

IN THE HIGH COURT OF JUSTICE

CH 1998 -D- No. 2149

CHANCERY DIVISION

B E T W E E N :

JOHN ALFRED DONOVAN

Plaintiff

- and -

SHELL UK LIMITED

Defendant

(By Original Action)

AND BETWEEN

SHELL UK LIMITED

Plaintiff by Counterclaim

- and -

**(1) JOHN ALFRED DONOVAN
(2) DON MARKETING (UK) LIMITED
(3) ALFRED ERNEST DONOVAN**

Defendants to Counterclaim

(By Counterclaim)

WITNESS STATEMENT
of
MIKE McMAHON

**I, MICHAEL McMAHON, Company Director, of 17 Grange Road, Molesey, London, KT8
2PR WILL SAY as follows:-**

1. Although as I will explain in detail below my first career was in retail computer systems I am now a director of and shareholder in three companies operating in the leisure industry with particular reference to organic foods. One of my companies owns and operates Britain's first organic food restaurant and another operates two organic food supermarkets, all in South West London. We are in the process of setting up what I believe will be the world's first organic pasta/pizza restaurant.

2. My experience in electronic retail systems dates back to 1967, when I worked with the Honeywell Company and subsequently in 1974 with Singer Computer Company. Singer introduced the first EPOS (Electronic Point of Sale) system in Europe at Heathrow Airport's Terminal 3 during the time that I was National Sales Manager. After leaving Singer I moved back to Ireland from where I did a great deal of consultancy work with a company called RTC which in particular developed point of sale systems for cash and carry companies such as Nurden and Peacock. In 1983 I moved back to the UK and continued to work for RTC as a consultant here before being headhunted to McDonnell Douglas as their retail specialist installing systems for international companies, such as Gucci. Subsequently I worked with Nixdorf helping to specify and design point of sale computer systems which were contracted to many high street retailers including Tesco, Bookers Cash & Carry and Shell.

3. In the mid-eighties I was recruited as Managing Director of System Software International. We marketed a computer software package for retailers and carried out installations for a supermarket chain in Ireland, BP world-wide, Jet Petroleum and for the convenience store chains, 7-Eleven and Circle K. The systems were required to communicate with a variety of point of sales systems including Nixdorf, IBM, ICL, NCR and particularly with forecourt point of sale systems such as Edacom. Through this exposure I had developed an expertise which was respected by IBM who invited me to lecture to their retail staff in the United States, Hong Kong, Singapore, Australia, New Zealand and the UK.

4. Being so heavily involved in retail systems, a prerequisite was the understanding of the application of technology for loyalty and data capture systems. I was extremely enthusiastic about Smart Cards and set up my company Concept Systems to take advantage of the knowledge I had gained about such Card systems. During 1991, I was a consultant to Marks & Spencer for the implementation of their Smart Card based staff discount scheme, which we designed in such a way that it could be expanded to capturing loyalty data. I was invited to do presentations and design work for Boots, WH Smith, Texaco and others. I visited most of the well-known manufacturers of smart card technologies including the main supplier (Novotron) who owned the world-wide patent. I spent a considerable amount of time in their offices in Paris and with their executives

developing an in-depth understanding of the technology, its capabilities and its applications.

5. Around about November or December 1991 I was telephoned by Andrew Lazenby of Shell. This was pretty much out of the blue although it is possible that I might have sent a mailshot to Shell along with other companies because at this time we were talking both to Texaco and BP about loyalty schemes as well as to Mobil. I cannot remember specifically what was said but I do recall that as a result of the conversation I went to a meeting with Mr. Lazenby, taking one of our employees, Alison Churchouse. My recollection is that the meeting was a long one, at least a couple of hours and during it I explained the various Smart Card technologies available and showed examples of the various terminals.

6. There followed a series of meetings in the first half of 1992 mainly attended by myself although sometimes by one or other of my colleagues and these meetings always involved Andrew Lazenby and sometimes his colleague, Tim Hannigan. The meetings continued to develop Mr. Lazenby's understanding of the various possibilities of the available technologies. In or about March 1992 I was approached by Alistair Duncan of Fortronic De La Rue. Fortronic was aware of Shell's interest in Smart Card technology and hoped to play a crucial role (as indeed it ended up doing). They were aware of my considerable expertise and of course the close contact I had with Shell and were keen to take advantage of both. My specialist expertise in the application of computer systems in retail therefore made me ideally suited to work with Shell on the development of the electronic loyalty card scheme originally known as Project Onyx. I had no difficulty with becoming involved with Fortronic. The project was far too big for Concept Systems to handle alone and we would always have needed to work with a hardware provider. I worked informally with Fortronic for a couple of months and during May and June I negotiated arrangements with them and a formal arrangement commenced on the 1st July 1992.

7. On 4th June 1992 I sent Mr. Lazenby a letter at his request supplying an outline quotation for a Shell loyalty scheme using smart cards. It was obvious from comments made to me that both had formed a very favourable opinion of our company and its specialist expertise.

This was confirmed in the typewritten note made by Mr Hannagan under the heading of "PROJECT ONYX - THE PLAYERS". The note also mentioned the relationship between Concept Systems and Fortronic.

8. On 11th June 1992 I had a further conversation with either Mr Hannagan or Mr Lazenby. The hand-written note by one of those individuals correctly recorded that I was at that time pressing for a "bankable letter of intent". It also listed some of the companies with whom I had already established contact concerning the potential supply of smart card technology.
9. On 2nd July 1992, I had a long meeting at Shell Mex House with Andrew Lazenby. I disclosed to him that Texaco was about to give the go ahead on a proposal I had put to them. During the conversation Mr Lazenby persuaded me to stall on the Texaco deal because a contract with Shell would be much more valuable. Although he was not prepared to issue a "letter of intent", I accepted his assurances that my company would receive a brief for a loyalty scheme and his endorsement as the eventual supplier. He was confident that a long-term Shell loyalty card scheme was inevitable. I note from his e-mail communication to Mr Watson and Mr Hannagan later the same day, 2nd July 1992, that he was enthusiastic about the "chance to steal Tex's deal".
10. On 16th July 1992, I had a meeting with Mr Lazenby at Shell-Mex House. Mr Lazenby was interested in exploiting my contacts with the various retailers with whom I had worked over the years. He asked me who they were and I told him that they included Sainsburys; Marks and Spencer; Tesco; Safeway; ASDA; Boots; W. H. Smith; Kwik Fit; and Sketchley, amongst others. As promised, he gave me a verbal briefing. It was only now that Mr. Lazenby put his cards on the table and I first learnt of the novel plan for a Shell organised multipartner loyalty scheme, which could potentially be owned and operated by the partners. It was significantly different from schemes run by organisations such as Air Miles and Green Shield Stamps - for example Green Shield was a typical voucher product working on the assumption that only 60% of stamps would be redeemed, whereas the scheme contemplated by Shell would involve 100% redemption. Mr Lazenby wanted me to approach various retailers to test interest in the concept. It was important for Shell

to know the number and type of retailer they could rely on becoming involved in the scheme because the necessary technology would depend on how many retailers would be involved.

11. It was obvious that Mr. Lazenby was well versed in the principle of a multi partner scheme and obvious that he had been looking into it for some time. He mentioned that Shell had an option on the concept. He just needed to know whether he could successfully recruit partners. I wrote to Mr Lazenby the following day, to confirm the basics of the brief that he had given to me. I have read the multibrand loyalty card proposal that Don Marketing supplied to Mr Lazenby in May 1992. Their proposals, the brief given to me by Mr Lazenby two months later, and the eventual Smart multibrand scheme, appear to be basically one and the same.
12. During a subsequent conversation Mr Lazenby explained the importance of finding a supermarket partner. He ruled out Tesco on the basis that their image was incompatible with Shell and was also becoming a direct competitor, with a growing number of hypermarket petrol outlets. He wanted me to contact Sainsbury before approaching Safeway. Different agency names came up from time to time in our discussions. I know Don Marketing was involved because I was asked whether I thought I could work with Don Marketing. He mentioned Don Marketing in connection with the concept but said that he preferred to work with agencies that he had chosen not ones that were trying to trade on past relationships. It was always clear that it would be necessary for a promotions agency to be involved. The project could not work without one.
13. I subsequently had a lengthy conversation with David Watson who was Mr Lazenby's manager. A record of the conversation is contained in the hand-written note, which I understand is in Mr Watson's handwriting. He correctly mentioned in his note that we had joined forces with De La Rue/Fortronic and that I had approached four retailers including Sainsbury.
14. A hand-written note by Mr Lazenby dated 14th August 1992 contained a short list of five suppliers, including "Concept Systems". The note stated his intention to have a

confidentiality letter prepared by "PM". According to the notes, the letter was also designed to tie the short-listed suppliers to a moratorium on other oil industry links until the tender period was completed. If I recollect correctly, I believe that we did sign a confidentiality letter but as yet I have not been able to trace a copy.

15. I now turn to the hand-written note to David Watson dated 23rd October 1992, which provides unequivocal evidence of Mr Lazenby's underhanded plans. I was naturally horrified to read his cold-blooded objective to "Keep rejects holding as long as poss".
16. On 27th and 28th October 1992 Mr Lazenby sent letters to four companies including Concept Loyalty Limited that were designed to deceive and keep them on hold, under the false premise that the tender period was still in force. This meant that the confidentiality agreements were also still in force. In addition to that deception, he also encouraged three of the companies, including mine, to supply considerable further information despite the fact that he had already decided to reject those companies. Mr Hannagan was copied on all four letters.
17. Mr Lazenby also wrote to Senior King informing them that two companies had been chosen to move forward with the project, Senior King and another company. The other company was Geoff Howe & Associates who received a letter from Mr Lazenby along similar lines. Both were entitled to believe that they had almost made it to the finish line and were down to a two horse race. Mr Hannagan also received copies of these letters. Consequently, he knew exactly what was going on.
18. The "CONFIDENTIAL" note of 29th October 1992 from Lazenby to his colleagues, David Watson and Tim Hannagan, confirm that a blatant and deliberate deception was carried out. I was not completely shocked at Mr Lazenby's chicanery as I had suspected that he was not straightforward. I am more surprised that Mr Watson and Mr Hannagan were both complicit in the trickery executed by Mr Lazenby. Their actions against a number of companies, including my own, amounted to a restraint of trade and a planned deception designed to gain a pecuniary advantage. I say this because if they had not been wilfully deceived none of the relevant companies would have supplied such extensive commercially

valuable information free of charge.

19. I detected a growing unease in the relationship between my company and Fortronic from about this time. In view of Mr Lazenby's avowed intent in his note of 28th October 1992, regarding the "Possibility of using the Fortronic technology independently", it is logical to speculate that Mr Lazenby, possibly assisted by Tim Hannagan, deliberately drove a wedge between my company and Fortronic. Basically, Fortronic had undertaken to pay a 5% commission to Concept Loyalty for our involvement in the Shell project, which had been enormous. I believe that the eventual contract awarded to Fortronic by Mr Lazenby was worth over £17 million pounds. It should have generated a commission of over £800,000 for my company. Instead, possibly as a result of collusion between Mr Lazenby and Fortronic, we received no commission at all. The circumstances are not relevant to the current litigation but did bring my career in electronic loyalty schemes to an untimely end.

20. I have read with interest the documents relating to Senior King, the former retained agency that had also made a considerable investment in time and resources in relation to Project Onyx. Senior King put forward a smart key tag based loyalty scheme. As I have pointed out they must have concluded that they were in a two horse race after receiving the letter from Mr Lazenby at the end of October 1992. If so, both they and Geoff Howe & Associates were wrong. Mysteriously a horse that did not run in the race – Option One, materialised at the winning post. I understand that there is no trace in the discovery materials of Option One ever being in the original tender process. Their name certainly did not appear in the short lists that I have seen. They did however contact me in late 1992, again out of the blue. I was asked to go to a meeting at their offices when I met about five people. They told me that Shell had asked them to make contact with us and again I went through the whole technology issue with them. I had many meetings with Option One after this. For which I received not a penny in remuneration. From reading the documents, Senior King appears to have received the same treatment as I did, with Mr Lazenby apparently intent on separating them from their partner company, Schlumberger.

21. Some months ago, I was introduced to the managing director of Option One, Mr Bob Bailey. He conceded that his company had no expertise in electronic loyalty schemes and had acquired its

knowledge from me as a result of countless meetings, which Mr Lazenby had asked me to attend. Mr Bailey went on to boast that he had made over a million pounds from its role in Shell Smart. Option One also received gold awards from the Institute of Sales Promotion for Shell Smart. It now appears that the concept was not devised by Option One. I know for certain that the technical expertise came from me and from other relatively small companies who had provided information in good faith, in the expectation that we were all dealing with an honourable company. I am therefore somewhat at a loss to understand the basis on which Option One received the ISP awards.

22. I was of course absolutely appalled to read Lazenby's internal memo describing me as 'a used car salesman' and particularly so when I realise the depth of deception used by Mr Lazenby to glean for no cost my knowledge. It is especially disturbing that he made overt promises to use us on the Project Onyx when he had no intention whatsoever of dealing with others or us in an honourable fashion. It was because of his unwarranted allegation that I have deemed it necessary to set out my background in some detail. I can only speculate about his motive for rejecting my company in such a damning and unjustified way.

23. Mr Donovan has brought to my attention Shell's Statement of General Business Principles and a speech by Shell Chairman Mr Mark Moody-Stuart delivered on 6th October 1997. The following are extracts from the relevant speech:

"Commercial activity not only can be, but should be, undertaken with positive underlying values – ethical and moral... The Statement of General Business Principles constitutes a set of basic core values – honesty, integrity and respect for people... We do not bend these Principles. They are non-contestable and non-negotiable. If an employee fails to uphold these values he or she no longer belongs with us".

Despite this statement Shell has not sacked Mr Lazenby or his accomplices. I assume that like my company, the other parties involved in the long drawn out tender process abided strictly by the normal ethical rules. Mr Lazenby, with the support of his colleagues, Mr Hannagan and Mr Watson, self evidently did not do so. I suffered significant losses as a consequence of being deceived by Mr Lazenby to participate in a tender process that was corrupted by his indefensible conduct. His actions changed my life. The documents originated by Mr Lazenby toward the end of October 1992 speak for themselves.

24. I confirm the contents of this statement are true to the best of my knowledge, information and belief and I make it knowing that it may be given in evidence.

Signed: Michael McManus

(Michael McManus)

Dated this 19th day of April 1999

Witnessed at

18.04.99