burke by the Murphy Group. Any memoranda or notes in respect of same would be relevant. I therefore propose to make an order for discovery of this category of documents.

6. All communications or records of communications between Joseph Murphy Senior, Joseph Murphy Junior and James Gogarty between 1988/1990

Decision:

These categories of documents are clearly relevant because they will encompass the circumstances surrounding the sale of the lands. It has been contended by Messrs. Fitzsimons Redmond, on behalf of the Murphy Group, as far back as the 21st of January 1998 that the payment of £30,000.00 was

not authorised by the Murphy Group, the identity of the intended recipient was unknown to them and they had no knowledge of the motivation and purpose of the said payment. Mr. Gogarty contends that the payment was made with the knowledge and consent of Joseph Murphy Junior and that he acted on the instructions of Joseph Murphy Senior. This category of documents is clearly relevant. I intend however, to confine these documents to the period 1st of March 1989 to 15th of December 1989 and I direct that all communications and records of communications be furnished within that period, whatever may have been the subject matter of the communication.

7. All documents in relation to the geographical whereabouts and travel arrangements of Joseph Murphy Junior, communications made or received or meetings attended in May and June 1989.

Decision:

In his supplemental statement Mr. Joseph Murphy Junior furnished three documents relating to his travel arrangements in or around that time. This is a matter that has been raised by Mr. Joseph Murphy Junior himself in his supplemental statement. In the

end I have to decide whether or not Mr. Joseph Murphy Junior was present at the meeting in the house of Mr. Raphael Burke and these documents therefore, are clearly relevant. I direct therefore that these documents should be furnished. This category of documents should include;

- (a) Bank records;
- (b) Credit card records and any other documentation.
- (c) Appointment diaries
- (d) Telephone (including mobile phone) records

The period covered is the 1st of May 1989 to the 1st of September 1989. If there are no other documents other than those furnished by Mr. Murphy Junior with his supplemental statement then I require an affidavit deposing to the fact that there are no other such documents.

8. All documentation relating to or touching upon the geographical whereabouts and travel arrangements of Mr. Frank Reynolds, the meetings attended and communications made or received in May/June 1989.

Decision:

These documents are a very limited category of documents and are limited to the period May and June 1989. It has been alleged that Mr. Frank Reynolds attended a number of meetings with Mr. Michael Bailey in or around this period and in particular was present at an alleged meeting in the premises of JMSE in Santry prior to Mr. Bailey and Mr. Gogarty (on Mr. Gogarty's version) leaving to go to Mr. Raphael Burke's house. These documents therefore are relevant and I direct that discovery be made of them, such discovery should include;

- (i) Any credit card bills;
- (ii) Any appointments diary or diaries;
- (iii) Any other documentation in this category.

9. All documents in and in relation to the High Court injunction proceedings instituted in the name of JMSE and Others against Mr. Gogarty and Others following the meeting of the 7th of June 1988.

Decision:

I do not consider these documents to be relevant. These documents relate to injunction proceedings taken by the then Chief Executive Liam Conroy following the meeting in June 1988 that effectively

deposed Mr. Liam Conroy. I refuse the discovery sought.