



**Tribunal of Inquiry
Into Certain Planning Matters and Payments**

Appointed by Instrument of The Minister for the Environment
and Local Government dated the 4th day of November 1997
as amended by Instrument dated the 15th day of July 1998

DECISION

OF

THE SOLE MEMBER
Mr. JUSTICE FEARGUS M. FLOOD

Re: Discovery - Joseph Murphy Senior

Thursday, 2nd December, 1999

On Tuesday, 29th January 1999, I set out the circumstances in which the making of an order for discovery would be considered by the Tribunal. Having reviewed the decision of Lord Justice Brett in *Companie Financiere du Pacifique –V- Peruvian Guano Company* and the decision of Finlay CJ in *AIB –V- Ernst & Whinney 1993 IR* I stated *“In the context of an Inquiry, discovery is directed towards establishing whether there is any documentary base which would either corroborate the allegation which is being made, either in the Terms of Reference or otherwise or which could have the opposite effect and exonerate the person against whom the allegation is made. The parameters must be such that every document relating to matters in question in the Inquiry which would not only be evidence on the specific issue but also which it is reasonable to suppose contains information which may not which must either directly or indirectly enable the investigator to advance the proof of the allegation or to establish the contrary is discoverable.”*

In my ruling of Friday, 19th March 1999, I determined that the consideration of the contents of the affidavit of Liam Conroy sworn on 20th March 1989 may have some probative value on matters relevant to the Tribunal” terms of inquiry.

In the course of this original affidavit, the deponent deposed to certain facts which, if true, could have had adverse consequences for Mr. Murphy had they been made known to the appropriate Revenue authorities in the UK, Ireland or Guernsey as the case may be.

The fact of the Conroy affidavit having been sworn and its contents are relevant to the terms of the Inquiry because it has been suggested by James Gogarty that the fear of disclosure of these contents to the Revenue Authorities had motivated Joseph Murphy Senior towards selling the lands in North County Dublin rather than jointly developing them with Michael Bailey.

In a subsequent affidavit sworn by Liam Conroy on 25th April 1990, Liam Conroy identified two financial institutions in Dublin in which he alleged Joseph Murphy Senior had deposited money using English accommodation addresses and thereby accrued deposit interest without deduction of tax. Whilst this affidavit had been the subject of a specific order for discovery

to the Tribunal, it had not been produced prior to the commencement of the taking of evidence on commission in Guernsey and came to Tribunal ultimately as a result of direct contact with the High Court Office in London.

The existence of bank accounts in Ireland in the name of or under the control of Mr. Joseph Murphy Senior may have probative value in determining whether or not payments were made to third parties coming within the Terms of Reference of the Tribunal. Consideration of such accounts may indicate that they have no relevance to the matters currently under investigation. However, the fact that Mr. Murphy has provided the Tribunal with a sworn affidavit to the effect that he has had no bank accounts in Ireland since 1976, coupled with similar evidence on oath, contrasted with the fact that information has since been provided to the Tribunal from financial institutions which prima facia suggests that he had accounts in Ireland in the mid to late 1980's obliges the Tribunal to discover whether or not any further financial accounts exist during that period.

Two separate distinct reasons exist which oblige the Tribunal to make further discovery in this matter:-

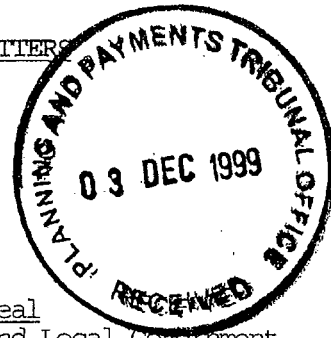
1. The fact that Mr. Murphy while sworn on oath told the Tribunal that he did not have any such accounts, whereas it would appear prima facia that such accounts existed, raises the question as to his credibility as a witness.
2. The existence of accounts in Ireland during the period under investigation by the Tribunal where such accounts have been, ~~be~~ denied by the account holder would prima facia merit inquiry into the nature of and the transactions carried out through such accounts in order to establish whether they may have a bearing on the matters under investigation.

Accordingly, I am disposed to making an order in the terms set out in the Tribunal's letter of the 24th November 1999. Notice of my intention to do so will be given to the financial institutions in accordance with the procedures already adopted in Discovery matter.⁵

Feergus M. Flood

Sole Member of the Tribunal of Inquiry

TRIBUNAL OF INQUIRY
INTO CERTAIN PLANNING MATTERS



Given under Official Seal
of the Minister for the Environment and Local Government
this 4th day of November 1997
pursuant to the
Tribunals of Inquiry (Evidence) Acts 1921 and 1979

TRANSCRIPT OF PROCEEDINGS HELD BEFORE CHAIRMAN,
MR. JUSTICE FLOOD, IN THE PRINIWORKS BUILDING,
DUBLIN CASTLE,
ON 14TH OF JANUARY, 1998 AND FOLLOWING DAYS.

TRANSCRIPT OF PROCEEDINGS ON THURSDAY, 2ND NOVEMBER, 1999.

I hereby certify the following to be
a true and accurate transcript of
my shorthand notes of the above
named proceedings.

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Michelle Coffey
J. & D. Doyle

DOYLE COURT REPORTERS
2, ARRAN QUAY, DUBLIN 7.

Tel.....8722 833
Fax.....8724 486
After hours:.....2862 097
E-mail: doyleaos@indigo.ie

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