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18/02 '03 13:51

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YOUR REF: M2 28 Feb

CURR REF: A Turner

DATE: 18th February 2003

J KISSOON SINGH Inc
Fax No: 031) 306-0778
No. of pages including this one : 45

Dear Sirs,

DINERS CLUB SA (PTY) LTD / A & V SINGH

1. Our letter of the 13th February 2003 refers.
2. We enclose copies of the application papers sent to us by our London solicitors which were prepared for the hearing on 11th February 2003 which was adjourned to 20 February 2003.
3. We have today received a draft witness statement and order which is sought on behalf of Diners Club International Limited and Citibank International Limited in relation to the evidence to be given by Messrs Walker, Mortlock, Bird and Brett.
4. We have instructed our London solicitors to attend the adjourned hearing before Master Turner, our view being that the Master should not afford any relief which is not consistent with that which would be provided under South African Law or would not be consonant with the order granted by Judge Levinsohn in September 2002.
5. We fail to understand the relevance of your request for our client's shareholding and accordingly do not believe that we have to furnish you with this information.

Yours faithfully,

BOWES & TURNER
A Turner

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Claim No.

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION**

**DINERS CLUB (SA) (PTY) LIMITED,
a corporation**

Plaintiff

vs

**(1) ANIL SINGH,
(2) VANITHA SINGH,**

Defendants

**ORDER UNDER THE EVIDENCE
(PROCEEDINGS IN OTHER
JURISDICTIONS) ACT 1975**

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MS/PS.41592.0004

18/02 '03 14:57 TX/RX NO. 1892 P01

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**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION**

Claim No.

MASTER TURNER - MASTER IN CHAMBERS

**IN THE MATTER OF THE EVIDENCE (PROCEEDINGS IN OTHER
JURISDICTIONS) ACT 1975**

AND

**IN THE MATTER OF A CIVIL PROCEEDING NOW PENDING BEFORE THE
HIGH COURT OF SOUTH AFRICA (DURBAN AND COAST LOCAL DIVISION)
BETWEEN:-**

DINERS CLUB (SA) (PTY) LIMITED.

Plaintiff

vs

**(1) ANIL SINGH,
(2) VANITHA SINGH.**

Defendants

ORDER

UPON THE APPLICATION by the Plaintiff for an Order to obtain evidence for a foreign court.

AND UPON HEARING Solicitors for the Plaintiff and the Solicitors for Diners Club International Ltd and Citibank International Ltd as intervenors.

AND UPON READING the evidence filed and the letter of Request dated 6th February 2003 from The Honourable Mr Justice Phillip Levinsohn in the High Court of South Africa (Durban and Coast Local Division) from which it appears that the proceedings are pending in

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that court between the Plaintiff and the Defendants ("the Proceedings") and that that court seeks to obtain the testimony of the following witnesses:-

1. Kevin Davern, of Lloyds TSB Bank Plc, 71 Lombard Street, London EC3P 3BS
2. John Paul Clough, of Abbey National Plc, Genesis House, 301 - 349 Midsummer Boulevard, Milton Keynes, MK9 2JE
3. William David Cummins, of Royal Bank of Scotland Plc (Natwest division) Green Holt, West Challow, Wantage, Oxon OX12 9TN
4. Derek C. Wyld, of HSBC Bank Plc, 8th Floor, 365 Chartwell Square, Southend on Sea, Essex, SS99 2UU
5. Alexander Leckenby, of Link Interchange Network Limited, 4 Cardale Park, Beckwith Head Road, Harrowgate, HG3 1RY
6. Adrian Walker, [of Diners Club International Service Centre, First Floor, Diners Club House, Kingsmead, Farnborough, Hants GU14 7SR]
7. [Allen Mortlock, of Diners Club International Service Centre, First Floor, Diners Club House, Kingsmead, Farnborough, Hants GU14 7SR]
8. Michael Bird, [of Diners Club International Service Centre, First Floor, Diners Club House, Kingsmead, Farnborough, Hants GU14 7SR]
9. Andrew Brett, [of Diners Club International Service Centre, First Floor, Diners Club House, Kingsmead, Farnborough, Hants GU14 7SR]
10. Dr. Ross John Anderson, of University of Cambridge, Cambridge
11. Michael Keith Bond, of University of Cambridge, Cambridge
12. Richard Nell Clayton, of University of Cambridge, Cambridge

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IT IS ORDERED that:

- 1 each of the witnesses listed 1 to 13 above attend before Mr Justice Philip Levinsohn and [] who are hereby appointed examiners ("the Examiners"), sitting at Royal Courts of Justice, Strand, London WC2A 2LL, on Monday 3rd March 2003 and from day to day thereafter until examination is complete or any individual witness is released and do submit to be examined (on oath or affirmation) touching the testimony so required.

- 2 The witnesses Adrian Walker, Michael Bird, Andrew Brett and Allen Mortlock and each of them shall not be compelled to answer any question about or related to the following:
 - (i) the detail of the information technology standards or strategy employed by Diners Club International Ltd ("DCI"), Citibank Limited ("Citibank") or any other entity within the Citicorp group of companies ("Group Companies");
 - (ii) the details of the physical location of and physical security systems at any premises owned or operated by DCI, Citibank or any Group Company;
 - (iii) the detail of the software architecture and logic of any computer system or programme run or operated by (or on behalf of), or licensed to, DCI, Citibank or any other Group Company;
 - (iv) the details of the operation, architecture, logic, location or function of any hardware or software involved in or associated with the encryption, decryption, generation or verification of Personal Identification Numbers issued to Diners Club card holders;
 - (v) the means by which any computer system, software or hardware used by or belonging or leased to DCI, Citibank or any Group Company has been or could be attacked, influenced, circumvented or otherwise subjected to unauthorised access or use;

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- (vi) the physical location of or physical security arrangements relating to any Hardware Security Module System licensed to, used, owned or operated by or on behalf of DCI, Citibank or any Group Company;
 - (vii) the details of the operating regulations and procedures in place between DCI and its franchisees; and
 - (viii) any matter concerning any transactions or activities not directly connected with the Diners Club Card having the number 361358226037.
- 3 the Examiners shall record or cause to be recorded the evidence of each of the witnesses so examined as appropriate, according to the rules of practice of Her Majesty's High Court of Justice relating to the examination and cross-examination of witnesses.
 - 4 the Examiners do:
 - (a) administer the oath or affirmation as the case may be to witnesses giving evidence;
 - (b) when completed the recording of the testimony of witnesses be safely taken by Mr Justice Levinsohn to the High Court of South Africa (Durban and Coast Local Division) for transcription thereof.
 - 5 the examination shall take place in private and no member of the public or press shall be admitted.
 - 6 the parties, their legal representative and their experts shall keep confidential all information revealed during the examination and such information shall not be used for any purpose other than the purposes of the Proceedings and the parties shall take all steps necessary to keep such information confidential including, where necessary, by making application to the High Court of South Africa.
 - 7 the witnesses Adrian Walker, Michael Bird, Andrew Brett and Allen Mortlock shall be entitled to legal representation at the hearing but only for the purposes of any question which may arise as to the terms and effect of this Order.

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T.G. Teichgraeber
Plaintiff
1st
17.02.03
TGT1-5
OTHER

IN THE MATTER OF THE EVIDENCE (PROCEEDINGS IN JURISDICTIONS) ACT 1975

AND

IN THE MATTER OF PROCEEDINGS BEFORE THE HIGH COURT OF SOUTH AFRICA (DURBAN AND COAST LOCAL DIVISION)

BETWEEN:

DINERS CLUB (SA) PTY LIMITED

Plaintiff

-and-

(1) ANIL SINGH
(2) VANITA SINGH

Defendants

**WITNESS STATEMENT OF
THOMAS GILLETTE TEICHGRAEBER**

I, **THOMAS GILLETTE TEICHGRAEBER**, of 8430 West Bryn Mawr Avenue, Chicago, Illinois, United States of America, Attorney at Law, will say as follows:

1 Introduction

1.1 I am the General Counsel for Diners Club International Ltd ("DCI"). I am a qualified attorney having been called to the bars of the State of Kansas in 1972 and the State of Iowa in 1978. In my role I am responsible for advising and directing DCI in legal matters. I am the senior legal officer for DCI's worldwide card business operations. I have first hand knowledge of the matters relevant to this case and I am authorized to make this statement on behalf of DCI, its associated company Citibank International Limited ("Citibank") and their parent company Citigroup.

1.2 I make this statement in support of DCI and Citibank's intervention in this matter. DCI and Citibank intervene to oppose the application by Diners Club South Africa

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("DCSA") for an order that certain witnesses should attend to give evidence to assist in a trial proceeding before the High Court of South Africa ("the Proceedings"). DCSA is the Plaintiff in the Proceedings. The Proceedings are brought against two defendant individuals ("the Defendants"). In the event that the Court is minded to grant the order, the intervenors seek to have its terms drawn up in a manner that ensures that business secrets and confidential information are not disclosed during the examination of those witnesses.

1.3 I make this statement on the basis of my own knowledge and on the basis of information supplied to me by Michele Scruton (EMEA regional legal counsel for DCI), George Szul (DCI's international anti-fraud officer), Mark Woltkamp (DCI's director of credit and risk) and members of Citibank's information technology group. Information which is founded on my own knowledge is true and information which I have received from others is true to the best of my knowledge and belief. There is now produced and shown to me marked TGT1-5 a paginated and divided bundle of documents which are the exhibits to this Statement.

1.4 In this Statement I will:

- (i) describe the commercial roles played by and relationship between DCI and Citibank;
- (ii) explain how DCI and Citibank come to be involved in these proceedings; and
- (iii) outline my specific concerns about this application.

2 The role of DCI and Citibank generally

2.1 DCI carries on an international charge card business, the card in question being the Diners Club Card. Amongst other things, DCI grants franchise rights to other entities in order that those franchisees may issue cards to individuals. DCSA is one such franchisee.

2.2 DCSA's application notice and letter of request attach a schedule of witnesses who are to be made the subject of the order. Of those witnesses, four are connected with DCI and Citibank. Citibank provides certain technical services to DCI on behalf of the franchise network and Adrian Walker, Michael Bird and Andrew Brett (together

the "Employees") are all employed by Citibank and work at a Citibank computer facility in Farnborough. Certain of DCI's network information technology systems are monitored from this facility. It is to be noted that the charge cards themselves are not manufactured at or issued from Farnborough nor are personal identification numbers ("PIN") generated or dispatched from there.

- 2.3 Allen Mortlock is a former employee of a Citibank entity and worked at the Farnborough site.
- 2.4 The Court will be aware that the subject matter of the Proceeding concerns certain cash withdrawals from automated teller machines ("ATMs") in London which were made using a Diners Club Card and PIN issued to the Defendants to the Proceedings (see summary of issues attached to application notice). DCSA is seeking to recover the principal amount of those withdrawals and interest from the Defendants.
- 2.5 The ATM network consists of an interconnected series of components of hardware and software that function in such a manner as allows Diners Club Cards issued in a foreign country (e.g. South Africa) to be used in ATMs in Great Britain or other countries. Such transactions are facilitated through a series of computer functions which may be monitored at Farnborough. The Defendants have suggested that abuse of the computer systems in the network could be to blame for the ATM transactions and that, accordingly, they do not owe DCSA any sum in respect of those cash advances.
- 2.6 The detailed functions and security arrangements at the Farnborough office are business secrets belonging to DCI. All employees of Citigroup companies are under duties of confidentiality in respect of these matters pursuant to their contracts of employment and the other terms and conditions of their employment.
- 2.7 Further, as the Court will appreciate, the ATM network is a key component in the global banking and financial services network. Each entity in the chain of related systems is under obligation to the others to keep secure and secret the detailed workings of the network. The level of security involved is such that the agreements between those entities are themselves subject to strict terms of confidentiality.

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2.8 Somewhere in the region of US\$36 million is processed through the DCI network each day. All parts of the global ATM network are, therefore, attractive targets for criminals. Sophisticated forms of card fraud in the UK and worldwide are on the increase and it is of paramount importance that details of the workings of the systems are not revealed. Even minor technical data about systems operation can be of value to these criminals as can information which may enable them to discover where certain computer hardware, card production and PIN generation facilities are located. Exposure of technical data increases the risk from "hacking" attacks and disclosure of certain business locations increases the risk from physical theft or mail interception attacks.

3 DCI's involvement in the Proceedings

3.1 DCI is always keen to assist its franchisees with non-payment or fraud issues but, as in this case, it is always made clear to franchisees that DCI will not allow confidential details of its related systems which are business secrets to be disclosed. DCI is simply not permitted to make unlimited disclosure by reason of its obligations to other financial institutions and, equally, the Employees at Farnborough are not permitted to make such disclosure by reason of their obligations to Citibank. *

3.2 In the context of the Proceedings, DCSA was allowed access to the Employees whom, since a body corporate cannot give evidence itself, DCI and Citibank nominated as spokesmen on a limited range of issues relating to the operation of the DCI computer network. The Employees gave DCSA a broad outline of the systems relevant to the case and summaries of their evidence are attached at TGT1. It was always made clear that the Employees would not attend at trial in South Africa on DCI's behalf nor would DCI submit to cross-examination on confidential and security sensitive particulars of its systems. *

3.3 DCI now finds itself in a somewhat bizarre situation. DCSA volunteered the Employees (or in other words DCI and Citibank) who are, effectively DCSA's own witnesses, to be examined in England apparently assuming that DCI and Citibank would consent to this. DCSA did not appear to have made any appropriate procedural accommodation for DCI and Citibank's concerns about secrecy and confidentiality. When DCI raised its concerns about this state of affairs DCSA (not, as one would *

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expect, the Defendants) made this application to compel the Employees to attend, again, without due regard to the highly sensitive nature of the issues in question.

4 Specific concerns about this Application

4.1 The letter of request and the summary of issues attached to the application notice are drafted in very general terms. For example paragraph 6 of the letter of request states:

"The witnesses should be examined regarding their expert testimony, summaries of which have been or will be filed on record and relate to the security and integrity of the equipment and systems employed and which were involved in the 199 transactions referred to above..."

and paragraph 5 of the Statement of relevant issues provides:

"The Defendants, on the other hand, have filed expert memorials directed at attacking the security systems and attempting to demonstrate that not only were such systems capable of being violated but that the probabilities favour other persons involved in the various organisations having perpetrated a fraud. The Defendants' experts also challenge the integrity of the equipment utilised in the transactions."

4.2 It is clear that the Defendants' intention is to approach the matter by suggesting how the DCI systems in question may be attacked, and, presumably, by testing those theories in cross-examination of the Employees. I am advised and I believe that the Court does not have the advantage of a list of questions or the subject matter of such questions from either DCSA or the Defendants and it is not, therefore, possible to assume otherwise than that what is proposed is a wide ranging investigation into the detailed functions of DCI and Citibank's systems.

4.3 My concerns about the nature of the Defendants' intentions are amplified by the fact that they have sought, and been denied, an order from the South African Court involving a wide ranging physical investigation of the systems involved in the case. I refer to TGT2, the Defendant's application; TGT3 the Witness Statement of Craig Bend; and TGT4, the order of the South African Court.

4.4 The concern that I have is that an unrestricted cross-examination would, in effect, substitute for this physical inspection of the systems. Further, in my view, a far ranging investigation into the detailed workings of the system recorded in the Court record would expose DCI's systems to potential attack, breach binding obligations of confidentiality and business secrets and, ultimately, be contrary to the public interest. Frauds on the global financial network impact on every honest person who has a bank account, credit or charge card.



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4.5 Owing to its obligations of confidentiality and the security issues involved, in order to protect the most confidential of its business secrets, DCI, through the Employees, is not able to answer questions on the following at the very least:

- (i) the detail of the information technology standards or strategy employed by DCI, Citibank or any other entity within the Citicorp group of companies ("Group Companies");
- (ii) the details of the physical location of and physical security systems at any premises owned or operated by DCI, Citibank or any Group Company;
- (iii) the detail of the software architecture and logic of any computer system or programmes run or operated by or licensed to DCI Citibank or any other Group Company;
- (iv) the details of the operation, architecture, logic, location or function of any hardware or software involved in the encryption, decryption generation or verification of Personal Identification Numbers issued to Diners Club card holders;
- (v) the means by which any computer system, software or hardware used by or belonging or leased to DCI, Citibank or any Group Company has been or could be attacked, influenced or circumvented;
- (vi) the physical location of or physical security arrangements relating to any Hardware Security Module System licensed to, used, owned or operated by DCI, Citibank or any Group Company;
- (vii) the details of the operating regulations and procedures in place between DCI and its franchisees; and
- (viii) any matter concerning any transactions or activities not directly connected with the Diners Club Card having the number 361358226037.

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4.6 Accordingly, I would ask that the Court decline to grant this order or, alternatively grant an order in the form of Exhibit 'TGT5'.

I believe that the facts stated in this document are true.

Signed.....*Thomas Billette Teichgraber*

Dated.....*February 17, 2003*

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