

ClaimNo: HC 05 C00158

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29th March 2006

Before :

Mr. Martin Mann QC
(Sitting as a deputy High Court Judge of the Chancery Division)

Between :

FRESH 'N' CLEAN (WALES) LIMITED
(In Liquidation)

Claimant

- and -

(1) HELIM MIAH
(2) HILGATE CORPORATION LIMITED
(3) JANAIL SINGH
(4) TRADEMASTER LIMITED
(5) GERMAN GIOVANNI DE LA TORRE

Defendants

Mr. Paul Girolami QC and Mr. Matthew Smith (instructed by) Messrs. Moon Beaver for the Claimant and Mr. Rupert D'Cruz and Miss Olya Marine (instructed by Messrs. Cobbetts) for the 2nd and 3rd Defendants, the other defendants not appearing or being represented

Hearing dates: 19th to 23rd and 29th March 2006

JUDGMENT

Introduction

1. Fresh 'N' Clean (Wales) Limited ("the Company") was wound up by the Court on 16th March 2005, provisional liquidators having been appointed on 26th January 2005 on the application of the Commissioners of Customs and Excise ("Customs"), as they then were. Customs claimed the Company owed £3 million in respect of VAT and had further VAT actual or potential liabilities in excess of £13 million. They

alleged that the Company was involved in Missing Trader Intra-Community (“MTIC”), or carousel, fraud, a commonly occurring VAT fraud. These proceedings were commenced on 26th January 2005 by the Company when in provisional liquidation. Since the appointment of joint liquidators, with effect from 17th March 2005, the proceedings have been continued by the Company in liquidation.

2. The Company’s only director at the time of the provisional liquidation, was the first defendant, Mr. Helim Miah (“Mr. Miah”). A trading partner in the UK at that time was the second defendant, Hillgate Corporation Limited (“Hillgate”), whose principal director was and is the third defendant, Mr. Janail Singh (“Mr. Singh”). Hillgate had another director, the fourth defendant, Mr. Sukhvinder Singh, but he, apparently, played little, if any, role in Hillgate’s affairs. In any event, he has gone abroad and has not, as I understand the position, been served with the proceedings. It is not apparent that the necessary permission to serve out was given.

3. The Company, originally a small laundry, dealt, at the relevant time, in mobile telephones, importing huge consignments of these, which, for a short period, between 18th November 2004 and 26th January 2005, it sold in similarly huge quantities to Hillgate, on 30 days credit. Hillgate sold these on to its customers, usually the same day and, it seems, on like credit terms, although the evidence about this is somewhat vague. Nothing turns on this, however, not least because it is common ground that Hillgate was never paid sufficient by its customers to cover its liabilities to the Company, or anything like it, not even the VAT element. In fact (I digress a little here), the claim pleads that Hillgate’s bank statements show no payments from its customers between 26th November and 22nd December 2004, an averment which is admitted in the defence. Returning to the dealings between the Company and Hillgate, the Company’s practice was to invoice Hillgate for the price plus the VAT. However, despite both the Company and Hillgate both being registered for VAT, Hillgate neither received payment from its own customers for the slightly higher purchase price which it charged them plus VAT, nor, as I have just said, discharged its liabilities to the Company in respect of the price and VAT. This was pursuant to an arrangement initiated by either Mr. Miah or an employee of the Company, Mr. Steve Roberts (“Mr. Roberts”), whereby the Company issued third party payment instructions to Hillgate to pay the bulk of the proceeds plus the output VAT thereon to

or in favour of foreign entities. Hillgate simply passed these instructions on to its own customers. All that the Company and Hillgate got out of the trade was a small 'turn' or commission, as Mr. Singh described it.

4. The 5th Defendant, German Giovanni de La Torre ("Mr. De La Torre"), is, or was at the material time, the sole director of the 4th defendant, Trademaster Ltd ("Trademaster").

5. Trademaster was one of Hillgate's customers, to which Hillgate passed on the third party payment instructions. Trademaster, in accordance with these instructions, paid the bulk of the proceeds of back-to-back sales of its own, that it, likewise, had made, again at a slightly higher price, and again usually the same day, plus the output VAT thereon, to the nominated third parties, less Hillgate's commission and its own small profit.

6. This state of affairs led the joint liquidators to conclude that Mr. Miah had breached his fiduciary and good faith duties to the Company, and also, after taking into account the facts and matters alluded to later in this judgment, that Hillgate, Mr. Singh, Trademaster and Mr. De La Torre had all dishonestly assisted Mr. Miah to this end.

7. It is convenient to interpose here that Trademaster and Mr. De La Torre have not participated in the trial before me, the Company having, as I understand the position, settled its claims against them.

8. The main thrust of the claim against Hillgate and Mr. Singh is set out in paragraphs 7-14 of the Particulars of Claim, which, for convenience, I shall incorporate herein.

7. On 19 November 2004, the Company agreed to purchase a consignment of mobile telephones at a price of £227,500 from Bustabal Enterprises SL ("Bustabal"), a trader registered or purportedly registered in Spain in respect of the Spanish equivalent of Value Added Tax ("VAT"). Accordingly, the Company was not required to pay VAT on that acquisition. In fact, the consignment was released to the Company by Bustabal without any payment being made by the Company and no payment by the Company in respect of that consignment has ever been made.

8. On the same day, the Company sold on or purported to sell on that consignment to Hillgate at a marginally higher price and charged or purported to charge VAT on the sale price. The Company was required to account to Customs for the entire sum of that VAT, having paid no VAT on acquisition to set off against it. However, the Company issued a direction to Hillgate that (save for £1,237.50 which was to be remitted to the Company) the entire purchase price (including the sum due or purportedly due as VAT) should be paid to third parties, most of whom were based overseas.

9. Later on the same day, Hillgate sold on or purported to sell on the consignment to Trademaster at a marginally still higher price and charged or purported to charge VAT thereon. Hillgate gave directions to Trademaster that the purchase price (including the sum due or purportedly due as VAT), less a sum of £1,825 which was to be remitted to Hillgate, should be paid to third parties, most of whom were based overseas.
10. Yet later on the same day, Trademaster sold on or purported to sell on the consignment to a purchaser of its own at a marginally still higher price and charged or purported to charge VAT thereon. The purchaser paid that price, including the VAT or purported VAT, to Trademaster, which retained a small sum equal or approximate to the small increase in price applied by it, remitted to Hillgate the modest sum requested by it and paid the rest of the proceeds away to third parties, most of whom were based overseas, in accordance with Hillgate's (and the Company's) instructions.
11. Until it was released to Trademaster's purchaser, the consignment remained at the premises of a freight forwarding company and was the subject of a series of instructions, all issued in the course of the same day, by each participant in the chain (being Bustabal, the Company, Hillgate and finally Trademaster), authorising in each case the release of the consignment to the next purchaser in the chain.

12. Hillgate and Trademaster were able to set off as input tax the VAT charged on their acquisition of the consignment against their liability to account to Customs in respect of the VAT due on their re-sale of the same. Neither Trademaster nor Hillgate made any or any substantial payment to the Company referable to the purchase price due to it or the VAT due thereon.
13. Those arrangements amounted to a fraudulent scheme, the design and effect of which was to render the Company insolvent and unable to discharge its own VAT liabilities and to profit Hillgate and Trademaster, who each received a modest sum by way of commission, and unknown third parties, apparently based overseas, who received the bulk of the proceeds of Trademaster's sale (including, in particular, the sum paid by Trademaster's purchaser in respect of VAT or purported VAT on the purchase price).
14. The said pattern of dealing was repeated in all material respects in connection with the other transactions set out on the attached schedule save that (1) the consignments on occasions consisted of computer components rather than mobile telephones as set out in that schedule; (2) some of the consignments were supplied to the Company by traders other than Bustabal but in each case the supplier was based in another EC member state; and (3) in connection with the transactions other than those highlighted in yellow on the attached schedule, Hillgate's customer was a party other than Trademaster. The total value of the sales entered into by the Company between 18 November 2004 and 21 December 2004 was £66,333,247.75 and the total VAT liability incurred by the Company on those sales, for which the Company is now required but unable to account to Customs, and which sum (less the modest commissions paid) represents the illicit gains made by the unknown third parties, was £11,603,354.60.

I should add here that the particulars of claim include other claims which the Company no longer pursues against Hillgate and Mr. Singh.

Mr. Singh and Hillgate

9. According to Mr. Singh, he became involved in Hillgate as a result of his acquaintanceship with a Mr. Vijay Kumar (“Mr. Kumar”), a customer of Michaels Foods, about which I shall say something later. Mr. Kumar was looking for a company secretary for a start up company named Galaxy Supplies Ltd (“Galaxy”). He had accepted the position and in September 2003 was appointed a director and company secretary. He had in addition put Mr. Kumar in touch with another customer, Mr. Chris Hanrahan (“Mr. Hanrahan”), who at the time was looking for a position. Galaxy had employed Mr. Hanrahan to do the company’s paperwork. He had allowed Galaxy to occupy an office temporarily in a property of his at 740 Yardley Wood Road, Birmingham. He had intended to invest in Galaxy but in the event did not do so, having, it seems, tired of the idea of further involvement when it appeared the business would never get off the ground. He resigned on 13th September 2004.

10. Mr. Kumar also introduced Mr. Singh to Hillgate, of which Mr. Kumar was a director until sometime in May 2004. There was obviously an agreement of some sort with Mr. Kumar because in March 2004, in circumstances which I shall relate later in this judgment, Mr. Singh came to own it, in equity at least, along with Mr. Sukhvinder Singh. These two had decided to trade in ‘fancy goods’, meaning, apparently, electrical items including mobile telephones. Sukhvinder Singh does not, himself, appear to have achieved anything at all with Hillgate before departing the country sometime in November 2004.

11. At all events, it is common ground between Mr. Singh and the Company, that he was Hillgate’s controller from no later than August 2004, despite, for reasons which it is unnecessary to go into, the issued shares never having been effectively transferred to him.

The Company and Hillgate

12. The circumstances in which Hillgate came to be the Company's customer and the transactional arrangements they entered into, and each of them with their respective customers, are clearly of central importance in this case.

13. Mr. Singh and Mr. Hanrahan described in evidence how Hillgate commenced to trade. Mr. Hanrahan had offered his services freely to Mr. Singh in the hope, it seems, that he would be offered employment with Hillgate should it become successful. He is quite expert with computers and Mr. Singh is not. Mr. Singh had asked him to design a template letter for Hillgate to broadcast to potential suppliers and customers, and he had duly done so. So-called introductory letters in this form, complete with logo, had then been broadcast to businesses whose names had been posted to notice boards and websites on the internet. They had also, Mr. Singh said, searched 'The Trader' magazine, a magazine which was sold over the counter at Michaels Foods. It was in this way, according to Mr. Singh, that he had come to learn of the existence of the Company, Trademaster and others, and that they dealt in mobile telephones.

14. According to Mr. Singh, the responses which Hillgate received to these introductory letters enabled him to ascertain the nature of the respondents' businesses and to conduct the checks which Hillgate was required to make for VAT purposes before trading with them. The documentary evidence did not, however, reveal any responses, still less any from the Company. It did reveal a somewhat similar one from the Company signed by Mr. Roberts, which clearly was not responsive, and several others, some signed and some unsigned, of a similar nature including a signed one from Xiacom Ltd ("Xiacom") and unsigned ones from PAS Trading Ltd ("PAS") and T.J. Connections Ltd ("TJC"), which companies are all mentioned later in this judgment.

Mr. Miah

15. In his opening, leading counsel for the Company rightly pointed out that for accessory liability there must first of all be a proven breach of duty on the part of the

party alleged to have dishonestly assisted. This breach of duty does not need to be dishonest. What has to be dishonest is, as the cases referred to later in this judgment show, the alleged accessory's state of mind.

16. Since Mr. Miah has declined to participate in these proceedings, the court has only one-sided evidence before it upon which to decide the case against him. This can be shortly stated. The Company was registered for VAT. In the 226 pleaded transactions, it supplied vast quantities of mobile telephones for an aggregate price of at least £66m to Hillgate, a company which was also registered for VAT. It issued third party payment instructions whereby it was entitled to receive only a tiny percentage of the total amount due to it. Absent any assets of corresponding value, of which the joint liquidators found there to be none, and absent any corresponding input VAT to set off against the output VAT, this arrangement made it impossible for the Company to account to Customs for output VAT of approximately £12m. In fact, the Company would have incurred no input VAT because such evidence as there is of the source of the supply is that it was foreign.

17. In this situation, it is impossible not to conclude that Mr. Miah failed to discharge his clear duty to act in the Company's best interests by, at the very least, ensuring that it collected and retained sufficient of the proceeds of its sales to discharge its liabilities, not least its output VAT. It is not a sufficient counter to this that there is no evidence before the court of Mr. Miah having done anything at all in relation to the Company's affairs. The facts, in particular, the third party payment instructions, of which Mr. Miah should have been aware, even if he was not, speak, in my judgment, for themselves.

The law

18. In order to succeed against Hillgate and Mr. Singh, the Company must prove, to the appropriate standard, that Mr. Singh had a dishonest state of mind. Despite some historical uncertainty about the precise meaning of this expression, it is now clear on the authorities that dishonesty simply means not acting as an honest person would - an objective standard which is assessed in light of what an alleged accessory actually knew at the relevant time, as distinct from what a reasonable person would have

known or appreciated, taking into account any personal attributes of the alleged accessory such as his intelligence and experience, and the reason why he acted as he did; see *Royal Brunei Airlines v. Tan* [1995] 2 AC 378, 389, 391. Hence, if judged by ordinary standards, an alleged accessory's mental state would, against this background, be characterised as dishonest, it is irrelevant that the alleged accessory judges his conduct by different standards. It is enough that his state of mind consists either in knowledge that the transaction is one in which he cannot honestly participate or in suspicion combined with a conscious decision not to make inquiries which would have resulted in such knowledge; see *Barlow Clowes International Ltd v. Eurotrust International Ltd* [2005] UKPC 37 (10th October 2005), ¶¶10, 15.

19. For Mr. Singh and Hillgate to be liable in the present case, therefore, it has to be established either that the facts known to Mr. Singh would have deterred an honest man from trading with the Company or that the facts known to Mr. Singh gave him solid grounds of suspicion concerning the transactions into which Hillgate was proposing to and/or had entered into with the Company which Mr. Singh made a conscious decision to ignore.

The evidence

20. Mr. Singh described his personal, educational and business background in some detail in his evidence: how he had come to the United Kingdom in 1968 at the age of 13 and completed his secondary education here, his lack of further education and professional or technical qualifications, how at the age of 16 he went to work in a factory, followed by employment in various supermarkets, his purchase of a newsagents business in 1984, and how he turned it into a convenience store from where he continues to trade as 'Michaels Foods', the incorporation of the store, his acquisition of 738 Yardley Wood Road in Birmingham in the name of the company which operates Michaels Foods and his acquisition of 740 Yardley Wood Road, which he converted for the purposes of, and where for a while he operated it as, a care home, his acquisition of another care home, this time in Coventry, which he operated through the same company until he sold it in April 2004 for about £240,000, how he understood VAT so far as he needed to do so for the purposes of his various businesses from time to time, and how he had personally completed quarterly VAT

returns for these for a considerable period. It was quite clear from this, and I find, that he is an intelligent man who will not shrink from seizing any reasonable business opportunity if it appears capable of earning him a profit.

21. The properties which I have mentioned are not the only properties which Mr. Singh has owned or over which he has exercised control. He also owns 2 Beach Road, Hollywood, Birmingham, a property which is subject to a freezing order granted the provisional liquidators on 26th January 2005 and which remains in force.

22. Mr. Singh became a director of Hillgate on 5th March 2004. His accountant, Mr. Jayantilal Dullabh Vaghela (“Mr. Vaghela”), now retired, recounted being instructed to complete a VAT application for re-registration and that the registration had been perfected on 16th August 2004, and how, in December 2004, Mr. Singh informed him that Hillgate had commenced trading in November 2004 and now wished him to complete its VAT returns, which he duly did. He annexed to his witness statement schedules which he created during this process from information provided to him by Mr. Singh. These show that Hillgate commenced trading on 12th November 2004, when it entered into 5 transactions with a company named F & S International Ltd at a total cost, including VAT, of about £2m, and that it had entered into 5 more such transactions with the same company on 16th November 2004 at a total cost, including VAT, also of about £2m. Hillgate’s transactions with the Company appear from this schedule to have commenced on 16th November 2004 although it is common ground before me that these began on 18th November 2004.

23. Mr. Vaghela observes in his witness statement that he believes that the business which was being carried on by Hillgate was a genuine trade and that the third party payment instructions were carried out at the Company’s behest in good faith; that had he believed the business was in any way fraudulent he would not have involved himself with the Company. This is, of course, his opinion, not evidence.

24. Whether one looks at the schedules provided by Mr. Vaghela (which cover the period from the commencement of trading down to the date on which the provisional liquidators were appointed, 26th January 2005) or the schedule of transactions annexed to the particulars of claim (which cover solely the period from 18th

November 2004 to 21st December 2004), perhaps the most remarkable feature which springs out of the page is not so much the sheer enormity of the value of the transactions recorded, £66m net of VAT, but rather the rapidity of the turnover with customers, with sales usually the same day, and the absence from the listing between 18th November 2004 and 26th January 2005 of any other suppliers. It is perhaps less remarkable, but nevertheless somewhat surprising, that very few customers are listed. Those which are listed include Trademaster, PAS, Xiacom and TJC.

25. Samples of the transactional documentation examined with Mr. Singh in evidence highlight the extraordinary character of these transactions. It is convenient to look at one of the transactions which took place on the second day of trading with the Company, 19th November 2004. A starting point can be a purchase order placed by Hillgate with the Company for 1000 Nokia 6670 (sim free) telephones at the price of £228.50 per unit. The cost net of VAT is £228,500. The VAT charged is £39,987.50. The grand total is £268,487.50. The price is to be paid, at Mr. Roberts's behest, in accordance with third party payment instructions then faxed to Mr. Singh, as to £212,687.50 and a 'deposit' of £39,750 to the bank account of Pagecom Ltd, an Irish company, as to £12,225 to the bank account of Y2 Exports and as to £2,587.50 to the bank account of Bustabal Enterprises SL ("Bustabal"), the Spanish company mentioned in paragraph 7 of the Particulars of Claim, leaving an unspecified 'remainder' (in fact £1,237.50) to be paid elsewhere, but left blank.

26. According to Mr. Singh, this is the upshot of telephone calls during which Mr. Roberts has informed him that the Company has these machines for sale at this price, and Trademaster, perhaps in the person of Mr. De La Torre, has informed him that it will pay £229 per unit for the whole consignment, plus VAT, following which Trademaster has confirmed the order by faxing a purchase order to Hillgate for 1000 telephones for the sum of £229,000 plus VAT of £40,075, and Hillgate has done likewise by invoicing Trademaster for £269,075, including VAT, and faxing it third party payment instructions in exactly the same terms as the Company's to Hillgate except that this time Bustabal is to receive £2,587.50, instead of Y2 Exports, and Hillgate, it seems, is to receive £1,825. Curiously, only one of two of the documents produced by Hillgate and said to represent the third party payment instructions for this transaction (these are actually captioned 'Payment Advice') indicate that Hillgate is to

receive this sum. Trademaster's customer, The Export Company (UK) Ltd ("TEC"), having plainly closed a deal with Trademaster to purchase the same model of telephone in the same quantities at the slightly higher price of £230 per unit, has, in the meantime or contemporaneously (the evidence does not assist here), forwarded a purchase order to Trademaster for £230,000 plus £40,250 VAT, giving a grand total of £270,250, and Trademaster has reciprocated with an invoice in the same amount together with a 'supplier declaration' of a type which I shall return to later signed by Mr. De La Torre. The Company, Hillgate, Trademaster, TEC and others in what has by now become quite a long chain of transactions then, virtually simultaneously, faxed releases to the bailee of the goods, Interken Freighters (UK) Ltd ("Interken"), for the benefit of each of their customers respectively, the ultimate destination being, apparently, France. It is not at all clear how all of these entities in the chain have identified Interken as the bailee. On the documents in evidence, only the Company knew its identity at the start of the day. In fact, it knew this no later than 18th November 2004, as appears from shipping and other documents in evidence. Another evidential link which the evidence does not reveal is when exactly the Company closed its deal with Bustabal. All that is known, apparently, is that on 19th November 2004 the Company placed a purchase order with Bustabal for 1000 Nokia 6670 (sim free) telephones at the price of £227.50 per unit at a total cost of £227,500. VAT was not payable.

27. Mr. Singh said the whole deal would have taken only a matter of minutes, including any negotiations over price and quantity, although it cannot be left unsaid that his evidence concerning there having been negotiations in the real sense of the word was, in my judgment, wholly implausible. In fact, he made no real attempt to support the idea that serious negotiations preceded any of these transactions, even when pressed in cross-examination to do so, for example, by explaining the pretty standard margin of 25p or 50p per unit. All he wanted to achieve, he repeatedly said, was a small profit. With that he would be content, and one was left with the clear impression that, with this explanation, the court should be content also. I am not. His explanation, or rather the lack of it, is, in my judgment, incredible.

28. I should add that a number of peculiarities in or related to several of the transactions were the subject of cross-examination. One of these was a fax timing

discrepancy evident from the electronic record on certain of the transactional documents. This was not explicable as is often the case by demonstrating that a clock on a fax machine had been set inaccurately or not set at all. Another consisted in the fact that an analysis of Hillgate's landline records inexplicably revealed no calls having been placed with Trademaster, PAS and Interken on days when, according to the pattern of daily trading which emerged in the course of Mr. Singh's cross-examination as having been the norm, the landline records should, at the very least, have revealed faxes being transmitted and received. Yet another consisted in the appearance in one of Hillgate's bank accounts on 1st December 2004 of a Chaps transfer of £41,749 from Trademaster. This could not be reconciled with any individual transaction or series of transactions, and Mr. Singh was wholly unable to explain it. Indeed, one answer he gave, to a question in cross-examination seeking to eek out an explanation for the need to pass on third party payment instructions, to the effect that he did not have appropriate banking facilities, could be seen to be an obvious untruth simply by glancing at Hillgate's bank account statements.

29. In isolation, these peculiarities could perhaps be viewed as evidentially neutral. By contrast, when viewed together and put in the scales alongside the mass of documentary materials in evidence, it is impossible not to conclude that the transactions in the chain, one only of which I have described by way of illustration of the way in which business with the Company was conducted, were other than artificial attempts designed to create the impression that the business was conducted at arms' length. A salient question which gives the lie, in my judgment, to any idea that these were genuine transactions, given, especially, that there was no secrecy with regard to the identity of Hillgates' suppliers and customers, is what valuable service did Mr. Singh and Hillgate provide for which an honest and reasonable businessman would sensibly pay? Mr. Singh's evidence has not answered this question.

30. The fact is that the one transaction which I have described in some detail, and the others particularised in the schedule of transactions annexed to the particulars of claim, left the Company liable for the VAT which it charged to Hillgate without the Company having any corresponding input tax to set against it, and, in consequence, highly exposed to a claim from Customs which it would not, on the face of things, be able to meet. The danger of this would have been more apparent in some transactions

than others. An example of the former category is a third party payment instruction on 23rd November 2004 in favour of Tocado Holding BV. The danger, in my judgment, must have been obvious to Mr. Singh, given his background, and, in my judgment, his obvious business acumen. I simply cannot believe that any reasonably intelligent and honest person engaged in this business would not have known that he was involved in a fraudulent and dishonest scheme. In my judgment, Mr. Singh knew perfectly well that he was.

31. Mr. Singh has sought to persuade the court of his innocence by drawing attention to a series of conversations and dealings he had with Customs between 14th September 2004 and 29th November 2004 during the course of which he was, he said, informed in person by a Higher Officer, Mr. Joseph Baines (“Mr. Baines”), that making third party payments is not illegal, and made it clear that he would be guided by Customs to tell him if he was doing anything wrong. He points in the latter respect to a telephone conversation with a Mr. Wyatt of Customs, some time in November 2004, after Hillgate had commenced to trade but before a meeting with Mr. Baines on 26th November 2004, during the course of which Mr. Singh said he had asked Mr. Wyatt whether he had made any mistakes in relation to information which he had provided to Customs, and was informed that he had not. As to this, however, it is impossible to draw any conclusions, if only because the context in which Mr. Wyatt telephoned Mr. Singh and the nuances of Mr. Singh’s request to him are far from clear. It is possible, perhaps probable, that Mr. Wyatt was simply seeking to obtain information which Customs needed before giving Hillgate the go ahead to trade and to clarify with Mr. Singh that he had done as requested by Customs by a letter dated 29th September 2004 under the hand of the Tax Operations Manager at Customs’ Business Services and Taxes office at Redhill. This drew attention to MTIC VAT fraud in, inter alia, mobile telephones business and the particular need to verify the VAT status of new customers and suppliers with that office. Boxes to be ticked in reply to this standard form letter included not just the VAT details but also the identity of the people involved in the trade and also the nature, quantities and value of the goods. In addition, the letter required the recipient to continue forwarding, on a monthly basis, a purchase and sales list with specified details to the Office. This had not in fact been done, and indeed Hillgate had started trading without informing Customs despite, according to Mr. Baines, being asked to do so, which I find he did,

during a conversation with Mr. Singh on 28th September 2004, a meeting which had been arranged so that Mr. Baines could meet Mr. Hanrahan. In fact, Mr. Baines never met Mr. Hanrahan, who was ill that day. Mr. Hanrahan had ceased all involvement, such as it had been, with Hillgate before 26th November 2004.

32. Mr. Singh's and Mr. Baines' recollections of their conversations at meetings on 14th and 28th September 2004 and 26th November 2004 differ somewhat, although, in the main, more as a matter of timing and nuance than of substance. Mr. Baines made contemporaneous notes which he later incorporated in a report. This then formed the basis for his witness statement. I accept but I do not find in the least surprising that Mr. Baines might have misinterpreted some of Mr. Singh's remarks to him, and, equally, I accept that Mr. Singh might have misinterpreted certain of the remarks which Mr. Baines made to him. I wholly reject, however, the idea that he had attempted to mislead Mr. Singh into believing Hillgate could safely trade just because third party payments were not illegal. He accepts that Mr. Baines told him that Customs 'did not like' them, and he was well aware of the reason. This was not only because, as I find, Mr. Baines informed him they were one of the hallmarks of MTIC VAT fraud but also because, as is as plain as a pike staff, Mr. Baines told him such payments must cease in a letter to him dated 29th November 2004, delivered by Mr. Baines by hand following a meeting between them on 26th November 2004. The letter could hardly have been clearer.

Droitwich Business Centre
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HM Customs and Excise
Business Services and Taxes

Hillgate Corporation Limited
740 Yardley Wood Road
Billesley
Birmingham
B13 0JD

Your ref:
Our ref: JCB / MTIC District
Date: 29 November 2004

Dear Sirs,

YOUR VAT REGISTRATION NO 844 6287 02

RE: Due Diligence

I am writing further to my recent visits in connection with Value Added Tax and our discussion regarding commodity brokering, particularly dealing in mobile phones and computer processor units (CPUs).

We discussed the potential revenue risks involved in commodity dealing within the trade and of the need for you to make adequate checks into your client's commercial background and the validity of their quoted VAT registration number. It is particularly important to fully check not only new contacts but also any business where there is a change in ownership or trading pattern as it is not unknown for businesses to have their identity 'cloned'.

As a matter of routine you should ask for copies of a new contact's VAT registration and incorporation certificates and check that the commercial trading name, address and bank details agree with those shown on the documents. Companies House have a web site where company / director's status can be checked freely on line. You should treat with caution any request to make full or part payment to a third party or overseas account. Although there may be legitimate reasons for this, for example factoring arrangements, payments to third parties may put in doubt the chain of the supply for VAT purposes and jeopardise your entitlement to input tax recovery. Similarly, you should also ensure that the goods purchased are in the ownership of the alleged supplier and not consigned to your company from a third party.

I would also treat with caution any unsolicited contact that offers to supply goods and provides you with specific leads for onward sale, especially when the product involved is not one normally dealt in, for example computer processor chips and where the only contact is a mobile phone / fax number. Faxes that arrive with no sender details whilst possibly entirely innocent could equally be an attempt to hide their true origin.

If you are asked by a supplier or trade purchaser to provide a copy of your VAT certificate it would be prudent to 'cross' the document with an endorsement to the effect that it is a copy to prevent any later abuse of the certificate.

During my visit on Friday 26 November last I was surprised to learn that the company had already commenced to trade in a substantial way, some millions of pounds value dealt in a matter of weeks. At my visit of 28 September last and in subsequent telephone conversations I was led to believe by your Mr. Jarnail Singh that he had no knowledge of wholesale dealing and that this would be 'managed' by an employee Chris Hanrahan, yet Mr. Singh now tells me that Hanrahan is no longer employed and

that he, Mr. Singh, is conducting the dealing alone. My understanding on 28 September was that your Mr. Singh and Mr. Hanrahan would be available for interview prior to commencing trading to discuss what measures needed to be taken by the company to evidence due diligence in its commodity trading. Unfortunately, the company did not keep to this agreement and commenced trading without notifying me.

I have to inform you that I consider that the company has not shown an adequate level of diligence in its purchasing procedures. Should a public revenue loss be identified within the transaction chains I will be reporting the company to the Commissioners for them to consider the imposition of assessing your company for the tax loss under the joint and several liability provisions. As your Mr. Singh was informed at my visit last Friday, 26 November the absence of any evidence of direct payment to his supplier for the full stock value together with the passing on of 3rd party payment instructions is in my opinion prima facie evidence of a disregard of the level of diligence required in this type of activity.

Mr. Singh assured me that the company wished to fully co-operate with Customs and ensure that it did not become unwittingly involved in VAT fraud. With this in mind, I trust that your company will cease passing 3rd party payment instructions and ensure that it makes payment direct to the immediate supplier of stock.

As discussed with Mr. Singh I will require the company, with immediate effect, to:-

1. notify me of any new supplier prior to commencement of trading with them, and,
2. by 5pm Friday provide me with full details of the company's wholesale dealing during the week, supplier, stock, price, customer, forwarder and payment details. In the absence of email this information should be faxed to me on 01905-855757. 'NIL' returns are required.

I am enclosing a copy of Notice 726 (Joint and Several Liability.....)If you do not understand your legal and moral obligations or wish to discuss the above further please do not hesitate to contact me.

Yours faithfully,

J Baines
Senior Officer,
HM Customs & Excise

The emphasis, I should add, was incorporated by Mr. Baines in the original.

33. Accompanying the letter, as it states, was a Notice 726, the aim of which is to draw to traders' attention the effect of the then quite recently added Section 77A of Value Added Tax Act 1994, imposing joint and several liability on traders in a supply chain where VAT is unpaid. This provision is not the basis for recovery in these proceedings, which is for reasons which it is unnecessary to go into. However, if Mr. Singh was in the least bit uncertain that he was or might be involved in such a chain before he received the letter, then, in my judgment, he cannot possibly have been in any state of ignorance thereafter. When the notice was put to him in cross-examination, he could only answer that he failed to understand it. I reject this. In my judgment, taking into account his evidence and demeanour in giving it, and, in particular, his background, he clearly did understand it.

34. This professed lack of understanding had manifested itself at other times during his cross-examination, for example, when he was asked about the circumstances in which supplier declarations had been signed, and about their content. The evidence does not tell when it became the practice for customers to require such documents although they are an obvious precaution, one would think. The declarations in evidence in these proceedings, however, seem clearly to have been designed with Section 77A in mind, not least because they make express reference to the section. Mr. Hanrahan on occasion signed such documents. He said he did so, which I accept, at Mr. Singh's direction, when he was at Hillgate's offices. For example, he signed one such declaration on 18th November 2004, Hillgate's first day of trading with the Company. Mr. Singh signed one on 24th November 2004 and another one on 30th November 2004. This one he signed not only after the meeting with Mr. Baines on 26th November 2004 but also after he received Mr. Baines' letter dated 29th November 2004. The declaration is to this effect:



PAS Trading Ltd
Batley Business & Technology Centre
Unit 24 Technology Drive
Batley, West Yorkshire
WF17 6ER
Tel: +44(0)1924 470444
Fax: +44(0)1924 470555
VAT No: 454 2683 32
Company No: 4558135

SUPPLIER DECLARATION

Transaction Details

Details supplied in reference to mobile phones offered to PAS Trading Ltd, VAT no. 454 2683 32 on Date: 29/11/2004

PAS Trading supplier name: Hillgate Corporation Ltd Goods Description: Nokia 6260

Value: £195 each Quantity: 250 PAS purchase order no: 224

Supplier sales Invoice no: Supplier VAT number: 44 3287 02

This declaration must be completed and FAXED back to PAS Trading Ltd to proceed with the above transaction.

We Hillgate Corporation Ltd declare that:

All goods offered are brand new with standard (unless otherwise stated) manufacturer's specification and full manufacturer's warranty and must have the latest software version, EGN/SIM free.

We as suppliers have the full legal title/ownership of the goods.

The full legal title/ownership will be passed on to the PAS Trading by way of invoice, and the physical stock will be released to PAS Trading by the relevant freighters under our instructions.

PAS Trading Ltd has the right to have the full legal title confirmed by freight forwarder/third party.

As well as a faxed confirmation of the invoice, we will also forward the original hard copy invoice by post.

The above goods are supplied to you at the current market value to the best of my knowledge. However any goods sold at a 'loss' price are reasoned fully legitimate and are intended purely in the best interests of our business, and will be explained on our invoices.

These goods have been subject inspection by us or our agents/freight forwarders and we are satisfied that these specific goods exist and have not been sold to PAS Trading previously. IMEI numbers available on request.

We Have no reasonable grounds to suspect that the relevant VAT on these specific goods has not or will not be paid by our supplier

We also confirm that our suppliers VAT registration number is valid at the time this purchase took place.

We confirm that the above (our) VAT number is valid as of today and the relevant VAT will be declared to you in our sales invoice.

All relevant commercial documentation in relation to the purchase of these specific goods is held by us, and at PAS discretion we may be require to produce evidence of this

We confirm that we have carried out reasonable due diligence checks on our supplier of the goods including a review of the following:

An official VAT documentation, namely a certificate of registration VAT 4 or EU equivalent.

Companies house Certificate of Incorporation.

Company letterhead and letter of introduction

Verification of the VAT registration number with HM customs & excise, Redhill/Dorset House, or as specified

We have conducted further checks into the backgrounds of our supplier and are satisfied that these checks constitute reasonable enquiries as required by Section 77A VAT act 1994.

I certify that to the best of my knowledge the information provided is true and complete and no known inaccuracies or falsifications have been included.

Signed.....  (Director/Authorised signatory)

Printed.....  Dated 30/11/04

35. Mr. Singh clearly did not regard the declaration as of any importance, at least of no greater importance than a mere formality, a 'normal procedure', in his own words. Yet he must have known not only that it was in obvious respects false but also, and importantly, that any bona fide customer would rely on it. He cannot complain, in these circumstances, if the court concludes his evidence is unreliable, which I find it is. In particular, I find that his protestation that he could not risk inquiring of Mr. Roberts as to why payment must be made to third parties, because business of this sort is always done in good faith, as a matter of trust - that the question simply cannot be asked - was patently untrue. He agreed he knew nothing about Trademaster, PAS, or TJC. Only TJC appeared on an electronic notice board. None of them had websites. No reasonable and honest businessman would, in my judgment, given this degree of ignorance, expose himself or his company to the consequences should there be default in any link of the chain, especially with such huge sums of money at stake, aggregating to at least £66m plus nearly £12m VAT, much of it for a period over twice as long as the 30 days credit which the Company extended to Hillgate. In my judgment, if Mr. Singh truly did not ask Mr. Roberts why he must arrange for payments to be made to third parties instead of the Company, this was because he

knew perfectly well, or at the very least had solid grounds to suspect, that it was because the mechanism facilitated MTIC VAT fraud.

36. I should mention one final matter which it has been argued demonstrates Mr. Singh's truthfulness. This is the fact that when asked by Mr. Baines on 26th November 2004 to forward to him copies of all documentation generated by the transactions entered into by Hillgate, Mr. Singh duly did so by faxing the same to Customs at Redhill on various dates beginning on 5th December 2004. Documents faxed in this way included not only duplicates of documents which Mr. Singh had already provided to Mr. Baines during the course of his visits to 40 Yardley Wood Road but also documents in respect of transactions closed between 26th November 2004 and 5th December 2004. The fact is, however, that Mr. Singh had no choice in the matter. He had failed to tell Mr. Baines that Hillgate had commenced trading and he knew perfectly well that if he did not comply he would unquestionably fuel any suspicion in Mr. Baines' mind that Hillgates' business was not a proper one. I should add that this assertion underpinned a submission made by counsel for Mr. Singh and Hillgate to the effect that Mr. Singh's conduct in his dealings with Customs revealed an honest mind. The conduct included that Mr. Singh had vouchsafed to Mr. Baines he had too much to lose to risk becoming involved in MTIC VAT fraud, e.g., his matrimonial home worth in the region of £500,000, that he had sought 'guidance' and a straight answer to a question he said he had put to Mr. Baines whether third party payments were illegal, that Mr. Baines had told him that they were not, or, at any rate, that Customs did not like them (according to Mr. Baines, he told Mr. Singh on 26th November 2004 that he should cease making them), that Mr. Singh was therefore entitled to infer that Hillgate could properly continue trading, complying with, and passing on, third party payment instructions. The answer to this submission is that, in my judgment, acceding to it would necessitate inferring that Mr. Singh is naïve to a degree which is wholly unsupported by the evidence. Far from being unintelligent, or uncanny in business, Mr. Singh appeared to me to be intelligent and shrewd, a risk-taker who, in his dealings with Customs, recognised that refusal, or even evident unwillingness, to co-operate with Customs, could easily snuff out a highly profitable business opportunity which was already bearing fruit - lots of it. He considered the risk worth taking, the paperwork was in place to satisfy Customs' basic requirements and third party payments were not, per se, illegal.

Conclusion

37. In the circumstances, I find that Mr. Singh's mental state was dishonest and, accordingly, that he, and through him, Hillgate dishonestly assisted Mr. Miah's breaches of duty to the Company. Judgment will therefore be entered against Mr. Miah, Hillgate and Mr. Singh.

Addendum

- (1) Ordered that judgment be entered for a sum or money equal to £11,603,354.60 plus interest at the rate of 5.6% from 26th January 2005 to the date of the order and otherwise as provided in a draft order agreed by counsel for the Company, Hillgate and Mr. Singh.
- (2) On application being made for permission to appeal, permission refused for the reasons set out in the form annexed.