

Co. Reg. No 96/10937/07

# J. Kisson Singh I n c o r p o r a t e d

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A T T O R N E Y S

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OUR REF: MS H E PATEL/sk  
YOUR REF:

8<sup>th</sup> OCTOBER 2002

ADVOCATE A.K. KISSOON SINGH SC  
DURBAN CLUB PLACE  
SMITH STREET  
DURBAN

Dear Sir

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

We enclose herewith replying affidavit from Plaintiff in respect of the notice in terms of Rule 36(6).

Please advise whether we need to do anything further in this regard.

Yours faithfully

  
**J.KISSOON SINGH INCORPORATED**

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Also at: Suite 5A, Goolams Motor City, 10 Acropolis Street, Starwood, Phoenix  
Telephone: (031) 5077490 Fax No: (031) 5077493 Resident Attorney: Saras Naidoo

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Also at K1.7 Umlazi Industrial Park, Phase 3, V Section, Umlazi  
Telephone : (031) 306 2262

Director: Hajra Essop Patel  
Associates: Meera Jayantilal Patel, Saras Naidoo, Ahmed S.Kader  
Consultant: Arseyah Kadwa

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

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Case No: 00/3156

In the matter between:

DINERS CLUB (SA) (PTY) LIMITED

Plaintiff

and

SINGH, ANIL

First Defendant

SINGH, VANITHA

Second Defendant

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FILING SHEET - PLAINTIFF'S REPLYING AFFIDAVIT

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Presented for service and filing by :

Dated at JOHANNESBURG on this the 25 day of SEPTEMBER 2002.

(Sgd.) A. S. L. TURNER

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**BOWES & TURNER Inc**  
Plaintiff's Attorneys  
**c/o GOODRICKES**  
28<sup>th</sup> Floor  
320 West Street  
DURBAN  
Tel: (031) 301-6211  
Ref: Mr J A Allan

TO:  
THE REGISTRAR  
THE HIGH COURT  
PIETERMARITZBURG

AND TO:  
**J KISSOON SINGH INC**  
Defendants' Attorneys  
First Floor  
International Plaza  
128/132 Commercial Road  
DURBAN  
Ref: Ms Patel/sb/03S944K01

Received a copy hereof this day of  
September 2002

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For: DEFENDANTS' ATTORNEYS

TO: DEFENDANTS' ATTORNEYS  
3-10-2 10:30  
Rg  
J  
(1)

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**IN THE HIGH COURT OF SOUTH AFRICA  
(DURBAN AND COAST LOCAL DIVISION)**

**Case No: 00/3156**

In the matter between:

**DINERS CLUB (SA) (PTY) LIMITED**

Plaintiff

and

**SINGH, ANIL**

First Defendant

**SINGH, VANITHA**

Second Defendant

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**PLAINTIFF'S REPLYING AFFIDAVIT**

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I, the undersigned,

**CRAIG BOND**

do hereby make oath and say:

- 1 I am a director of the Plaintiff and the facts herein contained are within my personal knowledge save where otherwise stated or appears.

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2 I have read the affidavit of Anil Singh and wish to reply thereto as more fully hereinafter set out.

3 AD PARAGRAPHS 3 AND 4

I note the averments herein.

4 AD PARAGRAPHS 5, 6.1, 6.2, 6.3, 6.4 and 6.5

4.1. I am advised that the expressed intention of serving a Rule 36(6) Notice was made more than simply "*in passing*" and was sufficient to provoke a response from the Plaintiff's senior counsel.

4.2. Be that as it may, what is significant and remains unexplained, is why the Defendants waited until the 27<sup>th</sup> August 2002 to serve the Notice. Indeed, in paragraph 8.4 of the affidavit deposed to on the 17<sup>th</sup> June 2002 by Dr Anderson in support of the application for leave to take his evidence on commission, he stated: *'I have advised the legal representatives of the Defendants as to additional information, documentation and access to equipment which is necessary for me to be able to properly prepare for my evidence and to demonstrate to this Honourable Court the vulnerabilities in*

*the proposed testimony of the Plaintiff's witnesses. I understand that as a result, a request for particulars for trial, a notice for better discovery and a notice to make equipment available for inspection will be delivered."*

- 4.3. It is accordingly incorrect to say that Dr Anderson was only able to "properly apply his mind to what information ought to be requested, what additional documents ought to be discovered by the Plaintiff and what equipment ought to be requested for inspection during August 2002." That advice had already been given prior to the 17<sup>th</sup> June 2002.
- 4.4. This application could certainly not have been moved during February 2003 without the consequence that the commission and the continued hearing would be placed in jeopardy.
- 4.5. The Rule 35(3) Notice has been responded to and as stated by the Defendants a Rule 30 Notice has been served in relation to the request for particulars. The Plaintiff has not sought to have the Rule 30 determined in these proceedings as it is, I am advised, a point of law which could be determined by any Judge. Either the rules allow the service of a request for particulars for trial during the course of the trial or they do not. The only issue which

concerned the Plaintiff was the Rule 36(6) Notice and the application was brought to have same determined as a matter of urgency before the Honourable Mr Justice Levinsohn. The mere fact that the Defendants are *dominus litus* in serving the notices does not deprive, I am advised, the Plaintiff of its entitlement to relief and to take such steps as would ensure that the trial be expeditiously brought to a conclusion.

- 4.6. It is quite inappropriate for the Defendants to have raised the question of the negotiations which ensued between the parties. It is accordingly necessary for me to set the background to such negotiations. An investigator from The Standard Bank of SA Limited had, per chance, received evidence from an informer as to the manner in which fraud was perpetrated in relation to ATM transactions conducted overseas. An interview with her had been recorded on a video tape which was shown to the Plaintiff's legal representatives. The Defendants' counsel were invited to view the video tape which was shown to them by the investigator in order that they be properly informed so as to give the Defendants appropriate advice. The suggestion to the Defendants was not whether they "*would be prepared to enter into negotiations for a settlement of the dispute*" but rather given the information at hand, they ought to settle the matter. The Plaintiff is not in possession of

the tape and is not able to identify the informant. Since then further information has come to hand and the Scorpions are investigating same.

5 AD PARAGRAPHS 6.6 to 6.11

- 5.1. I am advised that Rule 21 does not enable a party to litigation to deliver a notice requesting further particulars after the trial has commenced. The request for particulars must be served not less than twenty days before trial.
- 5.2. The trial in this matter commenced on the 4<sup>th</sup> March 2002 and the request for particulars was served on the 27<sup>th</sup> August 2002. It clearly constitutes notice in terms of Rule 21 and for that reason, I am advised, a notice in terms of Rule 30 was served on the Defendants' attorneys.
- 5.3. I do not understand on what basis, having served the request for particulars for the purposes of trial out of time, the Defendants can now seek an order authorising or condoning the delivery of the request or granting permission to deliver such a request. The Rules simply, I am advised, do not contemplate the requesting of particulars during the course of a trial. The purpose of a request



for particulars is to prepare for the trial and not during the trial. What in fact the Defendants are seeking is for this Honourable Court to establish a new rule altogether which I am advised is inappropriate.

5.4. The Defendants have been aware since the commencement of this litigation that, if they were to challenge the fact that the First Defendant's PAN and PIN were utilised for the transactions in the United Kingdom on the 4<sup>th</sup> and 5<sup>th</sup> March 2000, they would require the services of an expert. They waited until very late in the day to employ the services of Gibson and only after Gibson had given evidence did they then start looking for another expert. They should have done this earlier and would have, I have no doubt, come across Dr Anderson. It is accordingly no excuse to say that they are only now receiving expert advice.

5.5. As one would anticipate the request for the purposes of trial does not arise out of the pleadings but constitutes a long list of interrogatories in relation to issues in which, I am advised, the Plaintiff bears no evidential onus. For instance the questions raised in paragraphs 1 to 11 were canvassed in the evidence of Du Preez in the cross-examination of her by Defendants' senior counsel as emerges, for example, from pages 59 to 62 of the Record. This

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has always been an issue and was even foreshadowed by requests made by the Defendants at the pre-trial conference. Consequently they did not need Dr Anderson to advise them thereon.

- 5.6. The issues raised in paragraphs 12 to 17 are again nothing new in these proceedings as it has always been the Defendants' case that the number of transactions *per sé* demonstrated a vulnerability in the system. Quite clearly they did not need Dr Anderson to advise them thereon as is evidenced by the testimony of Gibson who also made reference thereto.
- 5.7. Paragraphs 18 to 24 of the request again do not arise out of any technical input by any of the experts. These are factual issues which frankly could have been requested prior to the commencement of the trial and have nothing to do with the state or operation of the computer systems and whether these computer systems are vulnerable.
- 5.8. It is inadequate for the Defendants simply to say that they require the information without explaining precisely why the information is required, establishing an entitlement thereto and giving an adequate reason for not having asked the questions when they ought to have, namely prior to the commencement of the trial.

## 6 AD PARAGRAPHS 6.12 and 6.15

6.1. The Defendants must have been well aware of the reason for short notice being given to them as to the nature of the examination which they wished to conduct of the various computer systems. It was not of the Plaintiff's making that the notice in terms of Rule 36(6) was only served on the 27<sup>th</sup> August 2002. The Defendants had already been advised by Dr Anderson, at latest by the 17<sup>th</sup> June 2002, that he required the identified computers to be subjected to examination. It was accordingly necessary to put the Defendants on short notice in order to establish same and in particular whether the fears that the computer systems would be compromised or could be destroyed in the process were in fact a reality. All of this had to be done in sufficient time in order to put an application before his Lordship Mr Justice Levisohn prior to him taking his sabbatical.

6.2. It is not correct that, had the Defendants withdrawn the notice, as was demanded in that letter, an application would be brought. The request for information regarding the examination was incidental and only significant insofar as the Plaintiff did not withdraw the

notice. It was only after the time period prescribed in that letter had elapsed that the Plaintiff brought the application.

- 6.3. I am advised that it is incumbent upon a party giving such a notice to advise of the nature of the examination and that the proposition that *"all the Plaintiff had to do was to decline to submit the items requested to the inspections"* is not correct.
- 6.4. According to the application brought by the Defendants for leave to take evidence on commission consultations were held with Dr Anderson on the 2<sup>nd</sup> and 3<sup>rd</sup> June 2002. He was able as a result thereof to advise the legal representatives as to what equipment he wanted to examine and stated categorically in paragraph 8.3 thereof that he anticipates *"that Bond and Clayton can effect a rapid and concrete demonstration to this Honourable Court of the insecurity of the IBM 4753 and RACAL RG 7000 hardware security modules."* However, he added, that *"the equipment they will use to do this, and which is available at the computer laboratory, could not be exported from the United Kingdom without a license that is unlikely to be granted quickly, or indeed at all on terms that the University will find acceptable."*

6.5. In the result it would seem that Dr Anderson had already advised the Defendants as to the examination which he wished to subject the computer systems to and it would have been a simple matter for a telephonic consultation to have taken place in order to clarify any doubts which the Defendants might have had. Bearing in mind that a notice in terms of Rule 36(6) I am advised, requires that the equipment must be made available for inspection for ten days from the date of service of the notice, five working days to provide the information is hardly unreasonable.

7 AD PARAGRAPH 6.13

I simply do not understand the Defendants' submission.

8 AD PARAGRAPH 6.14

8.1. I reiterate what has been said in the founding affidavit.

8.2. I fail to see the relevance of the Plaintiff's counsel having put the content of the various expert summaries of the Plaintiff's experts to Gibson. I am advised that it is proper to have done so regardless of whether that evidence is lead in rebuttal.

9 AD PARAGRAPHS 6.16 AND 6.17

I shall deal with the affidavit filed by Dr Anderson separately.

10 AD PARAGRAPH 7

I reiterate what is stated in the founding affidavit.

11 AD PARAGRAPH 8

The Plaintiff will not object to the filing and use of a facsimile of the affidavit.

12 AD PARAGRAPH 9

12.1. Whilst it is correct that the Plaintiff sought and obtained an order for the hearing of evidence on commission it does not, of necessity, mean that such evidence would in fact have been taken on commission if rebuttal evidence was not necessary. Furthermore, even if the Defendants adduce evidence of their experts it still does not compel the Plaintiff to lead any evidence of its experts on commission or at all.

12.2. The simple proposition is that the Defendants are not entitled to rely upon being able to cross-examine these witnesses as it bears an evidential onus to relieve it of the consequences of the *prima facie* evidence against them.

12.3. I am advised that the Defendants have misinterpreted the rule and that appropriate argument will be addressed in this regard.

### **AD THE AFFIDAVIT OF DR ANDERSON**

#### 13 AD PARAGRAPH 4

13.1. I assume that Dr Anderson has read the record of evidence and the cross-examination of Du Preez where it was explained that there was no limit in relation to a Diners Club Card on the number of transactions in any given day per card. The only limit was the amount which could be withdrawn in relation to each transaction. This is a feature of the Diners Club system and it is inappropriate to compare that system with the operation of any other accredited card which might have a limit on the number of daily withdrawals or the total amount which could be withdrawn in any given day.

13.2. It would seem that Dr Anderson is confusing the facts of the case with whether the system is secure and it is interesting to note that he does not point to a single piece of equipment or computer system which has to be examined in this regard.

#### 14 AD PARAGRAPH 5

14.1. Again Dr Anderson has not acquainted himself with the facts "*Diners UK*" (whatever he means by this, the position had been explained in the founding affidavit) is unable to access the PIN which is not stored in the United Kingdom but in Germany and cannot print out a PIN mailer. In order to do so the person would have to have the PIN Master Key (PMK). Dr Anderson assumes that the PMK is transported outside of The Standard Bank of SA Ltd and it is not.

14.2. "*Diners UK*" cannot access the PAN and cannot do it by reference to the name of one of Plaintiff's customers.

14.3. Nobody in the United Kingdom would have known that the First Defendant's domestic ATM operations had been suspended.



- 14.4. Dr Anderson clearly has not read the record carefully as it was put to the First Defendant in cross-examination that the Diners Club card could be used overseas and that the block put on his card only affected domestic ATM transactions and not transactions abroad (Record p184). His example is accordingly inapposite.
- 14.5. Furthermore, the First Defendant's card would only have been suspended for ATM transactions 30 days after his statement of account dated 1<sup>st</sup> February 2000 (as per B7 to the Particulars of Claim: p26) should have been paid. On the facts of this matter it would only have been on the 2<sup>nd</sup> March 2000.
- 14.6. What is significant is that Dr Anderson is not able to point to a single attack on the RACALS or IBM 4753/4755 which was successful whilst the computers were in operation. RACAL and IBM know of no successful attacks. For such an attack to have worked the person would have to have had the HSM in an authorised state which would mean breaking the Local Master Key (LMK) which is randomly created in TDES. Gibson has conceded that this never happened.

- 15.1. Yet again it would seem that Dr Anderson has not carefully read the expert summaries filed on behalf of the Plaintiff. The transactions do not pass through the computer system of The Standard Bank of SA Ltd en route from "Diners UK" to South Africa and there is no authorisation done in South Africa for such ATM transactions.
- 15.2. I cannot comment on the general statements he makes in relation to an incident in the late 1980's but would suggest that, even on Dr Anderson's showing, the whole process of PIN management has changed substantially since then in relation to both the hardware and the software. A simple statement that thieves use stolen cards is of really no interest in this matter as the First Defendant's card was not stolen.
- 15.3. It is interesting to note that Dr Anderson for the first time in this affidavit challenges whether a PIN was required in the present case. Gibson, on the other hand, has conceded that it was. Furthermore in Dr Anderson's expert summary he does not challenge any of the Plaintiff's experts in this regard. If, however, he does actually believe that a PIN is not necessary then one wonders why he wishes to examine any of the cryptographic equipment.

## 16 AD PARAGRAPH 7

16.1. Dr Anderson has now had a number of occasions to examine the probabilities of the case in order to put forward a theory which contemplates the probabilities and the facts of this matter. It is clear, both having regard to his expert summary and to his two latest theories which I have dealt with previously, that he still has not acquainted himself with the facts. A process of speculation can hardly assist this Honourable Court in coming to a conclusion where the basis of such speculation is remote from the facts and the probabilities.

16.2. Dr Anderson does not disclose what information is lacking. A very full description of the computer systems, the functions and operation is contained in the Plaintiff's expert summaries.

## 17 AD PARAGRAPHS 8 AND 9

17.1. I fail to see the relevance of the Halifax Building Society case. It was, first of all, a criminal prosecution of which the Halifax Building Society was the complainant. The Building Society refused to allow its security to be compromised by the defence and it was this

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refusal per sé that lead to the dismissal. There is no indication that the integrity of the computer system in use by Halifax was tested evidentially or was the subject of any finding by the Crown Court.

17.2. Again, however, one is confronted by broad generalisations made by Dr Anderson in relation to "*phantom withdrawals*" and certainly he has established no basis for the admission, I am advised, of other incidences. There are certainly different facts in those cases and there is no suggestion as to what systems were utilised in relation to those transactions.

17.3. Dr Anderson is unable to give any examples of the RACALS or IBM 4753/4755 HSMs being successfully attacked whilst in operation in a commercial environment.

#### 18 AD PARAGARPH 10

18.1. I fail to see what parallels there are between the present matter and that of the Halifax matter.

18.2. It is not clear to me the point that Dr Anderson is making. Is the suggestion that this Honourable Court should simply accept his expertise because his experience is "*much broader and deeper than*

*Mr Gibson's* and because he is *"the author of the main articles on the subject"* and, if this is the case, he will not then give the evidence?

- 18.3. What, however, emerges from the evidence that he says that he will give is that he does not need access to any of the computers which he wishes to examine in order to express his views.
- 18.4. As was pointed out in the founding affidavit the IBM 4753 is the HSM which houses the 4755 which is a cryptographic adaptor card. The Plaintiff does not baldly claim that the 4753 is different but only that the 4753 is not the precursor to the 4758 as suggested by Anderson. It is then a very simple matter for the Defendants to demonstrate, if they can, that in fact what Dr Anderson says in his summary is correct namely that the IBM 4753 was the precursor to the IBM 4758. One can imagine a number of ways of effectively rebutting Plaintiff's evidence as it is simply a question of fact. It is a fact which can be ascertained from IBM without any difficulty whatsoever.
- 18.5. Again I do not understand Dr Anderson's view in relation to the RACAL RG 7000. The expert summary of Bond is to the effect that the RG 7000 was susceptible to an attack but that it had been

corrected. Accordingly the question is not whether the RACAL RG 7000 is subject to attack but whether, at the time of the transactions, the software had been updated.

18.6. It is again significant that Dr Anderson deliberately moves away from the facts and does not answer, as he cannot, the question why any of the RACAL HSM's are relevant and consequently, yet again, his hypothesis resides only in a vacuum.

18.7. It appears that Dr Anderson has been given other information which he does not disclose when he alleges that this matter is not isolated. He is correct, and I annex hereto marked "R1" a copy of an affidavit deposed to by RAMESH SINGH on the 7<sup>th</sup> August 2002 in which he admits to committing a fraud. It involved the Plaintiff, the same ATMs were used and the PIN was sought to be issued only shortly before the transactions took place in London.

#### 19 AD PARAGRAPH 11

I am advised that the test of the "*appropriate burden*" is inapposite and that appropriate argument will be addressed at the hearing hereof.

#### 20 AD PARAGRAPH 12

20.1. It is extraordinary that, having spelt out in detail to Dr Anderson the facts of this matter, namely, that the RACAL HSM's could not have been attacked and the First Defendant's PIN divulged simply because the First Defendant's PIN only passed through them subsequent to the first transaction taking place, he makes no attempt whatsoever to demonstrate to this Honourable Court what the relevance is of the experiment which he wishes to subject the RACALs to.

20.2. The PIN is not maintained in the United Kingdom and "*Diners UK*" cannot from its offices in Farnborough access the PIN. There is network security in place. The RACALS in the United Kingdom which he wishes to examine are merely translators i.e. they pass the information on.

#### 21 AD PARAGRAPHS 13 AND 14

21.1. Dr Anderson has been given ample opportunity to apply his mind to the facts and neglects to do so. He simply does not explain the relevancy of the RACALS.

21.2. The examination which Dr Anderson proposes is, in itself, irrelevant. As mentioned earlier, the HSMs have to be in an

authorised state. A person wishing to extract information would have to have broken the LMK's which nobody has successfully done. Accordingly, what Dr Anderson is suggesting is that the HSMs be given to him in an authorised state or that the HSMs are shut down and taken off line. In either case, the experiment does not emulate what had to have happened, on his theory, and accordingly, even if the experiment was successful, does not prove that a person in the employ of one of the organisations could access the information.

- 21.3. If the suggestion should be made that this fraudulent person had access to the HSMs in an authorised state, the simple answer is that it could not have happened as it requires the coincidence of two smart cards or passwords held by different people and the transactions would be logged.
- 21.4. Dr Anderson's approach does highlight, however, the consequence of his experiment. The shutting down of the HSMs would mean that as long as they were being experimented on no transactions will take place. All transactions will stop altogether. The computer systems have back-ups for the very reason that it is necessary to guard against a computer going down. Consequently the risk of



having no back-up whilst Dr Anderson and his associates experiment is not one which can or will be taken.

21.5. For the same reason as I have stated previously there is no relevance of experimenting with back-up equipment as it will not show how the person was able to break the LMK. The back-up unit is as much part of the system as the production unit and neither The Standard Bank of SA Ltd nor Diners Club International Ltd, its subsidiaries or associated companies will allow them to be experimented on.

21.6. The Defendants have not sought to examine the IBM 4755 and as we understand Dr Anderson he takes issue with Bond that the 4755 was the precursor to the 4758. One would have thought that it would have been a simple exercise for Dr Anderson to have established whether he or the Plaintiff is correct in relation to this.

## 22 AD PARAGRAPH 15

22.1. It is again extraordinary that Dr Anderson has not addressed specifically which equipment he is referring to. The Plaintiff has been at pains to indicate what equipment is extant and what is no longer in use or available for examination. A bald statement that

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they intend to use "a similar procedure" tells one nothing as to what examination they intend to conduct in relation to that equipment or even, for that matter, address the relevance of the particular piece of equipment with regard to the facts of this case.

- 22.2. Dr Anderson's approach to the matter is demonstrated by the use of words such as "destroyed" suggesting that the respective parties actually and intentionally "destroyed" the equipment. This is simply not correct and is inflationary.

#### 23 AD PARAGARPH 16

- 23.1. I do not understand Dr Anderson's views in this regard. It would seem that what he expects is that the Plaintiff who is not in control and possession of any of the computer systems which he wishes to examine, if it cannot persuade The Standard Bank of SA Ltd or Diners Club International Ltd, its associates or subsidiaries to provide the equipment, to purchase the computer systems in order to facilitate his tests. The unreasonableness of his attitude is highlighted by the fact that not even now for the purposes of this application has he addressed his mind to the probabilities which are prevalent in this case as distinct from a purely hypothetical attack against various computer systems which cannot affect the outcome

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of the case. Employees of those companies that possess and control those systems are maligned by him without there being any probable foundation in respect thereof.

23.2. It is also clear from the expert summaries filed on behalf of Dr Anderson, Clayton and MK Bond that indeed the RACAL, for instance, as well as the VISA HSM and IBM products must have previously been made available to them for testing otherwise it is difficult to conceive on what basis they make the comments they have. Indeed, Dr Anderson concedes that he is able to acquire equipment from IBM.

23.3. It is interesting, however, that it would seem that Dr Anderson and the Defendants have made no attempt whatsoever to obtain the computers in question for the purposes of his experiments.

23.4. Dr Anderson does not disclose anywhere why he needs the mainframe computers or what experiments he intends to conduct on them. In order for his experiment to have any relevance he would first of all have to breach the security which protects the systems. In the case of The Standard Bank of SA Ltd this would mean breaking "Top Secret" and "SOBR". Dr Anderson does not suggest that he can do this.

23.5. One of the fundamental mistakes that Dr Anderson makes is that he treats individual components of the system in isolation. Whereas it is the working of the systems in their entirety that is significant. There are security systems in place which protect the operation of the systems and prevent the sort of attack that Dr Anderson is suggesting might be successful.

#### 24 AD PARAGRAPH 17

24.1. Anderson highlights one of the very difficulties with which the Plaintiff is confronted. Whilst it is correct that the systems employed are very expensive, Anderson would, nevertheless, have The Standard Bank of SA Ltd and Diners Club International Limited, its subsidiaries or associated companies make same available to him and his associates so that he can experiment therewith in an attempt to explain theories which are completely divorced from the probabilities of this particular case.

24.2. This paragraph shows Dr Anderson's intent, namely experimentation, which he will carry out in the hope that it will provide some explanation for the ATM transactions forming the

subject matter of this action. I again refer to what I have said previously.

#### 25 AD PARAGRAPH 18

25.1. Clearly, Dr Anderson has misunderstood what has been said in the founding affidavit. The state or condition of most of the equipment on the facts of this matter is irrelevant. I reiterate that there is no suggestion that the components to the system were not working and consequently the state or condition of that equipment is not in issue. The question is only whether a generic attack on the items will succeed.

25.2. Furthermore it seems now that beyond examining the particular items in question Dr Anderson wants to consider holistically the access control and management of these computer systems which has not been and cannot be asked for in terms of the Rule 36(6) Notice. No one person has or will ever be given end-to-end access to the various computer systems for obvious reasons.

25.3. I do not understand the last sentence in this paragraph.

#### 26 AD PARAGRAPH 19

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26.1. It is correct that neither The Standard Bank of SA Ltd nor Diners Club International Ltd has "spare cryptographic processors". There are back-up systems, providing test and disaster facilities, which are part of the operating systems of the Bank and Diners Club International Ltd and cannot simply be hived off so that they can be experimented on by Dr Anderson and his associates.

26.2. If the production system goes down the back-up system must be immediately available.

#### 27 AD PARAGRAPH 20

27.1. It is clear that Dr Anderson is not a banker and simply does not have the requisite knowledge to make the statements that he makes. The Bankers in South Africa and in the United Kingdom have adopted a Code of Banking Practice which, I am advised, is consistent with the legal requirement that the Bank preserve their clients' confidentiality. It is not a question whether he is prepared to keep information confidential but the obligation which the Bank owes its customers.

27.2. The Data Protection Act is not applicable to South Africa and the equipment which Dr Anderson wishes to examine in the United Kingdom is, in any event, irrelevant on the facts of this case.

27.3. An order by this Honourable Court requiring Dr Anderson not to disclose any information would not be effective as he is resident in the United Kingdom and has indicated that he will not come to South Africa.

#### 28 AD PARAGRAPH 21

28.1. The non-disclosure of information concerning the design of the products has not been discredited. Once information of this nature enters the public domain it is much easier for a would-be criminal to devise schemes to abuse it.

28.2. IBM and RACAL do their own research and development and do not need to rely upon the likes of Dr Anderson to assist them.

#### 29 AD PARAGRAPHS 22 AND 23

I fail to see the relevance of the suggestions he is making here.

## 30 AD PARAGRAPH 24

- 30.1. The Record at page 287 is incorrect. Reference was made to a page out of the RG 7000 manual and not to "IG 75". One would have assumed that a person purporting to have the expertise of Dr Anderson would realise that there had been a mistake and have made the necessary enquiries. The page of the manual was given to Lane by Bonfrer during cross-examination of Gibson, and is not a manual which is in the Plaintiff's possession.
- 30.2. Unfortunately Lane did not have the correct information at hand in relation to the franchise. The Standard Bank Ltd has never held the franchise for Diners Club. The franchise has always been held by Diners Club SA (Pty) Ltd. In this regard I annex hereto marked "R2" a copy of the first page of the first Franchise Agreement concluded between the Plaintiff and Diners Club International Ltd.
- 30.3. There has never been a dispute that The Standard Bank of SA Ltd generates and issues the PINs for Diners Club SA (Pty) Ltd but it is not an agent in the strict sense of the word. It acts independently and provides a service for Diners Club SA (Pty) Ltd.



30.4. The Defendants have at no stage disclosed what the relevance is of the Diners Club Franchise Agreement. Not even in this application has such relevance been disclosed and one cannot imagine how it would assist Dr Anderson in his testimony.

### 31 AD PARAGRAPH 25

31.1. The Plaintiff has had extreme difficulty in obtaining information from The Standard Bank of SA Ltd and Diners Club International Ltd, its subsidiaries and associated companies particularly where such information is of a confidential nature or might in any way compromise the security of the various institutions.

31.2. It is one thing, however, to obtain information which does not compromise security its altogether another to require a Bank or credit card institution to make its computers available for an examination which would or could compromise its security.

31.3. I know of no incident where one Bank has successfully asked another Bank to allow its computer systems to be subjected, end-to-end, to an examination and it is extraordinary that Dr Anderson suggests baldly that it has happened without giving any concrete examples thereof. In fact in the only example quoted by Dr

Anderson, the Halifax Building Society was prepared to allow the criminal case to be dismissed rather than supply confidential information which would have compromised its security.

31.4. The Plaintiff is unable to make available for examination or experimentation any systems which are owned or controlled by third parties. It certainly cannot compel The Standard Bank of SA Ltd or Diners Club International Ltd, its subsidiaries or associated companies, to open their systems for the Defendants' experts in an action to which they are not parties.

#### 32 AD PARAGRAPH 26

It is significant that Anderson has not dealt with the need for further particulars or documentation whatsoever which, as stated previously, having regard to the request for particulars, cannot arise out of anything that he might require.

#### 33 AD PARAGRAPH 27

33.1. In the light of the allegation that the 2620 is irrelevant Anderson does not take this Court into his confidence in establishing why he suggests that the 2620 is indeed relevant. Furthermore, he does

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not heed the fact that the 2620 is no longer available for inspection.

33.2. The 2620 has nothing to do with the issue or generation of a PIN.

33.3. Whilst it is correct that an inappropriate disclosure of the key material facilitates forgery of credit cards, this is only relevant to point of sale transactions. This matter does not concern point of sale transactions.

#### 34 AD PARAGRAPH 28

Dr Anderson attempts to side-step the issue. Either the 4755 was the forerunner to the 4758 or it was not and that would be a simple fact for him to establish.

#### 35 AD PARAGRAPH 29

35.1. Anderson has not applied his mind to the facts. There is a fundamental basis upon which the criticism was made namely, whether upstream or downstream, the PIN and PAN never entered the systems of LINK, TNS and "Diners UK" before the first transaction took place.

MB

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35.2. Conducting experiments on the computer systems will not, even on Dr Anderson's version, in any way contribute to the opinion he expressed in relation to MAC verification. It is a matter of fact, either it was done or it was not.

36 AD PARAGRAPH 30

Dr Anderson has again demonstrated in this affidavit that the basis for his belief is suspect.

37 AD PARAGRAPH 31

Bonfrer does not state that the PINs are stored in the United Kingdom. However, as a matter of fact, the PINs are stored in Germany and not in the United Kingdom. Diners Club UK Ltd is an entirely different company to Diners Club International Service Centre.

38 AD PARAGRAPH 32

Again Dr Anderson has demonstrated that he lacks objectivity and independence, both of which qualities this Honourable Court will take into

P.B.

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account in assessing the extent to which his testimony will assist in coming to a just and proper determination of the matter.

39 In the circumstances the Plaintiff persists in its prayer for relief.

*[Handwritten Signature]*  
\_\_\_\_\_  
**DEPONENT**

THUS SIGNED and SWORN to at *Johannesburg* on this the 25<sup>th</sup> day of September 2002 by the deponent who has read, knows and understands the contents of this affidavit, who has no objection to taking the prescribed oath and who considers same to be binding on his conscience.

BEFORE ME,

*[Handwritten Signature]*  
\_\_\_\_\_  
*W. Steyn*

**COMMISSIONER OF OATHS**

*Willem Steyn*

SUID-AFRIKAANSE POLISIEDIENS  
STANDARDBANK KONTAK PUNT  
JOHANNESBURG SENTRAAL  
2002 -09- 2 5  
JOHANNESBURG CENTRAL  
STANDARDBANK CONTACT POINT  
SOUTH AFRICAN POLICE SERVICE

" R1 " 123

**RAMESH SINGH STATES UNDER OATH IN ENGLISH :**

I am an adult male with Id. No. 4206125093053 residing at 69 Bailey Road, Durban North. Occupied as a restaurant owner at Club Restaurant, 232 Effingham Rd, Effingham Heights. Tel no. 5637625.

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In June 2000 I receive a phone call from my attorney Kassim Seedat: whom I instructed to collect my rent money. He asked me if I had a Diners Club Card. Kassim told me that he's got a friend by the name of Samuel Bernard who has a friend in London who will make money available to bring into South Africa illegally and asked me if it was okay if Bernard can contact me. I told him that it would not be a problem, not knowing what this all entailed.

3.

The same day I received a phone call from Bernard. He told me that he can only get money to South Africa via a Diners Club Card. I told him that we can meet at Kassim's office for I wanted him to be present when he tells me how the scam works.

4.

The next day we met at Kassim's office at the corners of Cross Street and Prince Edward Street. 1<sup>st</sup> floor C.N.R. house, J.N. Singh and Seedat. The only people present was myself, Kassim and Bernard. I asked them to explain the story to me. Bernard said that he has a friend working in London that can make money available which can be drawn without any trace. I asked them how that was possible. He told me that it would be money that people don't claim for eg. Old accounts that still had money in it. He also told me that the only way he could withdraw the money would be by means of the Diners Club Card. I asked him if there would be any records and if I would be implicated in any way. He assured me that it will all be sorted out in London, for he knows some people in London and that it will never come to South Africa. I asked him what my portion of the deal would be as he made it clear that money would be withdrawn and that I would get some amount from the transaction. He told me that he would give me 100 000 pounds in cash. He would leave on the Thursday, arrive on the Friday and return on the Monday and he asked me to get him from Durban International at 07:30 as part of the arrangements. I was surprised at the amount and asked him how much he would be making, and he told me not to worry about the amount they make but that I would definitely make 100 000 pounds. I asked him who was going to pay Seedat his cut and what amount it would be, and he told me not to worry about Seedat, that he would sort Seedat out.

5.

I was very tempted by the amount and agreed to hand my card over to Bernard. After handing it to him, in front of Kassim, he asked me if I knew my pin number. I told him that I've never used my card in an ATM machine before and therefore do not know the pin number. He told me that I should go to the nearest Standard Bank to get the pin number and that he would come to me at a later stage to collect the number from me. He kept the card with him.



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6.

I went to the nearest Standard Bank which was Briardene and I was referred to the Greyville Branch to get my pin number. After I received the pin, I went back to my restaurant where I continued work as usual.

7.

Bernard came to me later the same day and asked me for my pin number. When he arrived there he was accompanied by his son. He told me not to worry about his son being there for his son is okay and that he is the one with the contact in London. I was still under the impression that he would be the one going to London and that I had to pick him up from the airport. I gave him the pin number. He went to the ATM machine down the road and came back a few minutes later. He told me that I still owed money on my Diners Club Card to the amount of R 1218-74. He asked me if I had money to settle this amount immediately for it is necessary to have a clear settlement before he goes to London with the card. He then left and gave me a number to phone him as soon as it is settled. I confirmed that I had the money available. I then went to Briardene branch and settled my account, leaving the Diners Club Card with him.

8.

After I made the deposit I phoned him and told him that the account is settled. He told me to phone Diners Club for it takes up to 24 hours to settle the account on computer and he needed the account to be settled immediately. He also told me not to forget to report my card stolen on Monday morning. I phoned Diners Club and requested them to clear my account, but I was told that it would take up to 24 hour and that there was nothing they could do to settle it immediately. I phoned Bernard and told him what they have told me at Diners Club. He told me that it was alright and that I should not worry about it, but that I must not forget to pick him up from the airport the following Monday, 2000-06-26.

9.

I never heard from Bernard again over the weekend. On the Monday morning I went to the airport at 07:30 to pick Bernard up. I waited for about an hour and a half and there was no sign of him. I decided to go to my Grey street office and phone Kassim for I didn't have any of their numbers on me at the time. I got to my office and phoned Kassim. I asked him if he had heard from Bernard. His reply to this was negative. I asked him he has his number on him and if he could phone him. He told me that he would give Bernard a call right away. About ten minutes later I phoned Kassim again and asked him if he got hold of Bernard. He informed me that the phone was just ringing.

10.

I then went to my restaurant and phoned Diners Club to stop the card. This was at 12:18 dated 2002-06-26 when the call was logged at Diners Club. I never heard from Bernard again.





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11.

A few days later I received an account from Diners Club stating that I owed them R 35138.07. I immediately went to Kassim's office and requested him to get me out of the debt as it was due to him that I landed up in the debt in the first place. I told him to get hold of Bernard to settle the debt. Kassim immediately started legal proceedings against Diners Club disputing the debt. To date I never received any account from Kassim regarding his involvement concerning this matter.

I know and understand the contents of the above statement.  
I have no objection in taking the prescribed oath.  
I consider the prescribed oath to be binding on my conscience.

  
SIGNATURE OF DEPONENT

AC BB M




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I know and understand the contents of this statement .  
I have no objections to taking the prescribed oath .  
I consider the prescribed oath binding on my conscience .

DATE : 7/8/2002

TIME : 1430

PLACE : DURBAN

DEPONENT : 

I certify that the above statement was taken by me and that the deponent has acknowledged that he/she knows and understands the contents of the above statement. This statement was sworn/affirmed to before me and the deponents signature/mark/thumbprint was placed thereon

in my presence, at Durban on 2002-09-01 at 14:35



COMMISSIONER OF OATHS

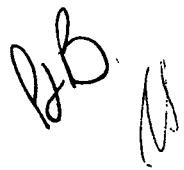
RANK : Insp.

FORCE NO : 24403061

Benette Ledingham.

FULL NAME AND SURNAME  
SYNDICATE FRAUD UNIT Commercial Branch .  
PROJECT INVESTIGATION TEAM  
23<sup>rd</sup> FLOOR  
JOHN ROSS HOUSE  
DURBAN

SOUTH AFRICAN POLICE SERVICE



THIS AGREEMENT made

this 26<sup>th</sup> day of July 1966, among DINERS' CLUB INTERNATIONAL LTD., a corporation organized and existing under and by virtue of the laws of the Dominion of Canada, having an office at 80 Richmond Street West, Toronto 1, Canada (hereinafter sometimes referred to as "International"), THE DINERS' CLUB, INC., a corporation organized and existing under and by virtue of the laws of the State of New York, having an office at 10 Columbus Circle, New York, N.Y. (hereinafter sometimes referred to as "Diners") and THE DINERS' CLUB SOUTH AFRICA (PROPRIETARY) LIMITED whose address is at Cavendish Chambers, Jeppe Street, Johannesburg, South Africa (hereinafter referred to as "Franchisee")

WHEREAS, International has been authorized by The Diners' Club, Inc. to arrange for the licensing of others to operate a credit card business under the name of Diners' Club in Europe, Asia, Africa, Australia, South America and other territories outside the North American continent; and

WHEREAS, International has the ability to furnish various types of assistance and services to persons operating credit card businesses in the territories described above; and

WHEREAS, Franchisee is already operating within the territory referred to below a franchise (hereinafter referred to as "the pre-existing Franchise") granted by International

WHEREAS, Franchisee is desirous of continuing its credit card business in the Republic of South Africa and South West Africa, Botswana, Lesotho and Swaziland

(all of such countries being hereinafter called "the Territory" under the name of Diners' Club and continuing to obtain the services and assistance of International in connection therewith and

*[Handwritten signatures and initials]*