

CHANCERY DIVISION

B E T W E E N:

JOHN ALFRED DONOVAN

Plaintiff

- and -

SHELL UK LIMITED

Defendant

(by Original Action)

AND B E T W E E N:

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
DAVID PIRRET

I, DAVID PIRRET of Caixa Postal 62050, Rio de Janeiro, RJ 22250, Brazil WILL SAY
as follows:-

1. I joined Shell UK in 1974 immediately after my graduation. From 1989 I became involved in UK Oil downstream. From July 1992 until January 1996 I was Head of Retail, responsible for all of Shell UK's retail activities.

2. Between 1992 and 1996 I oversaw the development of what has now become the Shell Smart scheme. During that time the scheme was very fluid - it evolved substantially in response to the input of a number of Shell personnel, each with

their own concerns and agendas. It is incorrect to suggest that there was a smooth progression from a fixed starting point to a fixed end point. I held strong feelings about the features that should be present in a successful scheme of this nature and used my authority and influence to ensure that they were included in the scheme.

3. I became Shell's Head of Retail in July 1992, replacing Jim Slavin. During his time in the post Jim had closed down Shell's long-term promotion, Collect and Select, in favour of a series of short-term promotions. I approved of this decision because the practice of issuing Collect and Select tokens to retailers on account and only charging the retailers on redemption had given rise to a large potential liability of uncertain extent. For this reason I was apprehensive about any long term promotional activity that did not provide certainty about the number of points issued and to whom.
4. However, the movement towards short term promotions had diminished Shell's market share of the most financially significant customers: high mileage price-insensitive customers such as travelling sales representatives. This was confirmed by market research which indicated that such customers had switched to our competitors e.g. the Esso Tiger Tokens.
5. Despite pressure from John Collins (the Chairman of Shell UK) and David Varney (the Managing Director) to restore Shell's market share, I had an open mind about how this should be achieved in terms of promotional strategy. I was prepared to consider the possibility of moving towards a new long-term promotion or, at the other extreme, of getting out of promotional activity altogether and competing on

price. Frank Leggatt was appointed head of retail marketing in September 1992 and was therefore directly responsible to me. He replaced Graham Sweeney. I had worked with Frank Leggatt in the past and we had a good working relationship. He and I were in daily contact, including frequent discussions on the subject of long term promotions. As a result I became aware that the promotions team were researching the potential of a long-term points collection scheme based on a range of technologies including magnetic stripe, SMART or paper tokens. I was enthusiastic about the possibilities of such long term promotions although I was beginning to have misgivings in relation to magnetic stripe technology as a result of widely reported instances of fraud e.g. in relation to the Mobil Premier Points cards. From January 1993 David Watson instructed an agency called Option One to advise Shell on this subject.

6. After the decision had been made to develop a long term promotion, this was progressed without any formal involvement or discussion on my part until May 1993, after Option One had produced their initial recommendations. At this time Frank and I agreed that the individuals most directly concerned with the project, David Watson and Andrew Lazenby, should give a presentation of their proposals so that we could consider the way forward. I was also conscious of the fact that the necessity to give such a presentation would itself help to focus the minds of David and Andrew on the key issues as to the viability of any such project.
7. David, Andrew, Frank Leggatt and I met on 10 May 1993 at the Retail Management Meeting, at which the presentation was conducted mainly by Andrew Lazenby but David Watson and Frank Leggatt also contributed to the discussion.

Andrew set out the objectives behind the scheme, summarised the history that had led up to this point and took me through the proposed strategy, together with an estimate of costs. It was obviously a major undertaking for the company but appeared to have been well thought through. The emphasis was very much on making the scheme work effectively for Shell and there were no grandiose plans to introduce major third party participants at launch. I felt this was realistic as the creation of some kind of partnership with third parties would have introduced unnecessary complication and fettered our control over the scheme.

8. Andrew told me that they had been working towards a proposed launch date of 1 October 1993 but now felt that it would be difficult to get the scheme into operation by that date and were considering moving the launch date to 1 February 1994. My own view was that there was no point in aiming at an unrealistic target date, as I knew that Shell had had bad experiences with delay and failure of I.T. systems in the past. However I felt that it would help concentrate everyone's minds on essentials if we worked to a fairly tight timetable and also that it would be advantageous to launch before Christmas. I therefore suggested a target date of 1 December 1993, which was agreed upon at the meeting. I also indicated that because of the scale of the project it would need approval further up the line within Shell (all projects in excess of £5,000,000 required the endorsement of Shell International). I said that I was prepared to deal with that but I believe that at some point, either at the meeting or subsequently, I asked for a note summarising the main features of the scheme which I could use in discussions with more senior personnel. I received that note on 2 July 1993.

9. During this time I spoke to David Varney and John Collins on a regular basis. They were concerned about falling sales and market share and viewed a long term promotion as a possible remedy. Collins insisted that any such scheme should be tested in a small representative region before it was rolled out nationwide.
10. A project of this magnitude involves a large number of people within a company like Shell and it is therefore important that it should command wide acceptance within the company. During the period leading up to adoption of the scheme there were therefore a lot of discussions within the company with those likely to be affected. One of those was Ian Sutcliffe who was at this time the fuels manager. He had some reservations about the scheme, on which he wrote a note on 20 August 1993. He felt that it was unnecessary for the company to be investing in electronic technology and that it would be better for us to proceed with a paper-based promotion. On 23 August, Ian, David Watson and I met with a view to trying to reach some consensus about the matter. As a result of our discussion, Ian accepted that the technology was viable and that we should proceed with the project as a whole.
11. Following consultation with Shell Centre, I decided that the best way to secure approval for the project was to include it within the retail department's budget proposal (known as a 502) for 1994. The sums involved were very substantial and I was aware that the natural inclination of senior management would be to view it with caution. By now I was convinced of its merits and was therefore naturally keen to try to persuade senior management that the retail department's view was correct. One idea which I had was that the merits and mechanics of the scheme

might be validated by an outside party who was well-known in the fuel retailing business and who carried some credibility with those who ultimately had to make the decision. One such person was Alan Davis who had previously been a consultant on promotional matters for Esso. On my suggestion, he was brought in as a consultant on this project to good effect. Meanwhile, however, the launch date was inevitably being pushed back and on 15 September Andrew Lazenby wrote to myself and Frank Leggatt suggesting a launch date of 28 March 1994.

12. A number of other issues also needed to be addressed. The relationship with Air Miles was very important to us. We had been a founder member of the scheme since 1988 when it had been part of the Collect and Select rewards and we were keen to maintain the relationship. Nevertheless there was no denying that our scheme had the potential to be a direct competitor to Air Miles, which had very much been a forerunner as a multi-party loyalty scheme. Although we had very limited plans to involve third parties at launch, we had made no secret of our long-term intentions in this regard and as Air Miles saw the prospect of launch of our scheme becoming nearer, they became more concerned about this issue. On 22 September they wrote to David Watson to this effect and suggested a meeting between their managing director, Alan Deller, and myself. I had a number of meetings with Alan Deller, whom I reassured that it was not in Shell's interests to scupper the Air Miles scheme and that we very much valued our continuing relationship with them. We at all times tried to ensure that they did not feel down-graded when our own scheme got under way. This was more than mere diplomacy - we could not afford to lose Air Miles and its clientele; so much so that if it had

come to a choice between Air Miles and any third party, Air Miles would have been our preferred choice.

13. Another matter that came up was how to keep key suppliers to the project on board while the authorisation process within Shell proceeded. Of particular concern were the technology suppliers, Fortronic. Andrew Lazenby wrote to Frank Leggatt, David Watson and myself on this subject on 14 October 1993 and I authorised a lump sum payment to Fortronic to keep them involved until the start of 1994. The sum eventually agreed was £300,000.
14. On a wider front, David Watson wrote a note to Frank Leggatt, Andrew Lazenby and myself on 23 September 1993 on the subject of the future for relationships between Shell and the major supermarket chains. This is a subject that is much talked about but any sort of promotional arrangement with a major supermarket is hard to bring about. All the major ones are very powerful retailers in their own right and have little to gain from arrangements of that sort. It was a particular problem for Shell which, being itself a very powerful organisation, liked to be in control of its own promotional arrangements, which was very much part of the thinking behind the way that we set up Project Hercules (which later evolved into Shell SMART).
15. A number of meetings were held between myself and J Sainsbury following a meeting at a function between the Chairmen of Shell and Sainsbury's. These discussions ranged from supply of petrol to Sainsbury's and supply of packaged groceries to Shell for its convenience stores to the implementation of a joint

national promotion. These discussions were positive but despite some interest within Sainsbury's on promotions, the discussions came to nothing. Apart from meetings with Sainsbury's David Watson's note did not lead to any substantive discussions with any of the major retailers.

16. The retail 502 incorporating the Project Hercules proposal was eventually approved and we then moved towards a pilot scheme in Scotland, commencing in May 1994, leading on to a full national launch in September. Although the scheme obviously remained one of my concerns until I left my position in January 1996, I did not have much direct involvement in it over this period.
17. I was unaware of Mr Donovan and his company before he started suing Shell UK. The only time I met Mr. Donovan over the entire period that I was the head of retail was during a single meeting in June 1994 attended by myself, Richard Wiseman (Shell Head of Legal), Chris Fay (Chairman of Shell UK Oil), John Donovan and his father Alfred Donovan; I recollect that this meeting had something to do with previous litigation commenced by Mr. Donovan. I have certainly never heard his name mentioned in any way in connection with the SMART project prior to the present litigation commencing. We used another agency, Option One, to advise us extensively on the project but all the decision-making was carried out within Shell and the exact format and mechanics of the scheme evolved over a long period.

I confirm that the contents of this statement are true to the best of my knowledge and belief.

SIGNED

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DAVID PIRRET

DATED

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31/3/99.....

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

**HEARSAY NOTICE PURSUANT TO
RSC ORDER 38 RULE 21**

TAKE NOTICE that at the trial of this action the Defendant desires to give in evidence the statement made in the following document, namely the witness statement of David Pirret dated 31 March 1999 a copy of which is annexed hereto.

AND FURTHER TAKE NOTICE that the particulars relating to the said statement are as follows:

1. The statement was signed by David Pirret on 31 March 1999 in Brazil

2. The statement was made on 31 March 1999 by David Pirret at the request of Jane Antonia MacCarthy a solicitor at D J Freeman, the Defendants' solicitors, in the following circumstances, namely for the purpose of the above action.

AND FURTHER TAKE NOTICE that the said David Pirret should not be called as a witness at the hearing because he is beyond the seas namely in Brazil.

Dated 19th April 1999

Signed:.....

D J Freeman
43 Fetter Lane
London EC4A 1NA
(Ref: JXM/105457)

Solicitors for the Defendant in the first action and the Plaintiff to Counterclaim

To: Royds Treadwell
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And to: Alfred Donovan
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Third Defendant to Counterclaim