

**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)**

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**WITNESS STATEMENT OF  
FRANK LEGGATT**

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**I, FRANK LEGGATT of Well House, Potters Lane, Hawkhurst, TN18 5BB WILL SAY  
as follows:-**

1. I joined Shell in 1964 and worked for them for more than 30 years until my retirement in 1998. During my time at Shell I worked in both upstream (exploring for and producing crude oil) and downstream (refining and marketing of finished petroleum products) divisions of Shell. Between 1985 and 1992 I headed the Gas

and Distributor businesses amongst other things before 1992 when I moved to Retail Marketing. Between mid 1994 and my retirement I was the General Manager of Commercial Division and then of Retail.

2. During this time I was involved, amongst other things, in overseeing the development of the Shell SMART programme. SMART involved a far from straightforward development process. If, as John Donovan appears to suggest, the entire scheme had been dreamt up solely by Andrew Lazenby on the basis of Don Marketing's proposals, it would perhaps have been a lot simpler. In fact, the SMART project had all the advantages and disadvantages of being created in the course of consultation between a large number of individuals: David Pirret, David Watson, Tim Hannagan, Ian Sutcliffe and Gary Anderton all made significant contributions to the eventual form of the scheme, quite apart from the influence of Option One and others outside Shell UK.
3. In September 1992 I became Shell's head of retail marketing, succeeding Graham Sweeney in that position. David Watson, who was then advertising and promotions manager, reported directly to me and in turn was responsible for a group of people, including the promotions team then headed by Andrew Lazenby. After I took up this position, I had a number of discussions with David Watson about the way forward for promotions. Shell had, since the closure of Collect and Select in March 1991, been engaged in a series of short-term promotions. I saw no sensible future in short term promotions, they were expensive to run and I did not see any particular benefit being obtained from them. In my view we had to either come out of promotional schemes altogether and promote our fuel on price

alone or start a long term promotion. I became aware after joining the department that people in the department such as Tim Hannagan and Andrew Lazenby had investigated the possibility of Shell undertaking long term electronically based promotions and that Shell were already in touch with a number of potential suppliers for such a project.

4. I did not have any direct input into the project until I received a note dated 24 December 1992 from Andrew Lazenby, setting out his recommendation that we should proceed with a long-term loyalty scheme, together with the reasons underlying such a recommendation. This note pulled together the various ideas Andrew Lazenby had considered. It was clear that Andrew Lazenby very much favoured the development of a scheme that would utilise electronic technology. It seemed to me that Andrew Lazenby was correct in his analysis of the merits of a long-term promotion but if we were to go down the electronic route, my main concerns (then and throughout the project) were that the system should work and that we should be able to collate, analyse and use the information which we would obtain about our customers. I did not respond formally to his note but I had conversations with Andrew Lazenby and David Watson, in which I indicated that development of proposals should continue and that I wished to be kept informed of progress.
5. On 20 January 1993 I had a discussion with Andrew Lazenby. He proposed to carry out market research at a cost of approximately £20,000, which would investigate reactions to long term promotions in general and in particular to the use of Smart cards or magnetic strip cards, in such promotions. I said that in view of

the fact that the proposed promotion was likely to include links with third party retailers, this research should cover not just motorists but consumers generally. He also proposed to brief to Option One, an agency with whom David Watson and Andrew Lazenby had worked previously, in this connection. This would be for a three month period at a fixed fee. I approved this proposal but was keen to ensure that the project was kept under close supervision within Shell and asked Andrew Lazenby to be fully involved in a very hands-on role with Option One. Because I was still sceptical about the electronic route, it was agreed that Shell should continue to investigate the possibility of a contingency scheme which would involve paper tokens, along the lines of Collect and Select or what Esso were currently promoting (namely Tiger Tokens). Andrew Lazenby agreed that he would produce such a plan. After that meeting the research project and Option One's involvement got under way. The long-term promotion scheme came to be known within Shell as Project Hercules. Andrew Lazenby dealt with the detail of how such a scheme would work whereas my role was to ensure that the project was properly managed and to liaise with other people within Shell so as to ensure that there was wide acceptance by senior management of our proposals and understanding of the wider implications of such a scheme. I was also concerned to maximise the amount of useful data that could be collected and to ensure that all the forecourt staff would be able to work the system easily and quickly.

6. While I was not involved in the detailed work of implementing the project, I continued to receive regular updates on progress from Andrew Lazenby and David Watson. Option One produced their initial response to their brief in early March and on 12 March 1993 Andrew Lazenby wrote to me and to David Watson

summarising the current position in relation to developments on the technology front and discussions with possible partners in the scheme, as well as other matters. I was particularly interested in possible arrangements with third parties and on 24 March 1993 Andrew Lazenby wrote me a longer note on this subject. The main thrust of this document was identifying key retail segments and prioritising the retailers in terms of desirability of linkage. On 6 April 1993 I received a note from Andrew Lazenby about the current position as to technology. My practice on receiving such notes would be to discuss them with Andrew Lazenby, and anybody else that needed to be informed. I supervised Andrew Lazenby and provided a link to the relevant personnel who were affected by different aspects of the project.

7. On 20 April 1993 I received further notes from Andrew Lazenby: one dealing with the updated status of discussions with prospective retail partners and another dealing with discussions with Argos about the possibility of participating in their Premier Points scheme, at least within Scotland and Northern Ireland where their association with Mobil did not operate. A third note on the same day set out Andrew Lazenby's thoughts on targeting Shell's customers by segmentation of the market into high mileage drivers, mid range drivers and low mileage drivers. This followed a discussion he had had with Ian Sutcliffe. On the following day I received a long note from Andrew Lazenby about the rewards that were likely to be offered as part of the promotion.
8. Ian Sutcliffe had recently begun as Fuels Marketing Manager. Following a reorganisation in the department Ian Sutcliffe had been recruited to be responsible

for Fuel Marketing, including advertising, promotions and sales of fuels. The position was a new one. Previously the organisational division had been on the basis of the different skills involved in retail marketing rather than being organised around the products being sold. Ian was therefore concerned with any promotion or data capture scheme, though he was not directly responsible for it in line management terms.

9. I then had a meeting with Andrew Lazenby on 23 April 1993 at which we discussed all these matters and reviewed the scheme generally. By this time we had received the full report of the recommendations of Option One. I told Andrew Lazenby that the next step should be to take the matter up the line to David Pirret, the head of retail, and I indicated that we should be working towards a presentation to him within 14 days, ie. by 7 May. I had discussed the concept of a long term scheme with David Pirret many times by that stage, as we met frequently, and I knew he was broadly in favour of it. The purpose of the presentation from my point of view was to ensure that Andrew Lazenby and David Watson maintained their focus and ensure that they had thought the project through. I discussed my key concerns with Andrew Lazenby, namely getting the reward structure right, whether we had the capability to bring off the technological solution proposed and whether we were making the right impact on launch. In relation to the technology question, I continued to urge the contingency plan of launching the scheme with paper vouchers, as well as the alternative of using a magnetic stripe rather than a smart card. At the end of the meeting it was agreed that Andrew should prepare a presentation, setting out the long-term plan for the project, giving its rationale and the issues in relation to implementation that will

have to be addressed. It should include a fall-back position and deal with the question of where we envisage being at launch. I thought that we should be doing everything possible to launch at our target date of 1 October 1993, or as close as possible to that date.

10. My meeting with Andrew Lazenby did not deal in any detail with the question of third party retailers joining in the scheme as it was already becoming apparent that for a variety of reasons it would be difficult to involve third parties at the outset. We were working to a tight launch date, and we were also very concerned of third parties' ability to provide the branding image we wanted. Third parties themselves were likely to be slightly sceptical about joining an as yet unproven scheme. I felt that the scheme would have to stand or fall on its own irrespective of whether third parties could subsequently be persuaded to join it.
11. I had a further meeting with Andrew Lazenby on 30 April 1993 to review the progress he was making in preparing for a presentation to David Pirret. The key issue that was emerging was whether we could justify the additional cost that would be involved in setting up such a hi-tech scheme. This cost was estimated at being something between £5 million and £10 million. In notes of 4 and 5 May 1993 respectively, Andrew Lazenby updated me further on developments in the technology and in rewards. He also wrote me a note on 5 May: about the possibility of converting points earned on paper vouchers into electronic points (from which it appeared that such a conversion would be extremely difficult to operate in practice); and about the increasingly impractical launch date of 1 October 1993. Andrew Lazenby recommended that we should postpone to

1 February 1994 and fill the gap with a short-term tactical promotion, which would bring in as many customers as possible.

12. My meeting with David Pirret was due to take place on 7 May but in fact was postponed until 10 May. David Watson and Andrew Lazenby were also present at the meeting. David Pirret was enthusiastic about the concept of a long-term promotion and also about the use of smart card technology with its ability to obtain data about our customers, although he recognised that there were still a number of technological issues to be addressed. He was very keen that we should have the scheme up and running before the end of 1993 and we therefore agreed to aim for a launch date of 1 December. David Pirret indicated that he would need to get approval further up the line from David Varney (his immediate superior) and John Collins (the chairman of Shell UK). After the meeting, David Watson, Andrew Lazenby and I reviewed the steps that needed to be taken to get the scheme into operation. Apart from the technology issues, we also discussed the rewards to be offered. We were looking primarily to rewards by way of mail order as well as on-site rewards. Other issues to be addressed included the design for the card, the associated publicity material, and the budgets and other financial information.
13. I had a further meeting with Andrew Lazenby on 14 May, just before he went on holiday. I was concerned that in order to persuade customers to take up and use the card, it had to be as user-friendly as possible. The actual mechanics of using it therefore had to be as simple as possible to avoid unnecessary time and queuing by customers. I wanted to ensure that the card itself gave extra value to the customers and, indeed, if it did so, I contemplated the possibility that we might be

able to charge them for the card. Andrew Lazenby was very enthusiastic about the scheme and continually generating new ideas for it but I felt that there had to come a time when we must settle on the basic elements of the scheme and stop trying to introduce new ideas into it, otherwise we would never get it launched effectively.

14. Over the next few weeks a lot of work was done on many fronts to try and settle on suppliers for the technology, mail order and design aspects of the project and on choosing a name for the scheme. However, I was concerned as to whether we could get everything together in order to be able to meet the tight launch date of 1 December 1993 that David Pirret had set us. In addition, most of my time was taken up dealing with the Shell garage franchises, the basis of which was being changed at the time. The department was very busy. I asked Andrew Lazenby to consider again the possibility of launching on the basis of a paper-based scheme, converting later to electronic points. Andrew Lazenby wrote me a note on 23 June 1993 on this subject to the effect that it could be done but it would be messy. On the same day David Watson also wrote to me on the subject of obtaining the necessary management approvals for the cost expenditures required by Hercules. He asked whether clear management approval already existed for those expenditures to take place but I had to tell him that at that time no such authority had been given. In an attempt to try and speed along this process, Andrew Lazenby copied me in on a note to David Pirret on 2 July 1993 with a summary of the proposal which he could use as a briefing paper for other senior management. In recognition of my concerns, Andrew Lazenby drew attention to the risk that we might not be fully operational by the proposed launch date of

1 December and mentioned the contingency of using paper vouchers at the outset. His note continued to be predicated on the basis that the promotion had to stand and fall on its own merits, irrespective of whether we could get any third party retailers to participate as there was a risk that we might never be able to do so.

15. It became apparent that the process of getting approval for the scheme was not going to be straight-forward. There were concerns in parts of the company as to whether the scheme of the sort proposed would be economically viable. Someone had calculated that to make the scheme a success, Shell's market share would need to increase by 0.5%. On 22 July 1993 Julian Beck, the fuels product manager, sent me a discussion document on this subject, in which he set out the benefits and costs of a smart card in relation to a paper-based promotion. He posed the key question as being whether the smart card promotion could produce an extra 85 million litres of sales each year above a long-term paper-based promotion. His concerns reflected the views of Ian Sutcliffe, the fuels manager for whom he worked. His note led to a number of discussions with Ian Sutcliffe on this subject. Ian Sutcliffe then wrote his own note on the subject on 20 August in which he set out his areas of concern, which related to the set-up cost, potential consumer resistance to an electronic promotion and additional transaction time. I believe that this led to a meeting between Ian Sutcliffe, David Pirret, David Watson and Andrew Lazenby, at which these issues were discussed and Ian Sutcliffe's concerns alleviated.
16. Meanwhile we had been exploring the difficult subject of what approvals were actually needed within Shell. David Watson and I agreed that we should seek

authority for the scheme in the retail department's budget for 1994. This budget submission is known within Shell as a 502. The inevitable result of this was that the launch of the project was going to be pushed well into 1994. In a meeting I had with Andrew Lazenby on 7 September, I made some suggestions as to how senior management, such as John Collins, might be persuaded of the merits of the scheme. I thought he could be shown how a SMART computer terminal might actually work in practice. I also suggested that the introduction of a strong retail partner, such as, for example, Sainsbury's, might create excitement about the project.

17. The delay in launching Hercules meant that we were continually looking for short-term promotions to fill the gap for which we had not provided. In particular we wanted to have a strong promotion immediately prior to the launch of Hercules so as to get the maximum number of customers available for enrolment in the long-term promotion when it got under way. Our most successful short-term project in the past had been Make Money and David Watson and I were keen on the prospect of re-launching that promotion for the period immediately prior to Hercules. However, John Donovan of Don Marketing had recently claimed that Shell were not able to re-run Make Money without paying him a fee. In September 1993, Charlie Fox and I decided that we would check the position relating to rights over the promotion, as the 1984 Make Money Promotion had indeed been carried out with some assistance from Don Marketing. I wanted the ownership of the rights checked as I knew that Don Marketing had also raised problems with Nintendo. Our conclusion was that Shell owned the rights over the promotion. Nevertheless, Don Marketing subsequently issued proceedings. By

this stage, we were very anxious to get the position sorted out so that there would be no question about our using the rights in the future. We agreed to pay Don Marketing the sum of £60,000 to settle the matter and ensure that any rights they had were transferred to Shell. Apart from this incident I have never had any dealings whatsoever with Don Marketing or Mr Donovan and until this litigation had no idea whatsoever that they claimed some connection with the SMART project. Certainly I have never seen their name mentioned in any way in connection with that project.

18. On 17 September I produced a first draft of the proposal to go into the 502 for 1994. This was then worked on by David Watson and Andrew Lazenby. Ultimately, however, approval of the 502 was not given until December 1993. Nevertheless, during this period, steps were taken to try and keep the momentum going towards the project launch. I suggested that we should hold a "devil's advocate" day at which all the problems relating to the possible implementation of the scheme could be launched and we could canvass how our competitors might seek to combat the scheme. That was held on 26 November 1993 and I thought it was very useful.
19. Following approval of the project we moved into the implementation stage, although even during that period we still pursued a number of different options as to how the scheme might work. For example, in January 1994 Ian Sutcliffe, who took over David Watson's responsibilities for Hercules when David Watson left to take up another post within Shell at the end of 1993, commenced discussions with VISA UK Limited. Those discussions continued for many months. As VISA

were already operating a very successful points collection scheme known as Profiles, a link with them would have been a very major step for us to take but in fact it never came about. Even without such a move we were realising that SMART was a huge project to implement and we therefore tried to strengthen our team. Alan Davis had been brought in as a consultant. We also brought in Gary Anderton with a brief to concentrate on implementation. David Pirret and I had both worked with Gary Anderton before and knew he had good implementation skills. Gary Anderton ultimately became responsible for running the SMART scheme. My main concerns were that the scheme should come into operation smoothly without adverse impact on our retail strategy and relations with our own retailers and that its benefits should be fully exploited.

20. On 1 February 1994, shortly after his arrival in the team, Gary Anderton recommended that the marketing specification for the scheme needed to be frozen so that we did not keep changing things in the run-up to launch. He also suggested the introduction of a change procedure that would give us more control over any changes that needed to be made to the project. He also pointed out that if we were going to proceed with retail partners we needed to have "big, long-term players", which was not a description that could be applied to any of the third parties with whom we were in discussions. He questioned whether we needed any third parties at launch and we agreed that we would stick with a few smaller participants on a redeemer-only basis. Ian Sutcliffe, Gary Anderton and I viewed it very much as a Shell scheme although we remained happy to bring third parties in later if good commercial terms could be negotiated with them.

21. Andrew Lazenby remained with the project, although the introduction of Gary Anderton and, to a lesser extent, Alan Davis meant that inevitably he had a less-central role. He and I had some conversations about this and although I endeavoured to reassure him about his position, he felt that he would like to move on to another position within Shell and did so at the end of April 1994. However, until then he remained an active member of the team and on 23 February 1994 he wrote to me and to David Pirret setting out his strategy for commencing with a regional launch of the scheme. Broadly we adopted his proposals. We decided to have a pilot scheme at a number of sites in Aberdeen, which commenced in May 1994. We then moved on to a launch in the whole of Scotland in July of that year, with the object of having a full launch of the scheme nationally in September 1994. We needed to have a promotion to cover the United Kingdom, other than Scotland, for the period from July to September, which could generate a collection scheme that would hopefully ultimately link in with SMART when it was launched nationally. On 19 April 1994 Andrew Lazenby wrote to me with a recommendation for a scheme in conjunction with MGM Cinemas and Block Buster Video Rental. His note had attached to it copies of extracts from the market research that had been carried out into various possible schemes. I understand that subsequently Mr Donovan claimed that this promotion was also based on an idea that he had submitted but certainly when approving the proposal for the cinema promotion I was wholly unaware that he had ever suggested such an idea. The promotion that I approved was based on a presentation from Tequilla UK.

22. I formally left my position as Shell's retail marketing manager in August 1994, to become General Manager of the Commercial Division as I had effectively been doing that job through most of the summer.

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

SIGNED

  
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FRANK LEGGATT

DATED

13th April 1999  
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