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# BOWES & TURNER INC

**ATTORNEYS** 

T MONTHOUS AVENUE CHAIGHALL FARK JOHANNISHURG PO BOX 411890 CRAIGHALL PARK 2004

FACEBAILD (011) 747-2541 TELEPHONE (611) 767-2541

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DATE: 18th Publishing 2008

J KISSOON SINGH Inc Fax No: 031) 306-0778

No. of pages including this one: 45

Dear Sirs,

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

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

Yours faithfully,

BOWES & TURNER

A Turner

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Claim No.

IN THE HIGH COURT OF JUSTICE QUEEN'S BENCH DIVISION

DINERS CLUB (SA) (PTY) LIMITED,

a corporation

Plaintiff

YB

(1) ANIL SINGE, (2) VANITHA SINGE,

Defendants

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

Well, Gotshal & Manges

One South Place London EC2M 2WG
Tel: +44 (0) 20 7903 1000
Fax: +44 (0) 20 7903 0990

<u>www.weil.com</u> MS/PS.41592.0004 Pol

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SITION DIAD FORM DIAM MADRIES

IN THE HIGH COURT OF JUSTICE OUEEN'S BENCH DIVISION Claim No.

MASTER TURNER - MASTER IN CHAMBERS

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

AND

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

DINERS CLUB (SA) (PTY) LIMITED.

Plaintiff

VI,

(I) ANIL SINGH, (2) VANITHA SINGH,

Defendants

ORDER

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

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

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

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

- Kevin Davorn, of Lloyds TSB Bank Plc, 71 Lombard Street, London EC3P 3BS
- John Paul Claugh, of Abbey National Ple, Genesis House, 301 349
   Midsummer Boulevard, Milton Keynes, MK9 2JE
- William David Cummins, of Royal Bank of Scotland Pic (Natwest division)
   Green Holt, West Challow, Wantage, Oxon OX12 9TN
- Derek C. Wylde, of HSBC Bank Plc, 8<sup>th</sup> Floor, 365 Chartwell Square, Southend on Sea, Essex, 8899 2UU
- Alexander Leckemby, of Link Interchange Network Limited, 4 Cardale Park, Beckwith Head Road, Harrawgate, HG3 1RY
- Adrian Walker, [of Diners Club International Service Centre, First Floor, Diners Club House, Kingsmess, Femborough, Hants GU14 7SR]
- [Allen Mortleck, of Diners Club International Service Centre, First Floor, Diners Club House, Kingsmead, Pemberongh, Hants GU14 7SR]
- Michael Bird, [of Diners Club International Service Caure, First Floor, Diners Club House, Kingsmead, Famborough, Hants GU14 78R]
- Andrew Brett, [of Diners Club International Service Centre, First Floor, Diners Club House, Kingsmend, Pamborough, Hants GU14 75R]
- 10. Dr. Ross John Anderson, of University of Cambridge, Cambridge
- 11. Michael Keith Bond, of University of Cambridge, Cambridge
- 12. Richard Nell Clayton, of University of Cambridge, Cambridge

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### IT IS ORDERED that:

- each of the witnesses listed 1 to 13 above attend before Mr Justice Philip Levinsohn 1 I who are hereby appointed examiners ("the Examiners"), sitting at Royal Courts of Justice, Strand, London WC2A 2LL, on Monday 3rd March 2003 and from day to day thereafter until examination is complete or any individual witness is released and do submit to be examined (on oath or affirmation) touching the testimony so required.
- The witnesses Adrian Walker, Michael Bird, Andrew Brett and Allen Mortlock and 2 each of them shall not be compelled to answer any question about or related to the following:
  - the detail of the information technology standards or strategy employed by **(i)** Diners Club International Ltd ("DCF"), Citibank Limited ("Citibank") or any other entity within the Citicorp group of companies ("Group Companies");
  - the details of the physical location of and physical security systems at any (ii) premises owned or operated by DCI, Citibank or any Group Company;
  - the detail of the softwere architecture and logic of any computer system or (III) programme run or operated by (or on behalf of), or licensed to, DCI, Citibank or any other Group Company.
  - the details of the operation, architecture, logic, location or function of any (tv) hardware or software involved in or associated with the encryption, decryption, generation or verification of Personal Identification Numbers issued to Diners Club card holders:
  - the means by which any computer system, software or hardware used by or (v) belonging or leased to DCI, Citibank or any Group Company has been or could be attacked, influenced, circumvented or otherwise subjected to unanthorised access or use;

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

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T.G. Teichgraeber

Plaintiff

17.02.03 TGT1-5

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

AND

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

BETWEEN:

DINERS CLUB (SA) PTY LIMITED

Plaintiff

-end-

### (1) ANIL SINGH (2) VANITA SINGH

Defendants

### WITNESS STATEMENT OF

### THOMAS GILLETTE TEICHGRAEBER

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

### 1 Introduction

- I am the General Counsel for Diners Club International Ltd ("DCI"). I am a qualified attorney having been called to the bars of the State of Kansas in 1972 and the State of lows in 1978. In my role I am responsible for advising and directing DCI in legal matters. I am the senior legal officer for DCI's worldwide card business operations. I have first hand knowledge of the matters relevant to this case and I am authorised to make this statement on behalf of DCI, its associated company Citibank International Limited ("Citibank") and their parent company Citigroup.
- 1.2 I make this statement in support of DCI and Ciribank's intervention in this matter.
  DCI and Ciribank intervens to oppose the application by Diners Club South Africa.

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

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

#### 1.4 In this Statement I will:

- describe the commercial roles played by and relationship between DCI and **(1)** Citibenk:
- (II) explain how DCI and Citibank some to be involved in these proceedings; and
- outline my specific concerns about this confication, (III)

### The role of DCI and Citibeak generally

- 2.1 DCI carries on an international charge pard business, the card in question being the Diners Club Card. Amount other things, DCI grants franchise rights to other entities in order that those franchisees may issue cards to individuals. DCSA is one such franchisee.
- 2.2 DCSA's application notice and letter of request attach a schedule of witnesses who are to be made the subject of the order. Of those witnesses, four are connected with DCI and Citibank. Citibank provides certain technical services to DCI on behalf of the franchise network and Adrian Walker, Michael Bird and Andrew Brett (mgether

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

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

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

### 3 DCI's involvement in the Proceedings

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



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



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



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

# 4 Specific cencerus about this Application

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

"The witnesses should be examined regarding their expert testimony, summaries of which have been or will be filed on record and relate to the security and integrity of the equipment and systems employed and which were involved in the 190 transmissions referred to above..."

and paragraph 5 of the Statement of relevant issues provides:

"The Defendants, on the other head, have filed separt manuaries directed at attacking the executivy systems and attacking to demonstrate that not only were such systems capable of being violated but that the probabilities favour other persons involved in the various organizations having perpending a fraud. The Defendants' experts also challenge the integrity of the equipment utilised in the transactions."

- 4.2 It is clear that the Defendants' intention is to approach the matter by suggesting how the DCI systems in question may be attacked, and, presumably, by testing those theories in cross-examination of the Employees. I am advised and I believe that the Court does not have the advantage of a list of questions or the subject matter of such questions from either DCSA or the Defendants and it is not, therefore, possible to assume otherwise than that what is proposed is a wide ranging investigation into the detailed functions of DCI and Citibank's systems.
- 4.3 My concerns about the nature of the Defendants', intentions are amplified by the fact that they have sought, and been depied, an order from the South African Court involving a wide ranging physical investigation of the systems involved in the case. I refer to TGT2, the Defendant's application; TGT3 the Witness Statement of Craig Bond; and TGT4, the order of the South African Court.
- 4.4 The concern that I have is that an unrestricted cross-examination would, in affect, embetitute for this physical inspection of the systems. Further, in my view, a far ranging investigation into the detailed workings of the system recorded in the Court record would expose DCI's systems to potential attack, breach binding obligations of confidentiality and business secrets and, ultimately, be countary to the public interest. Frauds on the global financial network impact on every honest person who has a bank account, credit or charge card.



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- Owing to its obligations of confidentiality and the security issues involved, in order to protect the most confidential of its business scores, DCI, through the Employees, is not able to answer questions on the following at the very least:
  - (i) the detail of the information technology standards or strategy employed by DCI, Citibank or any other entity within the Citicorp group of companies ("Group Companies");
  - the details of the physical location of and physical security systems at any premises owned or operated by DCI, Citibank or any Group Company;
  - (iii) the detail of the software srchitecture and logic of any computer system or programms run or operated by or licensed to DCI Citibank or any other Group Company;
  - (iv) the details of the operation, architecture, logic, location or function of any hardware or software involved in the encryption, decryption generation or verification of Personal Identification Numbers issued to Diners Club card holders;
  - (v) the means by which any computer system, software or hardware used by or belonging or lessed to DCI, Citibank or any Group Company has been or could be attacked, influenced or circumvented;
  - (vi) the physical location of or physical ascurity arrangements relating to any Hardware Security Module System licensed to, used, owned or operated by DCI, Citibank or any Group Company;
  - (vii) the details of the operating regulations and procedures in place between DCI and its franchiscos; and
  - (vili) any matter concerning any transactions or activities not directly connected with the Diners Club Card having the number 361358226037.

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Accordingly, I would ask that the Court dealine to grant this order or, alternatively grant ha order to the form of Biblist TGTS.

I balieve that the facts stated in this deciment are true.

Bigued Hornes Cillete Ga Chyrather.
Dated Formany 17, 2003

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Plaintiff G.E. Woolhouse (1) Exhibits "GEW1" 7th February 2003

Cinim No.

IN THE HIGH COURT OF JUSTICE QUEEN'S BENCE DIVISION

MASTER TURNER – MASTER IN CHAMBERS

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

AND

IN THE MATTER OF A CIVIL PROCEEDING NOW PENDING REFORE THE HUGH COURT OF SOUTH AFRICA (DURBAN AND COAST LOCAL DIVISION) BETWEEN:

DINERS CLUB (SA) (FTY) LIMITED, a corporation

Plaintiff

Y

(1) ANIL SINGE, (2) VANITHA SINGEL

Defendants

L, GEOFFREY EDWARD WOOLHOUNE, of 5 Great College Street, Westminster, London, SWIP 351 state that:

I am a Pariner in Radoliffical affressess, Solicitors, of 5 Great College Street, London SW1P 35J. I have received instructions from Mr. Andrew Turner, an Atturney in South Africa, practising with the firm of Bowes & Turner Inc. The facts and matters which I refer in this winness statement are derived from the documents which are exhibited and from the information provided to me by Mr. Andrew Turner and which, in each case, I verily believe to the true.

- 2. I am instructed by Mr Andrew Turner, to apply for an Order for the examination of the following witnesses:
  - 1. Kavin Davorn, of Lloyds TSB Bank Pic, 71 Lombard Street, London EC3P 3BS
  - John Paul Clough, of Abbey National Fle, Genesis House, 301 349
     Midsummer Boulevard, Milton Keynes, MK9 2/E
  - William David Cammins, of Royal Bank of Scotland Plc (Natwest division)
     Green Holt, West Challow, Wantage, Oxon OX12 9TN
  - 4. Derek C. Wylds, of HSBC Bank Plo, \$\* Floor, 365 Chartwell Square, Southend on Sea, Essex, \$399 JULI
  - Alexander Lecksaby, of Link Introhange Network Limited, 4 Cardale Park,
     Beckwith Head Road, Harrowskie, HG3 1RY
  - Adrian Walker, of Diners Club International Service Centre, First Ploot, Diners Club House, Kingsmead, Famburough, Hants GU14 75R.
  - Allen Mortlock, of Dink's Club International Service Centre, First Floor, Diners Club House, Kingsmeed, Famborough, Hents GU14 7SR
  - Michael Bird, of Diners Club International Service Centre, First Floor, Diners Club House, Kingameed, Famborough, Hants GU14 75R
  - Andrew Brett, of Diners Club International Service Centre, First Floor, Diners Club House, Kingamusid, Famborough, Hants GU14 7SR
  - Dr. Ross John Anderson, of University of Cambridge, Cambridge
  - 11. Michael Keith Bend of University of Cambridge, Cambridge
- 12. Richard Nell Clayton of University of Cambridge, Cambridge in each case whose testimony in relation to the above matter the above-named foreign Court is desirous of obtaining.
- 3. There is now produced and shown to me a bundle marked "OEW1" of the best copies
  I can presently provide of the following:

FROM MAKACAKE POST CONT.

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- 2. the Examiner record or cause to be recorded the evidence of each of the witnesses so examined as appropriate, according to the rules of practice of Her Majesty's High Court of Justice relating to the examination and order-examination of witnesses.
- 3. the Examiner do:
- (a) administer the cath or affirmation as the case may be to witnesses giving evidence;
- (b) when completed the recording of the testimony of witnesses be safely taken by him to the Examiner's Court being the High Court of South Africa (Durben and Court Local Division) for transcription thereof.

Dated 11 February 2003

19/02 03 11:42 FAX 031 3047379 ADVKISSOON SINGH

# In the high court of south africa (DURHAN AND COAST LOCAL DIVISION)

Case No: 00/3186

In the matter between:

DENERS CLUB (SA) (PTY) LIMITED

Plaintiff

and

SINGH, ANIL

Pirst Defendant

SINGH, VANITHA

Second Defendant

### LETTER OF KEQUEST

To the Royal Courts of Justice, Queens Bench Division, the Strand, London.

- I, Phillip Levinsohn, a Judge of the High Court of South Africa respectfully request the assistance of your Court with repard to the following matters.
- 1. A claim is now pending in the High Court of South Africa (Durban and Constal Local Division) in which Diners Club (SA) Pty) Ltd of 35 Symone Road, Auckland Park, Johannasburg, is the Plaintiff and Anii Singh of 1 Highway Place, Mobeni Heights Durban is the First Defendant and Vanithra Singh of 1 Highway Place, Mobani Heights, Durban is the Second Defendant.

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- 2. The Plaintiff is represented by Sower & Turner Inc c/o Goodrickes 23th Floor, 320 West Street, Durban. The Defendants and represented by 3 Klaspon Bingh Incorporated, 1\* Ploor, International Plaza, 128/132 Commercial Road, Durban.
- 3. The chaim by the Plaintiff is for :
  - 3.1. Payment of an amount of R607,423.12 together with interest arising out of the alleged use by the Pirst Defendant of his Dinary Club Card in the United Kingdom.
  - Accordingly the relief sought by the Plaintiff is against First and 3.2. Second Defendants, jointly and severally, the one paying the other to be absolved for:
    - (a) Payment of the sum of R607.423,12;
    - (b) Interest on the sum of R612,910.07 at the rate of 22% per annum as from 24<sup>th</sup> March 2000 to 31<sup>st</sup> July 2000;
    - (c) Interest on the sum of R607,423.12 at the race of 22% per annum as from 1st August 2000 to 5th September 2001;
    - (d) Interest on the sum of R607,423.12 at the rate of 31% per annum as from the 7th September 2001 to 5th November 2001;
    - (a) Interest on the sum of R507,423.12 at the rate of 20% per annum alternatively at such other maximum rate in terms of the Usury Act or permitted by law from 9th November 2001 to date of payments
    - (f) Costs of suit on the scale as between attorney and client;
    - (a) Further and/or alternative relief.
  - 3.3. The fects of the case inedfar as they have been pleaded and evidence has been address to date are:





- 3.4. The Defendants resist the Plaintiff's claim on the basis they allege that the Plast Defendant's card was at all material times in First Defendant's possession and that he did not allow such card to be copied or disclose his PIN to any third party not did he use his card or allow any third party to use his card or PIN.
- 4. It is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties that you cause the following witnesses who are resident within your jurisdiction, to be examined if called. The names and addresses of the witnesses appear from Annahure A hereto.
- 5. The witnesses should be examined on oath and in accordance with the normal rules applicable to That.
- 6. The witnesses should be examined regarding their expert testimony, summaries of which have been or will be filed of record and relate to the security and integrity of the equipment and systems employed and which were involved in the 190 transactions referred to above and in the Republic of South Artice. The only documents which the witnesses have produced or are required to produce are estached or will be attached to their summaries.
- 7. I would ask that I be appointed the commissioner to take evidence and that you give effect to the orders of the High Court of South Africa (Durbon and Countal Lucai Division) given on the 21<sup>st</sup> February 2002 and 19<sup>th</sup> June 2002 and direct that the evidence be taken before me during the period 3<sup>rd</sup> March 2003 to 14<sup>th</sup> March 2003 at the Royal Courts of Justice, the Strand, London.
- Finally, I request you to dispute with the rule that the evidence is to be certified by you in that I am the Judge seized of the matter in the High

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- **10.7** --

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Court of South Africa (Durban and Coastal Local Division) and shall ensure that the recording of the evidence is transported back to South Africa and transcribed, if necessary, the costs thereof to be borne equally by the parties,

6/2/2002

THE HONOURABLE MR JUSTICE LEVINSOHN -HIGH COURT OF BOUTH AFRICA (Durban and Coastal Local Division) THE EMBANKMENT, DURBAN, SOUTH AFRICA

ANNEXURE A

# The Plaintiff's witnesses and their addresses are as follows:

- 1 Kevin Davorn of Lloyds Tib Bank pic 71 Lombard Street, London, EC3F 385; and
- 2 John Clough of Abbay National pla Genesis House, 301-349 Mideummer Boulevard, Milton Keynes, MKS 216; and
- 3 William Cummins of The Royal Bank of Scotland pic (Natwest division), Green Hot. West Chellow, Wantage, Oxon, OX129TN; and
- 4 Derek C Wylde of HSES Bank pic 8th Roor, 355 Chertwell Square. Southend on See, Comes 8599 200; and
- 5 Alexander Lectenby of Link Interchange Network Limited 4 Cardale Park, Backwith Head Road, Harrogate, HG3 1RY; and
- G Adrian Walker, Allen Mortisck, Michael Bird and Andrew Breiz of Diners Club International Service Centre - 1\* Floor, Dinara Club House. Kingamead, Fernberough, Hampshire GU14 75R.
- 7 Dr R J Anderson and Messrs MK Bond and R Clayton University of Cambridge, Cambridge.

Diners Club v A & V Singh February 2003-02-05

# STATEMENT OF RELEVANT ISSUES

- ı.
- 1.1. The Claimant is Diners Club SA (Pty) Ltd, a company duly incorporated and registered with limited liability according to the laws of the Republic of South Africa having its principal place of business at 35 Symons Road, Auckland Park, Johannesburg, Gauteng.
- 1.2. The Claimant is the Plaintiff in an action instituted before the High Court of South Africa (Durban and Coastal Local Division), (Case No 00/3156) against the Defendants.
- 2. The First Defendant in the aforementioned action is Anil Singh, an adult businessman who he resides at 1 Highway Place, Mobeni Heights, Durban, KwaZulu Natal who is also the First Defendant in the above action.
- 3. The Second Defendant is Vanithra Singh, an adult female of full legal capacity who resides at 1 Highway Place, Moberi Heights, Durban, KwaZulu Natal, who is also the Second Defendant in the above action.
- 4. The following are the issues in the aforementioned action which concern the taking of evidence in the United Kingdom. In summary:
  - 4.1. The First Defendant made application on 11th February 1997 for the Issue to him of a credit card ("the card") by the Claimant.

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- The First Defendant, simultaneously with his application, sought the 4.2. issue of a so-called additional card ("the additional card") in favour of and for use by the Second Defendant.
- 4.3. The Application was approved by the Claimant on 24 February 1997 and the card and the additional card were issued by the Claimant shortly after the approval had been given.
- The card issued to the First Defendant bord a card number (which incorporated the account number used by the Claimant for billing purposes) viz 361358226037 ("the card number").
- The card and the additional card were renewed and, more 4.5. particularly, in respect of the period from December 1999 to January 2001.
- On 16 February 2000 the First and Second Defendants signed application forms utilised by The Standard Bank of South Africa Ltd ("SBSA"), it being Issuer of Personal Identification Numbers ("PIN" or "PINS") on behalf of the Claimant, requesting the issue of PINs for their respective cards.
- Different PINs were issued to the First and Second Defendants for 4.7. use by them in conjunction, respectively, with the card and the additional card. The PINs were issued out of a so-called Auto E Centre (here)nafter referred to as "the Auto E") owned and operated by SBSA in Chatsworth, KwaZulu Natal.
- The last time that the card and/or the card number was 4.8. successfully utilised prior to the Issue of the PIN associated with the card was on 29 January 2000.

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- 4.9. Two unsuccessful transactions initiated by the use of the card and its associated PIN were undertaken at two different ATMs owned by Nedcor on 3 March 2000.
- 4.10. The two transactions attempted on 3 March 2000 were for an amount of R100.00 each.
- 4.11. During the period Saturday, 4 March 2000 to Sunday, 5 March 2000, a total of 190 successful transactions were effected in consequence of the use of the card, alternatively, a card bearing the card number in association with the corresponding PIN at various ATMs in London, United Kingdom, resulting in a total withdrawal of £54,960.00
- 4.12. The withdrawais were affected from ATMs owned by National Westminster Bank PLC, Abbey National PLC, HSBC Bank PLC and Lioyds TSB Bank PLC ("the acquirer banks").
- 4.13. The first of the ATM transactions in the United Kingdom took place on Saturday, the 4 March 2000 and the last ATM transaction, on Sunday, the 5 March 2000.
- 4.14. The card and the additional card were returned to the Claimant's offices in Durben on Monday the 6 March 2000.
- 4.15. The First Defendant has pleaded that his card was in his possession on the 4<sup>th</sup> and 5<sup>th</sup> March 2000 and that he did not allow anybody to make a copy thereof nor provide anybody with his PIN.
- 5. Both the Claimant and the Defendants have filed Notices and Summaries in relation to expert testimony of witnesses who reside and work in the

United Kingdom. The nature of the evidence, insofar as the Plaintiff is concerned, is directed at establishing and proving the security and Integrity of the systems employed in the 190 ATM transactions and involves evidence to be given by employees of the acquirer banks, the SWITCH organisations and Diners Club Service Centre in the United The Defendants, on the other hand, have filed expert summaries directed at attacking the security systems and attempting to demonstrate that not only were such systems capable of being violated but that the probabilities favour other persons involved in the various organisations having perpetrated a fraud. The Defendants' experts also challenge the integrity of the equipment utilised in the transactions.

6.

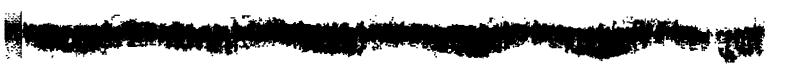
- On 21 February 2002 the claimant brought an application to the 5.1. High Court of South Africe (Durban and Coast Local Division) to seek the leave of the Court to take evidence of certain witnesses who are resident in the United Kingdom, ramely from :
  - 6.1.1. representatives of the acquirer banks; and
  - 6.1.2. the two switch organizations through which the electronic data passed, that is, Link Interchange Network Limited ("LINK") and Trensaction Natwork Services (UK) Limited ("TNS"); and
  - 6.1.3. Allen Mortlock, Adrian Walker, Michael Bird and Andrew Brett in relation to Diners Club International Service Centre.
- 6.2. The representatives of the banks concerned are, in the order in which the banks have been referred to above, William David Cummine, John Paul Clough, Derak Wylde and Kevin Davom.

- 6.3. LINK is represented, for purposes of the present case, by Alexander Leckenby and TNS, in its turn, is represented by Louise Markham.
- 6.4. It will be eppreciated from the facts hereinbefore set out that the nature of the evidence is peculiar to the operation of the systems in the United Kingdom, whether it be factual or expert, and is not available in South Africa.
- 7. Pursuant to this application and on 21 February 2002, the High Court of South Africa (Durban and Coast Local Division) granted leave to take the evidence of Allen Mortlock, Adrian Walker, Michael Bird, Andrew Brett, John Paul Clough, Derek Wylde, Kevin Davom, William David Cummins, Alexander Leckenby and Louise Markham on commission, a copy of which order is "Exhibit 1" hereto.

8.

- 8.1. On 19 June 2002 the defendants made application to the High Court of South Africa (Durban and Coast Local Division) for leave to take the evidence of Ross John Anderson, Michael Keith Bond and Richard Neil Clayton on commission.
- These witnesses are resident in the United Kingdom and the 8.2. evidence which the defendants wish to lead is of an experi nature and relates to the aforementioned transactions.

9.1. On 24 June 2002 the High Court of South Africa (Durban and Coast Local Division) granted leave to take the evidence of these witnesses on commission before Mr Justice Levinsonn and amended the prior order granted in favour of the claimant to substitute Mr Justice Levinsohn as the presiding commissioner, a copy of which order is "Exhibit 2" hereto.



- 9.2. Both the claimant and the defendants are agreed that Mr Justice Levinsohn should take the evidence.
- 10. The orders of the High Court of South Africa (Exhibits "1" and "2" hereto), were placed by the First Secretary (Administration and Consulate). Consulate Services of the South African High Commission before the Senior Master who, on 6 December 2002, wrote to the First Secretary, a copy of which letter is ennexed hereto marked "Exhibit 3".

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STATEMENT OF RELEVANT ISSUES

EXHIBIT "1"

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Room E117
Royal Courts of Justice
Strand
London
WC2A 2LL

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Tel: 020 7947 6105 Fex: 020 7947 6237

# From the Senior Master

First Secretary (Administration and Consular)
Consular Services
Cons 7/9/1;
South African High Communican
Trafalgar Square
London
WC2N 5DP

Dear Sir,

6 December 2002

Having read the order of the High Court of South Africa of 24 June 2002, I would be delighted to welcome Mr Austica Levinsohn to the Royal Courts of Fusion in London.

I have written to our Administration and asked them to endeavour to make suitable court accommodation available for the judge.

Please ask the judge to let us know when he anticipates to start the hearing and how many days he considers that it might last. The present indication is 3-14 March 2003 (see letter of 7 November 2002 from the South African Ministry of Justice).

The countrecen will be usually of the traditional form and I trust that Mr Justice Levinsohn will excuse us if we do not remove the Royal Arms from above his seat. However, he may well find that if local English counted are engaged he will be addressed as "My Lord" which greatly armsed an American judge who told me that she enjoyed being addressed as "My Lord" in place of the usual "Your Hodour".

Jour fully Brunes.

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TARICALONES

CASE NO \$156/2000 In the high court of south africa DURBAN AND COAST LOCAL DIVISION refore the honourable MR justice Levinsohn AT DURBAN ON THE 24 JUNE 2002

IN THE MATTER BETWEEN:-

DINERS CLUB (SA) (PTY) LTD

PLAINTIFF

AND

ANIL SINGH

FIRST DEPENDANT

VANITHA SINGH

SECOND DEFENDANT

Upon the Motion of Counsel for the Applicant and upon reading the Notice of Mation and the other dominants flied of record,

### IT IS ORDERED:.

- THAT the Defendants are hareby granted leave to take the evidence of the RICHARD NEIL CLAYTON on Commission before Mr Justice P Levinsohn as Presiding Commissioner, in England, United Kingdom.
- 2. That the relevant authority is England, United Kingdom is requested to take such steps as may be necessary according to the law of that country to seems the appoinment of Mr Justice P Levissohn as Prosiding Commissioner to take the evidence in England, United Kingdom, the shove court having been assistled that the evidence of the above mentioned witnesses is necessary in the interests of justing:

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04/02/03 17:05 FAI 797 2841

TARICABOWES

- That the United Kingdom is not required to beer the costs pertaining to 3. travalling and accommodation of any parsons attending the proceedings nor the costs parisining to the recording or transmission of the proceedings
- That the Order granted in favour of the Plaintiff to take the evidence on commission in Hugland, United Mingdom of the Witnesses identified in the said Order dated 21 February 2002 is smouded to substitute Mr Justice P Laviesche as the Presiding Commissioner (in paragraph 1 thereof):
- That the evidence of the witnesses referred to in paragraph 4 above shall **S**. be taken after the evidence of the witnesses identified in paragraph I shove, save that such evidence will be taken without projudice to the Definitions' right to object to such swidence being admitted.
- 6. It is ordered that the relevant surhority/authorities of the Republic of South Africa transmit this request to the relevant authority/suthorities in Bagind, United Kingdom.
- That the costs of this application, as well as the costs of the aforesaid 7. commission shall be costs in the cause;
- 8, In the event of the appointment of My Justice P Levinsohn as Presiding Commissioner not being accoded to by the government of the Republic of South Africa or of the government of the United Kingdom of any other person empewered to consent to seme, the parties are granted leave to Approach this Court for further relief.
- 9, That the costs of the adjournment of the trial for the week commencing 24th June 2002 are reserved.

19/02 '03 11:42 FAX 031 3047379 ADVKISSOON SINGH 233

04/08/00 17:08 FAX 787 4541

Taricanowes

That the costs of the commissioner, recording, transcribing and venue, if 10. any, shall be borne by the parties in equal shares but shall be costs in the ceuse as set out in paragraph 7 above.

BY DEDER OF THE COURT

R. NAIDU ACT. ASST. REGISTRAR

GOODEICKES (WO)

STATEMENT OF RELEVANT ISSUES

EXPERIT "3"

STATEMENT OF RELEVANT ISSUES

EXHIBIT "2"

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SCHEDULE A

Taricadowes

- 1 Kavin Davom
- John Paul Clough
- William David Cummins 3
- Derek Wylde
- Alexander Leckenby
- Louise Markham
- Adrien Walker
- Allen Mortlock
- Michael Bird
- 10 Andrew, Brett

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**BOT** 

the Examiner record or cause to be recorded the evidence of each of the wimesees so 2. examined as appropriate, according to the rules of practice of Her Majesty's High Court of Justice relating to the examination and excess-examination of witnesses.

- 3. the Examiner do:
- administer the oath or affirmation as the case may be to witnesses giving evidence; **(a)**
- when completed the recording of the testimony of witnesses be safely taken by him to **(b)** the Examiner's Court being the High Court of South Africa (Durben and Court Local Division) for transcription thereof.

Deted 11 February 2003

PROPH MEMORAN FEBRUARY

L03

TX/RX NO. 1892

78/02 .03 T4:57

Claim No.

IN THE BUGH COURT OF JUSTICES QUEEN'S MENCH DIVISION

MASTER TURNER - MASTER IN CHAMBERS

IN THE MATTER OF THE EVIDENCE (PROCEEDINGS IN OTHER JURISDICTIONS) ACT 1978

AND

In the matter of a civil proceeding now pending before the high court of south affica (durban and coast local division) between:-

DINERS CLUB (SA) (PTY) LIMITED,

Plabetti

V

(1) ANIL SINGE, (2) VANITHA SINGE,

Defendants

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

AND UPON HEARING Solicitors for the Flaintiff.

AND UPON READING the evidence filed and the Letter of Request (Letter Registry) dated 5th Fobruary 2003 from The Honourable Mr Justice Phillip Levissohn in the High Court of South Africa (Durban and Coast Local Division) from which it appears that proceedings are panding in that court and that that court seeks to obtain the testimony of the following witnesses:-

Kavin Davora, of Lloyds TSB Bank Flo, 71 Lombard Street, London ECSP 3B5

TX/RX NO. 1885

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WGM 020 7903 0990

**LTO** 

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

- 1. Kevin Davelri, of Lloyds TSB Bank Plo, 71 Lombard Street, London BC3P 3BS
- 2. John Paul Clough, of Abbey National Plc, Genesis House, 301. 349 Midsummer Boulevard, Milton Keynes, MK9 2JE
- 3. William David Cummins, of Royal Bank of Scotland Pic (Natwest division) Green Holt, West Challow, Wantage, Oxon OX12 9TN

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COLUMN DIAN FAME SILO DISHAPAN

IN THE HIGH COURT OF JUSTICE QUEEN'S BENCH DIVISION Claim No.

MASTER TURNER – MASTER IN CHAMBERS

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

AND

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

DINERS CLUB (SA) (PTY) LIMITED,

Plaintiff



06 LX/RX NO. 1886 P. 1-6-5-53

... W. W. TANE 'SC 48.08 14:06

- 18 FEB 2003 13:53

Flaintiff G.B. Woolhouse (1) Exhibits February 2003

Cialm No.

In the high court of justice Queen's bench division

MASTER TURNER - MASTER IN CHAMHERS

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

AND

IN THE MATTER OF A CIVIL PROCEEDING NOW PENDING HEFORE THE FIGH COURT OF SOUTH AFRICA (DUBBAN AND COAST LOCAL DIVISION)

BETWEEN

DINERS CLUB (EA) (PTY) LIMITED, a corporation

Plaintiff

(1) Anil Singe. (2) Vanitha Binge.

Defendants

This is the Exhibit marked "GEW1" referred to in the Witness Statement of Geoffrey Edward Woolhouse dated this 7th day of February 2003

AUSSENEELSEST SEPTEM MINERS ESTRES

PLT

TIVER NO. 1885

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### Statement of Truth

\*(i helieve)(The Applicant believes) that the facts exceed in Part C are true.

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(Austronti's Belleitstil's Lideaden friend)

Position of office held prompty

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18/02 '03 13:51 TX/RX NO. 1885

Claim No.		
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[i] [We] wish to rely on the following evidence in support of this application:

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order include
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their on which
testing you
identifying
any rule or
statulary
provision.

because(\*)

This application is made pursuant to Section 2 Svidence (Proceedings in Other Jurisdictions) ACL 1975.

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H	[ <b>W</b> e]	wish to	rely and	tisk ené ž	lak

the attached (witness statement)(silkissit) 🔀 💮 my statement of case 🛄

evidence in Fart C overleaf in support of my application

stigations for. Amengage and And issue: The same to same stigate of the of the same of t

Slaved

(Applicant)'s Scholory's Litigation friend)

Pasition or office held Malasing of Canadia of Irm or Canadia

Address to which documents about this sixim should be sent (including reference if appropriate)(4)

Andeliffeplehrusseur	İ		-		if applicable
5 Graat College Street Mastminster	<b>F</b>		fax no.	020 7232 6308	
				DX no.	nx 113 EDB
Tel. no. 530 7222 7040	Postoseis	SWLF	385	a-waji	

The sourt office of Mary and Justice, Strand. London, Wast Jin

is upon beaution 13 art and 4 gas (4.50pm in High Court Manday to Friday. When corresponding with the sourt, places address forest or letters to the Court Manager and letters transfer.

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A- blication Notice	In the
You should provide this information for living the application  1. How do you wish to have your application deals with	COMERN'S DENCK DIVISION -
a) at a hearing?	Claim no, originating application
b) at a telephone conference?	Warrent no.
2. Give a time estimate for the hearing/bonference (hours) (mine)	Claimant DINERS CLUB (6A) (PTY) LTD
4. Give dates of any tripl period or fixed trial date	Defendant(e) ANIL SINGN Unbluding ref.) VANITYA SINGN
d. Level of Judge Senior Master, QSD 6. Parties to be served N/A ex parte application	Dute

Note You must complete Parts A and B, and Part C If applicable. Sond any relevent the and the completed application to the court with any draft order, witness asserted to other avidence; and sufficient copies for service on each respondent.

#### Part A

1. Enter your full norms, or partys of uplisher. M [We](1) Radoliffeelegrasseur DINERS CLUB (SA) (FIX) LIMITED

Ion behalf of lithe Claimant lither Balandard

2. State charty what order you are employe and if possible attack a deats. Intend to apply for an order (a draft of which is attached) that(\*)
the several witnesses mentioned in the draft of the Order sought, (a copy of
the draft being attached) attend for examination before Mr. Justice Levinsohn
on the testimony required in the proceedings pending in the Migh Court of South
Africa (Durban and Court Local Division) between Diners Club (SA) (FTY) Ltd (the
plaintiff in those proceedings) and Anil Singh and Vanitha Singh (the
Dofondants in those proceedings).

This application, by Order of Master Furner dated 4th February 2003, is to be heard at 3.26 p.m. on Tanday 11th February 2003 on notice to the Solicipor for Dinera Club International,

white Streeth Made Server:

**L04** 

TX/RX NO. 1886

18/05 ,02 T4:08

- (a) the Letter of Request with its annexe; and
- (b) Statement of the Relevant Issues with its amounts;
- 4. It is proposed that each of the above witnesses be examined on oath (or affirmation if appropriate) in relation to the proceedings in which the Plaintiff (Diners Club (SA) (PTY)

  Limited has brought against the Defindants, Anil Singh and Vanitha Singh, in the High Court of South Africa (Durban and Couch Local Division) which Court is existed of the action between the parties and where the proceedings are being determined by Mr. Justice Phillip Levittecha and who is to be appointed as examiner for the purposes of taking the examination under the Order sought in the present application.
- 5. As Mr. Justice Phillip Lavinsohn is a Judge seized of the proceedings and appointed in South Africa, I have no doubt that he is a fit and proper person to take the examination and he is willing so to do.

#### Statement of Truth

I believe that the facts stated in this witness easterness are true.

Slewed ...... TA

GEOFFREY EDWARD WOOLHOUSE

Dated 7th February 2003

"EF02/03 10:30 PAR 787 2341

TARICABOMES

**@14** 

MAGD NO. 3456/2000 IN THE HIGH COURT OF SOUTH AFRICA DURBAN AND GOAST LOCAL DIVISION HREJRE THE HONDURABLE MR JUSTICE MAGIO AT DURBAN ON THE 21 PERSUARY 2002

IN THE MATTER PETWEEN.

DINERS CLUB SA (PTV) LIMITED

APPLICANT/PLAINTIPS

AND

SINGH, ANIL

FIRST RESPONDENT PIRST DEFENDANT

SINGH, VANITHA

SECOND RESPONDENT SECOND DEPENDANT

Upon the Metion of Counsal for the Applicant and upon reading the Notice of Motion and the other documents filed of record,

IT 16 ORDERED:

THAT the applicant be and is burely granted leave to take the evidence of the witnesses, whose identities are set full in a schedule annexed herete marked "A", before Adv. Author William Mark Harcourt as the Pendiasimus

2.

That the costs of this application, so well so the commission, he costs in the cause.

M. NAIDU ACT. ASST. REGISTRAR

Rowes & Turner inc C/a Goednattes (wo)

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