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



DURBAN

CASE NO 3156/00

DATE 2002/03/04

In the matter between:

DINERS CLUB (SA) (PTY) LIMITED

(PLAINTIFF)

and

ANIL SINGH

(FIRST DEFENDANT)

VANITHRA SINGH

(SECOND DEFENDANT)

BEFORE THE HONOURABLE MR JUSTICE LEVINSOHN

ON BEHALF OF PLAINTIFF:

MR P M M LANE SC WITH MR K J TRISK

ON BEHALF OF DEFENDANTS:

MR A K KISSOON SINGH SC WITH MR M W COLLINS

PROCEEDINGS ON 5 MARCH 2002 [Pages 93 - 211]

COPYRIGHT: TRANSCRIBER SNELLER RECORDINGS

ON RESUMPTION ON 5 MARCH 2002

ALL APPEARANCES AS BEFORE

LEVINSOHN J Yes, Mr Kissoon Singh.

MR KISSOON SINGH As M'Lord pleases. M'Lord, I call the first defendant to testify.

5

MR KISSOON SINGH CALLS

ANIL SINGH (sworn in)

EXAMINED BY MR KISSOON SINGH Mr Singh, you are the first defendant in this matter. Is the second defendant your wife? ---Yes.

10

15

And you are married to her according to the law of this country?
--- Yes.

How are you married? In community of property or by antenuptial contract? --- Antenuptial contract.

You must please speak a little loudly and, if possible, please address your answers to His Lordship. Right? --- Okay.

Now, what is your occupation, sir? --- I'm a businessman.

What type of business do you do? --- I'm doing eastern and western way. I'm an importer and exporter.

Do you also have retail outlets for goods that you sell? --- 20
Yes.

How many outlets do you operate at present? --- Six.

Did you have more in the past? --- Yes.

Do you presently have any of your retail outlets on the Natal North Coast? --- Yes.

25

Whereabout? --- In Stanger.

10

15

20

25

And was that outlet operating on the 3rd March 2000? --Yes.

Now it's common cause that you applied for and were issued with a Diners card and an additional card for your wife in about February 1997. --- Yes.

Would you please tell His Lordship how it came about that you made the application for a Diners card. --- A lady from Diners card came to the shop to enrol us in the business as a merchant and she asked us to fill this form up to apply for a Diners card for our personal use.

Now, having obtained your Diners card and your wife her Diners card, did either of you obtain PIN numbers for your respective cards until February 2000? --- No.

Now you main shop, retail shop, what name does it trade under? --- Avtar.

Spell that please. --- Avtar.

And where is that shop's place of business? --- At the Chatsworth Centre.

Do banks have branches at the Chatsworth Centre? --There's all banks there in the centre.

Standard Bank and Nedbank as well? --- Yes.

Do you bank at the Standard Bank, Chatsworth Centre? --Yes.

Are you well-known there? --- Yes.

Now, Mr Singh, as far as you could tell, did you use your Diners

Card from time to time from the time you received your card in

February 1997 until you obtained a renewal card? --- Yes.

LEVINSOHN J Did you say February 1997?

MR KISSOON SINGH February 1997, M'Lord. I'm just asking a general question from the time he got it, M'Lord, to show that it was used. I'm not asking specifically whether he used it in February.

LEVINSOHN J Yes.

MR KISSOON SINGH Now, Mr Singh, as far as your understanding of the way you operated that account with the plaintiff, how would you say you operated your account? Was it, in your opinion, a satisfactory way of operating it? --- It was excellent, excellent.

As far as you can tell, did the plaintiff ever have occasion to write to you to complain about the way you were operating your account? --- No.

Tell me, sir, does your business often take you out of the country on work? --- Yes.

15

10

5

Do you fly frequently or do you just fly every now and then?
--- Frequently.

Have you ever been to London? --- I've been to London when the plane broke down here. They put me on to a plane to go to London. I was just in the airport building in London about nine years ago.

20

Nine years ago? --- Nine years ago. That's the only time.

Did you not leave the airport building? --- No, I haven't.

LEVINSOHN J You were in transit, in other words? --- Yes.

MR KISSOON SINGH So you've never visited the City of London?

25

--- No.

Or even the United Kingdom, for that matter? --- No.

Now, I take it then that - what would you say to the plaintiff's allegations that you used your Diners card and your PIN number to withdraw all the cash that this case is about from ATMs in London?

--- I've never been to London, and my card was with me.

5

So on the days when the cash was withdrawn on the 4th and 5th March 2000 where were you? --- I was here in Durban.

And where was your Diners card? --- With me.

Did you ever give your PIN number to anybody else? --- No.

On that week-end of the 4th and 5th March 2000 where was your wife? --- She was here.

10

And all members of your immediate family? --- All here.

I take it you have your passport? --- Yes.

Would you be able to produce your passport to His Lordship?
--- Yes.

15

So that His Lordship could check what stamps there were. --Yes.

Do you only have one passport? --- Yes.

A document or a book is being handed to you. Is that your passport? --- That's mine.

20

<u>LEVINSOHN J</u> I take it you're not handing it in.

MR KISSOON SINGH No, M'Lord, we can just hand it in for perusal, M'Lord, and in due course we will make photocopies of every page and hand the photocopies in with the consent of my learned friend.

LEVINSOHN J Yes, well, then we'd better give it an exhibit letter.

25

That will be Exhibit H, and you'll put in some copies in due course.

EXHIBIT H - PASSPORT OF FIRST DEFENDANT

MR KISSOON SINGH Yes, M'Lord. M'Lord, my learned friend just indicates to me that copies of the passport were furnished to them by defendant's attorneys and it forms part of some of the documents in the bundle.

5

LEVINSOHN J So it's in the bundle.

MR KISSOON SINGH It may already be in the bundle.

LEVINSOHN J Perhaps we could just cross-reference it, Mr Lane.

MR LANE Might I be of assistance, M'Lord? The rule 35(3) was answered, M'Lord. Attached to the rule 35(3) should be the copies of the passport and that should be in Your Lordship's file.

10

15

<u>LEVINSOHN J</u> Yes. Anyway we'll call it Exhibit H for the sake of completeness.

MR KISSOON SINGH As M'Lord pleases. Now, Mr Singh, let's deal with events from the end of 1999. You've told us that as far as you are concerned your account was in good standing. Did you and your wife receive renewal cards from the plaintiff? --- Yes.

I take it you can't remember the exact date when you received those cards? --- No.

But it would be round about December 1999? --- Yes, I think 20 so.

And how did you receive those cards? --- I can't exactly remember if I picked up from the bank or it came by post.

When you talk about the bank you mean the Standard Bank, Chatsworth Branch, in the Chatsworth Centre? --- Yes.

25

Did the card come just on its own or did it come together with

10

15

20

25

other documents with it? --- I can't remember.

Now, as far as that replacement card is concerned, what did you do immediately you received it? --- I just took it off from the pack folder like that and I signed it and I threw the rest away.

LEVINSOHN J You took off what? --- I took the card off from the -it was stuck on a piece of board like, and I took it off from there and I signed the back and I threw the rest away.

MR KISSOON SINGH Did you use that replacement card? --- Yes.

Now do you hold other credit cards or charge cards or any other type of card like that? --- Yes.

From which financial institutions? --- Standard Bank, Nedbank, American Express, ABSA.

<u>LEVINSOHN J</u> Just give it to me slowly. Standard Bank, Amex. --- Nedbank and ABSA.

MR KISSOON SINGH Have you had these cards for a long time or are they fairly ...[intervention] --- Many years.

Now, until the year 2000 did you have any PIN numbers issued for any of your cards? --- No. Beside the ABSA. It comes with its own PIN.

Did you use that ABSA card with its PIN number anywhere?
--- No.

On the 16th February 2000 you applied for a PIN number for your Diners Club card. --- Yes.

How did that come about? --- There were some cards came from Nedbank so I went up to pick up those cards and the lady told me, "You know, you put your PIN in this card. It can help you

anywhere". So I did that ...[intervention]

LEVINSOHN J Slowly, slowly, Mr Singh. So 16th February you applied for a PIN. Where did you go to? --- To Nedbank.

What did the lady tell you? --- She told me I should put all my PINs on the card.

MR KISSOON SINGH All the PINs on your card or PINs on all your cards? --- PINs on all.

LEVINSOHN J You should obtain PINs for all your cards? --- Yes, and my wife's card.

MR KISSOON SINGH Was your wife with you at the time? --- No.

10

5

This Nedbank, is it also in the Chatsworth Centre? --- It's all there...

So did you then apply for a PIN for your Nedbank? --- As I walked down I did the same there at the Standard Bank.

What PINs did you apply for in Standard Bank? --- Both the cards, Standard Bank and Diners.

15

LEVINSOHN J What did the lady say to you about why you should have the PINs? --- She said it will help me if I've got no funds anywhere.

Help me if? --- If I've got no money anywhere. If I forget.

20

Did she say anything about overseas? --- No, we didn't talk about overseas.

Didn't speak about overseas. So then after you were at Nedbank you then decided it's a good idea, you'll go and get PIN numbers for your Standard Bank card. --- Yes, on my down to the shop ...[intervention]

25

And your Diners? --- Yes.

MR KISSOON SINGH Do you have to walk past the Standard Bank to get to your shop? --- Yes.

It's all in the Chatsworth Centre? --- Same.

So you went into the Standard Bank and you applied for PIN numbers for your Standard card and your Diners card? --- Yes.

And anybody else's PIN numbers? --- My wife's.

Let's have a look at the bundle A at page 42. It's plaintiff's bundle A, M'Lord, page 42. Do you see the form at page 42? --Yes.

Is that the application form you signed to get your PIN number for your Diners card? --- Yes.

That form has your Diners card number on it at the top on the right-hand side? --- Must be.

It's a number that says 36135828226037. Do you see that? ---. Yes.

Okay. And your signature is at the ...[intervention] --Bottom.

At the bottom. Now, who filled that form in for you? --- The lady at enquiries filled this form.

And you signed it? --- Yes.

This asked, according to the block right at the bottom for a reissue of your secret code. That wasn't correct. It was the first time you were getting it? --- The first time my code was given to me.

And that was ticked by the enquiries lady? --- Yes.

Or crossed, as the case might be. At page 43 do you recognise

10

5

15

20

25

10

15

20

25

that document? --- Yes.

What is that document? --- This is again applying for a PIN for my wife.

Did you also sign that? --- Yes.

Now I notice next to your signature are two places on that document. There's a signature which looks to me like being of a V Singh. Do you recognise that signature? --- Yes.

Whose signature is that? --- That's my wife's.

How did she come to sign this form? --- This form, I signed the form at the bank. Then the next day they sent this form to the shop for her to sign it.

Okay. Now look at page 44. Do you recognise that document?
--- Yes.

What is that? --- I think this is my other card.

Your Standard Bank card? --- Standard Bank.

And you signed that again? --- Yes.

And at page 45? --- I signed again.

Was it the same thing there about how your wife's signature came to be on that? --- Yes.

They sent it to the shop on the next day? --- Next day.

So she was not there with you when you applied for the PINs?

--- No.

Were the PINs issued to you at the same time? --- Same time.

Did you then get your wife's PIN for both the Standard Bank card and her Diners Club card? --- Yes.

LEVINSOHN J When you applied for the PIN did they want to look

10

15

20

25

at your card at all? --- I all the cards with me.

Yes, but did they take it from you? --- Yes.

They did take it? --- Yes.

So somebody at Standard Bank, Chatsworth, took your card in order to process your application for a PIN number? --- Yes.

MR KISSOON SINGH And your wife's card as well - they took it away as well? --- Yes.

Now, when you received the PINs how did you get it from Standard Bank? --- They gave me an envelope.

Do you perhaps have that envelope with you just to show His Lordship? --- Yes.

<u>LEVINSOHN J</u> Did you discover that, Mr Singh?

MR LANE No, there's nothing discovered. We haven't seen this document.

MR KISSOON SINGH Well, M'Lord, we won't hand it in. I won't even ask ...[intervention]

MR LANE. I would like to have a look at it, M'Lord. I may not object to it but I'd simply like to have a look at it.

LEVINSOHN J So perhaps - let Mr Lane look at it. But it's most unsatisfactory, Mr Singh. These are important documents, relevant to the case, producing this evidence and it's not discovered. What's the purpose of discovery if your attorney doesn't do it properly?

MR KISSOON SINGH | Lapologise, M'Lord.

MR LANE [Inaudible]

<u>LEVINSOHN J</u> Yes, certainly, Mr Lane.

MR KISSOON SINGH I apologise again, M'Lord.

10

15

25

MR LANE M'Lord, we won't object to these document being ...[intervention]

<u>LEVINSOHN J</u> It will be <u>Exhibits I and J</u>.

EXHIBITS I AND J - PIN ENVELOPES

MR KISSOON SINGH So that is how you get your PIN and you open the two parts and you see a number in the middle of it? --- Yes.

M'Lord, may we just hand it in?

<u>LEVINSOHN J</u> Yes, let me have a look at it. Yes, thank you.

MR KISSOON SINGH As M'Lord pleases. Now, those were issued to you on the 16th February 2000? --- Yes.

And did you then have occasion to use the PIN number and your Diners card - I'm forgetting about your wife's PIN number and Diners card, I'm asking about yours specifically - from the 16th February until the end of February 2000? --- No.

LEVINSOHN J Was the question whether he used the Diners card, not used it at an ATM?

MR KISSOON SINGH And the PIN number together, M'Lord, in conjunction. Now, on the 3rd March 2000 were you in Stanger at your store? --- Yes.

Did you have any of your cards with you? --- I had my card 20 with me.

Which card? --- The Diners.

Did you have occasion to use it? --- Yes, I used it in Stanger.

How and why? --- I went to draw out money because I didn't carry money and I put it in a Nedbank machine there ...[intervention]

Well, let's just take it step by step. Where is the Nedbank

10

20

25

machine that you used in relation to your store? --- It's not far away.

What does that mean? Across the road? --- Across the road.

100 metres away, 200 metres away? Can you give us an estimate? --- About 100 metres, I think.

About 100 metres away. How much did you wish to draw? --- R100.

Did you receive money from the machine? --- No.

Was the transaction rejected? --- Yes.

Now, that was the first time that you'd used an automatic telling machine? --- Yes.

Did you get money on that day from another source? --- I had to go back to the shop and pick up money.

Your shop? --- Yes.

Where were you going to from Stanger? --- I was going to the 15 airport.

Durban Airport? --- Durban.

Why were you doing that? --- I had to pick up Samantha.

Who is Samantha? --- Samantha is my friend's daughter.

LEVINSOHN J I just want to understand, why did you have to go to the ATM to draw money when your store is very close by and you could just take that out of the petty cash? R100 is neither here nor there in a store. — We don't touch the sales of any day. We don't take the money out from the till.

I see. --- Only in the afternoon the money is taken out.

But you're the boss. --- I've got a habit.

10

15

20

25

Yes. Anyway so you decided that you would go to the ATM but then you couldn't get money and then you went back to the store and got money? --- Yes.

So you broke your rule? --- I had to, because I had no money to come back, toll road.

Yes, yes, very well.

MR KISSOON SINGH So then you went to Durban Airport to pick up Samantha. --- Yes.

Did you have to pick her up at a particular time? --- Yes, she finishes at about 12.00, comes out at 12.15.

When you got to the airport were you waiting for her or was she there already? --- No, she was not there.

What happened then at the airport? --- I had some time so I went in. I saw the machine. I tried it again and it did the same thing.

So for the second time it was rejected? --- Yes.

<u>LEVINSOHN J</u> What sort of machine was that? --- It was an ATM. I think it was a Nedbank, I think.

Nedbank as well.

MR KISSOON SINGH Did it give you any sort of a message or instruction? --- I think it said "See your bank" or something of that sort.

So did you then collect Samantha from the airport? --- Yes.

Did you drop her off somewhere? --- I left her at home.

And what did you then do? --- I went to the shop and I went direct to Standard Bank there.

In the Chatsworth Centre? --- Yes. Three of us went to

10

15

20

25

Standard Bank.

Who were the three people? --- My wife, Pranil and I.

Who is Pranil? --- Pranil is a close friend of mine.

Does he have a surname? --- Pranil Singh.

So the three of you went to Standard Bank because of the problem with your Diners Club card having been rejected? --- Yes.

Who did you speak to at the Standard Bank? --- I spoke to the enquiry counter there.

You can't remember the name of the person? --- No.

And did you explain your problem? --- Yes.

What were you told? --- No, they phoned Diners card there from there and Diners told them they didn't receive payment.

What was your reaction to the allegation that Diners did not receive payment? --- No, I told them I made payments before the due date. Always my payment is done.

LEVINSOHN J How did you make payment? Did you make it through the bank or did you write a cheque out or what did you do? --- I can't remember if I made a cheque or cash but I got - I took a receipt from them.

MR KISSOON SINGH Did you pay it to the bank? --- I paid it to the bank.

Did you tell that to Standard Bank on that day? --- Yes, I think there's a receipt.

LEVINSOHN J When you say, "The bank", you mean Standard Bank?
--- Standard Bank.

Standard Bank are like their agents? --- Yes. If you do

10

15

20

25

anything it goes through Standard Bank.

MR KISSOON SINGH Now, did you remember at that stage who you had paid it to? --- Yes.

What was the name of the person you had paid it to at Standard Bank? --- Her name is Rumba.

R.u.m.b.a? --- R.u.m.b.a.

If you have a look at page 368 of the bundle, do you see a photocopy of a document there with a whole lot of handwriting? Just look at the handwriting. Just look at the preprinted form there. --Yes.

Is that the receipt you speak of? --- That's right.

It shows than an amount of R7 228,40 was apparently received by the Standard Bank on the 23rd February 2000. --- Yes.

Does M'Lord have it?

<u>LEVINSOHN</u> J Yes, I do.

MR KISSOON SINGH Was Rumba called by the enquiries clerk? ---

What were you asked to do by Rumba or by the enquiries clerk.

--- We phoned Diners from there and the lady said, "No, there's no payment due". So they told me to go and get the receipt. So from there I rushed home, brought the receipt and came.

Did the Standard Bank then find out what had happened to this payment? --- Yes, when they looked at it they found out what was wrong.

What was wrong? --- They had captured it incorrectly.

In other words, a wrong account had been credited? --- I think

10

15

20

25

they've got a suspense account or something like that, they were telling me.

You're not sure? --- I'm not sure.

But in any case the upshot of it all was that although you'd paid the money, for some reason or the other, Diners Club had not received payment for your account? --- Yes.

LEVINSOHN J That's very strange because you made the deposit on the Diners Card deposit slip and your account number and everything is there. So it must have been some real negligence in the Standard Bank, Chatsworth. Is that right? Because your account number is here and all the details are on this deposit slip, and I don't understand why didn't they capture it properly. But anyway, that's probably irrelevant.

MR KISSOON SINGH Well, it's common cause, M'Lord, that it was misallocated and that's ...[intervention]

<u>LEVINSOHN J</u> Oh, I see.

MR KISSOON SINGH It is common cause, M'Lord. The card was apparently blocked for domestic purposes according to my learned friend.

LEVINSOHN J Yes.

MR KISSOON SINGH Now, Mr Singh, did you have occasion then to speak to somebody from Diners Club from the Standard Bank's premises that afternoon? --- Yes.

This was now the afternoon of Friday, the 3rd March 2000? --- Yes.

Can you recall the contents of the conversation? --- Yes, I

10

15

20

25

phoned and asked them why my card is blocked. She told me no, I didn't pay anything towards the account and its gone on block. "But", I said, "I paid the amount".

Yes, and then? --- Then she told me - I told her I'm going overseas I need to use the card.

Were you intending to go overseas? --- Yes.

What else did you have a conversation with her about? --- I told her, "I need to use the card overseas". She said me, "No, we can do nothing with this. If you want, you can take R1 000 cash over the counter and it's late in the afternoon now. We don't work on weekends. We'll only lift the block on Monday and you can start using your card on the Tuesday".

Now what did you understand by that? Was your card going to be capable of being used at any establishment or at ATMs or anything over the week-end? --- I cannot use the card.

You cannot use the card only in South Africa? --- I cannot use the card anywhere.

Anywhere in the world? --- Yes.

<u>LEVINSOHN J</u> Is that what they told you? --- Yes, she told me the account is blocked.

Did she say you couldn't use it overseas? --- When I told her I'm going to go overseas she says, "No, you can't use it. Only on Monday I'll open the block and you can start using it from Tuesday".

Isn't the position that you can actually use a blocked card, you can use it overseas? --- I don't know.

And if you said to her you were going overseas then surely she

10

15

20

25

would have said to you, "It's all right, Mr Singh, we'll give you R1 000 local currency but don't worry, if you go overseas this weekend, you can use the card". Did she not tell you that? --- No, she told me my card is blocked. They'll only uplift it on Monday.

MR KISSOON SINGH Did you accept the offer of R1 000 cash over the counter? --- No.

Did you not want the R1 000 cash? --- I didn't need it at that stage, no.

Now on the morning of the 6th March 2000 did you experience a problem in your immediate family? --- Yes.

What happened? --- There was a hijacking at home at 7.30 in the morning.

Who was hijacked? --- My children were going to school, our children, and they were held up and pulled out the car and the car was taken away, and they crashed the car down the street.

<u>MR KISSOON SINGH</u> Did you then open your business at the normal business time that you normally open it? --- No, I think I went in about ten minutes late.

What time do you normally open your shop? --- At 10.00.

And after you got into your shop did you receive a telephone call from somebody at Diners Club? --- Yes, I received a call from Diners.

Yes, what was that person enquiring about? --- They asked me, "Are you in the country?". I said, "Yes, I'm talking to you". So they said, "No, we phoned at 8.30 here and someone told us you are

10

15

20

25

overseas". I said, "But we only open at 10 o'clock here so how could you speak to someone at 8.30?", so she just kept quiet. She asked me, "Have you got your Diners card?". I said, "Listen, I had a hijacking at home. I don't know if the card was in the car or if it's left on the table. I haven't carried it with me. I rushed and came to open the shop". She said, "Can you go and check where it is?", and I went.

Where did you go? --- I went home.

the card was still at your house? --- Yes.

Did you find your card at home? --- I found it on the table, on the dining room ...[intervention]

So it hadn't been taken away by the hijackers? --- No.

LEVINSOHN J Did she tell you why she was asking all these things?
--- No, she didn't ask me. I thought because it's blocked the weekend and in the hijacking somebody must have used the card.

MR KISSOON SINGH So I take it you were obviously relieved to find

Did you then phone the lady back? --- I phoned her from home and told her. Then she told me, "Can you go and hand the card in in Durban?". So she gave me the address and I went and I did that.

Did you ask her why you should hand the card in in Durban?
--- Well, I asked her. She said, "There's a problem with the card".

Did you ask her what the problem was? --- No.

Anyway, you went to the Durban office of Diners Club? --Yes.

Whereabout is it? --- It's in Greyville somewhere. One of the streets.

10

15

20

25

And what time did you arrive there? --- Just before 11.00, I think.

Who attended to you when you arrived at the Diners Club offices? --- There was a clerk sitting on a computer. I spoke to her.

Wrong it here, it's Mpumi.

When you say you wrote it here, where do you mean? --There's it here on the sheet.

On page 368. --- Yes, 368.

In the top left-hand corner? --- Yes, with the Durban phone number, Mpumi, and she told me what happened to the card.

She told me on the 5th in the United Kingdom there was R583 722,04 was taken out.

And you made a note of that? --- It's written here. I wrote it in my handwriting.

And what happened after she told you that? --- Then I told her, "How can that happen? Here's my card here". She says, "No, she's got a lot of cases like this that's happened".

<u>LEVINSOHN J</u> Just wait a bit. She said she's got a lot of cases like this that's happened? --- That's happened overseas.

So you say the person who told you this is this clerk, what's her name? --- Mpumi - M.p.u.m.u.i, I think.

She said there are a lot of cases like this that happened? --- I shouldn't worry about it.

MR KISSOON SINGH Were you allowed to continue with your conversation with her? --- No, someone there's someone came up

15

20

25

from the back and told her to keep quiet.

Did you meet a lady called Carla there? --- Yes.

Why did you have to meet Carla? --- Because she was a manager there, I was told, and then she took me into a room in the back and told me that there's a fraud on my card and don't worry, they'll sort it out.

Did you hand your card to Carla? --- I handed it to Mpumi at the desk, and I made her sign the slip here. You can see it written there, on 6/3/00 at 11 o'clock I gave her the card.

Whose handwriting is that? The words you are talking about is "Card handed Carla on 6/3/00 11-". --- Yes, Mpumi took the card.

Does M'Lord have the place? Page 368, M'Lord. It's on the centre of the page at the top.

LEVINSOHN J Yes, I see that, yes.

MR KISSOON SINGH So that was written by Mpumi? --- Mpumi.

Did you then leave? --- Yes, I left after that.

Did you get another telephone call later that day from Diners Club? --- Yes.

Or did your wife get a telephone call? --- No, I got a call.

Yes, what was that about? --- They wanted to know where my wife's card is and can I bring it across.

What was your response? --- I told them, "No, I'm not bring it along now. It's too late and there's heavy traffic. If you want, you pick it up or I will bring it in tomorrow morning".

Did you then take it in the next day? --- Next morning I took it in.

10

15

20

25

So your card was handed in, according to your evidence, at about 11 o'clock on the 6th March and your wife's card was handed in on the 7th March? --- Yes. There is a letter there from Diners that they received the cards.

Now, tell me, Mr Singh, were you ever told about whether your card had a limit on it or not? --- Yes, I was told there's a limit.

Who told you this? --- Authorization.

Authorization department? --- Yes.

At Diners Club? --- Yes.

Did they tell you what your limit was? --- R45 000.

<u>LEVINSOHN J</u> Is that one transaction? --- R45 000 - no on the whole card for the month. One transaction of R1 000 a day every two weeks.

MR KISSOON SINGH Sorry, don't get confused, please, Mr Singh. His Lordship is asking you was it for one transaction. Now you are getting confused. What was the R45 000 supposed to be? --- I can use it to purchase.

For the whole month? --- Yes.

And the R1 000, what was that? --- R1 000 every two weeks I can draw cash on ATM.

<u>LEVINSOHN J</u> Every two weeks? --- Every 14 days or R3 000 for the month.

On the ATM? --- Yes.

Who told you that? --- The authorization.

MR KISSOON SINGH Now, there may be a suggestion put to you that there was no limit on your Diners Club card. Do you disagree

with that suggestion? --- Yes.

Have a look at plaintiff's bundle, page 47. That's apparently a record of the plaintiff's computer printout with records of conversations of the 6th March 2000. Do you have the page in front of you? --- Yes.

5

If you have a look at the top of that page it shows a date of 6th March 2000. Do you see it in the middle of the page at the top? In the middle of the page, right at the top? --- Yes, 6/03/2000, that's right.

And underneath there's a time? --- Yes, 15:50.

10

Right. On the left-hand side of that do you see the account name of that? --- Yes.

Whose account name is that? --- A Singh, Mr A Singh.

And whose account number is that immediately underneath that? --- It must be my account number.

15

Do you see two lines down there, there's a word which says, "Credit limit". --- Yes.

What does that say? --- R46 359.

Credit limit of R46 359? --- Yes.

20

Do you see the next line or two lines down, I think, it says, "Balance of account at date of legal indicator raised R12 429,93"?

--- Yes.

LEVINSOHN J Where is that, Mr Singh?

MR KISSOON SINGH M'Lord, it's just two lines underneath the credit limit. On the left-hand side at the top of the page. It says, "Balance of account at date of legal indicator raised R12 429,93". Does

25

M'Lord have it? And next to it, it says, "Budget outstanding, nil".

LEVINSOHN J Is this now, "Account name, account number, date account opened. Open credit score, 0. Credit limit R46 000." Is that what you're referring to?

MR KISSOON SINGH That's so, M'Lord, and then, "Letter code".

Then, "Balance of account at date of legal indicator raised R12 429".

LEVINSOHN J Yes.

MR KISSOON SINGH So for whatever purpose it's there, Mr Singh, it appears as though there was a credit limit of R46 000 on your account. --- Yes.

M'Lord, just bear with me. I'd like to just get my copy of the document. I've highlighted certain portions on it. M'Lord, might I just ask leave to hand up my copy of the same page. I have highlighted something for Your Lordship's convenience which will be easier for Your Lordship to pick up.

<u>LEVINSOHN J</u> Yes.

MR KISSOON SINGH That's apparently - do you see at the bottom of the page, Mr Singh, there's a conversation there apparently - somebody has put some information into the computer. Do you see that? Dealing with what happened on the 3rd March. --- "Naude", the "Naude".

Just above that there is ...[intervention] --- "Samuels."

Samuels. Do you see it? There's a date there, 3rd March 2000, Samuels. --- Yes.

And then it says, "Misallocated payment of R7 228,40". ---

25

5

10

15

20

Yes.

"Handed query to back office." --- Yes.

Then there's an entry of "Naude". --- Yes.

It says,

"Member not prepared to wait till Monday for payment to be allocated. We made error and we must allocate. Told member not prepared to wait till Monday for payment to be allocated."

I beg your pardon, M'Lord.

"We must allocate. He wants to speak to manager. Advised to refer to Sandy/Lydia/Jacquie. On returning to phone member no longer on line. Have advised member will authorise R1 000 over counter at Standard Bank. Should this request be received for authorization please approve. Spoke to member, will sort out and he don't want to draw the cash. Was worried that he's going Monday to India and he will pick up problems. Told him will be sorted."

--- That's correct.

That seems to be in tenor with what you told His Lordship about your conversation, for what happened with the person from Diners Club. --- Yes.

What I note there from what has been typed there is that there's a note that if this request for R1 000 is received it must be

5

10

15

20

25

15

20

25

authorized. There is no note there that your card is unblocked, that you could go and use your card. --- Then why would I ask that

money then?

And if you look at the top of those entries you see the first one where account text is called Van Maastri or something like that. Do you see that at the top of that list, Mr Singh? On the left-hand side at the top, it's written there, "Van Maastri". --- Yes.

The eighth entry below that you see something called Moned? --- Yes.

Do you find the date? What date do you read on yours? --- 10
What is it 6/03/2000?

Account suspended, balance overdue. --- Yes, yes.

Did you receive statements from Diners Club from time to time?

--- Yes.

And in particular in relation to this - the crucial period or the critical period relating to this case there were statements which appear in the bundle in front of you from page 14. --- Yes.

Now those indicate on that first statement at page 14 that the cash advances were given to you in Bombay. Is that correct? Did you ever get cash advances in Bombay? --- No.

Did you spend that amount of money in Bombay? !--- Yes.

What was it for? --- For ...[indistinct]... payment.

Now, looking at the statements which follow over the next several pages until page 22 it appears to be transactions that were conducted by either you or by your wife. Correct? --- Page 22?

Up to 22. From page 14 to 21. --- Yes, that's correct.

10

15

20

25

But there were difficulties with one or two of those payments.

Isn't that so? --- Yes.

Sorry, with those statements. --- Yes.

If you, for example, have a look at the statement at page 21.

--- Yes.

It says on the 23rd February, Cathay Pacific Airways, Hong Kong, Hong Kong dollars and a South African rand amount. --- Yes.

Did you ever use it for such a disbursement? --- No.

What did you use your card for? --- I used it in Bombay to buy tickets, air tickets.

And the amount is obviously incorrect? --- Incorrect.

And you had correspondence with the plaintiff about that? --Yes.

Pointing out to them that you were being overcharged because you hadn't used your tickets in Hong Kong. --- Yes.

Sorry, your card to buy tickets in Hong Kong. --- Yes.

Then on page 22 the fourth entry on that page, "Int - cash advance/ATM/travellers cheques R7 108,99". Do you know anything about that amount? --- No.

Nothing at all? --- No.

Did you not buy travellers cheques on your Diners card or use it at an ATM to draw R7 000 or anything like that? --- No.

Tell me, sir, you being the main account holder, would any expenditure on your wife's card come debited to your account? --- It would come to my account after that.

Did your wife ever use her replacement card? --- Not to my

10.

15

20

25

knowledge. There's one more thing incorrect here - 14.

Yes, what is incorrect on 14? --- Cash advance. I've never taken cash advance. This was paid direct to the merchant and if a cash advances goes in, interest accrues from day one, and I'd written to them on that too. There ...[indistinct]... that account. So this is incorrect too. That shows you had to use your PIN to get a cash advance.

Well, whatever the ...[intervention] --- What date was this? But you say, in any case, you never received a cash advance? --- Never. And that's 1/08/99, and I've written to them on that I think.

You didn't have a PIN on that date, isn't that so? --- Ja, so how can it be cash advance.

Yes, all right. Now as far as you were given to understand, you did have a limit on your card? --- Yes.

What did you think, that that limit applied only to South Africa? --- No, it applied, everything on my card.

Did you have occasion when you wished to purchase for a large amount from Diners Club? --- Yes.

Using your Diners Club card? --- Yes.

Do you remember an instance when you wished to purchase a motor vehicle? --- Yes.

What did you have to before you could ...[intervention] --- I had to get a pay authorization.

So was it given to you, the authorization? --- No, they didn't give me what I wanted.

10

15

20

25

So you didn't use it? --- I didn't use it.

Let's go back to page 47. It's that telephone printout. There is a note there towards the middle under the - where Herman is apparently the person responsible, that you called to request the limit increased to R300 000 as you would like to buy a car. "Updated his bank code". Do you see that note there? --- Yes.

So now, Mr Singh, when you were issued with your PIN number was your attention drawn by Standard Bank to any specific conditions applying to the use of the PIN number? --- No.

Nothing. They just gave it to you? --- They gave it to me.

I take it you accept that if you had used your PIN number and your card to withdraw cash from any ATM anywhere in the world you would be liable for it? --- Yes.

And I take it you also accept that if you gave your PIN number to somebody to use it in conjunction with your card you would be liable for that as well? --- Yes.

What about if you didn't give your PIN number to somebody, and through some fraudulent means they obtained it, what do you say about your liability? --- It's not my problem.

Were you told about any changes to clause 7.3 of the original agreement? --- No.

Was your attention drawn to anything that had been changed? --- No.

If you had known that there was a change introduced to say that by the PIN being used by any person whatever you would become liable for that, what would your reaction have been? --- I'll

10

15

20

25

give my PIN away. I won't keep it - any of my cards.

You wouldn't want to take the chance? --- I won't take a chance. Not with what's happened now.

And at the time if you had known about it? --- I wouldn't.

You wouldn't have. M'Lord bear with me. I just want to check if there's anything I haven't led the witness on. Mr Singh, from time to time you have received statements from Diners Club indicating different balances that you owed them, particularly in relation to large sums of money. Let's talk from the time that the cash was withdrawn in London. You got a statement which said, for example at page B33 - not B33, M'Lord, page 33 of the bundle - that the total due was R613 300,55. Do you see that? --- Yes.

And then from pages B35 up to B37, 38, 39, the figure jumps into the R700 000s. --- Yes.

Various other things have been added to it at certain stages, legal costs, interest, and so on and so forth and additional debits. Do you see that? --- Yes.

If you go through the pages from 35 to 39. Do you have any knowledge of the transactions in London at the various ATMs on the 4th and 5th March 2000? --- No.

Nothing to do with you whatsoever? --- No.

Thank you, M'Lord, no further questions.

NO FURTHER QUESTIONS BY MR KISSOON SINGH

LEVINSOHN J Yes, Mr Lane.

MR LANE As M'Lord pleases. M'Lord, I see that it's almost five past.

LEVINSOHN J Do you want to take the short adjournment now?

MR LANE I would like to take the short adjournment now and recommence ...[intervention]

LEVINSOHN J You don't want to break the cross-examination. Yes.

COURT ADJOURNED

5

10

ON RESUMPTION

ANIL SINGH (under former oath)

CROSS-EXAMINED BY MR LANE As Your Lordship pleases. Mr Singh, perhaps I could get some of the easier aspects over early on. In the preparation for this matter, do the pleadings, leading up to the trial, did you work closely with your attorneys and counsel? --- Whenever they required me, I was there.

So for important ...[intervention]

<u>LEVINSOHN J</u> Slowly, Mr Lane.

15

MR LANE Sorry, M'Lord. So before the plea was filed - do you know what the plea is, Mr Singh? --- The statement I made.

The defence. Perhaps I could show it to you. M'Lord, with your leave I will hand to the witness an unmarked copy of the unamended plea. --- Yes.

20

You recognise that document? --- Yes.

That's the plea that was filed. Were you consulted before that document was filed? --- Yes.

Mr Singh, equally, when the pre-trial conference - just preceding the pre-trial conference which was held on the 12th February this year, two documents were filed on your attorneys. M'Lord, these

25

10

15

20

25

appear in the pleadings bundle at pages 69 and 77 respectively. In these documents, Mr Singh, various questions were asked concerning issues arising out of this case. I'm going to hand you - I'm going to let you have a look at my copy, the unmarked. If I might, M'Lord, just hand him my copy of these. If you page your way through that document, Mr Singh - just have a look at it - you'll see attached to it a copy of the application form marked T1, T2. That's the first 37(4).

Yes. Do you recognise that? No, do you recognise the document? That's notice. --- Yes.

The court pleading, as it were, Mr Singh. --- Yes.

Do you recognise that? Have you seen that document before?
--- I have seen a copy but not so good copy.

Mr Singh, I'm asking if you've seen that whole document that you've paged through. You see that whole document that you are now paging through? --- Yes.

From the beginning to the back. Have you seen that document?
--- Yes.

If you carry on paging through you'll find another document like that. It's also got 37(4) on it. Do you see that? --- It's page 77?

Yes. Just page through. Have you seen that document? --Yes.

And were you consulted about the answers that were requested in relation to those documents? --- Yes. I remember that now.

May I have that back? Mr Singh, I'll return to those documents in a moment. Mr Singh, from your evidence I had the impression that

10

15

20

25

you've been in business for some time. --- Yes.

You are used to contracting? --- Yes.

Did you enter a lot of contracts? --- No.

Do you understand the principles behind a contract? That someone offers you and you make an acceptance or vice-versa. In other words, it's a formal document recording what you've agreed and what you can expect of someone. --- I don't understand the fine prints.

What do you understand?

<u>LEVINSOHN J</u> Just wait a minute. You say, "I don't understand the fine prints"? --- Yes.

In other words, you know that there are occasions when you are going to be presented with a document that's got a lot of fine print on it? You've seen that? --- Yes.

You don't really understand the legal but you know that that's intended to be contracts which is intended to bind you. Isn't that right? --- Yes.

Yes. And it often happens in the business world that they give you, like, for example, if you order goods from a company and they give you at the back of the invoice a whole lot of fine print, they're intending to bind you, aren't they? You may not understand it all. You may not bother to read it because you're busy but that's what the intention is and you, as a businessman know that, hey? --- Most of the time I don't read it.

MR LANE Thank you, M'Lord. So going back to February 1997 then, Mr Singh, when Mrs Ribeiro brought the application into your

3156/00-NB/CD

business, can you tell me what happened? She gave you the application? --- She came to sign us on as a merchant and she told me, "Why don't you apply for a Diners card?". I said, "Fine, we'll apply". She filled the particulars and we just signed for it and she was gone.

5

Who gave her the particulars? --- Yes.

You did? --- Yes.

M'Lord, might I have the original exhibit of that document? <u>LEVINSOHN J</u> Is it in the file here?

MR LANE I think it's Exhibit D, M'Lord.

10

LEVINSOHN J Yes, just take the whole file with you.

MR LANE Now, that's the application form. Will you open it up, Mr Singh? Now, you see where your signature is? --- Yes.

[Water bottle knocked over] M'Lord, I thought floods only happened outside court.

15

20

<u>LEVINSOHN J</u> Well, it tends to put a damper on the proceedings.

MR LANE Never trust one's junior, M'Lord.

<u>LEVINSOHN J</u> No, it's a bit of an occupational hazard. We've seen it happen before.

MR LANE Now Mr Singh, I'm working off a copy and not the original so I would like you to look at the page which has on the left-hand side where it has the words, "When words fail you, the Diners Club Card is one of the more succinct ways of making a statement". Now,

Mr Singh, does your signature appear on the front of that page? ---

Which one are you talking about?

25

Yes, that's the one. Is your signature on that page? --- Yes.

10

15

20

25

The details you gave to Mrs Ribeiro. Could you go over the page? Turn it over. Does your signature appear on that page? ---Yes.

And what is to the right of your signature? Are there general terms and conditions, on the right-hand side of that page? --- This small print here?

Yes. --- Yes.

And would you look above your signature? --- Yes.

Do you see the words just above your signature?

"I hereby apply for a Diners Club card subject to the terms and conditions printed hereon, which I have read and accepted!"

--- Yes.

Did you bother to read that? --- I didn't.

So when you signed this document what did you think you were signing? What did you think was on it? --- I was just signing to get a card.

Now in paragraph 3.4 of your plea. Would you get your plea in front of you? I handed you a copy. M'Lord, at page 42. Do you have page 42, Mr Singh? --- Yes.

M'Lord, hopefully, your pleadings now accord with the pagination. We updated it.

<u>LEVINSOHN J</u> No, but not with the latest amendments. I don't see[intervention]

MR LANE No, M'Lord, the amendment isn't inserted yet. This is the old pleading, M'Lord, and this is one of the passages that had been

10

15

20

25

amended.

<u>LEVINSOHN J</u> I've marked here on 42 that there are some amendments.

MR LANE That is so, M'Lord. 3.4, Mr Singh. I want you to look six lines down, starting with, "And, in any event". Do you have that?

--- Time that same.

"And in any event, neither defendant was shown a copy of any conditions." Do you see that? --- Mm.

So it says,

"In any event, neither defendant was shown a copy of any conditions applicable to the said written application nor were any such conditions signed by either defendant, and consequently the defendants deny that the said annexures were part of that written application made by the first defendant, and put the plaintiff to the proof thereof."

That's not correct, is it? --- It's correct.

Mr Singh, it's not correct. I've just shown you the document, and your signature is to the left of the very terms and conditions.

They were there in front of you. This statement is not correct, is it?

--- That's right.

Sorry? --- It's not correct.

That's right, it's not correct. --- I signed that.

Yes, so this is not correct. --- No, I signed that.

Mr Singh, you've already made the concession. I'm not going

to repeat my question time and time again. Why did you tell your legal advisers, your representatives, that in any event you never shown those conditions? Why did you instruct them that? --- I wasn't shown any conditions. I was given the form to fill it and just signed and gave it.

5

10

Would you show the witness that form again. --- I saw this.

But what are on those forms, Mr Singh? Are they terms and conditions? --- But I didn't read it.

Mr Singh, you make a positive statement here? You say you were not shown them. Not that you didn't read it, not that you have no knowledge, you say, "I was not shown them". Now that is not correct. I want to know why you instructed your attorneys that you were not shown them. --- I believe a legal document must be initialled every page. I had to know.

Oh, so we are going into formalities now? --- No, no, that's what I thought. Whenever I signed a lease, I signed every page.

What's that got to do with the statement, Mr Singh? --- I thought it's general law.

LEVINSOHN J You know, Mr Singh, you as a businessman, you go into a parking garage and the attendant hands you a ticket. You've seen those tickets. It's got plenty of conditions at the back which is intended to bind you and you are liable. You are bound. When you go into the parking garage and you park your car you are bound by those conditions, and there are big signs up that say they are not responsible. You don't sign that but you're bound by it. This is the same thing, isn't it? You knew there were conditions here. You must

20

15

25

10

15

20

25

have known. Is that right? --- Yes.

MR LANE Thank you, M'Lord. Would you hand the witness this document? M'Lord, I'm handing to the witness a copy of the small bundle which is Exhibit B, M'Lord. Would you go through that document? It's the third document. It's the minutes of the pre-trial conference held on the 7th February 2002. Do you have that? Do you have the minutes? --- Pre-trial conference, yes.

Yes, you have that. Just move the other documents. If you undo the clip, Mr Singh, you can move those documents. Now, I want you to go to the annexure to that document, Mr Singh, PTC2 and PTC3. Now, Mr Singh, I want you to open PTC3 for the purposes of this question because it's the last word that's given. Now, Mr Singh, were you aware that at the pre-trial conference, were you told by your legal advisers that the original of the application that's Exhibit D was presented for their inspection? --- Yes.

And that they compared Annexures T1 and T2 to that document? T1 and T2 you will recollect I showed you earlier are the two annexures which are attached to the rule 37(4) notice, the first rule 37(4) notice. Do you remember that? --- Yes.

Now, if you'd just look at PTC2 to begin with. --- At 1.4.

No, PTC2. Do you have PTC2 in front of you? You'll see on the right-hand corner of the page, the letters PTC2. Do you have it, Mr Singh? --- Yes.

Now, that letter was written on the 12th February 2002? ---Yes.

I want you to look at paragraph 1, at paragraphs 1.1 to 1.3, and

at paragraph 2.1. --- Yes.

Now, those are answers which are asked in relation to Annexures T1 and T2, the application, both sides. The response that is given in PTC2 is,

"On the face of it defendants cannot deny same. However, the original documents are requested as Annexures T1 and T2 are illegible."

5

10

15

20

25

And 2.1,

"The defendants admit that Annexures A1 to A3 constitute the application form but do not admit Annexures A4 to A7."

Now why was that, Mr Singh? Why were you not prepared to accept the inspection by your legal representatives of the contract? --Because I couldn't see a clear copy of it.

No, that's not my question, Mr Singh. Your legal representatives had seen a copy. They had inspected it. --- I want to satisfy myself to it.

So you are not prepared to accept even your senior counsel's

word on that issue?

LEVINSOHN J Can I help you, Mr Singh, because I think I know what your thinking was. Your thinking was that you admit that you signed the application form but you didn't want to admit that all those other fine print formed part of the contract. You didn't want to admit that. In your own mind that's what you thought. You refused to admit it.

Is that right? --- That's right.

3156/00-NB/CD

Am I summing up your thinking correctly? --- Ja.

You admitted you signed the document but you didn't want to conceive of a situation where you were binding yourself contractually because you didn't think there was an agreement. Is that right? ---That's right.

5

MR LANE Right, Mr Singh, let's move to the card pack, the renewal in December 1999. You say that you can't recollect ...[intervention] --- That's right.

... the events of that. You don't know whether you picked them up or whatever. Do you know, and you're not certain as to in what form they were received by you? --- That's right.

10

Now, would you look at the bundle there, page 8? This is Exhibit E, M'Lord, as the original of this document. Now, Mr Singh, if you'd like we can look at the original but this is the content of a card pack which was used at and around the time that your cards were issued to you. Now that was never really challenged by your counsel and I assume that you accept that. --- I can't remember this.

15

M'Lord, I'm sorry, might I ask Your Lordship for Exhibit E? LEVINSOHN J Exhibit E. Here it is.

20

MR LANE Now would you look at that document. --- Yes.

Do you remember that document? --- Yes.

You see, that's the pack the card was sent in to you. remember.

Do you agree with that? --- Yes.

25

Yes. Inside the card ...[intervention] --- The card is stuck

10

15

20

25

here. You just pull it off.

LEVINSOHN J Yes, but when you look at it, it's like getting a letter from Diners Card. They're telling you, "Here's your card", and there's all sorts of writing on that. Did you read that? --- No.

Why not? --- I just took it off, signed it and ...[incomplete] You signed the card? --- I signed the card.

So you were prepared to accept that you now had a card, a new card, renewed for a further period of time? --- That's right. MR LANE Did your wife do the same? --- Yes.

What did you do with your old cards? --- I cut it up.

Now, obviously when the problems arose in March 2000, 6th March 2000, you would have been then interested to know what your liability would be contractually. Is that correct? --- No.

Not. So would you look at page 50 of the bundle? Do you remember receiving this letter? --- Yes.

Now, if you look just below the sub-paragraph 7.3, you will see in the brackets,

> "A copy of the terms and conditions is enclosed for your perusal."

Did you read this letter? --- Yes.

Immediately? --- Yes.

Now the terms and conditions were, in fact, discovered by you and appear at 371. They were annexed to that letter in the bundle at 371. This is your discovery, the document which appears as DD24 -defendants' discovery 24, item 24 in your discovery. Let me tell you why, Mr Singh, we know that this was the terms that were annexed,

10

15

20

25

is that there is a note, unfortunately fairly - it hasn't come out well in the photocopy - on 572 - 372, M'Lord, my apologies. M'Lord, I will get a better copy and I will ask you, Mr Singh, just to accept my word because I have read it. That note simply says that these are the terms and conditions which were annexed to the letter of the 16th March 2000. I just want you to accept that. --- Okay.

I will find that document, M'Lord. Did you bother to read those terms and conditions then? --- No.

So, Mr Singh, when you get your - yes, M'Lord, I have a copy now which is only just legible, which confirms the statement. You can see it if you like, Mr Singh. I did say that I would show it to you. Yes, you're satisfied, Mr Singh? --- Yes.

Good. You get, according to your evidence, you get the pack during December - that's the card pack. You take out the card. You sign it. You cut up your old cards. You tear up the card pack and whatever other documents were with it and throw them away. Is that correct? --- I didn't tear that pack. I just ...[inaudible] ...[intervention]

Okay, and the other documents? --- All, I threw it on the table.

Threw it away. On the 16th March when you get another copy of the contract, the terms and conditions, you don't read them. So really it was of no concern to you at all what the terms and conditions of the usage of your card was? --- I knew what to do with the card. I knew the card was with me.

That's not my question, Mr Singh. The question is it was of no

10

15

20

25

concern to you what the terms and conditions were of the use of your card? --- That's right.

Now let's move to another area, and this is the issue of the PINs. Now you've given evidence, Mr Singh, of the events of the 16th February. Do you remember those events? --- Yes.

You have a clear recollection of them? --- I should.

Sorry, I didn't hear you. Did you say, "Sure". --- I said should.

Should or sure? --- No, I should have a clear ...[intervention]

You should have. That's not an answer. Do you or don't you?

--- Well, I have a good recollection of what happened.

Yes, well. I'm going to read it - M'Lord, I'm now going to refer

to the pleadings bundle, to the 37(4) notice. It's at page 77 and following, and if I could ask Your Lordship ...[intervention]

LEVINSOHN J This is the further notice in terms ...[intervention]

MR LANE That's the further notice, M'Lord, yes. Now, if we could ask Your Lordship to look at the small bundle, Exhibit B, page 2 of that bundle, PTC2, page.

LEVINSOHN J Admissions?

MR LANE No, M'Lord, sorry, it's the rule 37 conference minute and then it's Annexure PTC2 to that, the second page of that.

LEVINSOHN J It's a letter from the attorneys?

MR LANE Letter from the defendants' attorneys, that's correct, M'Lord, and it's a response to the questions raised at the 37(4). Now I'm going to read it to you, Mr Singh. The question asked was,

"The plaintiff requires defendant to admit that,

- 1.1 Their respective PINs were issued to them on 16th February 2000.
- 1.2 There had not been any prior or subsequent issues of the PINs to them."

The answer to that is,

"Defendants cannot admit same as they cannot recall this. Defendants cannot recall this information."

LEVINSOHN J Where is this now?

MR LANE At page 2, M'Lord, paragraph (b), sub-heading (b).

LEVINSOHN J Oh, yes.

MR LANE It's there, M'Lord, and you see the second 37(4) notice dated 5th February 2002, and it's the first answer, M'Lord.

<u>LEVINSOHN J</u> Yes, well, what do you say about that, Mr Singh? --- No, I recall that.

Why was your side so evasive? That was a straight-forward question. "Were respective PINs issued to them on the 16th?". You just say, "Yes". --- Yes.

Well, why do they say, "Defendants cannot admit same as they cannot recall this"? --- I don't know.

It's untruthful, isn't it? --- That's right.

MR LANE Thank you, M'Lord. Then if you would look at paragraph 3. I'm afraid you can't, Mr Singh. I'm going to read it to you. Because it deals with another element which, when we come to deal with the use of the card on the 3rd March.

"The plaintiff requires defendant to admit that,

5

10

15

20

25

The first defendant's card and associated PIN was used on two occasions on 3rd March 2000 at ATMs owned by Nedcor Bank."

The answer to this is,

5

"First defendant admits usage of the card and associated PIN but cannot recall whether the ATMs were owned by Nedcor Bank."

Do you remember that answer? --- Yes.

10

Now in your evidence today you've told His Lordship that they were Nedcor machines. Do you remember that? --- Yes.

And that this machine is a mere matter of 100 metres away from you shop in Stanger. --- That's right.

So again this was not truthful? --- That's right.

15

Now, Mr Singh, you told His Lordship that you went to collect your card at Nedbank. --- Yes.

On the 16th February. --- That's right.

In order to get to Nedbank do you go past Standard Bank? ---That's right.

20

25

Were you also collecting your wife's card from Nedbank? ---Yes, the both cards come together.

Now what did you take with your in order to collect your cards at Nedbank? --- I took her pouch and my pouch in it.

Pouch, what's pouch? --- Where is all our cards and IDs. LEVINSOHN J Oh, you keep a sort of a wallet where you've got all

10

15

20

25

the cards. --- Yes.

MR LANE Yes. So you took those with you? --- Yes.

Right. Now perhaps you could just repeat your evidence regarding what Nedbank told you. What did they tell the reason for the advisability of getting a PIN was? --- She told me to put my PIN on the card. Whenever I need cash then I can use it and draw it off.

Did you not know that before you went to Nedbank that morning? --- There was no need for me to draw any time at cash.

That's not my question, Mr Singh. My question is did you not know that a card with a PIN could be used for drawing cash? --- I knew that.

So, Mr Singh, it came as no revelation to you suddenly on the 16th February that you now had this wonderful service that you could draw money? Is that correct? --- Well, I took her advice, the banker's advice.

No, Mr Singh. You were told something you knew already?
--- Yes.

So you proceeded from there straight to the Standard Bank?
--- On my way, to Standard Bank.

Why the urgency? --- Well, it was on my way to my shop.

But why suddenly now on the 16th February did you go into the Standard Bank to now go and draw your PIN? --- If I did there, let me do it all over.

LEVINSOHN J So the ones where you didn't have a PIN is - Nedbank you did have a PIN and the two ...[intervention] --- Standard Bank.

Standard Bank ones - the Standard Bank card, the other one is

Diners. Were there any other cards that you had that didn't have PINs? --- American Express.

Did you go and get a PIN for that too? --- Same, it was done at Nedbank at the same time.

So that was two there - a Nedbank card and American Express.

They operate as the agents for American Express, Nedbank? --- Yes.

MR LANE Then, sorry, Mr Singh, you fortunately had your wife's cards with you so you went to the Standard Bank. Can you remember approximately what time you got there? --- No.

Was it early in the morning, mid-morning, after? You're shaking your head. Unfortunately, it doesn't come on record. --- No, I can't remember the time.

Well, Mr Singh, we have records to show that it was approximately 10.30 that you arrived at the bank, Standard Bank in Chatsworth. Would you dispute that? --- No, I can't.

LEVINSOHN J You won't. Yes.

MR LANE Now, as I understand your evidence, you went to the reception desk and asked for your PINs to be issued to you. --That's right.

The persons responsible for the issuing of cards, the supervisor in charge that day was a Mrs Marimuthoo. Do you remember that name? --- No, I don't.

<u>LEVINSOHN J</u> Maybe you know her first name. --- No, I don't remember that lady at all.

MR LANE She declined to issue your PINs. Do you remember that?

25

5

10

15

20

--- No.

10

15

20

25

She would not issue your PINs that day or at that time. --- No.

She is going to give this evidence, Mr Singh, so I want you to think very carefully about your answers and we have - and I will show you the proof in a moment as to why that happened.

LEVINSOHN J Anyway, she said not prepared to issue the PINs?

MR LANE That is so, M'Lord.

LEVINSOHN J Is that what you're putting to him?

MR LANE Yes, M'Lord. --- I know there was some problem there and they called the manager in.

Well, now you recollect there was a problem. What problem was that? --- They wanted someone to identify me, I think.

Are you sure about that? --- Yes.

You didn't bring your ID with you? --- My ID book is always in my pocket.

Didn't you show them your ID book? --- I can't recollect that.

When you say you can't recollect do you mean it didn't happen
or it might have happened? --- It might have happened.

Yes. Let me understand your evidence. You're a customer of the bank and you go to collect your Standard Bank card, Mastercard, as well as your Diners Club card and you're treated like that?

MR KISSOON SINGH The witness didn't say he went to collect the cards, M'Lord. He went to ...[inaudible] ...[intervention]

MR LANE You're quite right, the PINs, the PINs. You're absolutely right. My learned friend is absolutely right. The PINs. And they treat you as if you are an absolute stranger? --- When the junior clerks are there, they don't know me.

10

15

20

25

Really. You see, Mr Singh, that wasn't the problem at all. The problem was that the computers in the banks - in the bank - in Standard Bank, Chatsworth, had experienced a problem. Do you recollect that? --- No.

Not at all? --- They had no problem because they took me to the ATM.

Yes, they took you to what is referred to as the Auto-e centre ultimately. Is that right? --- I don't know what is that.

Auto-e is a special service rendered by the Standard Bank. It's a centre. It has its own machines and its own issuing sector. You don't recollect any of that, that you walked out to a special centre to go and get it? --- I walked out by the ATM machines.

Yes, round past the ATM machines. Well, you must think very carefully about this, Mr Singh, because again Mrs Marimuthoo will give this evidence and will be supported by Mr Pat Moodley and Mrs Ramadu that you were unable - they were unable in the bank, the machines which they use for the issue of Diners Club and Mastercard PINs are in the bank premises, not in the Auto-e section. --- I don't know that.

Ja, I'm telling you. And that you were told that the PINs, because the bank machines were down, those situated in the bank itself, they were down, you could not be issued with your PINs. You were told that. --- No, I was not.

That you got agitated, that you were cross, and you insisted upon your PINs being issued to you. Do you remember that? --- No.

And that eventually they got hold of Mr Pat Moodley. --- But

10

15

20

25

Pat was there. He was at ...[intervention]

Yes, just wait for His Lordship to write it down and then I'll come to that. Then Mr Pat Moodley was called because of your agitation and that he came down and met you at the enquiry desk.

--- No, Pat met me in the bank, in the banking hall because they wanted to identify me and issue PINs for my wife.

What has Mr Moodley's presence got to do with issuing PINs for your wife? --- Because they didn't want to give her PIN number to me.

So did Mr Pat Moodley assist you in getting her PIN number given to you? --- He signed - I think counter-signed that form or something.

And he accompanied you to the Auto-e to get your PINs, didn't he? --- No, I think it was a girl that accompanied me.

Mrs Ramadu and Mr Moodley went with you. That will be his evidence. --- No, I think there was only one girl that came with me.

Mr Singh, think very carefully because there is evidence, and direct evidence on this. --- But I think there was only one person there.

So you say Mr Moodley didn't go with you? --- Pat helped to sign ...[intervention]

If he says he did, he's lying. Is that right? --- There was one person there only at that stage I think.

I see, and when the PIN operator, who happened to be a Mrs Ramadu - do you remember that name? --- I don't know their names.

Did she have a supervisor at all during the course of that transaction? --- At the beginning there was two ladies in the banking hall but when they came to the outside there was only one there I remember.

At the machine. I'm talking about at the machine when they were operating to get your PIN. Was the operator not present? --- I can't remember that but I remember it was one person with me.

I'm asking you was her supervisor not called to insert her card into the machine in order to facilitate and authorise the issue of your PINs? --- I can't remember.

You can't even remember that. And you're absolutely certain that Mr Moodley was not with you? --- He was in the banking hall with me.

When the PINs were issued to you? --- I'm not certain about that.

You're not certain about it or are you saying it might be or it was not? I want to know because he's going to give the evidence, Mr Singh. --- I'm not certain about that.

You're not certain about it. So he might have been there? --He might have been there.

Well, he will say that he was. Now, you spoke about the PIN being taken from you - sorry, the card being taken from you, apologies. Now, just let's get a description of the centre. It's an open-plan office, correct, where this machine is situated? --- Yes, it's open.

There are a number of people working in that office? --- In the

10

15

20

25

machines, no.

In the office where this transaction took place. There were a number of people working there. --- The machines?

Where the PIN was issued to you. Where that ...[indistinct]... computer is situated. It's an office, not out in the ATMs, it's in an office where other people are working. --- No, no, it's outside. It's an open area. It's not an office.

5

10

15

20

25

So you say it was issued at an ATM machine? --- The ATM machines are there and on the side they have people sitting there and working.

Yes, there's a little office on the side. --- It's not an office. It was an open area.

An open area on the side. --- Yes.

And that machine is situated in that open area, the machine which issues the PINs. --- I don't know if it issued the PIN there or out because I signed the form and they gave me the envelope. I don't know where it was issued. Inside or outside, I can't remember.

You didn't see the operator? --- I didn't see any operator. The envelope was given to me.

By whom? --- By one of the ladies.

Let's get this absolutely straight. Which lady? The lady who accompanied you or some other lady? Which lady? --- I can't recall that.

Well, I am now somewhat confused, Mr Singh, as to what happened. According to you, you went to the reception. Let's just try and trace it slowly. You went to the reception and you asked to

15

20

25

have your PINs issued to you. You say there was some problem with your identity. You say that Mr Pat Moodley happened to be there ...[intervention] --- No, they called him.

They called him to identify you? --- Yes.

Having identified you then what happened? --- Then I think he counter-signed that signature there.

You think he did or he did? --- He did. He tell them he knows me and give me the ...[intervention]

Right, let's have a look at those forms. I think it's page 42 of the bundle, that's Exhibit A. Now, the first one that's at page 42, M'Lord, just for identification, I'll ask the witness to confirm it but I don't think there's any dispute on this, is the Diners Club application signed by the witness. --- Yes.

Is that correct? The second document is the Diners Club card of your wife. --- Yes.

The third one is the Standard Bank Mastercard signed by yourself on your card. --- Yes.

And the fourth, which is at page 45, is the Mastercard of your wife. Is that correct? --- Yes.

Right, now when was this signed? --- At the same time.

No, when? I want to know at the enquiry desk after you got your PIN, when did you sign this document? --- I can't remember when I signed it ...[intervention]

You can't remember that either. I thought you told me and you told His Lordship that you only signed it when you were given the PIN.

That was your evidence a moment ago. --- No, no, this application

was signed before you get a PIN.

So you sign it before? --- Yes. Otherwise you won't get a PIN.

Right. So we now know and you remember it was before. Was it at the enquiry desk? --- No, I don't know where it was but not at the enquiry desk.

Who asked you to sign it? --- The lady who filled the form.

And you remember the signature on page 42? You'll see a signature in the block at the bottom on the right-hand side. It's a little stamp, there's a little oblique. --- Yes.

Do you know who signed that? --- No.

You don't recognise that signature. That's Mrs Marimuthoo's signature, authorising you to get your PIN. Then over the page, page 43, if you look at that document, you see a square at the bottom of the page. Do you recognise that signature? --- No.

Was that signed in your presence? Do you remember? --- I can't remember.

Right, so you filled the form in. You handed it to the enquiry desk attendant. She assisted you in filling it in. --- She filled it.

And you signed it? --- Yes.

What did she do then? --- I think there was a problem because of my wife's card there.

Did she take the forms away and go and talk to someone?

What happened? I want to know step by step what happened. --I know they called Pat there to authorise the signature, the form.

Mr Singh, was that immediate? I'm trying to get an account of

10

5

15

20

25

10

15

20

25

what happened on the day that you went in to get your PIN. --- Yes, it was done within, I think, less than 15 minutes. I was back and out.

No, let's go back. You go into the bank, you get the application form, you sign it. --- Yes.

You sign all four of them. You give it back to the lady at the desk with your identity book and your wife's identity book. --- I had. I don't know if they asked for it but I had all those documents with me.

They say they always ask for it. --- They don't always.

But you've only had one PIN issued, haven't you? --- Yes, but I do other transactions. They never ask me for IDs.

I'm talking about a PIN transaction. --- Yes, they asked.

What was that statement meant to mean, they don't always ask for ID? What does that mean? --- You said they always ask for IDs.

I'm talking about the PIN transaction, Mr Singh. --- The PIN, then fine, I don't know if they asked me there. I can't remember that.

But you wouldn't dispute it if they did because it's invariable practice? --- Yes, I won't dispute that.

Did she take your form and your identity book away with her?
--- I know she took the form but I don't know about the ID.

Yes, so she took whatever she had away with her? --- Yes.

With the - she took everything what she required what I fill.

Did she come back to you? --- Yes.

And what did she say to you? --- I can't remember that.

Then Mr Moodley arrived? --- Pat came in.

Yes. Now, you know him, don't you? --- I know him.

10

15

20

25

How do you know him? --- He opened my account and all that. He made all the applications for me.

He is what I think is referred to as a personal banker. --- Must be.

At that point in time he was employed by Standard Bank. Was he the personal banker in control of your account? --- Yes.

Now, what happened after that, after you say that Mr Moodley identified you, what happened after that? --- I was given the envelope.

You were just given it like that? --- We went outside ...[intervention]

You went outside? --- We went outside the machine.

Who went outside? --- There was a lady. I know. I can remember a lady but I don't know anyone else. I can't even remember that and they asked me to punch it. After I opened the envelope they asked me to punch the code in and I punched the code in.

Into what? --- Into the ATM.

You put your card into the ATM? --- Yes.

Are you certain about that? --- I'm certain about that because

I know I went first time I ...[intervention]

What did you punch in? --- I punched in the code.

What code? --- The envelope they gave me.

So you opened it?

<u>LEVINSOHN J</u> Slowly, I just want to get this down. They gave you the envelope? --- Yes.

I just want to write this down. It was sealed, was it? --- Yes.

And you opened it? --- Yes.

And then they said to you, "Put your card into the ATM and punch in the code"? --- Code, yes.

Who told you this? --- The girl.

What was the purpose of that? --- I don't know.

What did you think it was? It wasn't to draw cash? --- No, to - I think to get the card working.

To activate the card. Yes, Mr Lane.

MR LANE Well, Mr Singh, you know that every time a card goes into a machine a record of kept of it. Did you know that? --- No.

Well, I'm telling you that, and that will be the evidence. Mr Singh, every time your card has been utilised. It doesn't matter where it is, in this country or anywhere in the world, you have a computer record of the use of your card. You didn't know that? Don't shake your head, Mr Singh. The answer is "No". --- No.

There is absolutely no record of your card ever being utilised in a machine anywhere from the 16th February to the 3rd March. Does that surprise you? --- Yes.

LEVINSOHN J From 16th February?

MR LANE To the 3rd March.

LEVINSOHN J That's the Friday?

MR LANE That's the Friday.

LEVINSOHN J So what's being suggested to you, Mr Singh, is that they didn't put your card in the ATM when you got the PIN. That's what's being put to you. --- But I know I stood in the queue there

10

5

15

20

25

in the line and I did that, and the first time I stood in that queue.

MR LANE Well, Mr Singh, we have - and we asked a question at the rule 37(4). Perhaps you'd like to hear the question again. Page 78, M'Lord, paragraph 3.4 of the pleadings bundle. The question was asked,

5

"Plaintiff requires defendant to admit that these were the only two occasions."

Now what it's referring to is the ATM transactions at Nedcor.

"These were the only two occasions on which the card and its associated PIN had been utilised since 16th February 2000."

10

--- That's correct.

You didn't think it important to say that you used it on the 16th February? --- No, I didn't use it.

You didn't use it. But you did. --- I didn't draw any cash any time before that.

15

No, no, the question was directed to the card and the PIN. MR KISSOON SINGH M'Lord, in fairness to the witness, we went through that with him, and we understood that to mean since, meaning after the 16th, not on the 16th, from the 16th. We didn't actually ask him what happened on the 16th on that occasion, M'Lord.

20

MR LANE M'Lord, I don't think it's helpful to know what counsel asked. I think the witness is quite capable of dealing with this himself.

25

LEVINSOHN J Yes. What do you say, Mr Singh? --- M'Lord, the

10

15

20

25

only time I used my card was in Stanger and in this thing to draw money.

MR LANE But Mr Singh, you put your card into an ATM and you punched your PIN in, you're telling His Lordship. --- I didn't take that.

Is that not a use of a card? --- I didn't take that in account.

I see. --- For using. When you all asked that question, I thought to draw cash.

<u>LEVINSOHN J</u> You thought that when you put that card in at the bank that was simply to activate the ...[intervention] --- The bank purpose.

Are you sure it was one of the ATMs that has got cash in it or was it some other machine? --- There was quite a few machines, the ladies were sitting on and there's ATMs this side too. There was a table and about three, four machines there but now they've changed the whole thing, so ...[intervention]

Were they standing there when you put your PIN in? --- They were.

MR LANE Who was standing there? --- The lady was there.

The lady. By the way, did you tell your counsel this, these events, that you actually put your card into an ATM and inserted your PIN? Has that been told to anybody other than now? --- I can't remember that.

LEVINSOHN J Well, it's fairly important because it relates to what happened when you got your PIN. Did you tell your legal advisers about these events, step by step, like you've told us now? --- I think

10

15

20

25

I had a chat with them on this.

MRLANE Now we have a mysterious transaction, Mr Singh, because nowhere in the records of Standard Bank, which records everything, every transaction, every time your card goes into the machine and you put your PIN in there ...[inaudible] ...[intervention] --- The whole ...[intervention]

... every record of that. There's no record of you using that card anywhere from the 16th February to the 3rd March. Isn't that somewhat strange? --- Everything is strange here, if you look at my statements. Everything is strange in this.

Yes, well, we will unravel the statements, don't worry, Mr Singh. Let's get back to the 16th February. You say Mr Moodley wasn't with you when all this was happening? --- Pat Moodley?

Was he not there? --- He was there.

He was there when you were at the ATM? --- I can't remember that. But I know he was there to ...[intervention]

Yes. And you say that you took then your envelopes and you went back to your shop on your own. --- Yes.

You're sure about that? --- Yes.

Because Mr Moodley will give evidence that he went with you.

--- No.

Because he had to deliver the envelope to your wife. He delivered the envelope to your wife, got her to sign the form and appended his authorization. --- That's not true.

So he's lying, is he? --- The only ...[indistinct]... came the next day, they came with the forms down to sign it the next day.

10

15

20

25

Who came? Who? --- Somebody came with the form down to sign it.

Who? --- I can't remember who came but someone came, not the day, the next day they came in.

<u>LEVINSOHN J</u> So it wasn't Moodley? --- I don't remember who was this.

He didn't come with you straight away back to your shop so your wife could sign? --- No one came down, no. The signature I had signed and walked away with the forms.

Well, he was creating a problem for himself because he was giving you a PIN for your wife without her being there, so wouldn't he want to sort that out straight away? --- Then my signature shouldn't have appeared on her form. You can see double signatures there. He should ...[inaudible] ...[intervention]

MR LANE Mr Singh, you know very well that you made application and that was the problem. You had signed the form when the forms were given to you. It had absolutely nothing to do with that, Mr Singh, surely. --- Then why didn't he scrap this form up and make a new form and give it to her?

Mr Singh, I'm not going to answer your questions.

Mr Moodley's evidence will be very simple. But I just want to clear up something. You said you don't know who came to the branch? --
No.

His Lordship said, "Wasn't it Mr Moodley?". You said you can't remember. --- I can't remember.

You mean it might have been Mr Moodley? --- It might be.

Well, that's a bit odd. You know Mr Moodley and now you say it might have been him who brought the form around but you can't remember but it's someone from the branch? --- I've dealt with so many people there so I don't know who comes in and who goes out and these things are little things to remember.

5

Yes. Now, let's just go back again to what happened because I'm going to investigate this a little bit further. You leave the enquiry desk. You say you can only remember being in the company of one person. You don't remember anybody else interceding in the transaction for the issue of the PINs? --- I can't remember that.

10

When were you asked for your card? You were asked to give your card. Who asked you to give your card to them? --- Which card?

Your credit card. --- The Diners Club?

15

The Diners Club and the Mastercards. --- No, the Mastercard I've still got with me. I've still got the cards at Standard Bank.

Okay, so - no, no, no. I'm talking about not the time on the 6th March. I'm still on the 16th February, Mr Singh, still on the 16th February. Your evidence, as I understood it, was that someone had asked you to give them your cards for the issue the PIN. --- Yes. I ...[intervention]

20

Who asked you for that? --- Whoever was at enquiry. I took the four cards and I gave it to her and I said, "I want PINs on my cards".

Did she take your cards? --- Yes.

25

She took your cards. You didn't have them in your possession

from then until you got your PIN? --- No, she had to punch - she had to use the cards to get the envelopes.

No, but the woman at the eriquiries surely didn't punch the machine to get the envelopes. --- Well, whoever deals

...[intervention]

5

10

15

20

Is that not your evidence, Mr Singh? Let me understand that.

You say the woman at the enquiry desk punched the numbers in to get your PINs? --- Whoever the woman was dealing with me, was dealing with me.

No, Mr Singh, let's just stay with what you've just said. You've just said that the woman at the enquiry desk punched the numbers in to get your PINs. That's what you've just said. --- Whoever was dealing with me at that stage ...[intervention]

No, Mr Singh, just confirm that is what you've just said. Am I correct? I heard you say that. Am I correct? That was your evidence, that the woman at the enquiry desk punched in the numbers to get your PINs. — I don't know who punched the numbers because that machine wasn't there by me. The punching of the numbers, I don't know where it was done. I know I was[intervention]

LEVINSOHN J Just let's find out how this happened. There was a woman at the enquiry desk. You said, "I want my PINs". You then produced your cards. You gave her the cards and then what did she do? --- No, I went to the bank. I said, "I want PIN numbers on this".

And you gave it to this woman? --- Yes.

25

A clerk behind the desk, enquiries. You gave her the cards and

then? --- Then someone came up to fill these forms up.

Yes, and then? --- And then they filled the form up and they couldn't authorize my wife's card.

And then? --- Then they asked Pat to come through.

You what? --- They asked Pat, Mr Pat.

5

10

And then? --- He came in here and he identified and he told them it's okay to issue the PINs.

And then? --- Then they issued the PINs, I don't know where.

Who did that? --- I don't know who issued the PINs.

And what happened to your card? --- They were using the cards all the time to get the information from the card.

And then? --- And they gave me the envelope with the PIN number.

And the card? --- With the card. Then we went to the outside or the ATM machine or something like that.

15

So did you get the envelope before you went to the ATM machine? --- Yes, to open up and see the numbers.

And you opened them up yourself? --- Yes.

Did you open both of them? --- Both.

MR LANE So you didn't go to the machine which issued the PIN? You didn't stand with the operator who fed the information? Because I understood your evidence quite clearly earlier that you'd actually accompanied this woman to go and get your PIN. --- To feed the PIN to activate the card.

No, I understood it, it was at the time of the issue, Mr Singh.

25

20

--- Then your understanding is wrong then.

10

15

20

25

I see. Well, the record will speak for itself. So you opened your wife's PIN packet as well, did you? --- Yes.

And you also put her card in. Surprisingly, there's no record of that transaction either. --- Yes.

Yes. What did you do with the Mastercards? Did you also put those into the machine? --- They didn't ask me to put that.

Not the Mastercards. Now, in relation to the Mastercards, are there limits on your Mastercards? --- Yes.

What are the limits you say apply there? --- I can't remember the limit. I think it's about R30 000, and I think it's lifted to R50 000 now.

And has there been any unlawful use of your Mastercards? --No.

Your Mastercards, were they still valid on the 3rd March? --Yes.

And this wallet that you talk about, the pocket that you talk about, does that have all your credit cards in it? --- Yes.

And that's where you always keep them? --- When I'm going out somewhere I just take one card and I go. The rest is left at home.

So you take one card. Where do you keep your PINs? --- My PINs are kept in my drawer at home.

In your drawer. How do you keep your drawer - locked? --My drawer is locked with an A lock.

Why don't you destroy your PIN? Do you just remember your PINs for all your cards? --- I don't even remember my PINs, all the cards, beside my business one because of certain alphabets on it.

10

15

20

25

3156/00-NB/CD

And your Diners Club, do you remember your Diners Club PINs? --- Now I remember it by seeing it now.

Yes, but only now? --- Yes.

But you didn't memorise it on the 16th February? --- No.

So what do you do when you take the one card? --- I just carry it.

Do you go and unlock and look at the PIN and take it with you? What do you do? Do you go and fetch the envelope relative to that PIN number? --- My card and - they're kept separately there. When I take any card I check the number out and I've got a book. It's all written in the back. That's locked. All the cards, card numbers and everything is in one book.

Where is that book? --- I've got it.

What book? You say it's a book. Do you carry that book with you all the time? --- It's a note book.

It's a note book. And you carry it with you all the time? ---No.

When do you carry it with you? --- I don't carry it. I leave it. So that's also left at home? --- Ja, whenever I picked I look the card number and the PIN and I'm gone.

You don't write it down? --- No.

Now, just on another issue just on the side. This trip that you planned in the week of the 6th March, where were you going? ---To Bombay, India.

Had you got tickets bought already? --- I book my tickets and I get free authorization on the tickets or anything ...[intervention]

business.

Had you bought your ticket already? --- I don't have to buy it.

I pick it up on the day when I leave.

When were you planning to go? --- That week.

Not on the Monday? --- Monday, Tuesday, any time. I was on stand-by.

5

On stand-by. And you hadn't bought tickets at that point? --No, my ticket was booked.

<u>LEVINSOHN J</u> But surely you must make arrangements when you go overseas? You must tell your staff, "Look, I'm going away"? --- I don't ever tell anyone when I leave.

10

You don't? --- Only my family, my wife, my children know I'm gone. Because our game is a cut-throat game, sir.

MR LANE Well, if it's cut-throat - I'm certain I understand because it's cut-throat. Why would you not tell your staff that you are going overseas so someone looks after your business? --- My wife looks after the business. There's my sister there. I don't tell my staff what I do.

15

20

So would you tell her? --- No, I won't tell her.

You wouldn't even tell her. --- When I'm leaving I'll tell her, "You go to the shop".

So only your wife knows that you're going overseas? --- Only she'll know.

25

I see. And the travel agent whom you booked the ticket with?

--- They'll know.

Which travel agent is that? --- M K Bobby Naidoo's.

Would you like to spell that for me, please? --- M K, the other word is B.o.b.b.y, the other word is N.a.i.d.o.o.

LEVINSOHN J It's quite a well-known travel agent in Durban, Mr Lane, just for your own information.

MR LANE I see. As Your Lordship pleases. Right, let's go to the 3rd March 2000. Now, how good is your memory of the 3rd March 2000? --- I can remember things because I was very upset on that day.

Now you went to Stanger first? --- That's right.

To your business. Was your wife with you? --- No.

You went at - can you remember the time of the ...[intervention] --- I went in the morning.

In the morning. And that was a Friday, was it not? --- Yes.

Now you needed cash. What did you need the cash for? ---I left in a hurry and I went.

So did you go to the machine before or after you went to your business at Stanger? --- After I went to the shop.

You've already told His Lordship about your habit. So you went to the Nedbank machine? --- Yes.

What credit cards did you have with you? --- Only one.

Only one. And how were you able to remember your PIN number? --- Because when I picked the card I checked what I'm taking.

You've got that sort of memory. So if I told you a number, a

10

5

15

20

25

random number, now and asked you in a few hours' time you would remember that number would you? --- I will remember it.

Right. The machine refused to give you the R100? --- Yes.

So you went back and you got the money from your shop, against your principles? --- That's right.

Do you remember phoning Chatsworth earlier that day or phoning Diners Club earlier that day? That's on the 16th February.

--- No.

<u>LEVINSOHN J</u> Is the question put, "Do you remember phoning Diners or Chatsworth earlier that day"? --- Yes, it is.

MR LANE Sorry, the 3rd March, yes. On the 3rd March, M'Lord, not the 16th February.

LEVINSOHN J What's your answer to that? --- No, M'Lord.

MR LANE From Stanger you went then to Durban? --- To the airport.

And you went to pick up - sorry, I can't remember her name?
--- Samantha.

Samantha. Were you on your own? --- Yes.

What job does Samantha have at the airport? --- She's working for the airlines.

Which airline? --- At that time I think it was Nationwide.

Why did you have to pick her up? --- Her father told me to go and pick her up.

Why was that? --- Well, we do each other favours. So he wanted a favour then I do it. When I'm not there he goes and closes my shops and things like that.

5

10

15

20

25

And you then used the ATM at the airport and that was at 12.13pm. Remember that? --- Yes.

Now, Mr Singh, I want to just deal with another aspect which happened after that. During the course of the day, the 3rd March, you were asked to produce a copy of a deposit slip? --- Yes.

For the payment which had been misallocated? --- Yes.

M'Lord, I'm entering a new domain of cross-examination. I wonder if I could take the adjournment now.

LEVINSOHN J Yes, certainly. We'll take the adjournment to 2.15.

COURT ADJOURNED

10

5

ON RESUMPTION

ANIL SINGH (under former oath)

CONTINUATION OF CROSS-EXAMINATION BY MR LANE

You, M'Lord. Mr Singh, I want to go through to the day of the 3rd

March 2000, and you've told His Lordship that you ascertained that

there had been a misallocation of the account and that you were

asked to go and find the deposit slip, which you faxed through to the

bank. Is that right? --- No, I went with it to the bank.

You went with it to the bank? --- With it.

20

25

15

Later that afternoon did you fax through another copy of it?
--- No, I don't think so.

Are you certain about that? I do have, and I will show you in a moment - I'm not trying to catch you, Mr Singh - I do have a copy of that deposit slip which was faxed through at 15:42, 3.42. --Must be, if I went home and they wanted it, I could have faxed it. I

don't know about that.

Yes, right. Because we have one that has the usual fax data on the top, showing it came from Avtar to Diners Club. You don't remember that? --- No.

Well, now, a document, M'Lord, I'm going to ask Your Lordship to look at the bundle, Exhibit A, page 368. Could you also, Mr Singh, look at page 368? M'Lord, might I be of assistance? It seems that that file has collapsed.

5

10

15

20

25

LEVINSOHN J Yes, it's come adrift but I've got the 368 document.

I think I have. Yes, here it is. It's all come adrift. I think there were too many papers in it.

MR LANE M'Lord, would it be helpful for you if I split the file into two other files during the adjournment.

<u>LEVINSOHN J</u> Yes, I think so, Mr Lane.

MR LANE It's quite heavy. There are quite a lot of documents in there. I will see that it gets done during the adjournment.

LEVINSOHN J Thank you, Mr Lane.

MR LANE This is the document referred to, Mr Singh. Now, we've asked for the original of this document. What did you do with the original of this document? --- It must be on the file.

On file where, Mr Singh? --- With the Receiver of Revenue.

Why with the Receiver of Revenue? --- They have uplifted all my documents from home.

Well, we asked your attorney to produce the original of this document and I personally was advised on Monday that the original could not be found. That you'd had it but it could no longer be found.

10

15

20

25

Why was that explanation not given to me on Monday? --- wouldn't know.

Was any attempt made when we requested the original of this document to get it from the Receiver of Revenue? --- The Receiver doesn't want to release any documents. They will give you a photocopy.

Did you ask you for this original document? --- I've asked for all documents that they've got.

No, when we asked, we served a notice on you and then asked specifically for the original of this document to be produced in court.

--- They said they won't release it.

Did you ask? --- I asked.

You or your attorney? --- I asked them.

When? --- Some time back.

No, this request only went in last week. --- I got the documents today ...[intervention]

Mr Singh, I'm asking about this document and you were only requested last week, not some time ago, last week, to produce the original of this document. I'm asking whether you went to the Receiver and asked for this original document? --- Yes.

When? --- Maybe about two weeks ago, I think.

No, Mr Singh, let me repeat my question. The request for this document was made last week, for the original to be produced at court. Did you go last week? My attorney is just checking. I want to make absolutely certain that I'm correct that the letter went in last week. My recollection is it did. Were you asked by your attorney to

go to the Receiver and ask for this specific document? --- Yes. He said me, "Get all the Diners' documents".

No, no, this specific document. We only asked for a number of originals, not all of them. We just wanted some certain and very specific originals. --- No, she told me, "Get all the original Diners".

So you weren't asked specifically to go and find this document? --- No.

When were you asked to go and get all the original documents? --- About two weeks back.

About two weeks back. Because what is somewhat surprising, Mr Singh, is that your attorney never told us that that was the case. That the Receiver had your original documents. In fact, she told me that the document had been lost. Can you explain that? --- No.

Who did you speak to at the Receiver of Revenue's office? ---Mr Pastellides[?]. He is handling my case.

Now, page 368 of the bundle, you told His Lordship that the words, "Card handed Carla on 6th March 2000" were written by Carla. Is that right? --- No, by the clerk.

Who? --- Mpumi, I think her name is.

Yes.

And that 11, what's that 11? --- It was handed at 6/3/00 at 11 o'clock.

11 o'clock. You're certain that she wrote that 11? --- Yes.

Now, have you tried to make contact with Mpumi? --- No, the lawyers did.

They did. So then you will know that she's deceased?

5

10

15

20

10

15

25

Right, M'Lord, can I ask M'Lord to look at page 35. I'm afraid it is - M'Lord, could I take the file from you and just ...[intervention]

LEVINSOHN J No, I think I'll manage for the time being, Mr Lane, thank you very much. Page 35?

MR LANE Yes. Now, what I'm going to show you, Mr Singh, is the original of this document. I just want you to identify on the corner on the top of this page from where it came. Just have a look at that. On top left-hand side, now. M'Lord, I think I should make this as an exhibit.

LEVINSOHN J Let's make it 55A then.

MR LANE 55A in the bundle. It is the original of that document.

Mr Singh, you see on the left-hand side there? --- Yes.

Have a look. It's a fax sent on March the 3rd 2000. Do you see that? --- Mm.

From Avtar. That's your business, isn't it? --- Yes.

And you see the telephone number on the right-hand side? --Yes.

That is the Managing Director of Diners Club's fax machine.

You wouldn't dispute that, would you? --- Yes.

Do you say you wouldn't or you would? --- No, I can't dispute 20 that.

M'Lord, might I ask Your Lordship just to have a look at the document when I ask the next questions. You can keep the photocopy open in front of you. Would you look at the top of that page, Mr Singh, in the middle - well, first of all let's do something else. You see, if you compare this to page 368 it's the same

document, isn't it? --- Yes.

Because it's quite clearly the same document. --- Mm.

And that was sent through on a fax machine at 3.42 on the afternoon of the 3rd March. I want you to look to the top right-hand side. You see the letters 011? --- Okay, it's cut - 011, yes.

Can you see the 011? --- Yes.

Go back to page 368, Mr Singh. Do you see that, Mr Singh? --- Yes.

So you're not telling the truth, Mr Singh. --- Why?

This was sent on the 3rd March. You handed your card in on the 6th March. That 011 can not have been written on the page when you took this and your card to Diners Club on the Monday because it appears on a document which you faxed through from your offices on the 3rd. --- I know I'd taken it there ...[intervention]

Mr Singh, just answer this question. Don't try and avoid it.

Here is a document which you sent through to the plaintiff's offices on the 3rd March. O11 is the prefix for Johannesburg. --- Right.

Someone wrote it on the document. That is the very letter which you say was written in your presence by an employee of plaintiff at its Durban office on the 6th March.

LEVINSOHN J Just wait. Just let me understand what we are talking about here, Mr Lane. We are talking about the Diners there on the 368 document, there's an O11 on the right-hand side.

MR LANE Correct, M'Lord.

LEVINSOHN J Written in manuscript.

25

20

5

10

15

MR LANE Yes.

10

15

20

25

LEVINSOHN J 011-35884 and you say he ...[intervention]

MR LANE No, M'Lord, if you have regard to 368, you will see that the witness has referred to this phrase, "Card handed Carla on 6 March 2000", and he says the 11 which is appended to that represented the time, 11.00am. At the top of the page, M'Lord.

LEVINSOHN J "Card handed Carla on 6/3", and there's an "011" there.

MR LANE That's right, M'Lord. Now he says that Carla wrote that and wrote 11.00am. That's to indicate it was received at 11.00am. I got him to confirm that, M'Lord. Now, M'Lord, what I'm putting to him is if one has regard to the document at page 55, which was the fax, the original which was sent through, that this is simply not true. That that 011 existed on the fax which was faxed through on the 3rd March. In other words, three days before this witness says that was written on the document. So whoever wrote, "Card handed Carla", wrote into what was already on the document.

LEVINSOHN J Yes. Yes, what's your comment on that, Mr Singh? --- M'Lord, I was there at 11 o'clock, at about 11 o'clock, and I handed the card and I told her to sign this for me. So I didn't even bother to look at anything there, as long as she wrote that the card was received, and time didn't bother to me.

Mr Singh, let's try and answer the question, shall we? MR LANE The questions are very simple. You've now stated at least twice on oath that she wrote 11, and that 11 represented 11.00am, in your presence. Positive statements, Mr Singh. --- Yes, wrote that.

No, Mr Singh, she didn't write it. Look at page 55. --- She

10

15

20

25

wrote, "Card handed in".

No, you said 11. --- Yes.

I got you to confirm it, Mr Singh. --- Yes, that's 11 o'clock.

No, Mr Singh. --- Well, whatever, I was there at 11 o'clock.

Mr Singh, just listen. Just wait for the question. Mr Singh, page 55 demonstrates that "11" was already on that document on the 3rd March. --- Okay.

Do you accept that? --- Yes.

So why did you lie? --- I'm not lying because ...[intervention]

Mr Singh, you are lying about the person inscribing 11 o'clock
on this document? --- No, I don't know if that's lies or what because
I gave it to her and she wrote it. To me it looked like 11 o'clock
there. I didn't look at the other documents.

Mr Singh, you're not going to get away that easily. You said in your evidence-in-chief and you've now confirmed in cross-examination that she wrote that in your presence. --- She ...[intervention]

11 - not the rest, the 11. You said that on oath, Mr Singh. Do you agree or don't agree? --- Yes, yes.

Well, that's not true, is it? --- I don't know. Now you are showing me that then I'll say it's different here.

Mr Singh, it's simply not true, is it? --- Well, it's not true now when you're showing me but then ...[intervention]

Is there a truth now and a truth then, Mr Singh? --- To me it is the truth that and now.

Well, no, Mr Singh. You've just made a statement. It is true that 11 was already on the document. --- Obviously, I looked

at it, and to me it looked like 11 o'clock.

LEVINSOHN J Are you saying now that when you read it out here in court you assumed that she'd written the time? --- Time, yes.

But you're wrong about that? --- I'm wrong.

In fact, this 011 was on the document when it was sent on Friday. --- That's correct, sir.

Is that what you say? --- Yes.

MR LANE Now, Mr Singh, let's leave it at that. We'll argue the rest. Because, of course, it was important to you, Mr Singh, was it not? Somebody actually confirmed your version of 11 o'clock. Wasn't it? — I don't see any importance in these things here because to me I didn't use my card and I didn't bother, and they told me, "You don't worry. There's a lot of people use these cards like this. There's a lot of fraud in Diners".

A lot of fraud in Diners? --- Yes.

Did you make enquiries about what kind of fraud they were talking about? --- They shut her up. They called her in.

Yes. So you don't know whether it was point of sale, ATMs, whatever, do you? --- No, that I wouldn't know.

No, you wouldn't. Now let's go to the document at 368, Mr Singh. Who wrote the notes on this page? --- I did.

All of them? --- Beside that where the card was picked up ...[inaudible]... and then there's another 086 number. I don't know who wrote that. Beside the, "Card handed in Carla on 6/3", and this 086 number is not my writing. The top is my writing there.

Slow down, sorry. You just have to be a little more careful.

5

10

15

20

10

15

20

25

The 086 01, that's not yours? --- No.

Yes. --- The Carla thing is not mine.

Yes. --- From what I can see. The rest seems all my writing.

Even, if you have a look, there seems to be two handwritings on this. If you look, for example, at the right-hand side of the page you've got, "3rd March 2000, R1 000 over counter at Chatsworth", and underneath that, "Cannot draw week-end", etcetera. Is that your handwriting? --- That's my handwriting too.

Now, tell me, when were these notes put on here? --- While I was speaking to her.

While you were speaking to her. --- In Chatsworth, I think. Or - I can't remember.

You can't remember. --- There's a date here, 3/3/00.

Yes, but I want to know when you wrote - I want to know the time that you wrote the notes on this thing. --- I can't remember that. It should be in the bank, I think.

Let's not think. Let's try and be certain, Mr Singh. --- I can't be certain.

Did you write these as you were talking? Did you write them afterwards? --- I can't be certain. If I've got names here then I'll be on the phone with them. Managing Director, ...[inaudible]... Gibbon, draw only R1 000. Must be while I was there, or - I can't even remember this.

Well, let's try and trace the events of the day after the second failed transaction at Durban Airport. The first recorded message to Mr Samuels was at 13:37:53. Would you dispute that? --- No.

10

15

20

25

In fact, your counsel referred you to it under the Text 19 document. M'Lord, if I might, the Text 19 document is the - it's called a Text 19. It's the shorthand computer notes.

<u>LEVINSOHN J</u> [Inaudible]

MR LANE That's so, M'Lord. It's referred to as a Text 19. And what we have, M'Lord, is two printouts which appears at pages 47 and onwards are printouts without the time of the calls. We've inserted another - at 365, M'Lord, you will find the same document but printed out separately which reflects, in fact, the time of the calls.

LEVINSOHN J Yes.

MR LANE There, in fact, you have the date as well as the actual time that the calls were made. So one is able to log the time of the - well, not when the call was made, when the note was made, M'Lord, rather put it that way. And if you look, M'Lord, sort of half way down the page, for instance, you'll see just above "Misallocated payment", just above that, a figure 613582822000. Carry that across, you'll see the name, Samuels, and then you'll see the time, 13:37:53.

LEVINSOHN J Yes.

MR LANE So we are able to trace them by time, M'Lord. So one is able to see what happened on that day. Now, did you speak to Mr Samuels? --- I don't know who I spoke to there.

Let me understand first of all what you say happened on that day. I understand your evidence to be that immediately after Durban Airport you went to Standard Bank at Chatsworth. --- I left Samantha at home. I went to the shop. Then I went to ...[intervention]

Right. So you went there. What time did you arrive? --- It must be after half past twelve.

After half past twelve. You spoke to a clerk, is that right? A ...[inaudible]... clerk. --- Someone at the information.

Who was that? --- I don't know who that was.

5

10

15

20

You say she phoned Diners Club? --- Yes.

You didn't speak to Diners Club? --- Not at that time, no.

When did you speak to Diners Club? --- I think after that.

Can you give me a time? I am not going to hold you to times. I know that's two years ago. I just need to put it into an approximate framework so I know how many calls you had and who you spoke to.

--- I know there was quite a few calls. We was cut off and put on again and things like that but I can't remember times.

LEVINSOHN J You can remain seated if you want to. You can stay seated. It's fine.

You see you didn't mention ...[intervention]

MR LANE Mr Singh, you didn't mention in your evidence-in-chief that you had a number of telephone calls, but let's try and find out. Let's try and trace the events of the day then. You go to Standard Bank, Chatsworth. You speak to the clerk. She speaks to Diners Club. You are told there has been a misallocation of account. That's correct?

--- No, they called the cashier who I paid the money to, to confirm. Then they were not happy. They told me, "No, you bring your receipt". Then I went and brought the receipt.

Where was the receipt? --- At home.

25

And this is the document that we've got at 368? --- That's

15

20

25

the receipt.

Yes. That was the original receipt that you brought? --- I think so.

When you brought it back, who did you give it to? --- I can't remember. Either the cashier or enquiries but I knew the cashier well there.

How did you know the cashier? --- Because she's on the business side. So I told her, "Here's it. I paid you and there's it stamped".

And then what happened? --- Then she went to the girl there, and then they phoned Diners up, or they went into their computers or what and they found that the money was, I think, put somewhere else.

How do you know they found that they ...[intervention] --They told me it's on a ...[intervention]

Did they tell you that they had done it or that Diners Club had done it? --- They said they did it, I think, at that time. It was not captured correctly, I think.

So what happened then? --- Then they phoned Diners up, and they spoke to them and told them that payment was made, and I think Diners told them they didn't receive payment. So they said ...[intervention]

Did you hear that conversation? --- No, but I was hearing to what they were saying.

How did you hear what they were saying? --- The lady was saying ...[inaudible] ...[intervention]

10

15

20

25

So you were present when they were telephoning? --- Mm.

Did you go to the back office at Chatsworth? --- No, no, it was done on the counter like this.

Counter like this, right. Yes, carry on. --- Then I told them, "I need my card. I don't need a back record from here. I haven't had a bad record. My payments were done every month before the due date".

But that was sorted out. That was resolved because they'd found the misallocation. --- They found it but it wasn't resolved.

Well, you weren't going to get a bad record because they'd found the misallocation, isn't that right? --- Yes.

So there was no concern in your mind? --- No?

Concern about a bad record then. They'd found the mistake had happened. Standard Bank or Diners had made a mistake. The mistake lay in a single digit. They had mistranscribed on to the computer a single digit. That's why it had gone into a misallocated payment category. But there was no concern at that point in time. You'd been told, "There's been a misallocation. Don't worry". Isn't that right? --- No, I think there is a concern. To hold a Diners card you're held in prestige.

Yes, but you still held a Diners Club card. --- Ja, but then it's useless. You can't use it.

Yes. --- So what's the use of a card?

Only for two days. --- Only for two days?

Yes. --- I wouldn't like it for one hour.

Really. And what about all the other cards you held? --- I can

15

20

25

use my card at any time. This has not once happened to any of my cards or I'd never had an R/D cheque.

But now a mistake's happened. It's misallocated. You've found out the problem. Your name is preserved. There's no problems. You've got other cards if you want to draw money or purchase things. Why were you so concerned? --- Why shouldn't I be concerned?

No, no, don't answer with a question. --- I'm owing them R7 228, they don't know where the fund is. They find it lying somewhere in someone else's account and I've got no use of the card.

<u>LEVINSOHN J</u> I think I would have also been very irate, Mr Lane.
--- I was ...[intervention]

MR LANE M'Lord, irate is one thing but the sequence, as you will see, of the events as they unravel, M'Lord, irate, it's then fixed up. LEVINSOHN J Well, it wasn't really fixed up. There was a Friday afternoon. There was a week-end forthcoming and he was told that they could do nothing until Monday. It's hardly satisfactory. Anyway.

MR LANE Yes, M'Lord. Well, let's go back to the day then, Mr Singh. You are told there's been a misallocation. You hear a conversation between the bank and Diners Club and then what happens? What's the next thing that happens as far as you were concerned? --- I told them this is not right. You should clear my account up now and get it moving.

When did you say that? When did you say that? --- On the same time.

Exactly the same time? --- I can't remember the times. Don't hold me to times. I cannot remember times ...[intervention]

No, I'm asking you if there's a gap. --- I can't remember.

I'm asking you if there's a gap. --- I just can't remember.

You can't remember if there's a gap or not. You remember fairly well who you spoke to. You remember the circumstances. Now I'm asking you, we're still in the bank, and you've now been told by Standard Bank, Chatsworth, that there's been a misallocation and it will be sorted out on Monday. Do you immediately phone from the bank? Did you go back to your office and phone? Did you go home and phone? What did you do? --- I can't remember ...[inaudible]

Do you remember there being any gap at all in the sequence of events that flowed that afternoon? Whether you went back to your office or you went back to your home and then came back to the bank again? --- I can't remember.

You can't remember. Let's see if we can assist. If you look at your page 368, start at the right-hand side. Now, if you wrote something down here, would this indicate that you actually spoke to them? --- It should or they gave me the name.

It should or it did? --- Somebody must have given me a name that I wrote down.

Yes. Let's start on the right-hand side, Jerome. Who is Jerome? --- I don't know. That's what I find very strange. I don't know Jerome because on my PIN card too I've got that name, Jerome. I don't know why I wrote it.

Jerome. We can identify one Jerome - Jerome Samuels. ---

5

10

15

20

15

20

25

Okay.

Does that ring a bell? Did you speak to one Jerome Samuels?

--- Because I was trying to know who is Jerome on my PIN card. I
wrote on the both slips. I don't know why I wrote that.

Well, do you remember speaking to Jerome Samuels? --- No, I don't.

You don't. Because he logged the first call at 13:37:53 and confirmed the misallocation of the money. You don't have a recollection of that, of speaking to him? --- Could be. I don't know.

You don't know. Right, let's go down to the next one. Carl.

Do you know Carl? --- No. Customer manager I've got here.

Yes, did you speak to a Carl? There is a Carl who is a customer manager at Diners Club, yes. Did you speak to him? --- I must have asked to speak to someone senior because I was mad that day.

When did you ask to speak to someone senior? --- I don't know time but it must be during - after that time when I entered the bank or where it was.

But you don't remember speaking to Carl? --- I remember one person only, Mrs Myburgh, very clearly. I spoke to her and she was nasty to me.

Right, well, let's go down to Tim Jaffray. Do you remember Tim Jaffray at all? --- No. I don't know. I don't know why I wrote all these names on that day.

And Don Bale. Do you know who Don Bale is? --- It must be someone senior, all those people.

Yes, he was the Managing Director. --- Yes, it must be

10

15

20

25

She will also give evidence that you had told her that you needed money for the week-end. --- No ways.

LEVINSOHN J Just wait. Was this Marion Gibbon?

MR LANE This was Marion Gibbon, M'Lord. Now, Mr Singh, you said that you went to the bank with a friend of yours. In fact, three of you went to the bank - your wife and a friend - I think Pranil Singh.

--- Pranil Singh.

Sorry, what is his full name? --- Pranil Singh.

Why did he come to the bank with you? --- They were in the shop and my wife was going ...[indistinct]... home, so we all walked out together.

And did they stay with you during the whole - all these conversations? --- Yes.

Is that your wife sitting in the back of the court? --- That's right.

Has she been sitting right the way through your evidence? --Yes.

Now, on this same piece of paper there is a whole pile of telephone numbers. Do you know who gave you those telephone numbers? --- While I was talking to people they were giving me things and I was writing, and when we came here I just took it.

LEVINSOHN J Wasn't it clear to you, Mr Singh, that this wasn't Diners' fault? This was Standard Bank's problem. They should have sorted it out for you. Why didn't you get them to sort it out? --- They can't do anything. There are junior clerks there. They won't know nothing.

10

15

20

25

Yes, but you deposited it in the Standard Bank and they misallocated the payment so Diners didn't get it. Why should Diners be responsible for that? --- They blocked the card off.

Yes, but they're entitled to because they didn't get the payment. Standard Bank caused the problem. Anyway.

MR LANE Mr Singh, again I'm not pinning you down to times. I'm just trying to get an idea. Marion Gibbon will say that that was early

afternoon when she had that conversation with you. You'd agree

that's a possibility?' --- Could be.

And that then your first conversation with Doreen Myburgh would have been also early afternoon? --- Must be.

You were clearly not satisfied with your account only being rectified on Monday, were you? You wanted it sorted out there and the? --- Then and there.

Because an extra recorded we have - those ones to Marion Gibbon and the first call to Doreen Myburgh are not recorded in the Text 19. The next recorded call we have comes in at 15:36 - 3.36 - and it comes through to Sadia Moned. Do you remember the name Sadia Moned? --- Yes, I think I've got it written somewhere, that name.

Well, have a look at 368. You'll see her name on there. You see Sadia, where the big block at the bottom is you'll see Sadia. --Yes, there is Sadia.

Now, do you remember speaking to her? --- Yes, I do remember.

You do remember? --- I remember speaking to the person.

Why do you suddenly remember her? --- I remember the name. I think she's an Indian and she spoke very nicely to me.

Now, she, because she was recently employed by Diners Club, went through to her supervisor, Mrs Naude, and while speaking to you on the telephone Mrs Naude made certain entries in the Text 19. The one at 15:36 reads,

"Member not prepared to wait until Monday for payment to be allocated. We made error.

Wants to speak to manager."

Would that accord with what you ...[intervention] --- That is correct. It'll be correct, because I was made. I said, "Open my account now".

So this dispute and this visiting the bank had been going on since at least, on your version, half past twelve that morning. We are now at half past three. --- At least, yes. We must have spent about four hours in that bank.

Four hours in the bank. --- In and out.

Oh, so you did go in and out? --- Yes. We went and picked up that.

Was that the only time you left the bank? --- Mm.

To go and pick something up? --- Mm.

You were not certain about that earlier. Are you now certain that was the only time you left the bank? --- I don't know if I went to the shop down and came back.

But none of them for a long time? --- I was in and out. I can't place the times or anything on that date.

And were all the calls made from the bank? None from your

5

10

15

20

20

10

15

20

25

remember that.

offices and none from your home? --- I don't know. I can't

She will give evidence that you told her that you were going overseas that night. --- That's a lie.

That's a lie.

a lie.

LEVINSOHN J Who will say this?

MR LANE Sadia Moned. And that the call got cut off. Whilst the call was off she went and spoke to one of her superiors to ascertain what the position was in relation to your credit card and its use to draw. She then, in the company of Mrs Naude, telephone you back on your cellphone and advised you that you could draw R1 000 over the counter at the Standard Bank. They would arrange that for you.

--- What time was this?

LEVINSOHN J Just wait a minute. Yes.

MR LANE To assist you, this was all at around about 15:36 that afternoon. But it wouldn't worry you because you don't remember all these times, do you? --- It would worry me now because 15:36 the main doors close.

Yes, I know. --- At 3.30 the banks close.

Yes, we know. --- So how can I draw R1 000, only giving me R1 000 over the counter?

The banks close their doors. You were in the bank. Were you not in the bank at 15:36? --- I can't remember that.

Well, we have a Text 19 call which comes from the bank at 15:36. Six minutes after the bank closed. So are you disputing that you were there? --- I'm not disputing it but I say ...[intervention]

Well, then what is the point you're making? --- I'm making the point, if the bank was closed ...[intervention]

Were you in the bank or not after half past three that afternoon?
--- I cannot remember.

Yes or no? --- I cannot remember.

5

Well, then don't make a point of it, Mr Singh. Sadia Moned said she phoned you and told you that you could use your card overseas and that the block would not block transactions abroad. --- Did she phone me on the cellphone, did I get correctly that's what you told me?

10

She phoned you. --- On the cellphone?

Let's just deal with that, Mr Singh ...[intervention] --- No, it's very important if it's a cellphone or a ...[inaudible] ...[intervention]

She phoned you. You either remember it or you don't. She phoned you and told you ...[intervention] --- No, it's very important now ...[intervention]

15

Mr Singh, I'm not going to answer your question. Just answer mine. I said she phoned you and just stay with the question. She phoned you. --- She didn't phone me. I don't think so.

20

You don't think so. You don't think so or she didn't phone you? --- She didn't phone me.

No one after 15:36 phoned you? --- No one has phoned me and told me my card was unblocked.

Did you receive a telephone call after 15:36 that afternoon?
--- I can't remember that.

25

You can't remember. She will also say that she told you that

No, I didn't say that, and anyway I'm just telling you that she reiterated that to you. --- At that stage I didn't want any money. I was at home I could get any amount of money I wanted.

5

10

15

20

25

You say you were at home? --- At home means five minutes away, ten minutes away.

Why? Do you have money in a safe at home? --- I have money all the time ...[inaudible]

LEVINSOHN J Did you want to use the Diners card that week-end?

Why were you so agitated that you couldn't use it that week-end?

--- No, I wasn't agitated. It was that I didn't pay my account properly and every month I go before ...[intervention]

Yes, I understand that but now, having told you the bad news that they can only remove the hold after the week-end why were you still so agitated? --- No, the person was very rude to me on the phone from Diners.

MR LANE You say that was Mrs Myburgh who was very rude to you? --- Yes.

But Sadia was very pleasant to you? --- She was very pleasant at that day.

Now, the fax that came through, which I showed you at page 55, came through at 15:42. This is the time on it. You'll find it at page 55 in the bundle. You see the time is on it, 15:42. Do you see that? --- Yes.

Now, you are unable to explain how that was sent at that time to Diners Club? --- They must have asked me and I sent it off. It shows they had no proof of payment at that time.

Now, are you guessing now, Mr Singh? --- That's what that shows because they asked me for ...[inaudible] ...[intervention]

Do you remember who asked you for it? --- No, I don't.

Do you remember being asked for it? --- If I faxed it they asked me.

No, don't make assumptions, Mr.Singh. Do you remember being asked for it? --- No.

So you're guessing. --- No, I wouldn't fax something for nothing.

Well, I accept that, Mr Singh, but I'm trying to get some evidence of stuff that you remember. --- I think there's enough evidence here on this to say I faxed it for some reason.

Yes. Now, at that point - let's have a look again at the documents. You see none of the notes which are on 368 or not all of the notes. None of the notes would be an overstatement but a lot of the notes that you've appended on 368 are not on the document at page 55 you faxed through. Do you agree? --- Yes.

Why is that? --- I don't know.

You don't know. --- Could be I had a few copies of this.

LEVINSOHN J Well, you know, I get the impression, Mr Lane, that part of the writing was cut off by the fax.

MR LANE It's very difficult to see, M'Lord.

LEVINSOHN J You can see it on the original.

•

10

5

15

20

,

MR LANE There's that jagged line that goes across.

LEVINSOHN J Yes, you can see like the word "customer", and there's - so that was on and it looks like quite a lot wasn't ...[intervention]

MR LANE What might have happened, M'Lord, and just looking at it while I look at it in the cold light of day, if you see, for example, "Over counter", if you see the "t.e.r", it looks like it probably got folded over in the transmission. That's probably what happened.

LEVINSOHN J Yes.

MR LANE Yes. The last call that we have logged, Mr Singh, is recorded at 15:56 that afternoon, 3.56, to Mrs Myburgh. Do you remember making that call? --- [Inaudible]

So there's no point in putting to you what that Text 19 says.

Now over that week-end of the 4th and 5th March your other cards

were valid? They were operative? --- All operative.

All operative. Was your wife's other cards, were they operative? --- Besides the Diners.

Besides the Diners, they could be used? --- Yes.

And you had taken four to five hours out of your day to sort the Diners Card problem off? --- I was off the half a day with my wife ...[inaudible] ...[intervention]

So that's how you spent that whole four, five hours? ----

Yes. Let's go to the 6th March. Where were you at 8.30am?
--- I was at home.

You're sure? --- Yes.

5

10

15

20

What time did the hijacking take place? --- At about 7.30,

twenty to eight.

So you were definitely at home at 8.30? --- The police can prove that.

Yes, I was going to ask you, do you have a CR number for us?
--- That is recorded. It is recorded.

Why hasn't that been discovered? --- I don't know.

MR KISSOON SINGH How is that relevant, M'Lord?

LEVINSOHN J Is that relevant?

MR LANE M'Lord, it is. He says that he was, in fact, home. I am going to adduce evidence that there was a telephone call to his house at 8.30am.

LEVINSOHN J But how can you discover documents if the police ...[intervention]

MR LANE No, he's got a CR, M'Lord, and I was going to pursue that on the basis of the - there must have been an insurance claim. It establishes that either it happened or it didn't happen, M'Lord.

LEVINSOHN J Well, I don't know, if I was discovering documents I perhaps wouldn't foresee that that would be relevant to these issues here.

MR LANE Yes, well, I'll leave that line. So you have documents in your possession relating to that hijacking? --- Not in my possession.

And you made an insurance claim? --- Yes.

And you have no documents relating to that insurance claim?

--- No, the insurance - Bond Insurance Brokers will have that.

I see. So you were at home at 8.30am? --- I could have been

5

10

15

20

on the street or at home because that all was carrying on there. The police and everyone was there.

Yes. Mrs Sadia Moned will give evidence that she phoned the house at 8.30am. --- Who is this?

Mrs Moned, Sadia Moned. --- Yes.

5

And she spoke to your maid. — It's hard to believe that because at the shop where this phone call came at around ten past ten, quarter past ten, they told me they tried the shop at half past eight and someone picked the phone up and told them I've gone overseas. I told them, "You tried the wrong number. The shop is only open at 10 o'clock".

10

Did you employ a maid at the time? --- I've got a maid all the

time.

Do you have the same maid now as you had then? --- I don't know if it's the same maid.

15

Don't worry, don't you look at your wife? --- I don't know if it's the same maid.

You don't know if it's the same maid. And did you receive any report that Mrs Moned had phoned and spoken to your maid? --- No.

Because she says that she was told that you were away

overseas. --- That's what I just told her.

20

The account was suspended at 8.37 that morning and what they refer to as N4 which is a block on the account, was placed at 8.54 that morning. Are you certain that the next or the first thing you heard about was a telephone call from Diners Club at about 10.00am?

Why are you so certain about the time on the 6th March? --No, it's not the time. It was after 10.00.

After 10.00. --- Yes.

You did not telephone and speak to Mrs Moned? --- No.

She recollects that you telephoned her as a result of her having left a message for you. --- Then that should be on a text. It's such an important thing.

She says she phoned you and left a message. Is that correct or not? --- It's not correct.

LEVINSOHN J Is that on the text?

MR LANE No, M'Lord. M'Lord, the text is - you will find that, M'Lord, even the ones that Mr Singh remembers, for example the Marion Gibbon and others are not specific on the Text 19. There's not a perfect record of every conversation. It's when notes are made. It's like having a scribble pad beside you. So it's not always there. It's an imperfectly handled system. A perfect system but imperfectly controlled.

LEVINSOHN J Some of the institutions record every conversation that comes in.

MR LANE That's happening now, M'Lord. We, in fact, asked whether these calls had all been tape-recorded. That's an institution which is a more recent advent than ...[indistinct]... systems at this point in time, unfortunately, otherwise we'd have had tape recordings of all these, which are like the videos. There's many a slip between cup and lip. So you very definitely did not telephone her that morning? --- No.

5

10

15

20

10

15

20

25

At that point in time. She will also give evidence that during that call she explained to you the exposure, the amount of money that had been expended, that it had been incurred in the United Kingdom over the 4th and 5th March and that she asked you for an interim payment and that you had told her that you would revert to her, and that was the sum total of what you said, that you would look into it and revert. You don't have any recollection of that? — That's a lie.

It's a lie. She will say that you phoned back approximately
45 minutes later. --- I think it's before that. I phoned her back from
home to say the card was there.

Before what? --- She told me, "Where is your card?".

You're talking about telephone conversation you had after 10 o'clock? --- Yes, at the shop. From the shop.

Let's get - the shop opens at 10.00 is that right? --- Yes.

That morning you said you were there at ten past ten? --About ten past ten.

How soon after you went into the shop did the telephone conversation or the telephone ...[intervention] --- I think it's about five minutes later or so.

So approximately 10.15. You then had the telephone conversation. You then went home? --- Yes.

To go and find your card. How far is your home from the shop?

--- About five minutes, five, seven minutes.

Right. Then did you phone her from the house or back at the shop? --- From the house.

Now, you explained to His Lordship that you were concerned

10

15

20

25

that the hijackers had taken your credit card. --- No, I didn't say that. I was worried that it was in the car. It might be gone with the car.

Why? Do you leave your credit cards in the car? --- No, I just take it. I put ...[indistinct]... and then go through in the mornings to go and ...[intervention]

Do you leave your credit cards in the car normally? --- No.

Don't you keep them in your pocket? --- It's in my pocket all the time.

So why did that concern you that morning? --- Because I didn't know what was happening that morning.

Why would you have to check on that when the transactions had occurred on the 4th and 5th March and not on the 6th March?

I understand the hijacking took place on the 6th March. --- Yes.

So why did that concern you that they had used your card and that's what you had to check on? --- If the hijackers took that card away they could have tried using it.

Yes, on the 6th? --- On the 6th.

But why did that concern you to answer a query for the 4th and 5th? --- I didn't query anything at that time. I didn't know anything that had happened on the 4th and the 5th.

I'm trying to understand precisely what you were responding to,

Mr Singh. Your statement to His Lordship was that you were

concerned that the hijackers had used your card. --- That's right.

So you knew nothing at that point in time? --- I didn't know nothing about this pound drawn.

10

15

20

25

What did you know? --- I knew nothing.

So it was just a query as to where your card was? That's all they said to you? --- Ja, because they were blocking.

Nothing else? --- Nothing else.

Because they were blocking. Is that what they said? --- No, it was blocked. I knew it was blocked so I thought it was something to do with that and the hijackers.

[Inaudible - speaking simultaneously with witness] I'm asking what they told you in that conversation. What you were told? --- I was asked where is my card. Was I overseas? My maid told me that - someone told her that I was overseas. I said, "No, I'm here. We had a hijacking". Then she asked me where's my card.

LEVINSOHN J Just wait. You say your maid did tell you that there'd been a call? --- No, not me. They phoned the shop. They phoned the shop at 8.30.

MR LANE Well, Mr Singh, you've just said your maid. --- No, well, it's a slip.

LEVINSOHN J You've just said your maid and you said to me earlier that you didn't receive a report from your maid. --- No, I didn't receive any calls. I just ...[intervention]

MR LANE M'Lord, it ...[intervention]

LEVINSOHN J Yes, anyway, the record will show what you said.

MR LANE [Inaudible] Mr Singh, well, who phoned you? Do you know who it was? --- No.

You didn't ask. Did you ask, "Who is speaking?". --- I was just speaking.

10

15

20

25

Who were you going to ask to when you phoned back? --- I don't know if they gave me a name or what at that stage.

Mr Singh, they either did or they didn't. You said now they didn't give you a name. Now you said they did give you a name. --- I don't know.

You don't know. But then how did you phone back? --- I phoned back. I know I phoned back and told them my card is here. So they told me, "Take the card back to Durban".

Who did you speak to when you phoned back? --- I don't know.

You don't know. You kept no notes of those conversations?
--- Nothing.

Nothing. So all you were told was, "Were you overseas?", asked, "Were you overseas? Where is your card?", is that all you remember of that conversation? --- No, they told me they phoned earlier on to the shop and someone told them I'm overseas.

Yes. What else? --- And they asked me where's my Diners card. So I told them, "I haven't got it. We had a hijacking. I didn't carry it here. I don't know if it's in the car or at home".

Did you ask them why? Why were they asking you that?

Didn't you ask them? --- Well, there was a hijacking. I thought it was the hijacking and the card is gone.

No, but didn't you say, "Oh, has something happened? I mean, what's happened?"? A normal ...[inaudible] ...[intervention] --[Inaudible]... on Friday.

"Has something happened?" Didn't you ask them? --- There's

10

15

20

25

something happened on Friday then something on Monday. You ...[indistinct]

So, Mr Singh, you didn't - it wasn't of interest to you what had happened and whether people were spending money on your card right then? --- It could be. Because I thought it was the hijackers ...[intervention]

But you didn't bother to ask? --- If the hijackers got the card, why should I ask?

Anyway, so you went home? --- That's right.

And where was your card? --- It was on the dining room table.

The whole pouch was kept on top.

So you leave your cards lying around the whole time, do you?
--- My house is 100% safe.

And then where did you telephone from? --- From home.

From home. I think you've already said you don't know who you spoke to. --- I can't remember.

And you can't remember who you were told to speak to. Was it the same person that you spoke to earlier? --- I can't remember.

Now, Mr Singh, that conversation - this is now the second conversation - what were you told during that conversation? --- I was asked to see and take my card to Diners in Greyville. They gave me the phone number and the address to go and leave it there. Take it there and show it to them.

Did they say why? --- I didn't ask.

You didn't ask. Now it's not the hijacking. Now it's something else. --- No, I didn't ask ...[inaudible] ...[intervention]

10

15

20

25

You've been telling - Mr Singh, here's the scene I have. You are a man who is very conscious of your dignity. Your pride had been hurt because of what had happened on the Friday. You'd spent four hours at the bank in Chatsworth, chasing Standard Bank, chasing Diners Club, all these telephone calls, just to get your account back in order, and suddenly on the Monday morning when they told you that your account is going to be sorted out now they are telling you to deliver your card back to them and you don't ask why? --- If you had a hijacking, won't you think the hijackers must have taken the card?

Don't go back to that all the time, Mr Singh. We've been through that. --- What do I do then? Where do I go from there?

No, that's not the question. --- What do you want me to say?

Mr Singh, only the truth. --- That's the truth.

Yes. Now, Mr Singh, perhaps we can actually try and answer the question. You are sufficiently distressed on the Friday to spend at least four hours trying to get your account sorted out. On the Monday, when your account ought to have been sorted out, you are told simply, "Take your card and deliver it to Diners Club". You ascertain it's not been stolen but you don't bother to ask why they are telling you to deliver your card back. Is that correct? —— I don't know what you want me to say.

I want you to try and explain it, Mr Singh. --- I'm telling you what I'm telling you.

Yes. Anyway, Mrs Moned will give evidence that you phoned back approximately 45 minutes after you'd phoned her the first time.

10

15

20

25

You told her that you had not been overseas and you told her that you had been at the police reporting an incident, which she believed was a housebreaking. Now, you then say that you took your card to, is it Grey Street? --- No, Greyville.

Greyville, sorry. And you delivered it to the Diners Club premises there. Weren't you at this point in time - I mean, you must have been irate. --- I didn't hear you.

You must have been irate.

LEVINSOHN J Angry.

MR LANE Angry. You must have been furious. Consistent with how you felt on Friday, you must have been even angrier. --- No, I went in and asked the girl, "What's wrong? They asked for my card". Then she told me there's a fraud on my card, and she put on the computer and she showed me the whole screen.

So you weren't cross at all? You weren't irate that they[?] were now here to deliver up your card to them. You ...[inaudible] ...[intervention] --- [Inaudible]... Diners are a useless card.

Yes. Anyway, the evidence from Mrs Moned will be again that she phoned you later that afternoon and that is when she asked you to deliver the card. --- Afternoon?

In the afternoon, and that - asked you - and you confirmed that the card had been in your possession over the week-end. She asked you also during that telephone conversation whether you had lost your PIN or given it to anybody else and that you had answered her, "No", and then asked you to return the card uncut to the Diners Club premises in Durban. --- That's wrong.

10

15

20

25

What part of that is wrong? --- Completely, whole thing.

The whole thing. --- The whole thing that she told me to go there in the afternoon. I went at the same time in the morning. I cut up my card in front of Mpumi or whatever her name was.

You cut the card? You're certain about that? --- I cut it.

Did you cut it right in half? --- I cut it through the mag strip and that way. All my cards I cut up the same way.

So did you actually cut it right in half? Right in half? --- I cut it on the mag strip ...[intervention]

Did you cut it right in half? Was it in two pieces? --- More than two pieces.

More than two pieces. Okay, I'll come back to that. And then you got, as we say - we've dealt with the note that you referred to. Well, Mr Singh, before I leave that - no, perhaps I'll come back to that later. But you said in evidence-in-chief that you never gave your card to anybody. --- That's right.

You never allowed anybody to make a copy of your card? --Not to my knowledge.

And you never ever disclosed your PIN to anybody? --- No.

I just want to return to your evidence regarding the testing of the cards. I am instructed that testing of the cards is not a requirement of Standard Bank or Diners Club. Cards are not tested. Now, I just want to go to the actual testing. Who was with you when this happened? --- There was a lady there.

Only the lady? --- I can't remember who else was there.

Nobody else? Were there other people in the queue? --- There

10

15

20

25

were people.

There were people. What did you do? You put your card in? --- And put the PIN.

Yes, and then what did you do? --- I don't what - if I did something or they did something on the machine, I can't remember.

What did the screen say when you put your card in? --- I think it said, "Insert your PIN". I think. I'm not sure.

Okay, after you'd inserted your PIN what did the screen ask you to do? --- I don't know. They must have did something. I didn't do anything.

Well, not must have. They did or they didn't, Mr Singh. --Well, they must have. I don't ...[inaudible] ...[intervention]

You don't remember? --- I can't remember.

Yes. You see again we've spoken to Mr Moodley because you must understand that this version has never ever emerged in any of the correspondence, any of the letters, even in your evidence-in-chief. The first time we heard of this was when you gave your evidence under cross-examination. We took the opportunity during the long adjournment of speaking to Mr Moodley. He says that that is absolutely untrue. That they left the premises. He accompanied you. He never made any stop at the ATMs. That he carried your wife's envelope with him and handed it to her. Is he lying? --- He is lying.

He will give that evidence. And then, M'Lord, there is one matter which I must correct. I put to the witness that there is no - that under every circumstance a card will register on the Standard Bank computers. Not every instance where a card is inserted will it

transaction doesn't go through, in the sense of being cancelled it will not register on the mainframe computer. Now, on the account limits, Mr Singh, let's find out the point that you are trying to make on this. Let me tell you what the position is with Diners Club and let's have a look and see whether you agree or understand this, because this is what it is and what it was at that time. In South Africa you can draw R1 000 per day from an ATM with a maximum of R3 000 per month. Do you dispute that? --- No, I don't.

That they have what they refer to as an emergency cash facility. Have you heard of that? --- No.

It's R1 000 over the counter in South Africa, nothing to do with PINs or ATMs, over the counter and \$1 000 over the counter abroad. Would you dispute that? --- I don't now it.

You don't know it. That in relation to every account as what they refer to there is a management limit, which is a credit control mechanism on the account which also controls equally security of your expenditure. So there it's looked at and there is a management but it's not an official limit *per se*, it is a management control amount. Did you know that? --- No.

But in terms of the United Kingdom at the time of these transactions the limit was £350 per transaction. There is no limit on a daily withdrawal or a monthly withdrawal. Did you know that? --- No.

Now, Mr Singh, you made some reference to the Diners Club statements. The first one you made reference to is Annexure B1 at

15

10

20

page 20 of the pleadings. Do you have that document? --- Yes.

Do you have the pleadings? I think probably - I think you're looking at the bundle. Let me see if I can pick up a page reference in the bundle. I think if you look B14 - B14 in the bundle will give you the same document. No, B14. That's Exhibit A, bundle 14, page 14.

--- Yes.

Now what you have said in your evidence and have pleaded is that there was no cash advance in Bombay, India. --- There was no cash advance I drew out. The merchant went and took the money out. I had to sign the slip and he took it.

Yes, well, why is that not a cash advance, Mr Singh? --Because his machine was not working. There was something off line in his shop.

Yes, because we have Text 19 calls on this. You've seen them, haven't you? Well, let me put the facts to you, Mr Singh, and let's see if we can get some agreement. You telephoned for a preauthorization for a purchase of goods in India. --- Must be.

Must be or did? --- I can't remember here.

You can't remember. So you don't remember the incident? --I remember this deal going through, because I went and signed the document there. They told me, "Go to the bank and we'll give him the money straight".

Mr Singh, did you phone Diners Club to pre-authorize the transaction for the acquisition of goods? --- I must have did it but I can't remember.

Because we have, as I said, a Text 19. We can go through all

5

10

15

20

the Text 19s if you want relating to this transaction. --- Well, if it's done it's done. It was there. I'm not disputing the payment.

You presented your card when you were in India to the merchant, who refused to accept your card, as a card transaction. Do you remember that? --- No. The card couldn't work in the machine at his shop.

So you phoned up Diners Club. Do you remember that? Yes.

And they said they would try and arrange a cash amount from Citibank. Do you remember that? --- They'll give him the cash.

Give him the cash from Citibank? --- Yes.

Why is that not a cash advance? --- It's not to me because if they had to give a cash advance I had to pay interest from day one, and that I didn't want.

That's ridiculous, Mr Singh. It's clearly a cash <u>LEVINSOHN J</u> advance. Let's get on with this case. I mean, really, if that's what you're arguing about it's nonsense. Carry on.

MR LANE Thank you, M'Lord. Mr Singh, let's go to the next one you complain about on the statement. That, M'Lord, you'll find at page 27. Mr Singh, in your document file it will be 21. This is the Cathay Pacific transaction. --- That's right.

Now, the ticket you purchased in Bombay was that from Cathay Pacific? --- No, I bought it from Asian lady.

Yes, was it a ticket Cathay Pacific controlled flight? --- I think so.

You think so or it was? --- I can't remember. I used Cathay

10

5

15

20

10

15

20

25

Pacific only.

Would you look at page 367 in your bundle? Is that the voucher relating to this transaction? --- Yes, Bombay-Bankok-Bombay.

Yes, down in the left-hand corner you see the insertion of a total of INR34 080. Do you see that? --- Indian rupees.

Yes, well, Cathay Pacific, do you know that their head office is in Hong Kong? --- No.

You don't know that. Well, let me tell you what happened. Cathay Pacific has a requirement that they dispatch all their vouchers to Hong Kong. That 3 480[?] Indian rupees converts to R6 253,168 Hong Kong dollars. We checked it out and it converts. It converts at a rate of a rupee to Hong Kong dollar of 5,450, if I can read my handwriting, and thereafter it is debited against the card at the rand rate plus 1% in terms of the terms and condition that Diners card apply and, that, Mr Singh is one Hong Kong dollar equals R1,225 plus 1% equals 1,24. That's how that entry came in, Mr Singh. Now, can you tell me, accepting my version of that event what's wrong with it?

— If I took - I can't remember the exchange rate then in rupees for the rand and according to my exchange rate at that time the amount should have been R4 868,57.

LEVINSOHN J But you didn't listen to what counsel put to you. The rupees is converted first to Hong Kong dollars because it's done in the head office of Cathay Pacific. Thereafter the exchange is worked out between the Hong Kong dollar and the rand. Is that right, Mr Lane?

MR LANE That is right, M'Lord.

10

15

20

25

that.

3156/00-NB/CD

MR LANE I'm not going to labour this. It gets nowhere with this type of answer but just the last thing. If you look on the voucher against the letters CX - do you see that in the middle of the voucher? --- CX, ja, carrier.

Do you see that? --- Yes, that's Cathay Pacific.

Those are the official recognised symbol for Cathay Pacific. ---That's right.

So you concede that? --- Yes.

Thank you. Now, Mr Singh, it is plaintiff's case, and it will be ...[indistinct]... on this case that your card or a copy of your card and a copy of your PIN were utilised for all of the 190 successful transactions on the 4th and 5th March. What do you say to that? --- It could have been a copy. I don't know.

Your PIN as well? --- Must be they got the PIN somewhere.

And you had nothing to do with it? --- Nothing.

You didn't give anybody your card? --- No.

You didn't let anybody copy your card? --- No.

And you never told anybody your PIN? --- No.

You never left it in an insecure place where somebody could have just picked it up? --- No.

Were you careful in protecting your card and your PIN? Yes.

M'Lord, I believe that I'm at the end of my cross-examination. Would it be possible to take a short adjournment just so I can take instructions from my attorney.

LEVINSOHN J Yes, very well.

MR LANE I won't be long, M'Lord. I'm indebted to Your Lordship.

COURT ADJOURNED

ON RESUMPTION

ANIL SINGH (under former oath)

MR LANE M'Lord, I have no further questions at this stage for Mr Singh. As I intimated to Your Lordship we are having difficulty extracting information from the Airways. It may be that when that information comes I might ask to recall him at that stage, M'Lord, but at this stage I have no further questions.

NO FURTHER QUESTIONS BY MR LANE

<u>LEVINSOHN J</u> Yes, well, we'll leave that. Any re-examination, Mr Kissoon Singh?

MR KISSOON SINGH Just one or two questions, M'Lord.

RE-EXAMINED BY MR KISSOON SINGH Mr Singh, you were shown a fax imprint at page 55A or 55 of the bundle of documents, which shows that the fax came through at 15:42. --- Mm.

Can you recall the time when that fax was actually sent? ---

Now, that would have been imprinted on that document by the fax machine itself. Is that not correct? --- Yes.

And that means that the fax machine would have a clock on it ...[intervention]

MR LANE These are leading questions, M'Lord. I do suggest that -

5

10

15

20

.

NO FURTHER QUESTIONS BY MR KISSOON SINGH

LEVINSOHN J Mr Singh, on that Friday, that's when you were having this problem about your card not going through the machines,

did you tell anybody, whether the Diners or somebody at Standard Bank, "Look, I need that card because I intend to go overseas"? Did you tell anybody that? --- I told them I'm going to overseas.

Yes, you told them you're going overseas, yes. --- Next week.

Overseas next week and I need the card? --- I need to use it.

Who did you tell that to? --- I told that to someone on the phone.

That's at the Diners Club head office? --- Yes.

What did they tell you in response to that? --- They told me the card is blocked, it's late in the afternoon now, nobody works the week-end, they'll work on it on Monday and on Tuesday I can use my card.

And I gather that you weren't very happy about that? wasn't happy about that.

You see, because if you're going overseas or you planned to go overseas before the Tuesday you would be very unhappy about that. --- That's why I told them to get that thing cleared up. If I'd got a ticket I would have been gone if that hijacking hadn't happened.

When you would you have gone? --- I would have either gone - I don't know what was the flight at that time, either Monday or Tuesday flight.

So did you get your ticket on Monday or Tuesday? --- No, I didn't the ticket. You see, they send my ticket either and keep it at the airport or I collect it.

Where were you going to, India? --- India.

Right, now just tell me, what were your movements on the

15

10

5

20

Monday morning? Just exactly what your movements were.

Monday morning when the hijacking occurred ...[intervention]

No, just let's start off with your movements. What time did you wake up in the morning? --- I get up about 6.00 in the morning.

You were driving the car that was hijacked? --- No, the driver.

The driver that was taking the children to school? school.

Were you still at home then? --- Yes.

What time did the hijacking taking place? --- At about 7.30, twenty to eight.

Yes, and after that what did you do? --- Well, the children were hijacked and then the car went down. We're living on a hill, high, and it's a dead-end and the guys crashed the car into an oncoming vehicle, and they left the car and they ran off.

I see, and then the police came and so on? --- The police came. Firearms were found, and they said, "Don't touch the vehicle". Then the fingerprint people came.

And you were still at home. You only go to work at 10 o'clock? --- Yes.

And then what did you do from there? --- And then we waited for the fingerprint people to come in.

Yes, and then? --- And they towed the car away.

Yes. --- I saw that the children were comfortable. They didn't go to school, and I left for the shop.

So you were at home until just before 10 o'clock? --- Yes. Did anybody phone your home, wanting to speak to you, before 5

10

15

20

10

15

20

25

3130/00 115/02

10 o'clock? --- No, no one called me for the phone call.

Nobody called you. Did you have your cellphone on? --- Yes.

Diners knew your cellphone didn't they? --- I don't know.

Because they phoned you on the cellphone on Friday, didn't they? --- I can't remember.

So you didn't get a call at home before 10 o'clock? --- No, sir.

Did you get a message from the maid to say somebody had phoned? --- No, sir.

So there's no question of the maid speaking to anybody from Diners. Right, now you get to your shop and somebody does phone you. --- Yes.

And then they say you must take the card in? --- Yes.

You must have wondered why they wanted your card? --- I thought the hijacking caused something with the card there and somebody used the card.

But think about it. How would the hijacking have caused something to do with your card? The car was found, wasn't it? ---

The car was found and nothing was missing from the car and you didn't leave your cards in the car, right? Did you? --- No, you see the ...[intervention]

So then what's the hijacking got to do with this card story? --Usually, the driver, if he comes in late, I go and leave the children
...[intervention]

Mr Singh, what has the hijacking got to do with the cards and with Diners Club's phone call? Because you're connecting the two

and I don't see how they are connected. --- I don't know. I thought

something must have happened there.

No, but think about it. What could have happened? There must have been something else that Diners wanted - some other reason why Diners wanted the card and you would have asked them. Say, "Look, what's the problem? Why do you want me to go all the way to Durban from Chatsworth to give my card in?". That's the first question I would have asked if it was me. Why didn't you ask that question? --- Well, I didn't ask it.

You didn't, yes. Did nobody tell, "Look, there's been a big problem. Your card has been used and there's about half a million rand worth of debt that's accumulated overseas"? --- Only when I went to the office ...[inaudible]

Not on the phone? --- Not on the phone.

Any questions arising, Mr Kissoon Singh?

MR KISSOON SINGH No questions, M'Lord.

NO QUESTIONS ARISING BY MR KISSOON SINGH

LEVINSOHN J Mr Lane?

MR LANE No, M'Lord.

NO QUESTIONS ARISING BY MR LANE

LEVINSOHN J Thank you, Mr Singh. You can stand down, thank you.

MR KISSOON SINGH M'Lord, it's ...[intervention]

LEVINSOHN J Yes, I think perhaps it will be better to start afresh with a witness tomorrow morning at 10.00. The Court will adjourn.

5

10

1 =

15

20

MR LANE Sorry, M'Lord, before we adjourn, apparently there's a possible move of courts tomorrow. Should we vacate the court and move?

<u>LEVINSOHN J</u> Were you actually leaving your stuff here overnight?

<u>MR LANE</u> There's so much documentation and stuff to take, M'Lord.

We'd also have to arrange for Your Lordship's files to be moved across and so on.

LEVINSOHN J Well, I don't know.

MR LANE Or could we vacate the court tomorrow? Come a bit early and just find out what the position is.

<u>LEVINSOHN J</u> Just find out what's going on tomorrow morning.

MR LANE As Your Lordship pleases.

COURT ADJOURNED TO 6 MARCH 2002

10