IN THE HIGH COURT OF JUSTICE No HC11CO2185
CHANCERY DIVISION Neutral Evaluation No. 2014 EWHC 207 (Ch)

BETWEEN

(1) ALPHA SIM COMMUNICATIONS LIMITED
(In Compulsory Liquidation)
(2) U.A. DISTRIBUTION LIMITED
(In Compulsory Liquidation)
(3) REVAPOINT MARKETING LIMITED
(In Compulsory Liquidation)
(4) KEVIN JOHN HELLARD
(In his capacity as Liquidator of Alpha Sim Communications Limited)
(5) KEVIN JOHN HELLARD
(In his capacity as Liquidator of U.A. Distribution Limited)
(6) KEVIN JOHN HELLARD
(In his capacity as Liquidator of Revapoint Marketing Limited)
Claimants

-and-

(1) CAZ DISTRIBUTION SERVICES LIMITED
(2) IFTAKAR IQBAL
(3) FERN ASSOCIATES UK LIMITED
(4) AMAL MUNIR
(5) JAVEED AKHTAR SAKHI
(Also known as Javed Akhtar)
(6) GIRONA TRADE CENTER AND BUSINESS AFFAIRS SL
(a company incorporated in Spain)
(7) MARK ALLEN
Defendants

Before:
David Donaldson Q.C. sitting as a Deputy High Court Judge

26 February 2014

MTIC trading

1. This case concerns so-called Missing Trader Intra-Community ("MTIC") fraud, which revolves around the import, repeated resale, and ultimate re-export of large quantities of high-value low-bulk products such as mobile telephones or computer chips, and the associated accounting for VAT. Though I use the present tense, I understand such frauds to have effectively ceased in the second half of the last decade, as the result mainly of a change in 2007 in the manner in which VAT was levied on successive trading in these items. The claims in the present proceedings date from (a) August/September 2004 and (b) March/April 2006, but were not commenced until 30 June 2011. Their age is in itself a complicating factor, as is the way in which they find themselves being advanced so belatedly in this action.

2. Courts and tribunals have had to deal with MTIC frauds on, by now, numerous occasions and have had occasion to refer to its principal features. A most helpful summary, culled from a judgment of Blackburne J in *Regalway v. Shillingford* [2005] EWHC 261 (Ch), was provided by Proudman J in *HMRC v Sunico A/S* [2013] EWHC 941 (Ch) at paragraph 64:

> *" • A VAT registered trader in one EU member state sells taxable goods to a VAT registered trader in another member state (such as the UK). The overall effect is that the importer does not suffer VAT on its import.*
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> *• The UK importer, known in MTIC parlance as a "missing trader", "hijacked trader" or "Defaulter", sells the goods to another UK trader, known as a "Buffer". When the Defaulter sells to the Buffer, it charges VAT on the supply. As the Defaulter only incurs output VAT on its supply, but has no input VAT on its own purchase from the EU supplier, it is liable to account to HMRC for the full VAT element on its sale.*
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> *• The Defaulter then fails to file a return or account for the VAT to HMRC. Sometimes it will simply go missing, meaning HMRC is unable to pursue a claim for the VAT it is owed. Alternatively, the Defaulter will direct the Buffer to pay some or all of the purchase price to a third party or third parties ("Third Party Recipients"), thereby rendering the Defaulter unable to discharge its VAT liability. Such third party payments are central to the present case.*
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> *• The first Buffer trader, or "First-line Buffer" will sell the goods on in the UK to another Buffer (a "Second-line Buffer") and may either receive payment from the Second-line Buffer and make payments up the chain of supply itself, or the First-line Buffer may direct the Second-line Buffer to make third-party payments up the chain.*

• There may be a number of sales to Buffers, in order to extend the paper trail and obfuscate the underlying fraud.

• Eventually, a Buffer will sell to an exporter of the goods (the "Broker"). The Buffer may account to HMRC for VAT in the usual way, netting off the input tax on its purchase against the output tax on its sales. The amount of the VAT payable to HMRC by the final Buffer in the chain will represent the VAT on the Buffer's profit or commission.

• The Broker will then sell the goods to a purchaser in another EU member state. It will suffer no effective output tax on the export, but it will have an input tax credit in respect of its purchase from the final Buffer.

• The Broker will then submit a (frequently very large) VAT refund claim to HMRC in respect of the input tax from its purchase from the final Buffer.

• Quite often the same goods exported by the Broker will then be re-imported to the UK and the whole sequence will be repeated again. Hence the name "carousel fraud".

• It may be some time before the importer defaults on his obligation to account for the input tax he has charged and been paid. In order to avoid detection the transactions are usually effected, or said to have been effected, extremely quickly, often within the space of one day. More often than not, the transactions involve substantial sums of money passing down the chain.

• Overall, if the fraud depends upon the use of third party payments to put the money beyond the reach of HMRC, the Third Party Recipients (usually overseas companies) will receive virtually the entirety of the purchase price for the goods, including the VAT element, although each party to the fraud creams off a small percentage of the VAT as it passes on the goods."

3. While the carousel may revolve more than once, this is not a necessity. Since the value of any consignment is generally in the hundreds of thousands of pounds, the VAT element creamed off is proportionately high, even on a single revolution. If the carousel does proceed to a subsequent turn, it may be fuelled by the same or by a different consignment, which in the latter case may or may not have been acquired with the proceeds of sale at the end of a previous line, and it is not necessary that all the participants remain the same.

4. The chain of sales and resales from the original purchase of the goods in Europe to their export back to Europe is commonly referred to as a "line". The claims in the present action found on a large number of such chains. The role of the participants also has a conventional terminology, which I will adopt in this judgment, with some brief prior explanation.

5. (a) A chain starts[1] with the acquisition of the goods abroad by a company incorporated in a European state, termed either "the Strong European" or "the catcher".

(b) The catcher sells the goods to "the under", an abbreviation of "the underinvoicer", also a European company, which re-sells to a UK importer, a sale which attracts no VAT. It does so at a price significantly less than that agreed with the catcher. The function of this price drop is to create room for margin on the resales which will take place in the UK before the ultimate re-export of the goods.

(c) The importer, often referred to as the "number 1", resells to a "number 2", and the goods proceed through a number of resales, each with similar numbering by reference to their place in the UK portion of the line up to as many as five, before reaching an exporter or "broker". The companies between the importer and the exporter are referred to as "buffers", the first buffer equating to the number 2 and so on thereafter.

(d) Throughout this process, VAT invoices are issued, enabling each of the buffers to set off downstream VAT against its upstream liabilities. Since the margins are small, the resulting net VAT position is close to nominal. At the end of the line, since no VAT is chargeable on an export, the exporter can reclaim the whole of its downstream VAT from HMRC.

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[1] I use the historic present tense.

6. The fraud is engineered by the importer directing its purchaser, the number 2 or first buffer, to pay the entirety of the resale price including the VAT to one or more overseas entities[2]. Instead of making the payment itself the first buffer typically instructs the second buffer to pay its purchase price plus VAT abroad. At the end of the VAT quarter when a large number of lines, amounting to millions of pounds, have passed through the importer, it fails to account for the VAT on its downstream sales, and its management disappears, leaving the importer in default and without assets to satisfy the claims of HMRC. The only function of the buffers would appear to be to obscure the nexus between the reclaim of VAT and the upstream VAT-free acquisition on importation, which would not then be visible without considerable investigation of the intermediary links.

7. The successive trades within each line can be both set up and then consummated with minimal delay between them, and the line may be operated several times in a day. Many participants were clients of the same bank, permitting rapid money transfers, and allocation and transfers of goods in the possession of forwarding agents could be effected electronically, or perhaps by fax or even by telephone. It was therefore unnecessary for any of the intermediary participants to have any significant capital, and typically they had none. The only real money required was that for the initial acquisition of the goods, which could be recovered rapidly on their re-export. The 17.5% could be used to cover the small mark-ups in the United Kingdom sales, a commission to the under, a profit margin for the catcher, and a substantial remainder for the provider of the working capital.

The transactions underlying this action

8. The transactions on which the claimants rely as the basis of their causes of action are tabulated in Schedules 1 to 6 attached to the Particulars of Claim, reproduced as similarly numbered Schedules in the Appendix to this judgment[3] and compiled by the claimants as a summary of the available documentary material.

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[2] On occasion the payment instruction directs a very modest sum to be paid, often in cash, to the importer, though this may be intended for the manager of the importer, who will find it prudent to disappear at an early stage when the company's default becomes apparent.

[3] Schedules 5 and 6 do no more than duplicate some of the transactions in Schedules 2 and 3, and need not be separately considered.

9. Between 17 March 2006 and 23 March 2006 the First Claimant ("Alpha") made sales of mobile phones totalling around £12.1 million. They are included in Schedules 1,2 and 5 to the Particulars of Claim in this action[4], reproduced as similarly numbered Schedules to this judgment, which set out the lines of which they formed part with extensive, if not fully exhaustive, details of the individual transactions at each stage. Alpha never accounted to HMRC for the VAT on these sales, namely £1,344,132.14 on Schedule 1 sales, and £636,689.80 on Schedule 2 sales (which incorporate the Schedule 5 sales). Alpha's sole director at the time of the sales was Mr Imran Khan, who was registered as such on 20 February 2006. On 1 August 2008 he was disqualified on his own undertaking from acting as a director for 12 years.

(a) Schedule 1 transactions

10. (a) Each of the 12 consignments of phones in Schedule 1 was imported by Alpha. Though the details are not known in all cases, the "catcher" appears to have been Multimode Marketing SL and the "under" to have been PZP Ena DOO, a Slovenian company.

(b) The purchaser from Alpha - the first buffer - was MG Components Ltd ("MG") in all cases but two, where that position was occupied by Realtech Distribution Limited.

(c) The position of second buffer (or number 3) was occupied by RK Brothers Ltd ("RK").

(d) RK resold in all cases to the First Defendant ("Caz"), which occupied the position of third buffer.

(e) The goods then passed through a number of different companies in the position of fourth, and sometimes fifth, buffers before being exported by a variety of companies.

11. Payment instructions by Alpha to RK have been found in six cases. They instructed the lion's share of the purchase monies to be paid to Electron Global (in five cases) and Intertech (in one case). (Unusually for the immediate recipient of diverted monies, Electron Global was registered in the United Kingdom.) In four cases a relay of those instructions by MG to RK has been found, save that Multimode was substituted for Intertech. In addition the instructions provided for a small sum to be paid to WWCURR ("World Wide

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[4] Schedule 5 duplicates some of the sale in Schedule 2, and therefore requires no separate consideration.

Currencies"). A review of Alpha's bank statements reveals that no payment was ever made to it in respect of any of the Schedule 1 transactions.

12. Only one of the participants in the Schedule 1 lines, 12 in number, was sued in this action, namely Caz. It failed to file an acknowledgment of service and on 15 February 2012 judgment in default was given against it (i) in favour of Alpha (a) in the sum of £1,344,132. 14 for dishonestly assisting breaches of fiduciary duty by Mr Khan, (b) for damages to be assessed on Alpha's claim in conspiracy, and (ii) in favour of the Fourth Claimant, Alpha's liquidator, in the same sum for participating in Mr Khan's carrying on of Alpha's business to defraud creditors or for a fraudulent purpose (namely the non-payment of its liability to HMRC for VAT) in breach of section 213 of the Insolvency Act 1986.

13. The continuing relevance of Schedule 1 is now solely because the claimants seek to impose liability on the Second Defendant ("Mr Iqbal") in relation to these transactions. He does not contest the existence of an MTIC fraud on any of them, or that Mr Khan was in breach of fiduciary duty, but denies that he knowingly abetted it.

(b) Schedule 2 lines (duplicated in part in Schedule 5)

14. (a) Each of the 34 consignments of phones in Schedule 2 was purchased originally by either Sunico A/S, a Danish company, or Intertech SARL, a French company[5] - performing, according to the claimants, the role of catcher or Strong European.

(b) They were all resold to UAB A Dizaine, a Lithuanian company, which in turn resold at a loss - and therefore according to the claimants as the underinvoicer - to Alpha as importer.

(c) The purchaser from Alpha - the first buffer - was Realtech Distribution Limited.

(d) The position of second buffer (or number 3) was occupied by Vibetec Solutions Limited ("Vibetec").

(e) Vibetec resold either to the Third Defendant ("Fern") or to Electron Global Limited ("Electron") in the position of a third buffer. In the former case the lines are duplicated in Schedule 5.

[5] In four cases the identity of the company performing this role has not been established but is unlikely to have differed.

(f) In all cases however the resale by Fern or Electron was to Diginett Limited ("Diginett"), which resold to a fifth buffer, in all but a handful of cases New Way Associates Limited ("New Way"), before the goods passed to a number of different exporters.

15. The claimants have been unable to find documented payment instructions on these lines other than in five cases. The instructions were given by Alpha itself to its purchaser Realtech.

(i) In Deal 747, where the sale price (inclusive of VAT) was £200,184.75 the instruction was to pay (a) Sunico £169,200 and a further £16,200 as an advance deposit on future deals, and (b) "WWCURR" (World Wide Currencies) £14,658. That left a balance of under £1,500, wholly inadequate to cover the VAT element of £29,814.75. With different figures the same picture occurs on Deal 757.

(ii) In Deals 748, 760, and 771 the instructions were similar save that Sunico was replaced by Intertech, the original supplier, and the result was also similar.

The Claimants ask me to infer that there were similar instructions in all the other cases. Alpha never received payment of the purchase price in any of the transactions, as is apparent from its bank statements and is not in dispute.

16. Claims in respect of all the Schedule 2 transactions are brought:

(a) By Alpha against Mr Iqbal for dishonest assistance in breach of fiduciary duty by Mr Khan and conspiracy. Mr Iqbal was the director and alter ego of Diginett, the fourth buffer on these sales.

(b) By the Fourth Claimant, as the liquidator of Alpha, against Mr Iqbal for participating in Mr Khan's carrying on of Alpha's business to defraud creditors or for a fraudulent purpose in breach of section 213 of the Insolvency Act 1986.

(c) By Alpha against the Third Defendant ("Fern"), the Fourth Defendant ("Mr Munir"), and the Fifth Defendant ("Mr Sakhi") for dishonest assistance in breach of fiduciary duty by Mr Khan and for conspiracy. Mr Munir was the company secretary of Fern, the third buffer on some of the Schedule 2 lines: judgment against him for £514,642. 72 in default of acknowledgment of service was entered in favour of Alpha on 13 February 2012. Mr Sakhi, Mr Munir's uncle, was the sole director of Fern.

(d) By the Fourth Defendant, as the liquidator of Alpha, against Fern, Mr Munir and Mr Sakhi for participating in Mr Khan's carrying on of Alpha's business to defraud creditors or for a fraudulent purpose in breach of section 213 of the Insolvency Act 1986. In the light of the default judgment on the claim of Alpha

itself against Mr Munir, this claim was not pursued before me, and Mr Munir took no part in the proceedings.

17. None of these defendants contests the existence of an MTIC fraud on any of these transactions, or that Mr Khan was in breach of fiduciary duty but all deny that they were knowing participants in it.

(2) UA sales

18. Between 13 April 2006 and 26 April 2006 the Second Claimant ("UA") made sales of £13,155,543, inclusive of VAT of £1,959,335. UA never accounted to HMRC for the VAT on these sales. UA's sole director at the time of the sales was Mr Azam, who was registered as such on 24 November 2006. On 1 August 2008 he was disqualified from acting as a director for 13 years.

19. The sales in question are included in Schedule 3 of the Particulars of Claim in this action (duplicated in part in Schedule 6), reproduced as Schedule 3 to this judgment, which sets out the lines of which they formed part with extensive, if not fully exhaustive, details of the individual transactions at each stage.

(a) Each of the 30 consignments of phones in Schedule 3 was purchased originally by either Sunico or Intertech[6] - performing, according to the claimants, the role of catcher or Strong European.

(b) They were all resold to UAB Mingele, a Lithuanian company, which in turn resold at a loss - and therefore according to the claimants as the underinvoicer - to UA as importer.

(c) The purchaser from UA - the first buffer - was Aflecks Phones Limited ("Aflecks") in 23 transactions up to 25 April 2006 and USMIT t/a First Point Limited as to the remaining 7 transactions on 26 April 2006.

(d) The position of second buffer was occupied by Fonedealers Limited ("Fonedealers").

(e) Fonedealers resold either to Fern or to Emmen Communications Limited ("Emmen") - and in one sole case Electron - in the position of a third buffer. In the former case the lines are duplicated in Schedule 6.

(f) In all cases however the resale was to Diginett, which resold to a fifth buffer,

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[6] In two cases the identity of the company performing this role has not been established but is unlikely to have differed.

in all but five cases New Way Associates Limited ("New Way"), before the goods passed to a number of different exporters.

20. The claimants have only been able to find documented payment instructions on these lines in seven cases. The instructions were given by UA itself to its purchaser Aflecks[7]. In each case they directed payment of the totality or quasi-totality primarily to the original supplier, Sunico or Intertech, with a smaller payment as an advance deposit, a still smaller payment to WWCUU, and a very small sum to UA itself. The latter was a drop in the ocean compared with UA's VAT liability on the transaction. The Claimants ask me to infer that there were similar instructions in all the other cases.

21. In a telephone conversation with HMRC on 19 April 2006 Mr Fletcher of Aflecks stated that it had received no payments and his customers (including Fonedealers) made third party payments. Given the date of the conversation this must relate to earlier transactions. The Case Progress Sheet also records that in early March 2006 a provisional liquidator had been appointed in respect of Aflecks and its bank account had been frozen, suggesting that it would have been impossible for Aflecks to receive any monies.

22. Claims in respect of all the Schedule 3 transactions are brought:

(a) By UA against Mr Iqbal for dishonest assistance in breach of fiduciary duty by Mr Azam and for conspiracy.

(b) By the Fifth Claimant, as the liquidator of UA, against Mr Iqbal for participating in Mr Azam's carrying on of UA's business to defraud creditors or for a fraudulent purpose in breach of section 213 of the Insolvency Act 1986.

(c) By UA against Fern, Mr Munir, and Mr Sakhi for dishonest assistance in breach of fiduciary duty by Mr Azam and for conspiracy. Judgment in default of acknowledgment of service was entered in favour of UA against Mr Munir for £371,846.83 on 22 November 2011.

(d) By the Fifth Claimant, as the liquidator of UA, against Fern, Mr Munir and Mr Sakhi for participating in Mr Azam's carrying on of Alpha's business to defraud creditors or for a fraudulent purpose in breach of section 213 of the Insolvency Act 1986. In the light of the default judgment on the claim of Alpha itself against Mr Munir, this claim was not pursued before me, and Mr Munir

[7] It is alleged in the Amended Particulars of Claim (at paragraph 40(f)) that the payment instructions were passed to Fonedealers who made the payments, but I was shown no evidence in support, and it makes no substantive difference to the claimants' case.

took no part in the proceedings.

23. None of these defendants contests the existence of a MTIC fraud on any of these transactions, or that Mr Azam was in breach of fiduciary duty, but all deny that they were knowing participants in it.

(3) Revapoint sales

24. Between 31 August 2004 and 22 September 2004 the Third Claimant ("Revapoint") made sales of mobile phones totalling £9,256,691.70. It failed to file a VAT return for the period ending October 2004. HMRC was never paid the £1,619,920. 87 due to it from Revapoint as VAT on those sales. During this period the sole director was a Mr Tabrez, who was registered as such on 12 July 2004. He was disqualified from acting as a director for a period of 11 years on 20 December 2010.

25. The sales in question are included in Schedule 4 to the Particulars of Claim in this action, reproduced as Schedule 4 to this judgment, which sets out the lines, 34 in number, of which they formed part with extensive, if not fully exhaustive, details of the individual transactions at each stage.

26. (a) Each of the 34 consignments of phones in Schedule 4 was purchased originally by Girona Trade Center and Business Affairs SL ("GTC") - performing, according to the claimants, the role of catcher or Strong European. Though a company registered in Spain, GTC had little other connection with that country: its sole director was Mr Mark Allen.

(b) They were resold by GTC to Cilloni Silvano ("Cilloni"), an Italian company, which in turn resold at a loss - and therefore according to the claimants as the underinvoicer - to Revapoint as importer.

(c) The purchaser from Revapoint - the first buffer - was, for the first 10 consignments, The Phone Box Limited ("Phonebox"), and for the remaining 24 Monstermodz Limited ("Monstermodz").

(d) Both however resold to the same purchaser - the second buffer - Rascal Management Limited ("Rascal"), and then to the third buffer, in 25 cases Diginett.

(e) Resales then took place to a number of companies in the position of a fourth buffer, including in two cases Diginett, and then on to a number of exporters, in eight cases Diginett.

(f) The identity of the European purchasers is not known in all cases, but of those which have been identified some feature elsewhere in the documentation as

suppliers to GTC, though not necessarily on any of these lines.

27. Payment instructions, summarised in Schedule 4, were issued by the first buffer to the second buffer, Rascal, directing payment to third parties of almost all of the VAT inclusive price due from the latter to the former. The remainder was directed to be paid to GTC, usually in its totality, but sometimes subject to a smallish payment or payments to one or two overseas third parties. It is not in dispute that these instructions were implemented and the payments received by GTC. Nor is it disputed that, concomitantly and consequently, Revapoint never received payment.

28. Claims in respect of all the Schedule 4 transactions are brought:

(a) By Revapoint against Mr Iqbal, GTC and Mr Allen for dishonest assistance in breach of fiduciary duty by Mr Azam and for conspiracy.

(b) By the Sixth Claimant, as the liquidator of Revapoint, against Mr Iqbal, GTC and Mr Allen for participating in Mr Tabrez's carrying on of Revapoint's business to defraud creditors or for a fraudulent purpose in breach of section 213 of the Insolvency Act 1986.

None of these Defendants dispute that there had been an MTIC fraud on each of these transactions, or that Mr Tabrez was in breach of fiduciary duty, but they deny that they were knowing participants in it.

A preliminary point

29. Counsel for Mr Iqbal, Anthony Elleray QC, sought a short kill to the action against his client by suggesting that the goods were never in fact purchased or resold by the importer. If that were the case, then the importer would never, he submitted, have been liable for VAT[8]. I am however satisfied by the documentation, even if it is not comprehensive in every case, that goods existed, were imported, and passed through a chain of sale and resales, with the attendant allocations and releases and instructions to the forwarding agents.

The genesis of this action

30. In February 2005 HMCE officers at its offices in Glasgow began a criminal investigation into a MTIC fraud which they thought to be centred on a Glasgow-

[8] Even this assertion is in fact erroneous, if the importer issued a VAT inclusive invoice to its purchaser: see Schedule 11 para. 5 to the Value Added Tax Act, 1994. This would appear to have been so here (though copies of such Alpha and UA invoices have not been located in every case).

based family which might also be involved in money-laundering. In 2006 the investigation identified what it believed to be links to associates in Manchester and London. Covert audio surveillance was then deployed in an office used by Diginett at Craig House, 64 Darnley Street in Glasgow, from which Mr Allen also operated, and also at premises in Manchester (and in addition some visual surveillance in Glasgow). Transcripts of some of the conversations recorded were adduced in evidence before me, and I also listened to a considerable number of them in whole or in part.

31. It will be noted that the investigation began somewhat later than the Revapoint trading in the autumn of 2004 identified in Schedule 4. HMCE had been concerned by a large volume of trading by GTC (beyond the transactions in Schedule 4). Mr Allen was brought in to a local police station for questioning by two HMCE employees on 17 November 2004. Search warrants were also executed at Craig House and premises belonging to Mr Allen's girl-friend and to Amer Iqbal, brother of Iftakar, and close friend of Mr Allen. The view was however taken that Mr Allen was simply an "employee" of Diginett being used by Mr Iqbal, and the matter appears to have proceeded no further.

32. On 15 August 2006 searches were carried out at premises across the United Kingdom. A number of suspects were arrested and later charged under section 72 of the VAT Act, 1994. It appeared to HMRC that offences had been committed by members of a criminal "gang" which was primarily based in Glasgow where it included Mr Iqbal and his brothers Amer and Auid. On the application of HMRC the Court of Session made a restraint order under the Proceeds of Crime Act freezing the assets of many of the participants, including - as I understand it - all the defendants in the present action (other than perhaps Caz). Such orders are made with a view to a later confiscation order following a successful prosecution where the accused has benefited from his criminal conduct. It may be thought that this is a more appropriate route for the state to be made whole against a large tax fraud than civil proceedings such as the present action, and doubtless the authorities would have preferred if it had continued thus.

33. Regrettably, however, things do not then appear to have proceeded apace. I am unaware why, save for an indication that difficulties were caused by a change in the rules of evidence in Scotland. In 2011 HMRC was required to give an undertaking to the Court of Session that the restraint order would be discharged unless criminal proceedings were commenced by 30 June 2011. They were not; and the restraint order fell. That same day, however, application was made by the claimants to the High Court in London for a freezing order against all the defendants except Caz. It was granted for a period of 14 days by Vos J and renewed by Briggs J on 14 July 2011, the date of the Particulars of Claim.

34. The transition from an intended prosecution of criminal charges to a civil action in the High Court, and the apparent scramble to effect this before the deadline of midnight on 30 June 2011, has however been far from happy in its consequences.

35. Firstly, it has resulted in the case being presented to this court in the pleadings and witness statements in a manner which is ill-focussed on the particular transactions relied upon and the causes of action advanced. To say that the manner and content of this presentation was user-unfriendly would be a serious understatement. It has heavily burdened and prolonged analysis of the evidence and documents and the preparation of this judgment. It also gave rise to a number of gaps which manifested themselves during the hearing and which the claimants found themselves scurrying to fill on the hoof.

36. Secondly, while HMRC looms clearly behind the present action, and will be the ultimate beneficiary of any recoveries from it, it is not the, or even a, claimant. I was told that because of on-going investigations it had not passed to the claimants all the material in its possession[9], even - as I understood it - where it might have been helpful to the claimants' case.

37. Thirdly, the Particulars of Claim bear all the signs of having inherited much of their content from some prior document or documents concerned to set out, as would be understandable in a multi-party criminal fraud prosecution, a single global conspiracy embracing very many more parties than the defendants, operative over a lengthy period of time, covering very much more than the limited number of transactions addressed in this action, and possibly filling the extensive and otherwise bizarre gap in time between 2004 and 2006 which occurs, disconcertingly, in this action. That conspiracy would also plainly have been regarded as one to defraud HMRC. Before me, however, it was agreed that the appropriate analysis was by reference to the loss or damage suffered by the three claimant companies. The essential question explored before me was whether the defendants had dishonestly assisted the breach of fiduciary duty by the directors of the claimant companies owed by them to those companies and resulting in loss or damage to them.

38. Given the broad reach of the concept of dishonesty, if (or to the extent that) the claim in dishonest assistance were to fail, so too must the claim in conspiracy (though not vice versa). Consonant with that, the closing submissions of the parties addressed conspiracy as a cause of action scarcely, if at all. A further

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[9] This extends to some of the records and other documents seized from the defendants, about whose absence I heard complaints from their counsel. Since such material was not in the possession or control of the claimants it was not disclosable. No attempt appears however to have been made by any of the defendants to obtain it by other means.

complication, had it been necessary to consider conspiracy, would have related to its object and victim. Unlike the conspiracy envisaged before the abrupt change of horse from criminal offence to civil liability (and also unlike the civil conspiracy claims brought by HMRC itself in *HMRC v Sunico A/S* and *HMRC v Total Network SL* [2008] 1 A.C. 1174), any conspiracy claim in the present action would need to address the loss or damage caused to the companies. At the same time, and compounding a never resolved confusion, the case advanced by the claimants in their role as the liquidators under section 213 of the Insolvency Act was based on the proposition that the directors (abetted by the defendants) had carried on the business of the companies with intent to defraud HMRC as creditors.

39. In a final twist of complication, no claim in conspiracy could in any event lie as regards the Revapoint transactions. Having taken place in 2004, they were firmly time-barred[10].

40. It is against this unsatisfactory background, and with analysis from the claimants much less comprehensive and focussed than I would have hoped for, that I have sought to isolate and evaluate the material and evidence which is relevant to each of the individual claims and the transactions to which it relates. In doing so, I have tried to remain alert to the danger of allowing my adjudication of each claim to be improperly affected by a general wash of prejudicial material applied somewhat indiscriminately across the entire canvas. I have also borne in mind the serious, and indeed criminal, nature of what is alleged against each defendant and, following the remarks of Lord Nicholls in *RE H (Minors)* [1996] AC 563 at 586 and many other judicial observations to similar effect, take that into account in considering where in relation to any issue the balance of probabilities lies.

The 2006 transactions (17/3/06 to 23/3/06 and 13/4/06 to 26/4/06)

41. During the search of premises at 25 Church Street, Manchester, on 15 August 2006 a memory card was removed containing 11 folders with more than 275 Excel spreadsheets with dates from 24 April 2006 to 18 July 2006, with templates relating to deals on lines on specified dates and recording the participants down to the third buffer. Many of them are drawn from a template created on 30 December 2005.

42. These spreadsheets contain tabular cells embedded with formulae which

10 As the result of *Williams v Central Bank of Nigeria* [2014] UKSC 10, decided on 19 February 2014, the same is now true of the claims in dishonest assistance in respect of these transactions: see paragraph 107 and 108 below.

populate the documents with figures once limited data are added. The data in question are the "top price" and "bottom price", referring to the selling price of the Strong European or catcher and the buying price for the number 4 (or third buffer). When these are inserted, they feed the formulae in the other cells so as to produce the buy and sell prices for each company on the spreadsheet. This can only happen because the margin at each stage is pre-set: it is almost invariably a round figure regardless of unit price, and usually the same figure, though a larger margin may sometimes occur on more expensive units. They also contain a P.I. or payment instruction column, which on analysis is equal to the top price times the number of units being sold. The payment is to be made to the Strong European by the T.P., or Third Party (or Third Party Payer), the number 3 or Second Buffer.

43. Further columns include:

(a) "Comms" (or commissions), calculated as the margin of the number 1 and number 2 together with VAT at 17.5% thereon times the number of units; and

(b) "Wash", calculated as the purchase price of the Third Party less its payment to the Strong European less the Comms. Its presumed function would be to provide commission to the underinvoicer and a return to the financier of the scheme.

44. A further 72 spreadsheets with the same properties and derived from the same master relating to a period from February 2006 to August 2006 were found on a laptop computer during the search of premises at Queen's Court, 6 Lloyd Road, on 15 August 2006. 145 similar spreadsheets covering the period 2 March to 28 April 2006 were found on two flash cards seized during a search the same day at Masson Place, 1 Hornbeam Way, Manchester: on this occasion however the master template was created on 5 March 2006. Two further templates were found entitled *"PZP MASTER TEMPLATE"* AND *"PREMISTEN MASTER TEMPLATE"*.

45. Recordings made by covert audio surveillance at premises in Manchester accord with, and confirm, the figures in a spreadsheet for 19 May 2006 on deals on a line entitled *"19 MAY TONY 1"*. In a telephone conversation with Mr Amjid Siddique that same day a man using the codename "Goldie" gave him the bottom and top price for many of those deals. Also recorded are instructions by telephone to some of the participants as to whom and/or what quantity and type of phone and/or at what price they are to buy and/or sell.

46. That same day a lady was recorded at the same premises passing on to Electron (in London) the payment instructions for the Strong European, Commission and Wash in all eleven deals.

47. The transmission of similar information in relation to lines for 26 May 2006 is also recorded.

48. For the most part these spreadsheets, despite the large number of lines which they cover, do not relate to the lines on which the claimants seek to found in this action. Such a match does however exist in relation to UA deals nos. 849 to 861 in Schedule 3, as to which:

(a) in deals 851, 853, and 856 Fern was the Third Buffer.

(b) in all the deals Diginett was the Fourth Line Buffer.

It is however inherently improbable, and to a high degree, that all the other lines on Schedules 1 to 3 were not set up and recorded using similar spreadsheets.

49. The search of Masson Place also found some 210 payment instructions and associated documents for each deal involving PZP between 18 May 2006 and 19 May 2006, which feature in the spreadsheet for *"19 MAY TONY1"*. My attention was drawn in particular to those relating to the sixth transaction including:

(1) PZP's purchase order no. 1225 dated 19 May 2006 for 3000 Nokia 8800 at £400.05;

(2) PZP's release;

(3) an erroneous payment instruction by PZP in favour of Electron dated 19 May 2006 for invoice no. 1225;

(4) PZP's corrected payment instruction (mis-dated 9 May 2006) in favour of Multimode.

These documents all purport to come from an address in Slovenia. They were in fact sent from Masson Place, where one of the two fax machines was set with the header *"PZP ENA D.O.O."*(the other with the header "Premisten OU.68", another underinvoicer).

50. It is against this background that I turn to consider the position and evidence of (a) Fern and Mr Sakhi and (b) Mr Iqbal in relation to the transactions in Schedules 1 to 3.

(a) Fern and Mr Sakhi

51. For this purpose, it is not necessary to distinguish between Mr Sakhi and Fern, of

which he was the sole director, and I shall refer to the two indifferently, as convenience requires.

52. Mr Sakhi founded Fern originally with a view to importing construction materials and to raise capital for trading in electronic products, and Fern was registered for VAT in May 2003 with corresponding trade classification. Trading scarcely got off the ground before Mr Sakhi fell seriously ill and had to be admitted to hospital, returning to work only in 2005. During his absence Fern was run effectively by his nephew, Mr Munir. The latter ceased, Mr Sakhi told me, to be involved on the return of his uncle, who took over such trading contact as he had generated, though there is considerable evidence in the papers before me that Mr Munir's activities did not in fact terminate.

53. In May 2005, by which time Fern was trading actively in mobile telephones and CPUs, he met with an officer of HMRC at the latter's request. One topic raised on that occasion was the fact that Fern had been making payments to third parties at the request of its supplier. Mr Sakhi was warned that HMRC viewed such payments as an indicator of fraud, and he understood that the problem was that the diversion of payments could lead to a supplier up the chain not paying the VAT on the transaction. He told HMRC and repeated in a letter that he would no longer make payments to third parties, nor did he.

54. I note also that the "due diligence" expected by HMRC included a purchaser obtaining a "Supplier Declaration" in what appears to be a standard form found at various places in the court bundles[11]. That declaration, plainly inspired and probably drafted by HMRC, included the undertaking that *"We will not enter into a third party payment(s) with our supplier if there are grounds for suspicion that relevant VAT on those goods will not be paid.".* Any regular participant in back-to-back trading of phones or CPUs could not therefore have been ignorant of the MTIC phenomenon and the role of third party payments in it.

55. Understandably and sensibly, counsel for Mr Sakhi did not suggest that the transactions in question were not an MTIC fraud. Nor in the light of his exchanges with HMRC could Mr Sakhi have plausibly pleaded ignorance of the existence of such schemes. His case in effect was that he was unaware that it was taking place in the instant cases.

56. In part he relied on the fact that he had done all the checks on his suppliers

[11] The earliest which I have located is given by Cell Trading Ltd to Diginett on a form provided by the latter. Though that document is dated 20 September 2004, it has a fax footer which implies that the form itself goes back to at least November 2002.

required by HMRC[12]. This I find of little support to his case: such checks were the formal minimum which any participant in the market, innocent or corrupt, would need to have made, if it was not to expose itself immediately to the suspicion of HMRC where a fraud occurred.

57. He told me that he had gone further, including a visit to, for example, Diginett in Glasgow. He had also sought credit rating reports from his trading partners. Far from being a powerful point in his favour, however, the financial state revealed by them could not be regarded as reassuring in the context of deals in the hundreds of thousands of pounds. The same would have been true of any credit rating report on Fern sought by a customer or supplier. It was true that matters were so organised that the trades were typically all consummated in the same day, but there remained nonetheless not insignificant gaps of time in which either Fern would have released the goods (held by a forwarding agent) before receiving payment or have made payment before the goods were released to it, unless – which, Mr Sakhi told me was not, or not always, the case - it could procure its contracting party to take those risks. When that was put to him, Mr Sakhi's response was simply that the trade was built on trust. I found this an implausible explanation, given the level of the risks, which were wholly incommensurate with the small margin received by Fern. The trading becomes rational only if he knew that the entire line was orchestrated and therefore would never fail at an intermediate link leaving him stranded with a mammoth loss. It is thus in itself a strong indication that the trading was entirely artificial with a quite different purpose from genuine commercial activity.

58. It is not only the size of the margin taken by Fern which has potential significance, but its nature. According to Mr Sakhi's evidence, he would be contacted by suppliers seeking to sell him stock or by customers looking to purchase stock: the latter included Diginett on an almost daily basis, the former Vibetec. If he was trying to source stock, he would call or fax a number of potential suppliers. He told me that he would negotiate over price, both upstream and downstream. Yet Fern's margin was invariably 0.20p per unit, regardless of quantity or value. This is an incredible result if Mr Sakhi was negotiating ad hoc and at arm's length on each deal to achieve the most favourable terms with a supplier or customer doing the same. Moreover, in the cases where the Manchester spreadsheets exist for lines in which Fern was involved (see paragraph 48(a) above), the prices reflect a 0.20p margin for Fern. It would seem that the margins for Fern, and the similar round-figure margins for all the participants shown, had been pre-agreed with them, and were used to generate the purchase and sale prices in the spreadsheets, rather than the other

[12] These are listed in the standard Suppliers Declaration to which I referred in paragraph 54, which confirms that they have been carried out.

way round. Indeed, had it been otherwise, the template and its embedded formulae would have had no obvious value.

59. These matters would in themselves be sufficient to satisfy me that Fern's purchase price and sales price were in each case dictated to him by a person or persons organising the line.

60. They also gain an element of support from some of the covert surveillance. While the conversations do not address the transactions relied upon by the claimants in these proceedings, they are sufficiently proximate in time and similar in content to provide some assistance in understanding those transactions and the practice and knowledge of their participants. They are advanced by the claimants on the basis that the names "Uncle" and "Neph" denote Mr Sakhi and his nephew, Mr Amal Munir. Though that is disputed by Mr Sakhi (and other defendants), I am satisfied from my consideration of the transcripts and having heard Mr Sakhi in the witness box that the claimants' contention was accurate.

(a) On 10 February 2006 Mr Iqbal was recorded in a telephone conversation with a person whose uncle was associated with Fern, saying, *"Yeah, ah, Fern I don't want because he's, I don't know, I know he's your uncle and that, right, I fully respect that but yeah....see, he, he makes too many mistakes."* Mr Iqbal appears however to overcome his initial unwillingness because in a subsequent conversation immediately after this he is recorded as stating, *"I've got two companies, they'll take 15 pence each. One is Fern and one is Electron... They're Neph's...One's Neph's uncle and Electron's Anj's company........They also supply me as well.....but it doesn't matter, does it? Or does it, it's not as if Guess and them are running on the same deals but can they go down the same chain can they buy off Wild Tower?...... Electron Global and Fern Associates.....Cause remember they're, they're like the same situation as Guess. They buy from thirds".* This corresponds to the pattern found a month later on the Schedule 2 sales, where Electron and Fern bought from number 3s (or second buffers) and resold to Diginett.

(b) On 21 June 2006, at premises at Burton Place in Manchester, Mr Amjid Siddique is recorded saying, *"Ah Uncle, Uncle, did I give you your, your, eh buying price as 69 spot 20 for Kingfisher. And eh 69 point 50 for LTL.."*

61. The participation of Fern in these lines was in each case an integral part of a scheme whose function was to divert payment of the VAT element on the importer's sale into the UK market to a prior European supplier[13]. This could only be achieved with at the lowest the connivance of a person conducting the

[13] The payment abroad of the non-VAT element merely short-circuited a payment which would have reached the same destination by orthodox transmission upstream through the chain of suppliers.

affairs of the importer company, and thus necessarily involved a breach of fiduciary duty owed by him to the company in engaging in arrangements under which the company incurred a VAT liability for monies which were not to be collected from its customer. Equally, it was only because of the existence of the whole line, and as part of it, that the management of Alpha and UA engaged their companies in these arrangements[14]. It follows, and I so find, that in each of the cases in which it participated in such a line Fern (and through it Mr Sakhi) facilitated and thus assisted that breach.

62. That engaged its (and his) responsibility only however if the assistance was rendered dishonestly.

63. I take as a starting-point the oft-quoted observations of Lord Nicholls in *Royal Brunei Airlines v Tan* [1995] 2 A.C. 378 at p.389:

> *"Whatever may be the position in some criminal or other contexts ..., in the context of the accessory liability principle acting dishonestly, or with a lack of probity, which is synonymous, means simply not acting as an honest person would in the circumstances. This is an objective standard. At first sight this may seem surprising. Honesty has a connotation of subjectivity, as distinct from the objectivity of negligence. Honesty, indeed, does have a strong subjective element in that it is a description of a type of conduct assessed in the light of what a person actually knew at the time, as distinct from what a reasonable person would have known or appreciated. Further, honesty and its counterpart dishonesty are mostly concerned with advertent conduct, not inadvertent conduct. Carelessness is not dishonesty. Thus for the most part dishonesty is to be equated with conscious impropriety. However, these subjective characteristics of honesty do not mean that individuals are free to set their own standards of honesty in particular circumstances. The standard of what constitutes honest conduct is not subjective. Honesty is not an optional scale, with higher or lower values according to the moral standards of each individual. If a person knowingly appropriates another's property, he will not escape a finding of dishonesty simply because he sees nothing wrong in such behaviour.*
>
> *In most situations there is little difficulty in identifying how an honest person would behave. Honest people do not intentionally deceive others to their detriment. Honest people do not knowingly take others' property. Unless there is a very good and compelling reason, an honest person does not participate in a transaction if he knows it involves a misapplication of trust assets to the*

[14] I therefore reject the submission of Counsel for Mr Iqbal that a buffer subsequent to the third party payer cannot assist the breach of fiduciary duty because its purchase and resale is subsequent to that of the importer defaulter and its payment precedes the diversion of payment. The argument mis-identifies both the breach and the nature of the assistance.

detriment of the beneficiaries. Nor does an honest person in such a case deliberately close his eyes and ears, or deliberately not ask questions, lest he learn something he would rather not know, and then proceed regardless ..."

64. That does not mean that liability only attaches if the defendant appreciates that his conduct would be regarded as dishonest by honest people. As explained by Lord Hoffman delivering the judgment of the Privy Council in *Barlow Clowes International Ltd v Eurotrust International Ltd* [2006] 1 W.L.R. 1476 at 1481 what is required is only *"consciousness of those elements of the transaction which make participation transgress ordinary standards of honest behaviour "*without the need for the defendant to have thought about what those standards were. In this connection, as said by Peter Gibson J in *Baden v. Société Générale* [1993] 1 WLR 509 at 575, it need not be

> *"knowledge of the whole design: that would be an impossibly high requirement in most cases. What is crucial is that the alleged constructive trustee should know that a design having the character of being fraudulent and dishonest was being perpetrated. Further he must know that his act assisted in the implementation of such design."*

There are similar comments by Lewison J in *Ultraframe (UK) Ltd v Fielding* [2006] FSR 17. For this purpose, as generally in the law, a conscious decision not to make inquiries which might result in knowledge can be treated analogously to actual knowledge, *a fortiori* when the court is forming a judgment as to honesty of conduct. (cf per Field J in *Stokors SA v IG Markets Ltd* [2013] EWHC 631 (Comm) at para.11).

65. From at latest his meeting with HMRC in May 2005 Mr Sakhi was aware of the existence and nature of MTIC frauds and that they involved diversion of payment abroad. The fact that thereafter he himself did not perform the role of the party making that payment to an overseas recipient was likely to mean only that somebody else would do so. The other elements remained. I am in no doubt that his buy and sell prices were notified to him on the basis of an agreed and repeated margin, and that his account to me of prices being negotiated at arm's length on each occasion was untrue.

66. He may well not have known the identity of the supplier companies from which the payments were diverted, let alone of the employees or of the managers of those companies who were causing them to incur a VAT liability without collecting the corresponding amount from their purchasers, or that the law would categorise that conduct as a breach of fiduciary duty. But that degree of knowledge is unnecessary, provided he was aware of the general nature of the scheme and its implications in terms of the deliberate non-receipt of money by a prior supplier. As to that it is in my view most unlikely that the general

mechanics of the scheme were not the subject of conversation by Mr Sakhi with those orchestrating the trading, but even if he refrained from exploring that subject, that in itself would be a powerful indicator of dishonesty, unless indeed he had no need of clarification. As it was, Mr Sakhi never engaged in evidence with such questions, consistently with his stance - which I have rejected - that all his trades and prices were negotiated by him ad hoc and at arm's length.

67. In the result I am satisfied and find that Fern assisted dishonestly the breaches of fiduciary duty by the management of Alpha and UA on those deals in which it participated, and, concomitantly, that Mr Sakhi also dishonestly assisted those breaches by causing Fern so to participate.

68. Both Fern and Mr Sakhi are therefore liable to compensate Alpha and UA for the loss caused by those breaches. That equates to the difference between the VAT component of their sale price and any sum in fact collected by the companies referable to it[15]. I understand that the claimants have also given credit for any claw-back by HMRC of the VAT refund by the exporter (and need not therefore examine whether they are obliged to do so). Within these parameters I will hear counsel on the precise quantification.

(b) Mr Iqbal

69. Part of the case against Mr Iqbal in relation to the 2006 transactions is based on his role as the *alter ego* of Diginett, which featured in the Schedule 2 and Schedule 3 transactions[16]. A further suggestion is however that he was responsible for engineering the lines, both on those transactions and on the Schedule 1 transactions, where Diginett does not feature at all.

70. Much of the case against Mr Iqbal, especially in support of his alleged role as "puppet-master", is founded on the results of the audio surveillance, in particular of Diginett's offices in Glasgow. It is perhaps helpful for me to deal with some general matters at the outset.

71. Firstly, Mr Iqbal disputed that many passages attributed to him were in fact his voice, generally suggesting that it must have been his brother, Amer. The original attribution was made by Mr Kerrigan, who had had some historical acquaintance with Mr Iqbal and his brothers, and a professional life spent

[15] The latter is likely to be zero or at best minimal. Some of the recovered payment instructions include an extremely modest payment to the importer, though whether it in fact reached it – rather than its management - may be questionable.

[16] Diginett itself has not been sued. I received no explanation for its omission from the action, other than a suggestion that it was without assets.

listening to the speech of Glaswegians. It is supported by the evidence of Ms Elizabeth Mc Clelland, an expert in forensic voice and speech analysis. For my own part, though my experience is much more limited than that of Mr Kerrigan, I was of the clear opinion that the recordings were indeed of Mr Iqbal[17], whose voice I heard at some length while he was giving oral evidence.

72. Secondly, I was deeply unimpressed by his evidence that some of his conversations captured by the surveillance were simply relaying messages for his brother, who was trading through a company called Guess Ltd.

73. Thirdly, almost none of the taped conversations address the precise transactions relied upon by the claimants, or even the same lines. And only one took place during the period (17 March to 26 April 2006) covered by those transactions, some before, and some after (including after HMRC had commenced its raids). That is not to say that they are necessarily devoid of all evidential value as to the likely state of mind of Mr Iqbal in relation to the transactions in which Diginett participated and his possible involvement even in transactions from which it was absent.

74. Fourthly, much of the surveillance covers conversations of actors other than Mr Iqbal himself. In these Mr Iqbal is referred to as "Ifty" and that short version of his name is uncontroversial. Most of the references relied upon by the claimants were however to the pseudonym or, as the claimants would say, code-name "Tony", as to which Mr Iqbal (and other defendants) hotly disputed that it referred to him. I am however satisfied that he used the name Tony and was referred to by others under that name, as certain of the transcripts reveal.

(a) On 14 March 2006 Mr Iqbal was recorded as telling "Goldie" that *"if he* [referring to Neph] *wants to know about prices from PZP to Multimode say, "Just talk to Tony"."*

(b) The following day in a telephone call made at Diginett's offices in Glasgow Mr Allen tells his interlocutor that he was *"over in Tony's office".* Mr Allen was unable to suggest any alternative to Mr Iqbal as the Tony in question.

(c) On 23 June 2006, in a recording made in Manchester, Mr Siddique says

[17] On only one occasion did I experience some significant doubt, but even there I considered on balance that I was listening to Mr Iqbal.

"Tony. Yes, my brother ... Just giving you a quick call, brother, to see how your companies are getting on with the ICB banking (?[18]*) .. What's your company called? ... Oh yeah, I know about Digi."*

(d) On 29 June 2006 one of the employees at Diginett's office refused to disclose the name of *"Mister Tony"* to a telephone caller, who was wanting to speak to the person in charge of purchasing. Immediately afterwards he told another employee *"Don't tell Ifty's name, no-one"*.

(e) On 10 August 2006 both sides of a conversation between Mr Iqbal and Mr Siddique were recorded. It includes the following exchange:

> *"Mr Iqbal: Hello*
> *Mr Siddique: Tony?*
> *Mr Iqbal: Yes, brother."*

In addition:

(1) The sim card of Mr Siddique's phone seized on 15 August 2006 contained a telephone number (07758743002) against the reference *"Tony"*. On the same day a mobile phone with that number was seized from a Prada bag at Mr Iqbal's home which contained a passport and travel documents in his name.

(2) A further number for *"Tony"* (07877870484) was found in a mobile phone seized from 25 Church Street, Manchester (and on a sim card seized elsewhere in Manchester). That number is referred to by Mr Siddique in a conversation on 19 June 2006 as being number for *"Tony 3"*. On 14 June 2006 Mr Munir rang this number at 13.09, at which time Mr Iqbal answered the phone at Diginett's offices.

75. An enlightening introduction to Mr Iqbal's understanding of the operation of carousels can be found in a lengthy discussion which he had on 10 February 2006 with Jaleel Amjad. The latter was proposing to set up European companies which Mr Iqbal could use for lines. Mr Iqbal explained that he was *"in number five"* (= fourth buffer) and the exporter was two down the chain. There is also discussion about a company in Europe buying from the exporter (apparently a true carousel), passing to the catcher, and hence on to the under. In addition, the two men animatedly consider how the 17.5% is divided up, apparently 2% on the line, 1% for freight, 6% for the exporter, and 2% on losses (i.e. pilfering), leaving around 6% for the financier of the scheme. Mr Iqbal also refers to having companies in Europe, all of which are catchers.

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[18] This phrase, garbled or ill-transcribed, may well refer to First International Bank of Curacao, widely used by participants in MTIC lines until its closure in mid-2006.

76. Other recorded conversations relate to more practical implementation. For example:

(a) On 13 February 2006 Mr Iqbal can be heard asking whether 24 companies which he has listed in front of him are the ones that his interlocutor wishes to be plugged into: they include seven companies, of which six feature in the Schedule 1 and 2 transactions as number 5s and one as an exporter. He later says that a Polish company *"can't be a catcher as long as it's an underinvoicer"*.

(b) The same day Mr Iqbal was recorded giving instructions for transactions to which Guess and Caz are to be parties.

(c) On 22 February 2006 Mr Iqbal advised an unknown interlocutor that *"your gonna be buying off a company, Guess and Caz is gonna be buying off a company called Vibetec. Okay ... tell them to get their details into them and get their details okay. Now. See the stock, they're gonna get it from a company called Vibetec .. Not Wildtowers, you're not buying of them any more."*

(d) On 31 March 2006 Mr Iqbal was recorded saying *"I'm the buffer between the exs and youse guys are behind me"*.

77. Addressing firstly *the Schedule 2 and 3 transactions*, to all of which Diginett was a party, I am in no doubt that each was engineered and orchestrated as a part of a scheme under which payment of the purchase price, and in particular the VAT element, which UA should have received, was diverted abroad. I repeat the observations which I made earlier in paragraph 61[19]. Diginett participated in such a scheme in each of the lines in those Schedules, as part of which the management of Alpha in breach of fiduciary duty committed it to loss-making transactions and without which it would not have done so. It follows, and I so find, that in each of the cases in which it participated in such a line Diginett assisted that breach. Since Mr Iqbal, as the agent and indeed alter ego of Diginett, caused it to do so, he himself assisted that breach.

78. The evidence to which I have referred above satisfies me that Mr Iqbal must have been aware in considerable detail of what was happening and why: there is no need even to resort to a finding of "shut-eye" knowledge. On this basis there can be no question that the assistance was other than dishonest.

79. He is therefore liable to compensate Alpha and UA on the same basis as I

[19] I also draw attention to footnote 13 and the text to which it is attached, addressing and rejecting an argument advanced on behalf of Mr Iqbal.

indicated in paragraph 68 above.

80. In addition, the claimants seek relief against Mr Iqbal in relation to *the Schedule 1 lines*, in none of which Diginett participated, on the basis that he dishonestly assisted the breaches of fiduciary duty by the management of, respectively, Alpha and UA. The evidence is in my judgment quite insufficient for me to reach such a conclusion. While there is a certain quantity of evidence demonstrating that Mr Iqbal took an active role in orchestrating lines, it does not relate to any of the Schedule 1 transactions. The fact that the surveillance transcripts include conversations involving or concerning persons or entities who were also connected with those transactions does not demonstrate that Mr Iqbal was involved in engineering them, and is too patchy and weak to justify such an inference. Nor is that material in my judgment in any way sufficient to make out an allegation by the Claimants that Mr Iqbal was the directing mind and will of Caz (and hence liable in respect of its involvement in the Schedule 1 lines). Whether or not the addition of any material withheld by HMRC would have made a difference is not for me to speculate. Having chosen to fight, through the claimants, on a limited front and with partial evidence, it must accept any consequences of that decision.

The 2004 transactions (31/8/2004 to 22/9/2004)

(a) The claim against GTC and Mr Allen

81. Mr Allen's first contact with the Iqbal brothers goes back to his adolescence, when he became friendly with Amer, who worked in a Pricecutters shop near his school. During what he thought would be a "gap" year before starting a course in stage management at the Royal Scottish Academy of Music and Drama he obtained a job in 1987 at another branch of Pricecutters: the chain was owned by Amer's elder brother Zahid, and from 1990 to 1997 Mr Allen worked in a variety of branches in and around Glasgow, as did two other brothers, Auid and Iftakar (Mr Iqbal). Mr Allen had little contact with Mr Iqbal, and told me that he did not really like him. At some point Mr Allen was told by Amer that Mr Iqbal was involved in the mobile phone industry.

82. In the late 1990s Mr Allen himself became involved with mobile phone trading in "box-breaking", which consisted of buying large quantities of phones and separating the phone from its SIM card, charger and any credit vouchers in order to sell them separately. In around 1999 he spent some time with Amer in Australia and Singapore/Malaysia trying to import phones from the former to the latter. While retaining some of this activity the pair returned between June

2001 to January 2003 to "box-breaking" in Scotland, reselling within the UK and to Singapore/Malaysia. At the same time they would also match sellers of phones with buyers on a back-to-back basis, with a margin of around £4 to £5.

83. In around January 2003, to avoid frequent travel, Mr Allen set up a mobile phone retail shop in the south side of Glasgow, known as Mark Allen Communications or MAC. Following an early advertisement in the trade press he began to receive calls enquiring about sales or purchases of phones on a wholesale basis, and he decided to move into this area, and given his level of turnover acquired a VAT registration for this purpose in April 2003. This wholesale trading was done on a back-to-back basis, and all trades were intra-UK. Sometimes, he was asked to pay a third party, and in September 2003 received a complaint from HMRC about this.

84. In about November 2003 Mr Allen, according to his evidence, decided to sell MAC and set up a company in the European Union. Mr Iqbal, alerted by Amer, offered him £5,000, on the basis that Mr Allen assisted with the transition. Mr Allen was in the process of incorporating the business as Guess Trading Ltd ("Guess"), and it was the company which was purchased. Though Mr Iqbal was the first director, it was understood that it would be run by Zahid, who soon replaced Mr Iqbal as director, and worked on Guess at least initially from Diginett's office in Craig House. Mr Allen also came to operate largely from there.

85. Mr Allen told me that his decision was based on two main reasons. One was that he was fed up with what he felt to be constant and intrusive harassment by HMCE, which he would avoid by operating through a European company trading outside the United Kingdom. The second was that he believed that there were good profits to be made by exploiting the different level of phone prices between different countries (due to different amounts of subsidies received from phone operators). The modest margins which GTC in fact sought and made when it came to trade (as to which see paragraph 89 below) do not suggest that this suggested line of arbitrage was ever pursued. One can however note that purchase and sale of goods across a frontier in Europe would not give rise to any VAT liability or any need to register for this purpose, an obvious advantage in operating the European limb of an MTIC line.

86. With the assistance of Mr Andrew Ramsay, who had provided him with some accountancy services in his days as MAC, Mr Allen set up GTC in Northern Spain and shortly thereafter a company called BDR Technologies SARL ("BDR") in Bergamo, Italy. Mr Ramsay also worked as an accountant for Mr Iqbal and Diginett, and spent a considerable amount of time working in the Craig House office. He introduced Mr Allen to Spanish accountants who formed and registered GTC, and to Italian accountants who did the same for BDR. They also

investigated setting up companies in Switzerland and Belgium, though ultimately this was not done.

87. GTC contracted with a company called Regus to provide it with a virtual office in Barcelona (albeit with access to a physical office on demand). The service provided dedicated phone and fax lines. A caller by phone would be diverted to Mr Allen in Glasgow or wherever he and his mobile happened to be. Any post or faxes would be forwarded by email.

88. Having ascertained that bank payments in Spain might take as long as 2 to 3 days, Mr Allen decided to set up an account for GTC in Glasgow, with his own bank, RBS Maryhill branch, where even international payments could be made within minutes. Moreover most of GTC trading was done in sterling, which might be thought curious given Mr Allen's desire to operate back-to-back in Europe. Though Mr Allen spent some time travelling, he worked out of Glasgow, and in large part from Diginett's offices in Craig House.

89. Though his margin was higher than in the MAC days (50p compared with 15p to 30p) it was still small. The trades were however large, sometimes extremely large, up to 2000 phones, and the volume of deals was also high: GTC disclosed some 645 invoices for a five-month period between mid-June 2004 and 15 November 2004, totalling over £200 million. As a middle-man he required no capital, but was exposed to the same large-value risks as those run by Fern in return for a very small profit, unless he could get his supplier or customer to run them. His answer was the same as I received from Mr Sakhi, that the whole business rested on trust and integrity, and I found it no more plausible in his mouth as an explanation of his conduct than when I heard Mr Sakhi's evidence.

90. Mr Allen described a typical deal as involving either a call to a supplier to see what it had available or a call from a supplier offering stock. He would then phone round his customers quoting a price based on his purchase price plus his margin, typically 50p. The customers would normally say that they would call back after consideration, and might then push back on price, in which case Mr Allen would attempt to negotiate upstream. Mr Allen told me that GTC's main customer was Cilloni. This may be considered an understatement: GTC's tabulated record of transactions reveals that at least during this period it resold to another purchaser on only very rare occasions.

91. Mr Allen told me that he was never paid by Cilloni. Indeed, when he first started trading with Cilloni, GTC had received a letter dated 30 June 2004 in the following terms:

> *"Following your conversation I will be sending money to your account. The money will be sent to your account from my client as they have a U.K. bank*

> *account, as you know this will be far quicker if I was to send you from my own account you would not receive the funds for 3 days."*

The document to which he referred raises its own questions. It gives no indication of any addressee, and is not signed: I was not told how it came in this form to be in the possession of (and disclosed by) GTC.

92. Some of these payments from third parties, he told me, could be readily linked up, where the amount was identical to the price of a particular transaction or contained a purchase order or invoice number. Sometimes Cilloni would alert him to the arrival of a particular payment from a third party. But often Mr Allen was left to marry them up, he told me, as best he could. This was not easy. Sometimes the payment was fragmented. Sometimes it was more than was due. Sometimes several payments came from the same payer. Sometimes they covered more than one deal.

93. Mr Allen told me that Cilloni also sent him a letter (seized, according to him, by HMCE but never returned) explaining that the monies sent to GTC would include a deposit which he could use towards other deals. Moreover, during his interrogation in late 2004 he told HMCE that he had been similarly instructed by "the guy Tony", which was the sole identification which he could offer of the natural person with whom he dealt at Cilloni. One might wonder how on that basis Cilloni could ever come to receive its own profit element (a problem which did not pose itself in the actual circumstances where Cilloni was an underinvoicer reselling at a loss).

94. Taking the 34 deals in Schedule 4, analysis of the records show that GTC received a net overpayment of £423,960. 52, with underpayments only being made on three of the deals. Mr Allen points out that these deals were a fraction of its trading with Cilloni over that period (not to mention before and after). It would, it is said on his behalf, be necessary to analyse all the additional trades to see if their inclusion changed the picture to any significant extent. Such an analysis was not however produced, though it would not appear to be complicated.

95. It was pointed out to Mr Allen that the effect of this evidence was that there would be a cumulative build-up of a large surplus. He attempted to displace or relay it upstream, by suggesting that GTC had passed on the overpayment to its supplier as a deposit on the next deal with its supplier. I find it impossible to understand why GTC should have wished to do so: it would have been unnecessarily parting with money well in advance of delivery. I note also that GTC was at this period dealing upstream with a considerable number of different suppliers, so that the concept of a "next deal" would probably have been problematic. Nor did Mr Allen and his counsel make any attempt to identify any overpayment by reference to GTC's bank statements and the record of its

transactions up- and downstream which it itself produced in evidence.

96. If one rejects Mr Allen's account of what happened to the surplus monies, their purpose and ultimate recipients remains unexplained from his side. The claimants' case is in effect that these monies would have made their way to the organisers and/or financiers of the carousel. On the premise of an MTIC fraud with the VAT element diverted abroad (which I did not understand to be disputed), I find it impossible to conceive of any other explanation, and counsel for Mr Allen and GTC, asked to volunteer one, was unable to do so. Exactly how the surplus was moved out of the account would require a comprehensive set of upstream trading documentation, but I note, as an example of obvious possibilities, a payment on 13 September 2004 to Duck Trading FZC, a Dubai company (as to which see paragraph 104 (g) below) of £120,000, for which there appears to be no corresponding purchase in GTC's record of transactions[20].

97. As Mr Allen confirmed in his HMCE interrogation, he had earlier in 2004 been interviewed by one its officers for *"giving out third payments"* but told them that he had never done it again after that. He was aware that such payments were suspect, and having worked in phone trading for some time cannot have been ignorant of why. Though he suggested to his interrogators that there was in contrast nothing wrong with receiving third party payments, it was only the other side of a thin coin, and obviously so.

98. The role of Cilloni is also not without significance. It is beyond belief that, if Mr Allen had indeed concluded his sales at arm's length in the market in the way he described, he could so regularly have ended up with a purchaser which (a) resold into the United Kingdom and did so at a loss, and (b) though regularly purchasing phones in sterling in back-to-back trading requiring rapid settlement of large sums, had failed to equip itself with a bank account able to achieve that result. Moreover, when Mr Allen's computer was seized and examined in November 2004, it contained templates for Cilloni's purchase orders and invoice. The property fields show that they were authored by "MASTER PC, company DIGINETT". The style and format of the purchase order template is the same as in the actual purchase orders retained by GTC. The inference is clear that Mr Allen himself produced, or procured the production of, Cilloni's purchase orders to GTC (and even perhaps its downstream invoices to Revapoint).

99. I note also that Metric Trading, a Dubai company which features as the buyer from the exporter (on 8 occasions Diginett) in 16 of the Schedule 4 deals, was listed among GTC's customers on Mr Allen's computer seized in 2004. Its fax

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[20] The two transactions which *are* recorded for Duck that day are precisely covered by three other payments the same day totalling £630,000.

number appeared in a list entitled "Ifty's Phone Numbers in Dubai" on Diginett's computers.

100. Each of the Schedule 4 transactions was plainly choreographed as a part of a scheme under which payment of the purchase price, and in particular the VAT element, which Revapoint should have received was diverted abroad. I repeat *mutatis mutandis* my earlier observations in paragraph 61. GTC (and through it Mr Allen) played a pivotal role in the Schedule 4 lines. It was the Strong European or catcher at the start of the line and the recipient of the monies, and in particular of the VAT component, which were diverted out of the United Kingdom. I have no difficulty in concluding that GTC and Mr Allen facilitated and assisted the breach of fiduciary duty by Revapoint's management in causing that company to engage in an arrangement which created a VAT liability for which the company was to collect no money.

101. I am also entirely satisfied that Mr Allen was aware that he and GTC were participating in a scheme in fraud of Revapoint (as well as HMCE as its creditor) and of the general nature of its mechanics, including the role necessarily played by the management of the importing company, whether or not he knew of its precise identity or that of subsequent participants. His assistance, and that of GTC, was in these circumstances dishonest.

(b) Mr Iqbal

102. There are passages in the transcripts of the 2006 audio surveillance on which the claimants rely as suggesting that there may have been co-operation between Mr Allen and Mr Iqbal in the running of MTIC lines at that time. Whether or not that is a correct reading and interpretation of those passages, they postdate the 2004 transactions to such an extent that I could derive no proper assistance from them. The claimants' case against Mr Iqbal in relation to these transactions must therefore in my view be made out on the basis of such material as they identify which is broadly contemporaneous with, or precedes, September 2004.

103. Such material is quite limited. Its highlights are:

(a) Mr Ramsay, who assisted Mr Allen in setting up GTC and BDR, also acted as accountant to Mr Iqbal and Diginett[21].

(b) Mr Allen worked at the relevant time in and from the Diginett office suite at

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[21] Unfortunately, it was not possible to hear any account from Mr Ramsay. He was abducted in March 2006 by two men claiming to be police officers: more than a year later his head was found in the Firth of Clyde at Largs.

Craig House.

(c) When he was detained in autumn 2004, the GTC records were in the flat of Amer Iqbal.

(d) GTC and BDR banked at the same bank (and branch) as Diginett (though it is true to say that Mr Allen had banked there himself for a number of years).

(e) The Cilloni templates - see paragraph 98 above - were produced on Diginett's "Master PC" (though this may amount to no more than the fact that when at that office Mr Allen used one of the work-stations).

(f) Mr Allen's name and telephone number appeared on a Diginett Name List concealed behind a book case at Diginett's offices.

(g) The telephone number for Duck Trading FZCo appeared in the document headed "Ifty's Phone Numbers in Dubai" on Diginett's computers. Duck's fax number was one to which GTC's faxes were to be diverted by Regus. Amer Iqbal was a shareholder in Duck until September 2004. Duck featured as a (fairly small) recipient in payment instructions in two deals in Schedule 4.

(h) The fax number for BDR was also listed in "Ifty's Phone Numbers in Dubai", as was that of Metric Trading (as to which see paragraph 99 above).

(i) A manuscript note with "IFTY DUBAI 3046" on it and containing the BDR and GTC numbers for RBS's Royline system was found concealed behind the bookcase in Craig House.

(j) An email dated 1 March 2004 sent to Mr Allen and Mr Ramsay by the Italian lawyer who set up BDR and was investigating a possible similar Swiss company bears the handwritten annotation *"FAO IFTY- THESE ARE APPROXIMATE COSTS FOR SWISS COMPANY"*.

By way of addition to that material I am prepared to assume (as appears to be the case) that during the period of the 2004 transactions Mr Allen worked out of the Diginett offices, though absent in Dubai for at least some of the time, and would probably have had regular contact with him and his brothers.

104. Even on that basis, I consider the evidence too tenuous to justify a finding, as sought by the claimants, that GTC was in effect Mr Iqbal's company run by Mr Allen on his behalf or that Mr Iqbal was responsible (as "puppet-master") for engineering the Schedule 4 lines, (including the 3 in which Diginett did not feature). I do not pause to speculate whether evidence or material available to

HMRC but not passed to the claimants could have changed matters[22], and repeat the observations I made earlier in paragraph 80.

105. As I have already found (see paragraph 100 above), and counsel for Mr Iqbal realistically accepted, each of the Schedule 4 transactions was orchestrated as a part of a scheme under which payment of the purchase price, and in particular the VAT element, which Revapoint should have received, was diverted abroad. Diginett participated in such a scheme in 35 lines in that Schedule, as part of which the management of Revapoint in breach of fiduciary duty committed it to loss-making transactions and without which it would not have done so. It follows, and I so find, that in each of the cases in which it participated in such a line Diginett assisted that breach. Since Mr Iqbal, as the agent and indeed alter ego of Diginett, caused it to do so, he himself assisted that breach.

106. In determining whether that assistance was dishonest it appears to me that in the absence of similar evidence as is available for the 2006 transactions (see paragraphs 70 *et seq* above) the pricing of Diginett's trades assumes a central importance.

107. In 27 of the 35 transactions Diginett acted as a third-line or (in two cases) fourth-line buffer. In all but one of these cases the uplift between purchase and sale prices was a round figure, regardless of quantity or value (save to the extent that in general – though the pattern was not invariable – the margin was £1.00 on unit prices over £200 and £0.50 below that). It is entirely implausible that this could have emerged from normal operations and negotiations upstream and downstream in the market. Even in the absence of similar templates and spreadsheets to those recovered for 2006, I have no difficulty in concluding that these prices were contrived by the orchestrators of the lines. Nor, even on the basis – and I have found the contrary to be unproven on the evidence before – that Mr Iqbal was not a puppet-master, can his acceptance and implementation of these dictated prices be plausibly squared with anything other than knowledge, actual or shut-eye, of at least the general purpose of the scheme and indeed the breach of fiduciary duty which it would involve. I therefore find the Claimants' allegation of dishonesty in relation to these transactions to have been made outAs regards the eight transactions in which Diginett occupied the role of exporter, there is no similar consistency in pricing. Each of those transactions was however concluded on the same days (31 August 2004 and 15 September 2004) and with the same supplier (Cell Trading UK Limited) as Diginett bought from in transactions which I discussed in the previous paragraph. If, as I have

[22] In answer to a question by Counsel for Mr Iqbal a representative of HMRC called by the claimants suggested that there was further evidence obtained in the course of "the criminal inquiry currently ongoing in Scotland".

found, Mr Iqbal was dishonest in relation to the latter transactions, it is wholly unrealistic to imagine that his state of mind can have been any different in relation to the former, and I make a finding of dishonesty according.

(c) The impact of limitation and the claim in unlawful trading

108. Before me the case was conducted on the basis of the decision of the Court of Appeal in *Williams v Central Bank of Nigeria* [2013] Q.B. 499 that a claim in dishonest assistance escapes dismissal under the general six-year limitation period. That was however subject to a possible contrary decision by the Supreme Court on a pending appeal in that case. Judgment allowing that appeal (by a 3:2 majority) was delivered last week on 19 February 2014: [2014] UKSC 10.

109. As a result of this development, the claims of the Third Claimants in dishonest assistance have to be dismissed. At the same time the claims of the Sixth Claimant under section 213(2) of the Insolvency Act have ceased to be academic, since they are subject to no similar six year time limit. However, the same matters which led to my findings that (1) the management of Revapoint was guilty of the breach of fiduciary duty which I identified (2) Mr Iqbal, GTC and Mr Allen facilitated and assisted in that breach and did so dishonestly lead me equally to the conclusion that (a) Revapoint's business was carried on with intent to defraud creditors, namely HMCE, or for another fraudulent purpose, namely depriving the company of sums due to it, (b) each of these Defendants participated therein, and (c) they did so knowingly. On that basis it would be right that they should contribute to the company's assets to the extent of the loss which I have identified earlier (in paragraph 68) as being appropriate in a claim for dishonest assistance. Contrary to the submissions of their counsel, I do not consider it appropriate to limit the contribution of any of them to only part of that loss.

Conspiracy

109. The parties agreed that the inclusion of this cause of action in the pleaded case added nothing of substance to the causes of action which I have already addressed and no separate consideration of it is required.

Conclusion

110. I will therefore give judgment on the claims by the First, Second and Sixth claimants to the extent and on the bases that I have indicated. Counsel are asked to produce a draft order and insert the appropriate figures, which ought to be capable of agreement.