

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 204/2012

DATE: 4 August 2017

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: yes

(2) OF INTEREST TO OTHER JUDGES: yes

(3) REVISED: yes



CASE NO: 204/2012

IN THE MATTER BETWEEN:

Anton Meyer

Accused one

Garth Alan Coetser

Accused two

Clifford Lloyd Stevens

Accused three

Coram: Klein, M A/J

Date of Hearing: 26 January 2015 (accused pleaded) to 4 August 2017 (judgment)

Delivered: 4 August 2017

Criminal procedure law- legal representation-section 22 of the Legal Aid South Africa Act 39 of 2014-empowers a Court to refer to the Legal Aid Board- where the applicant refused legal representation-particular circumstances-report to court-section 22 (1)(a)(ii) the Legal Aid South Africa Act 39 of 2014.

Criminal procedure-witnesses' right to consult with legal representative-right to have legal representation in court

Criminal procedure-Tax Administration Act, Act 28 of 2011 (“the TAA”)-state privilege-manuals and procedural documents-privileged documents

Criminal procedure- excluding evidence-section 210 of the CPA -irrelevant or immaterial -or prolonging the case without good cause

Criminal procedure-documentary proof-section 15 of the Electronic Communications and Transactions Act, 25 of 2002 (ECT Act)-admissibility of a data message

Criminal law-common purpose- “scene” in case of fraud -cyberspace, offices, state buildings

Criminal law-money laundering- cheque swops-money can be camouflaged, filtered through fake companies by means of “cheque swaps”-section 4(b)(i) read with the provisions of sections 1 and 8 of POCA

JUDGMENT

KLEIN A/J

INTRODUCTION

- [1] The accused, Mr Anton Meyer (accused one), Mr Garth Alan Coetser (accused two) and Mr Clifford Lloyd Stevens (accused three) are charged with the following counts: Counts 1 to 198 fraud, read with the provisions of section 51(2)(a) of Act 105 of 1997. First Alternative to counts 1-198: Contravening section 59(1)(d) of the VAT Act, 89 of 1991. Second Alternative to counts 1-198: Contravening section 59(1)(a) of the VAT Act, 89 of 1991. Counts 199 to 237 forgery, read with the provisions of section 51(2)(a) of Act 105 of 1997. Counts 238 to 276 uttering, read with the provisions of section 51(2)(a) of Act 105 of 1997. Counts 277 to 356, which is known as money laundering, in terms of section 4(b)(i) read with the provisions of sections 1 and 8 of the Prevention of Organised Crime Act 121 of 1998 ("POCA").
- [2] The State alleged that the accused acted in furtherance of a common purpose to commit the offences.
- [3] The state alleged that the accused used 18 entities to fraudulently claim VAT refunds from SARS, totalling R216 308 27.95 million of which R147 580 438.99 was paid out to the said entities.

Legal Representation and Legal Aid

- [4] The accused were arrested in 2010. There were several delays in this trial. One of the reasons given was the lack of funds for legal representation. Eventually by end 2014 the honourable Judge Horn ruled that the trial will start on 26 January 2015. The question of representation was again taken up in middle 2015 after the court had given an indication that it might be a good idea for the accused to again apply to Legal Aid South Africa for legal representation at state cost. A trial within a trial was held and the court handed down a judgment.
- [5] A *rule nisi* order was first issued on 28 July 2015 as follows: 1. Legal Aid South Africa was to report to the court on or before Wednesday 5 August 2015 why the order contemplated in 2, should not be made an order of this court; 2. In terms of section 22 of Act 39 of 2014 the court directed that accused one Anton Meyer and accused three Clifford Stevens be provided with Legal

Representation at state expense, subject to the Legal Aid South Africa Act 39 of 2014 and regulations promulgated thereunder.³ The court order to be hand delivered to the Regional Operations Executive Gauteng Regional Office together with copies of the two applications from accused 1 and accused 3.

- [6] The order was made under the following circumstances: The court on 27 July 2015 asked accused 1 and 3 who were unrepresented if they want the court to look at section 22 of the Legal Aid South Africa Act 39 of 2014. This section empowers a Court to refer to the Legal Aid Board, a matter where the applicant has been refused legal representation at state expense by Legal Aid South African and the court is of the opinion that there are particular circumstances that need to be brought to the attention of Legal Aid South Africa by the court in a report referred to in subsection (1)(a)(ii).
- [7] The two accused submitted applications where they asked the court to intervene. The matter was postponed and the Chairperson of the National Bar Council of South Africa was approached to provide counsel with experience to assist the two-unrepresented accused. The court subsequently appointed adv Gerhard Van Wyk as *amicus curiae* to assist the accused. Adv G Van Wyk, appeared as *amicus curiae* in respect of the pending LA application of Accused 1 and 3. Adv W Karam and later adv Phillip Mokoena SC and adv Yacoob who represented Legal Aid South Africa. Adv Van Wyk as *amicus curiae* on behalf of Accused 3, brought to the attention of the court that accused three is the owner of immovable property and therefore withdrew his application. The court then confirmed that Accused 3 did not qualify for legal aid.
- [8] The court ruled that the matter concerning the legal aid application be treated as a trial within a trial. The court received the four (4) volume section 22 report and ruled on the dates for affidavits and Heads of Argument. After hearing argument, the court found that Legal Aid SA carefully considered all relevant factors and correctly found that Accused 1 does not qualify for legal assistance at State expense.

Legal Representation during the trial

All three accused

- [9] All three accused were represented by attorney Mr Schaefer in May 2011 who withdrew formally on 21 July 2014 as attorney, but appeared again on 18

August 2014 and 9 October 2014 making representations for the day only. Adv G Van Wyk appeared as *amicus curiae* for accused one and three concerning legal aid. On 16 and 21 September 2016 adv Kolbe S.C. applied for leave to appeal against the dismissal of a recusal application on behalf of all three accused.

Mr Meyer

- [10] Mr Meyer appeared in person for the greater part of the case, he was only again represented by Mr Schaefer on 11 March 2016 concerning his bail forfeiture.

Mr Coetser

- [11] Mr Coetser indicated on 2 February 2015 that he was represented by adv S Fourie. On 5 February 2015 adv W Carstens appeared for Mr Coetser. On 20 April 2015 adv M Du Preez appeared for Mr Coetser and has been doing so for the remainder of the trial. On 15 August 2016, Mr Coetser was legally represented by adv Mustebruke concerning a review application.
- [12] Mr Stevens was in person from the date of plea, 26 January 2015, to 11 April 2016 when he was legally represented by adv Gissing, up to 15 August 2016. Adv Gissing appeared again on 30 August 2016 concerning his bail forfeiture. Adv P Louw appeared for Mr Stevens from 23 January 2017 to date.

The accused pleaded.

- [13] On 26 January 2015 the accused were unrepresented. The charges were read and the accused were asked to plea but they did not plea, they said that they were not legally represented and a plea of not guilty for all of them was entered in terms of section 109 of the Criminal Procedure Act, 51 of 1977. (The CPA). No admissions were made nor were any plea explanation given.

Section 105 address by State

- [14] The State's case is that the accused in this matter acted as the directors and representatives of 18 entities and acting with common purpose with one another, operated a fraudulent VAT scheme. The accused's scheme was to defraud SARS by claiming fraudulent tax refunds in respect of eighteen entities during the period January 2007 to March 2010. The accused's companies were used as a vessel to perpetrate the fraudulent VAT scheme against SARS.

- [15] It is further alleged that SARS conducted several audits on the respective entities from which it became apparent that the supplier's invoices substantiating the VAT refund claims were false. This is the basis for the forgery and uttering charges levelled against the accused.
- [16] The accused, it is then alleged, laundered the proceeds of the fraudulent VAT refunds relating to the entities especially by way of intercompany transfers called cheque swops.
- [17] The State's case is based on 18 entities registered for VAT purposes and 2 other entities which were not registered for VAT. The names are reflected in Schedule "A" to the indictment. But Schedule "E", "Forged Supporting Documents" are only applicable to the following entities: Schedule "E", "Forged Supporting Documents" are only applicable to the following entities: Counts 9-13: Copper Sunset (2); Counts 14-21: Legacy IT Solutions (3); Counts 22-24: Square One (4); Counts 30-47: CCG Rentals (6); Count 56: Superbrush (7); Counts 72-74: Geo Relational (8); Counts 84-91: Square One Power (9); Count 115: Monkor Management (11); Counts 126-129: CCG 119 Investments (12); Count 133: Sunmark Farms (13); Count 143: Square One Imports (14); Counts 170-179: Sunmark International (17); Counts 193 – 198: Multi Cupboard (18).
- [18] The state called 12 witnesses. The accused did not give evidence in their own defence, but elected to call their own witnesses. Mr Meyer called 4 witnesses and Mr Coetser called 15, Mr Stevens elected not to call any witnesses as his counsel indicated that the defence had already called all those he wanted to call.

The evidence of the state witnesses can be summarized as follows:

Abrahams E

- [19] Mr Edward Abrahams, a SARS employee, is a security officer who looks after the securities of the main frame. SARS uses a unique system which is tamper proof. In order to get onto the main frame, you need access to the SARA device. Hacking is not possible. There was no communication between SARS and SAA.

Engelbrecht, R

- [20] Mr Riaan Engelbrecht is an investigator at SARS since 1994 and holds a B. Comm law degree. He has been at SARS for 24 years and started working in

the investigation department in 1994. His duties are to investigate any tax related crimes that primarily are referred to him by the SARS audit division. He is as a SARS investigating officer not a peace officer. The specific matter against the accused relates to the Value Added Tax Act.

- [21] He explained the VAT system to the court. He started investigating the “group” when he was alerted by a Durban SARS employee that a company called Multi Cupboard (Pty) Ltd had claimed a number of refunds relating to importation and exportation mainly for software.
- [22] Every vendor has a VAT file. Correspondence will also be put on the VAT file as well as audit queries. Mr Engelbrecht took the court through exhibit A establishing the 18 entities which were registered for VAT per the VAT101 documents. There were an additional 2 entities which were not registered for VAT.
- [23] The witness testified about exhibits in Exhibit B which is summarized in Schedule B to the indictment. Schedule B thus shows the VAT claimed and VAT paid out. The witness explained the amounts that differ from claimed to paid out as being mostly interest paid. Furthermore, the court was referred to the B exhibits and corresponding C exhibits where amounts were paid out. The witness also testified about VAT that was not paid out but which were claimed by the entities. SARS sees this as a potential loss.
- [24] The witness said that SARS will also be relying on section 15(4) of the Electronic Communications and Transactions Act 25 of 2002 (ECT Act) as SARS submitted electronic evidence. The witness also referred to those who signed the Vat claim forms. The witness also testified about inter account transfers. This is reflected in the exhibits. Mr. Meyer signed C9 to C93. B(96) was electronically signed by Mr. Meyer. Concerning entity number 15: Amber Falcon: Mr Garth Coetser, accused 2, signed the letter for Mr Stevens, accused 3, to open a bank account: C15-099. Mr Meyer signed B157 the VAT 201 relating to Amber Falcon. B158 was also signed by Mr Meyer. The witness showed all the CAMS transfers which are found in exhibit “F”.
- [25] Mr Engelbrecht also testified about the VAT returns. That is now the returns submitted by the 18 entities over the relevant period. The VAT returns are marked or are referred to normally as a VAT 201 form. The VAT 201's are marked Exhibit B. The state took the witness through all the VAT returns. The

accused are facing 198 counts of fraud because there are 198 VAT returns. The state then asked the witness to show the similarities between the VAT refunds and the amounts transferred to the bank accounts, which he did.

- [26] The witness also testified who, according to the bank documents, were the authorised persons to sign on the accounts. The witness would read the names and give details, i.e. "FNB has recorded as list of authorised signing officials being: Garth Allan Coetser, ID number 580915 5024 08 and it is cut off. Wendy Jean Wright, ID number 520614 0072 08, Belinda Dorothy Roberts, ID number 691003 0071 082. Sheryl Kay Gillett, PA to Garth Allan Coetser. ID number 580530 0106 08. "
- [27] The witness also stated that FNB has "recorded or on the document it is recorded as Garth Allan Coetser being the director and the next two ladies being designated as accountants." The amounts that were transferred by CAMS were also put on record.
- [28] The state referred to Exhibit K which is a Section 212 statement which relates to the returns submitted by e-filing. Section 23 of the VAT Act provides that to every person that become liable to be registered as a vendor, upon registration SARS assigns a number, a VAT number. Section 28 provides that the vendor should furnish the Commissioner with the return. Section 28(5) of the VAT Act requires a member or his representative to sign the return. The Regulations prescribe that an electronic signature is deemed to have been attached by the person who submitted that return by means of e-filing services. In terms of the Regulations the electronic signature of the vendor or representative is electronically linked to that return when the electronic return is submitted by means of e-filing. The witness went through all the signatory cards and put on record those who had signing powers. These are reflected in Exhibit A.
- [29] The witness took the court through all "B" exhibits comparing and showing deposits made into Exhibit "C". "B" is the VAT forms and "C" is the bank accounts. The witness testified about the bank documents at page C12.8. This account was registered in a close corporation by the name of Ofenze Consultancy CC. The contact person given on that document is C T Mabusa in the capacity as a member, at C12.9 there is also his details given. There is an ID number, residential address, cell phone number and he signed the

document. The witness did not know the person but gave the following explanation: He then gave hearsay evidence and told the court what Standard Bank explained to him. When they have an account number that is closed after a certain time period lapses they reuse that account number. The witness testified about the signatory cards, i.e. Exhibit C13, page 11. He mentioned the persons who had signing powers on the account namely Sheryl Kay Gillett. Wendy Jean Wright. Belinda Dorothy Roberts and Garth Alan Coetser, accused 2.

[30] The witness was asked who signed the VAT return Exhibit B147 for the period 10-07. It was signed by W Wright. The amount that had been claimed was R960 400.

[31] The witness also referred to page 14 of Exhibit C, a letter from entity number 15 dated 31 August 2007. He read the contents into the record. It reads as such:

“To whom it may concern. This affidavit serves to confirm that I, Garth Alan Coetser, ID number 580915 5024 085 as a director of the abovementioned company hereby authorise Mr C L Stevens to open a bank account with First National Bank as the sole signatory of this account. Thank you. Mr G A Coetser” Signed as such.

[32] The cross examination continued in a similar fashion, i.e. the question was put: “Now we were dealing with the VAT return for count 147, do you see this amount reflected in the bank statements, C15. The answer: “Indeed it does reflect there, showing that the money was transferred into the account on 1 February 2008.”

[33] Mr Engelbrecht testified about Exhibit “F”, called inter account CAMS transfers. He testified that he found corroboration for the CAMS transfers. He explained in detail, i.e. “On page 79, at the top of the page, the first transfer that was dealt with on that page, shows that on the 16th of March 2007 the amount of R812,000 was transferred from the account of Sunmark International, to the account 62062045705 which is marked on that schedule CCG, client account otherwise known as CCG183 and so also on the same page, the amount of 110,000 was transferred on the 29th of

March 2007, to the same CCG client account.”

TRIAL WITHIN A TRIAL

- [34] It was at this stage of the proceedings that counsel for accused two, objected to the evidence: She said: “My instruction at this stage, even before the state starts with the evidence in Annexure E to object to the use of the evidence. It is common cause that there was an illegal search and seizure, documents were handed back. It is my instruction that it is not clear whether these documents were part of the illegal search and seizure and copies were made thereof and what the position is.” Counsel mentioned that an agreement was reached for the handing back of said documents. She said: “In other words the state conceded. It is my instruction that these documents cannot be in the possession of the state, save for being copied from the documents obtained by the search and seizure.”
- [35] Counsel for the state put on record the following: The state, the respondent in that motion matter, confident of the strength of its case against the accused, decided not to fight the application to have the documents returned and an agreement was entered into between the respondent (the state in this matter) and the applicants, to have the items returned.” Counsel for the state confirmed that all seized items were returned but not stamps. The state was of the opinion that a trial-within-a-trial should be proceeded with to ascertain the admissibility of EXHIBIT E. and Counsel for the state mentioned that the state is confident that it will show that none of the exhibits tendered, were in fact part of the seizure. The state’s submission was that this is a factual question and not a legal question. After the trial within a trial was concluded, the Court ruled that the documents were not illegally obtained. A written judgment was handed down in this connection.
- [36] The witness looked at EXHIBIT C, that is the bank statements of all the eighteen entities. The first exhibit is C1, entity 1, CCG 130, E9 is in relation to count 9, there are no supporting documents in respect of counts 1 – 8. (The court notes that the reference to “no supporting documents” is not a

reference to “no documents at all” but the witness says no supporting bank statements). EXHIBIT C1: The five returns that was submitted in respect of CCG 130 Investments for counts 1 – 5 were all returns with zero rated sales except one.

Zero rated sales

- [37] A zero rated sale is a sale of goods and services at the zero rate. The goods that are sold at the zero rate in terms of section 11 of the VAT Act, relates mainly to basic food stuff.

Activities on bank accounts

- [38] There are very few transactions that Mr Engelbrecht could identify that relates to the normal trading activities of the business. The majority of the transactions that are reflected on these bank statements are what was referred to by these companies as cheque swops. (Cheque “swops” are also called cheque “swaps”, the court will again refer to this term *infra*.)
- [39] Where a cheque is deposited into one account, for instance, a deposit into CCG130 and then a cheque is issued by CCG130 and that is deposited into another account. That is a cheque swop. Exhibit B1 is the VAT return submitted for CCG 130 Investments (Pty) Limited for the period September 2008, or ended September 2008. Which in this case was for the period August and September 2008. Pages C1-11, C1-12 in the entities bank statements will be the relevant pages in exhibit C1 for this period. Comparing B1 return with these pages C1-11 and C1-12, these two documents tell a completely different story. For instance, in the VAT return sales of R225 720 were declared as standard rated sales and R5 457 000 was declared as zero rated sales. “So we are talking about sales of an excess of R5 600.000. “
- [40] Mr Engelbrecht explained. He said for the period July, August there was a R1 000 deposit into this account and August, September there were electronic transfers of R13 000 deposited or made into this account and the same amount withdrawn in cash. For that return, there were standard rated sales of R204 117 declared and for zero rated sales of R17 913.250. The input tax of R1 200.992.13! In February, there was R400.000 transferred into this account on 17th February, then on 18th February there was a cheque deposit of R1,184, 951.25. This is also confirmed by EXHIBIT C1 on page 17. Then on the same day, on 18th February there was a cheque issued, cheque no 6 for R1,

188.000.63. The witness then explained: "Now if you look at page C1-5 you will see a copy of that cheque. It was a cash cheque. If you look at C1-6 you will see that that cheque was deposited into the account for Super Brush (Pty) Limited which is one of the companies on the indictment. In respect of count 3, exhibit B the VAT return, C1-22 reflects the deposit. He said he looked at only February and March which is for the same period there was a VAT refund paid out of R636, 268 on 10th March. R600,000 was transferred out. There was R390,000 also transferred out earlier on 2nd March and inter companies transfers. Then on 27th March there was R1,269,940 paid into this account by cheque deposit and on the same day cheque 8 was issued for R1,268,420.13.

- [41] There was nothing going on in April, just a R50.000 transfer out of the account and then there was a receipt of that earlier VAT refund of R1,100,000 then the subsequent transfer out on the same day.

Registration with customs

- [42] Ms Watts told him (the hearsay was provisionally allowed) that any company or entity that exports or imports goods into or out of South Africa must be registered with Customs as an exporter or importer. Unless they do it very irregularly. She however checked on their system and found that CCG 130 was not registered as either an importer or exporter.
- [43] Mr Engelbrecht explained that If you look at the VAT return you will see R616 000 odd was declared as standard rated sales and R7,100,000 was declared as zero rated sales and input tax of R1,066, 000 was claimed as input. Yet the only activity on the bank account seems to be cheque swaps. There was a cheque deposited on 19th November for R981,000 and on the same day a cheque was issued and a cancelling of it. As a result of the cheque being unpaid. That was cheque no. 32 and it was unpaid as a result of a cheque that was earlier deposited into the account also going unpaid. Or RD. Then there was a cheque deposit on 23rd November for R982,000 and another cheque no. 34 issued for R981,036. Mr Engelbrecht concluded that besides cheque swaps, unpaid cheques being cancelled out, there was no activity on that account.
- [44] Concerning entity no. 4 which is Square One Doc Solutions, Mr Engelbrecht testified that it relates to counts 22 – 24, there are supporting documents in respect of all three counts. B42 is a VAT return for the period ending July 2009.

It is for the period June, July 2009 it shows standard rated sales of R1.064.000 and zero rated sales of R9.075.000. It claims input tax of R1.063.000. The bank activity for this period is at C6-64 to C6-67. There is what seems to be a cheque swop on 30th June. Payment of a cheque into the account of R1.337.000 and payment of a cheque 109 out of the account of R1.335.000. Then there was a CAMS transfer of R200.000 into the account, and on 24th June showing cash from GAC Loan, he understood "GAC" to mean Garth Alun Coetser. Then there was a CAMS payment made on 24th June of R128.819.00. Then in July there were three debit orders paid of R24.000, R7.000 and R15.000 and besides that just two CAMS transfers of R2.600 and R1.700. Mr Engelbrecht concluded: "Besides that nothing close to what has been declared on this return."

- [45] Concerning entity 7 known as Superbrush, counts 48 – 61, he said that there are supporting documents for counts 56, the only supporting document in respect of this entity for that count. Ms Watts stated that Super Brush was indeed registered as an importer and exporter and had Customs code 331230. However, Ms Watts drew a printout from the Customs system showing all transactions of such imports and exports captured on their system for such importer and found that for the period January 2007 to March 2010 that there were no transactions reflected on the system.

FOREX

- [46] The witness examined the bank statements in respect of all eighteen entities and could not find any indication of forex (that is now foreign currency) transactions. He testified about the few that he found.
- [47] He testified about exhibit C7(36). On 5th May 2009 there is an entry headed Bills and Foreign Exchange, Forex Sale Transactions and it has got a reference FXIB9556935 USD, the amount debited on the account was R1.891.500. There is CAMS transfer and it states cash for forex R900.000 into the account. Also two charges of R600 and R100 respectively forex commission standard rate. There is a purchase of USD on 5th May amounting to R1.891.500. Having examined the bank statements the witness did not find any other forex transactions besides the transactions mentioned.

Further activities

- [48] In summary format the witness went on to testify about count 55, the return marked B53, a VAT return submitted for Super Brush (Pty) Ltd for the period August 2008. It is for the period July, August 2008. It shows standard rated sales of R917.000 and zero rated supplies of R11.599.000. Against that input tax claimed of R1.510.000. Then in December he found much less traffic on the account. On 1st December there was R50.000 inter group transfer out of the account and on 3rd December there was cheque no. 105 issued for R10.420 and on 15th December there were three payments of R17.000 each referenced monthly cash. The witness concluded that besides that, there were no transfers, no activity substantiating input tax of R1.500.000.

Monkor Mangement Services bank accounts

- [49] Monkor Mangement Services bank accounts: There is evidence of a similar pattern occurring, in the sense that there are cheque swaps, like can be seen on page C11 57. There is a cheque deposit on the 16th of November for R943 000.00. Then, on the same day, cheque number 477 is issued for R942 564.00. The cheque, reflected at page C11 90, C11 90, a cheque issued on the 29th of July for R1 099 560.00 and that followed a cheque deposit into the account of 1 100 000.00.

Exhibit EE

- [50] Entity 14, Square One Imports, counts 136 to 146, which the one set of documents, filed under the so-called fourteen documents, marked EXHIBIT B Looking at the letter, EXHIBIT EE, this entity is referred to in this letter. On page 43 of the bank statements which is C14, so it is EXHIBIT C14 page 43 there appears to be a forex transaction dated the 22nd of December. It is a forex sale transaction FX, US dollars, R1 122 215.57.

Forex

- [51] There appears to be another forex entry at page 48, dated the 12th of June, forex sale transaction, FX, US dollars, R278 841.59. There appears to be another one on page 50, on the 3rd of July 2009, FX, US dollars R135 413.21. Another at page 53, dated the 11th of September 2009. US dollars bought for R263 206.82. Another at page 58, dated the 3rd of December 2009. US Dollars bought for R366 604.07. The witness

concluded that there were no other forex transactions, besides the five transactions he just referred to.

- [52] For entity 14 there were 11 VAT returns submitted. Entity number 15, Amber Falcon, counts 147 to 160, there are no documents filed into the EXHIBIT E. Bank statements, C15, page 51, appears to be a forex entry. Dated the 17th of February 2009, for the amount of R31 248.90. Another one at page 63, of C15. The amount of R31 754.90 was purchased, or forex was purchased on the 21st of August 2009. Another one at page 69, six, nine, a transaction on the 10th of November 2009. A purchase of forex for the amount of R37 709.58. There were no other forex transactions besides these three transactions. The bank statements of entity number 15 Anglo Falcon, EXHIBIT C15, were referred to.
- [53] The witness referred to two specific entries, the first one being referenced transfer to C L Stevens the amount being R40 000. The second one being transfer with the same credit card number ending 7058 which is also that for Stevens. Then on 30 November there is a general debit with the reference transfer to C Steven the amount of R40 000. The two entries for 14 December the first one being a general debit referenced transfer to C L Stevens the amount being R50 000 and the second one being general debit, transfer to the credit card number ending 7058 the amount of R70 000. Then 22 December there is another transfer to the same credit card account of R25 000.
- [54] Mr Engelbrecht also testified about a cheque on C15 at page 92. It is a cheque issued by Amber Falcon Properties 149 (Pty) Ltd dated 11 June 2009 with cheque number 107. It is issued payable to Van Lures, Cooper and Barlow and the amount is R2 340 000. It is signed it "seems to be by accused 3." At page 59 of the same exhibit C15 the cheque transaction is recorded on 12 June cheque number 107 in the amount of R2 340 000. Van Lures, Cooper and Barlow from his investigation is a firm of attorneys in the Cape. The witness spoke to one of the partners there Mr Hein Van Lures who confirmed that this cheque was payable to them for a property transaction. (This could be hearsay, but I will leave it for the moment)
- [55] The witness then identified a document, a declaration by a purchaser for

transfer duty purposes and it is in respect of a purchaser Clifford Lloyd Stevens, ID number 5811075175088 and it is in respect of a purchase of a property for the date of acquisition being on 3 May 2009 for the amount of R2 600 000 and the property description is section eight as shown and more fully described as sectional plan number SS7/179 and the scheme known as Monte Carlo Flats. In respect of land and buildings or building situated at Camps Bay in the city of Cape Town. The copy for the court's records was marked exhibit Z.

- [56] The witness received information from Watts, an affidavit from Ms Watts in which she stated that Basfour 2367 was not registered as an importer or exporter.
- [57] The witness could not trace any of the entities as registered importers or exporters. The witness upon examination of the bank statements did not find any entries in respect of forex transactions. The witness testified about the bank activities of each company and in spite of the declaration of some million-rand sales for the applicable VAT period there were only two pages that reflect activity for that two-month period in the bank statements. The bank activities did not substantiate what happened as declared on the VAT return. An example would be the VAT return marked B 181, the VAT return submitted for Sunmark International Trading for the tax period May 2009. In this case there is a single month return. So only for the month of May 2009 on that return standard rated sales of R960 450 were declared and zero rated sales which he assumed are export sales of R9,2-odd million and then there was total input tax claimed of R1 451 494,08. The corresponding bank statement for that month one finds at C17 page 48. The witness had earlier said that the total input tax was R1 451 000 but that is divided into two amounts one being R1 248 564,80 and the second amount at field 15 is R202 929,28. Now in the bank statements one finds a cash deposit on 29 May of R1 249 024. On 29 May cheque number 31 was issued by Sunmark International it is for the amount of R1 248 564,80, which is the same amount that was claimed under field 14. However, on 29 May that cheque was dishonoured as being unpaid and the SARS cheque number 30 issued on 28 May for R570,77 and bank charges and interest

payments of R55 and R1110 there is no other activity on the bank statements. The witness concluded that one again has the similar pattern of a cheque swap with a cheque going out used to substantiate or try to substantiate the input tax claimed.

Agents

- [58] Importers and exporters make use of the services of agents, called clearing agents. The practice is that the clearing agent would submit documentation to SARS or to customs for the clearance of goods. The clearing agent would be invoiced and the clearing agent would pay for the customs duties and the importer would then pay the clearing agent. Usually the clearing agent would request the money for such payment from the importer up front. In this case there is no evidence of any payment to any clearing agent. Even those payments that were presented specifically as being payment of these duties and of VAT I have shown that those payments were simply cheques part of the cheque swap, payment by cheque deposited into one of the other entity's accounts or into one of the entities also part of this group.

Central Account

- [59] VAT and customs duty need to be paid by the importer so they would have to find the money somewhere within their cash flow to pay for these duties, this VAT. The witness says that what usually happens as soon as the funds gets refunded based on the claim, if there is a refund, a person will find that money going to the bank account of that business and being used to offset that cash flow or that cash that was taken out the system. This is not what happened here. As soon as the money or the VAT refund was received it was usually transferred by claims transfer to a central account that central account being CCG 183 CC.

What was allegedly imported

- [60] The witness said that from the supporting documents, the waybills and the SAD500's and the invoices the majority of items so allegedly imported were software but there was a few imports of or so called imports of toothbrush handles or something to that effect but it was

usually software.

- [61] For many years the duties on software were nil. At the time of these imports there was a duty on the carrying medium. So if the software was imported on CD's then the value of the CD was subject to duty and the witness said if he remembered correctly it was at 10 percent. The documents or items were purported to be imported by SAA. He saw from the schedules that the duties were nil on software. Software is usually sold via the internet and that is his experience. You buy it via the internet.

Modus Operandi

- [62] The witness tried to explain, assuming the state case is proved, how the accused got away with this: "However, the audits are done by desk auditors who operate solely on face value on the documentation that is supplied to them and if there is a pattern that is reoccurring and refunds are claimed in the similar fashion over and over sometimes an audit would not even be done. It is when it becomes allocated to a more or to a field auditor where they would then look at or to an investigator like me then we drill down further."
- [63] Mr Engelbrecht clarified that the matter relates to import tax not export tax, as he understands it both are interlinked. When a person imports goods, import duty is charged as well as VAT, and as he understands it, that was the claim on which the import tax claimed was based. As soon as any vendor in South Africa exports goods, those goods are subject to the documentary requirements being met, are zero rated. If a company imports goods, then that is levied at the time of import, if he has to concentrate only on VAT. There are no goods that can enter the country without VAT being levied.
- [64] The input, or the accounting for VAT by any vendor is a time based accounting. There are time of supply rules that are in play here. There are two different ways of accounting for VAT, being the invoiced based and the payments based method. The payments based method is a very limited based method, and it only occurs as far as I am aware, to sole proprietors and CC's, and also where the turnover is less than a threshold. Basically all VAT, or most VAT is accounted for on the invoice bases. So, if you have

been invoiced with goods in this month, then you can claim the input tax and prove it on that invoice. If you only sell them next month, and you have had no other sales, then you have got nothing to declare. If you are accounting for VAT on the invoice bases, it also does not matter when you get paid for them. However, if you do not get paid for them, or if you do not later pay for that, then you will have to reverse that at a later stage.

Version for Mr Coetser.

- [65] Counsel for accused number two indicated her client's version by putting the following to the witness: "Sir, my instruction is to put it to you that my client's entities had a long standing arrangement with the company in America, this company in America to which you refer, for them, to buy on account." The reply: "Okay. So, when did they pay for that?" Counsel then replied that she was going to ask him because he inspected the documents. He answered that there was no payment if the invoice was issued, or payment should have been then a payment would be reflected in the bank account of Square One and it is not and besides the fact that you are talking about two different legal entities.
- [66] Counsel argued that there are payments but not at least, to the quantum that we are talking about and put it to the witness that there is mention of Square One Australia. The witness did not investigate whether there were any payments from Square One Australia to the American companies. He do not have access to that information.
- [67] Counsel for accused two then put this version: "I am putting it to you, Sir, that the Australian Square One could have paid the American companies. You cannot, at this stage say that there were not any such payment, seeing the fact that you are unable to access the Australian, as well as the US companies."
- [68] The witness said: "You are quite right. I cannot rebut that. My issue though is, if there were exports to the Australian company, then as well, if that happens, those type of payments have to be reflected in the accounting records of any of the South African companies."
- [69] The witness also said: "I am saying though that if the Australian Company, if Square One Australia pays the, a company in America for the South

African company's debt, then that debt payment, made by the South African, by the Australian company, has to be reflected in the books of the South African company. Then, the question must arise in your mind as to why is the Australian company not interacting and purchasing from the Miami company directly?"

[70] The witness was not aware of one occasion which the entities made use of a clearing agent.

[71] A company has no VAT implications if an end user in another country is used but if the goods come into South Africa first then you would have to pay customs and VAT importation, Then, you sell those goods to another country. Have them exported at the zero rate. So, you can claim back the VAT that you have paid. If the goods come into a bonded warehouse and it is in bond, then the duties on that is not paid, at this stage, the duties and the VAT is levied, when they get brought into a bonded warehouse. But, those goods are like, those levies and the VAT is set off, once those goods are proven to have left the country. So, it is still levied, but set off, once it leaves the country. It is not paid, but set off. But, then, again, those goods, when imported, are imported with that purpose code. It is like the same as someone brings in goods for South African Consumption, customs and VAT is levied. But, they are brought into, in bond. Only when those goods are removed out of bond, does that need to be paid.

Cash cheques *modus operandi*

[72] The witness said he did also testify previously that those cash cheques that they have picked up on, they found, deposited in one of the sister company's accounts. The *modus operandi* was that the cash cheque was deposited into another entity. If that entity also issued a cash cheque, it was deposited in another entity in all instances.

[73] The witness could not say "for sure" that SARS did not accept cash cheques before or after 2009 because he did not investigate that. The witness said he would have to check what dates they were, because at some point in time and again, he did not know exactly what date, SARS did not even have a cash office anymore. So, if you want to make a payment, you go to the bank and make a payment there.

[74] A representative party, on the VAT forms is whom SARS holds

accountable. The documents in exhibit B reflected SARS stamps on and some differ from others. B42 is a printout. There is no stamp on. Most of the stamps say post received, or received or something along those lines. The question, regarding the receipt of documentation and not all documents shown as evidence reflect the received stamp. If documents are handed directly to an auditor, they would not have stamped it. The explanation that he was given is that the VAT is a risk based system. If the risk is mitigated, then, then the payment will be made without an audit. If, if for instance an audit is done after each refund claim is made and the explanation is always the same and the documentation is always the same. Then there will be a time, when it is accepted and expected that there will be a refund. He used an example: A dairy farmer sells milk. Milk is zero rated. So, whatever inputs he has, he will be able to claim, if he has paid VAT thereon. But, he is always declaring all the sales at the zero rates. So, he will always be in a refund situation. So, they are not going to audit him every time.

- [75] The entities before court were not all audited, most, or the majority did not have documents submitted, because there were some audits done, where notes were made on the system, but no documents retained. The vendor or their representative would normally sign a VAT return. Exhibit B15 is an eFiling. The person that is registered for eFiling could have given the person, who has eFiled the returns, his password and logged in on his password. But, he is the responsible person, because he is registered to do it.

Concerning Mrs Wright

- [76] If a person signs a VAT 201, where the person says: "I certify that the particulars in this return are true and correct." Normally, SARS would hold that person liable for submitting those VAT return. The witness referred to B3, B13 as an example. It is signed by Wendy Wright. He said they held Wendy Wright liable. SARS applied for, through the police, a warrant for her arrest, because SARS believed that she was involved. The vendor is held liable civilly.
- [77] Mrs Wright was a suspect but this changed at the time of the search because subsequent to the search, they started interviewing her. They

saw the documents that were kept. He believed that she had submitted returns, based on the information that had been provided to her.

Cheque swops

- [78] The witness said “You will see on a number of the bank statements the term “cheque swap” is used as a reference.” The witness did not know what was meant by the term or what was written on the deposit slip. There were a myriad of accounts that the cheques were deposited into, or potentially deposited into. And, if there was a multiple deposit, then the cheque would be a part of the total deposit. So, you could not for sure know that that cheque was deposited into that account.

Concerning Me Oliveira

- [79] Mr Engelbrecht said the investigation of all 18 entities was triggered when Me Oliveira investigated another company. The accused was contacted as the accounting or public officer of the four entities and was requested to submit all supporting documents for that tax period.

Version put to witness by counsel for Mr Coetser:

- [80] The group of companies made use of a central treasury within the group. Payments done by one of the entities within the group that would administer all the financial bits.
- [81] The witness replied: I have not seen that account, and it would have been out of the ordinary, let me put it that way, if that was the case. Because usually companies administer their books for each legal persona.

Version put to witness by counsel for Mr Coetser:

- [82] If the witness do not have sight of the accounting records he cannot, or he is unable to comment regarding loans, intercompany loans.
- [83] The witness replied: You get intercompany loans. There were references to intercompany loans with the transfer of the VAT refunds received.

Version put to witness by counsel for Mr Coetser:

- [84] The witness did not have access to the US and Australian counter parts, which still formed part of the Square One group, and therefore cannot comment on any intercompany loans in that effect. The witness replied that he could not.

Version put to witness by counsel for Mr Coetser:

- [85] The central treasury was run by the offshore company, which administrated the intercompany loans. The witness replied that he did have access to any of the offshore company records.
- [86] The witness did not follow up how much money was paid offshore by Square One, the listed company. He did not see a direct link between that listed company and these companies. He investigated a syndicate and there were no payments made from Square One, the listed company, to these companies or vice versa.
- [87] He did not recall having seen the import code 707070 on the documents. He added that SARS VAT audit does not regularly speak to customs, had those systems talked to each other, the whole scheme would not have worked. It is a loophole in the system.

Evidence regarding the stamps used

- [88] Counsel put the following to the witness: "The stamps that were used, I know that there is a witness from SARS that says it is not a SARS stamp. Is there any expert that took a look at the stamps?" The witness replied: "No, there were not. The experts will tell you that they compare apples with apples, not apples with oranges." Counsel asked: "These stamps are still available?"
- [89] The witness testified that they are not in his possession. The witness confirmed that during the search some stamps were found and said: "if that is what you are talking about." Counsel said yes and then the witness answered that those stamps were entered into the SAP13's and into the SAP13 by Colonel Pelsner where they stayed in the 13 and SARS did not take possession thereof.

The field auditors

- [90] The field auditors will not just look at that document at face value. So, if they receive a document purporting to be a supplier's invoice, they may contact that supplier to substantiate if that supplier actually issued that invoice. Or, if they received and SAP500 they might go to customs to go and audit if that was legitimately issued.

Company abroad

- [91] They did not contact the company abroad, if that invoice was issued, and it purports to be an import, then they would go to customs to check of

that importation was duly made and entered. On the odd occasions, they may contact an overseas supplier. But, there is protocol involved in that, and they would not do it directly, there is an office for that. There is protocol when dealing with overseas suppliers.

Oversees payments: Version

- [92] The witness said if you look at all the bank accounts of the 18 entities, there are no such payments to an overseas company. There were some forex payments, but those were negligible compared to what ostensibly was imported. Secondly, most of the funds were transferred into the 705 accounts, CCG103, if he remembered correctly. There were no such payments to the overseas companies from that account. "I am putting it to you that payments were made from accounts abroad, not always from a South African account."

The witness replied: "Show me."

- [93] The witness was cross examined on his investigation by referring to Vigan Govender, team leader of the audit, and a Yolanda, who had to obtain returns from Krugersdorp. He received copies of documents, sent by Wendy Wright that he attached to the Vigan Govender and Norman Moodley statements.

Manuals pertaining to audit criminal investigations and the third manual pertaining to documents or documentation received by SARS.

- [94] Counsel for accused 2 wanted Mr. Engelbrecht to produce manuals pertaining to audit criminal investigations and the third manual pertaining to documents or documentation received by SARS. The witness said that Ronel van Wyk could bring it to court. The court said she is a potential state witness, that means the state can call her or at end of state case or make her available to the defence. Counsel for accused two applied for a postponement in this regard, the application was argued and the court made a ruling in this regard. The court refused the application.

CROSS-EXAMINED BY MR MEYER:

- [95] Mr Meyer asked the witness concerning exhibit J, he replied: The purpose of the schedule was to show when cheque swaps happened and the month where the counts occurred. He did not interview Mr

Meyer nor the other accused. He interviewed Miss Joubert, not Trevor James.

[96] The court needs to point out that the witness, Miss Lynette Joubert is know married and is Mrs Lynette Scafturis. The court prefers her new surname as this indicates her current status.

[97] The witness was not cross-examined by Mr Stevens who appointed counsel who withdrew and then he had no questions for the witness.

Recalling of Mr Engelbrecht

[98] On 1 December 2016 Mr Engelbrecht was recalled for the stamp issue, as a witness. He testified that stamp number 4 of Mrs Sibande was destroyed.

Govender, P

[99] Mr Govender is a SARS customs official, based in Durban, he has been with SARS for 25 years. He is an investigator in the Customs Investigation Section. In 2010 he audited companies' export and import documents. He testified about the computer printouts in exhibit J. He looked at the system of which he only has a viewing not editing function.

[100] He took the serial number on the E 9(10), the SAD 500, serial number 3952 and in this case, it is the J 2 (05) exhibit. On the said exhibit one sees the serial number. But the J exhibit shows the duty paid as R12 773.74. The importer code is 20412499 which is a different number which belongs to Xiabawag and not to Copper Sunset.

[101] He explained the "warehouse entries" that shows in the importer/exporter column. Customs allows a warehouse to make no payment of duty till it is taken out.

[102] The code is a once off code, for goods less than R20 000.00, the 7070 code. The system will generate a message if the value is more. Erroneous numbers will be rejected by the system and it will go back to the client. There are two systems, he could not verify between the two. (NAT 67 and CAPE)

[103] The witness said you cannot enter or access the data once a number has been given. You cannot manipulate the system, he knows, he worked with this.

Legodi, M.E

[104] Mrs Legodi is employed by SARS, almost 12 years. She is an operational manager. She testified about exhibit Q. Q1 is an invoice with a SARS stamp,

this stamp is wrong as it was not a customs stamp, the word “Johannesburg” is not on the stamps, there was no Johannesburg office. At the time, she was at the Carlton Centre they did not stamp any commercial invoices. It must have a number printed from on the document as proof of submission. Q3 is an example of how the numbering is done.

- [105] Q1 and Q2 should not have a SARS stamp. The stamp was for O.R Tambo, they did not do airports documents.

Maharaj , A

- [106] Mr Arvind Maharaj works at the SARS laboratory with audit investigations. He received computers from Nico Terblanche a SARS investigation officer. He testified about the documents which are signed when the items are collected, exhibit KK was handed in. It was handed to Wendy Wright and the witness who signed was Wendy Wright. KK005 was by Mr Meyer. They operated on instructions from a SARS investigation officer. He cannot remember how he got instructions from Mr Engelbrecht. KK006 was not completed fully but he cannot answer why.

- [107] Counsel for Mr Coetser put it to the witness that KK01 to03 was not on the list of the search and seizure, he replied he could not comment on that, it would have been at the scene.

Oliveira M

- [108] Me Maria Oliveira is employed at SARS, for 25 years. She is currently a VAT auditor. She has been in the Audit Department almost 18 years. The process of an audit: a case is allocated; you send a letter of engagement. You request documents and upon receipt you look if it is imports or exports. There are 4 types: Desk audit, in depth audit, refund and field audit. She then explained how it works. One hands files over to “CI”, criminal investigations, once audit has been done. For VAT refund claims you do not need only three types of documents, you need extra. SAD500, Air Waybill, commercial invoice but also customs notification that says goods are released and sometimes proof of payment.
- [109] She became involved in this case when an auditor came to her for advice, he wanted to see if Legacy I.T was importing and exporting. The case was allocated to her. This entity claimed VAT refunds, a letter of engagement was

sent 5 March 2009. She received information from Mr Meyer and she tested the exports. She did not receive documents, referring to exhibit EE.

- [110] The witness audited about 18 entities as she sourced the documents from SARS. The reason being that she never received documents from Legacy IT Solutions. Documents she received from Mr Meyer were SAD 500, invoice and Air Waybill.
- [111] The other entities were receiving refunds as well. She only does audits, not criminal investigations. She does not gather information for criminal investigations, nothing prevents her from continuing with an audit even if it has gone to investigation. When documents were requested mr. Meyer was not a suspect. She also did not suspect fraud.
- [112] After receipt of the documents from Mr Meyer she found the exports or imports did not take place. She did this by testing it on the customs and cargo website. She tested the other entities as she wanted to see if the same thing was happening in other companies because Legacy was false. The entities did not provide her with documents so she was forced to gather other audit files from previous auditors.
- [113] She was shown exhibit file 10, recognized the auditors and said she received the documents from the auditors. She received the same type of documents, sometimes there was a customs stamp on reading "NA Office" for customs, yet there is no office like that. She also tested the name NA on the system, it is non-existent. An example is E9(28) and another example is E 9(16).
- [114] She tested the SAA Airwaybills, none were found. She handed the case over to "CI", she thinks in January 2010. You hand over by giving a notice but you still continue with the audit, she handed it to Riaan Engelbrecht.
- [115] Before the audit she had no suspicion of irregularities, she wanted to test the other entities to see if they were doing the same. She visited Mrs Wright but not Joubert. She also visited Joubert but it was not a field audit, merely to collect her documents. She did not suspect irregularities. She received two lever arch files from a certain adv Van Der Westhuizen. Riaan Engelbrecht was present. After you have handed over to CI you may not give further documents. She next referred to exhibits in the E file, E9,E193, E 197, E73. All letters regarding the audits.E22 (10) and also to C3 (50), bank account: Her conclusion: "I could not find any trading, only inter-company transfers".

She never saw the accused as suspects, she is not supposed to engage a vendor and said if she suspects fraud, CI will contact the vendor.

Scafturis,L

- [116] Mrs Lynette Scafturis, formerly Joubert, knows the accused. She was 17 years old when she started working for Mr. Coetser or as she said strictly speaking the group, Square One Group Ltd.
- [117] The witness was not employed after 2010 when “news broke in the papers about the VAT fraud.” She left the company as a financial manager, after 19 years. The company was placed in voluntary liquidation. She reported to Trevor James at the end, her direct managers were Anton Meyer, Hayden Brown, Grant van der Riet and Trevor James. She was in charge of the VAT returns, she dealt with entities 3,4,9, 10 and 14.
- [118] She initially did VAT returns manually but in 2007 she did it via efilng. In May 2010 she received a call from Mr. Engelbrecht. That was after the arrest of accused 1 and 2. Her surname changed after her marriage and her affidavit, dated 8 March 2011 still under her maiden name. She completed the VAT returns for the 5 entities.
- [119] Exhibit K 18 shows the active user as Mr. Meyer, Square One Documents Solutions, efilng. Exhibit K 51 shows the active user as Mr. Meyer, Square One Power Solutions, efilng. Exhibit K 133 shows the active user as Mr. Meyer, Activated Learning Group, efilng. Exhibit B 22 (1) is a VAT return. There was a name swop, it was a common thing in the group. She submitted this return. She submitted B22(2), B 23 (1) B24 (1) B76 to B95, those are for Square One Documents and Power Solutions. B14 is Legacy IT Solutions. B 76 (1) is for Square One Power Solutions (Pty) Ltd.
- [120] The witness got the information for special import deals from Mr Meyer. He gave the figures, when audited he gave the supporting documents. Mr Coetser was also “pretty much involved.” She only ever received 3 pages from Mr Meyer and Coetser. For various intern suppliers in the group she would receive 20 pages consisting of shipment documents and multiple other documents.

- [121] The three pages consisted of a supplier invoice, airwaybill SAD 500, a few times an original, which was strange to her as for all others you received the duplicate copy. She confronted Mr Coetser as she was concerned about the documents, he told her not to be concerned. She asked him if it was genuine and he said there was no need for other documents. She did not ask Mr. Stevens. She also asked Mr Van Der Riet her direct line manager.
- [122] Mr Meyer left the group for reasons unknown to her, he took over Square One Power and Square One Documents Solutions, she dealt with Mr Meyer when he was no longer in the group. The entities were still on her profile, the internet banking system was on her name. She removed herself after May 2010, she requested from Mr. Meyer. She corresponded via email with Mr. Meyer. Mr. Meyer was her line manager at one stage, Mr Coetser was the chairman of the group, he was not in the same building but only in later years.
- [123] Mrs Scafturis knew of Mr Stevens, as someone who works for SARS, she gave him information about refunds, case numbers, documents, his involvement was small. She was not surprised when told Mr Stevens did not work for SARS, she said: "it would not surprise me".
- Square One group of Companies:
- [124] Mrs Scafturis testified that Square One Power did UP's and big diesel generators. Square One Document Solutions was a distributor of Xerox printers and consumables, local distribution. Activated Learning had training material.
- [125] Square One Imports was for electronical stuff, she was surprised that they were not registered with customs as they were an import and export company.
- [126] She mentioned the countries for exports and imports. Goods that were imported were stored at Square One, those were the 20 page pack goods. The three page goods were not seen, she only saw one box metamap software in the warehouse which was there for about ten years. She went to Australia to set up Square One Australia. In Australia she uncovered a fraud by the managing director, Steve. She reported this to mr. Coetser, the company traded as a loss, illegal in Australia.
- [127] She raised journals to Miami 2007 to 2010, under instruction, there was no support on the bank statement to prove that payment.

- [128] Cheque swaps were done around the 3 page imports. She was contacted by Wendy Wright in this regard. She said: "We would arrange cheques in their account , they deposit a cheque in our account. Most times what would happen when we need to issue a cheque, not funds, relied on their funds." She said also asked to raise cash cheques. She always acted under instruction. All info came from Meyer and Coetser. Apple was for the personal use of Mr. Coetser. The attachments for her affidavit was taken up in Exhibit "L".

Exhibit "L"

- [129] Mrs Scafturis testified concerning exhibit "L" by referring to the contents thereof: She said L5(4) was from Anton Meyer. L5(006) and B79(2) matches, the email reads : "greetings from Santorini" and amounts given , from A Meyer. L5 (008) and B81 (1) and (2) matches. L009 says "please keep this between you and me" from Garth. L10 reads : "writing for the documents from Cliff, should be tomorrow." She called these documents "the 3 page documents". She continued explaining the exhibit L , referring inter alia to L11 where Mr Stevens was also included in the email, he was cc'd in. In L12 Maria D Oliveira asked for documents. It was a VAT audit. Jenny Faber drafted a response. The witness said : "Garth and Anton were involved". L15 is an email to Cliff Stevens. L16 : "Hi Garth, Clifford asked me....". L18 and L19, Jenny Faber has a letter .L26 and E23 (1) go hand in hand, L26 and E 22 (07) , L26(4) and E23 (2) L40: Garth responded: "after Cliff gives me feedback" L47 reads: "Hi Anton...long list of documents." L50 to L64: Documents received from Mr Meyer.

Stamps

- [130] She said concerning stamps: "When putting out in prep for an affidavit, you get the same trend with documents"
- [131] She went on testifying about the "L"exhibits: L51 dates in middle is double. L66 date is upside down. L51: This address is the one of 2002, yet this is May 2008, Darrell lived in a different state. L56: address is identical to Nigeria Independent Electoral Commission. L50 and on: each had the same stamp. L68: Please transfer...lines up with bank statement, Exh C9 (23).Exh L (77) "cheque swops" Anton: We are doing some cheque swops today.." Garth asked for a cash cheque.

- [132] Cash cheques were deposited many times in CCG. Exh L (94) Anton asks for a cash cheque, reply: "Code it to hiding", transaction written off, coded to cost of sales. "Hiding" means make the transaction disappear. Some emails from Anton refers to "LC" which was a nickname given to her by Anton, Laura Craft, wore gym clothes.
- [133] Still on the "L" exhibits: Exh L 96: Anton asks for a cash cheque, said Clifford will collect. Clifford either dropped off documents or he would collect documents. L100: "Once done please destroy the spreadsheet". L101 is the spreadsheet, she never asked Anton for the reason why she had to destroy it. She has emails back to 1998.
Still on exhibit "L": L117: Cliff asked to split. (Email Anton to Lynette)
She always looked up to Mr Coetser from an early age.
She referred to her affidavit, par 27, about a tax clearance certificate. It was declined, Jenny Faber tried, Mr Coetser managed to get it, yet there were outstanding amounts.
- [134] In the latter years Mr Van Riet issued cheques and knew they would bounce. (This is hearsay evidence.)
Mr. Meyer cross-examination
- [135] Mr Meyer put it to her that she was closer to James than to him, her answer: "putting to you, you are wrong, you had a nickname for me, he didn't." Mr Meyer referred to the 2005 financial results, said amounts were reflected in it, referring to L100: her answer: "O.K." Referring to Square One, she said the organigram changed the whole time. There were auditors. Garth and Siswe would know. Square One was listed in April 2000. She was a shareholder. L101 and 102 was created by her when Anton asked her to do it.
Cross examined by Counsel for Coetser
- [136] Mrs Scafturis explained her interaction with the liquidator who was appointed in the listed company, he requested a debtor's list, at the most. He did not ask for the laptop, which she says is a company asset. She said it was rare to have site visits, Maria Oliveira did one in the end. She does not know which VAT forms she did, she followed instructions from a senior. She received email instructions for every company. Wright had nothing to do with their companies but they did interact with regards to cheque swops and other matters.

- [137] It was put to her that she only has ad hoc copies on the business laptop. She was asked how did she determine which ones to keep. She replied that she did not determine which ones to keep, the laptop is available.
- [138] All information for the companies came from Mr Meyer, the 3 pages, the follow-ups on VAT returns and the cheque swops. She said she coined it "3 page specials." When asked what is so special she replied "Hindsight is an amazing thing, they all stand out now." It was the norm to hand 3 pages in, but all other documents had more than 3 pages.
- [139] She was only aware of payments or transactions between Australia in 2001. Biometrix was Miami.
- [140] The documentation came predominantly from Mr Meyer she cannot conclusively say from Coetser. She became suspicious and queried Coetser who said there were actual documentation.
- [141] It was put to her that Coetser never bought companies, she replied in terms of his structure he did, but it was his issue, not hers. Documents from Meyer were cc'd to Coetser.
- [142] Counsel interrogated the witness at length about the listed company. Also about the Australia business. She was asked about L68 the CCG Clients account, it was put to her that it was indeed a loan account. She replied great, she did not have the support documents but she would have asked for the allocation. Concerning L 26 the attachments could be on an older laptop.
- [143] She believed that Mr Stevens was involved as Mr Meyer said he was waiting for documents.

Version

- [144] Mr Coetser's version was put to her as being that the risk of company auditors are at stake, Mr Meyer is to come and testify, all transactions were included in the audit, there was nothing suspicious. She disagreed, she said it was clear that there were intercompany debtors and creditors, Mr Meyer alleged it was a profit but he negated the profit.

Version

- [145] Counsel then said that it still shows a profit. She said the spreadsheet showed an alleged profit, the cheque swops give the money back, she therefore disagrees with the inference that the profit was left there. Counsel then said

that the witness is not an auditor. She replied that the emails shows there was no cost of sales. It was deemed to be no cost of sale.

Version

- [146] A version was put to the witness that Mr Coetser would rather give bank statements to SARS than cheques. She replied: "Interesting. The cheques were cash instead of SARS."

Version

- [147] Counsel also said that the witness never raised the concerns with Mr Coetser. She disagreed.
- [148] Mrs Scafturis also said that counsel for Mr Coetser opted not to look at any other exhibits and out of 30 she could only pick up 2 [to ask questions about] but concerning the other 28 counsel [for Mr Coetser] kept quiet about.
- [149] The company, CCG was a debtor and creditor, the profit was identical. A balance sheet entry is part of what happened in Coetser's loan account. She was not confusing cash flow with profit and loss. Then there is no point to do a cheque swop.

Version

- [150] It was also put to her that the audited financial statements showed a profit. She disputed that, she said the cheque transaction existed, the schedule alludes to one part, not the other part.

Version

Laptop

- [151] It was said that all her evidence was hearsay evidence because she could not be fully tested without counsel inspecting the information on her laptop. She replied that she had printed the information, the information reality exists. She was more than happy and would love to hand it over to the state. (The court ordered that the laptop be handed over to the investigating officer, 17 October 2016 and counsel could inspect it.)
- [152] On re-examination the witness confirmed that the Square One listed entity was not part of the charges.

Schoeman, S M

- [153] Mr Schoeman is employed by the South African Airways in the cargo division. If the SAA carries cargo, then the documentation would be an airbill, a manifesto called air cargo manifest. If there were goods coming in, the general rule is that a sales agent would act on behalf of the client. The account holder would get a range of airbills, bigger agents have their own system. If one imports, i.e. from Miami, then one must be registered with/as "TSA". The documents could be electronically transferred.
- [154] Exhibit E 9(9) is a SAA Airwaybill. But the following problems are encountered with this Air Waybill: No goods description, you cannot ship if the contents is wrong. Agent's code is wrong, it should have started with "001". No issuing agent's name. The SAA did not do flights from Miami! It was terminated in 1999. No routing information. The carrier is SA not SAA. The final destination is not mentioned. The goods description and weight cannot be edited once on the system. The number of pieces is quite large, 26 is mentioned. The aircraft contains baggage, passengers, so weight distribution is very important.
- [155] Concerning exhibit "M" the witness testified: The witness investigated 91 Air Waybills and "E" exhibits. None of these were recorded on the system, he did an additional audit and found no skipper or consignee on his system. None of the Waybills were accepted by SAA or a third party. None of the entities appeared on the system. An example: E21 (67) is an export to Greece, SAA does not fly to Greece. The agent code must be on it, it is not on it. Incomplete bills are not accepted. Goods description are in the wrong place. 5800 kg is too heavy. Another example: E21 (87) shows no routing information. The weight is 24750 kg, much more than a flight. He did the spreadsheet.

Sibanda B

- [156] Me Brenda Sibanda is employed at SARS, Customs, for 29 years as an administration officer. She receives documents from clients. She has an official stamp which was only allocated to her, it has a number and she is the sole person to possess a key to the safe. She testified concerning exhibit EE. The stamp print is not the same size compared to her stamp. It is smaller than her stamp.
- [157] She testified that exhibit "EE" is a letter with a stamp on it, it is signed by Mr. Meyer and addressed to SARS. She was assigned stamp 4.

- [158] Concerning exhibit P she said that P 001 is a register indicating stamp 4 being issued to her. The witness at first could not identify P 001, but when referred to it as (a) which it is, she recognized (a) and (b) as a spreadsheet which indicates what she received, with her signature at the end. Concerning P 002, which is the same as EE, she said she do not receive things not related to auditing.
- [159] This witness was at first confused about her affidavit. Counsel for accused two put on record that the State and the Investigating Officer and the witness had a discussion during the lunch break, the state explained that her statement was re-read to her.
- [160] The witness testified that all pages must be stamped, on "P" only the first page is stamped. The witness testified that she could not trace her stamp anymore, it was too long ago, although she tried. The register was also destroyed after five years. She insisted that she would not take documents in which is marked for audit.
- [161] The court may mention that the exhibit with an imprint of her stamp is on P005, it is 55mm by 35 mm contra the stamp imprint on P002 which is 48x32 mm, the naked eye can see the two imprints are totally different. But the court must decide on the probative value of this exhibit.

Viljoen C

- [162] Mr Carel Viljoen is employed by SARS and is a specialist technical support officer, he managed customs operating systems. The administration employees and users are given a unique "S" number. A user's number has to be registered and there is a specific IP address. There must be a Bill of Entry number. If a transfer was not successful, then it will not be transferred, there are error methods in place. He would have known if the system was hacked as he has been on the system for 32 years.

Watts A

- [163] Me Arnita Watts is an operational specialist at SARS, she identifies high risk entities as she works in risk management. She works at SARS going for 17 years.
- [164] Me Watts had to verify 19 entities. Four of the entities were registered for imports and exports. The period in question was January 2007 to March 2010. The entities registered are: Square One Imports (Pty) Ltd, Monkor

Management Services (Pty) Ltd, Multicupboard (Pty) Ltd, Superbrush (Pty) Ltd.

[165] Me Watts testified that exhibit H is a schedule drafted by herself. H 29 reflects the filtered information of Square One Imports Pty Ltd on the United States. It is listed date wise from the oldest to youngest, starting in 2007 ending March 2010. H 30 shows the customs value from highest to lowest. The highest being R1 061647, only one more than a million, from number 4 all are under 500 000. She read the summary: The value or total is R13 993 821.00 and the VAT on it R2 204 578.46]

[166] The witness compared this list with the "B" exhibit. B136 is a copy of a VAT return for 2007, she could not find any exports. B138 she could only find two exports, one for R710.00 and one for R30.00. In H 10 Coetser is reflected as the director. Concerning H31 she said if Monkor used the code, the system would have rejected it. Monkor was only registered for imports. Concerning B115she said that Monkor could not claim for exports. Not on the code allocated to them. B120: There was no claim found under this code, the claim was for R9 248 000. B124: There was no claim, R10 403 500. H31 is a summary of Monkor management Services Pty Ltd, the totals are R538 776 imports and VAT R85 613.92. H23 to 27: The other 3 registered entities showed no imports

[167] Referring to some E exhibits, Watts investigated them: E115 (3) E 115 (6) and opined that the SAD 500's were incorrect: There are no importers codes, the agent left out, being a compulsory field. If these were entered it would automatically be rejected. The system is reliable, she used it for 15 years.

Version

[168] Counsel for Mr Coetser put it that the group of companies might have more than one code: Watts replied: "yes". Counsel also said she could not verify the integrity of the data and Me Watts said it was not her responsibility.

Wright W

[169] Mrs Wendy Wright was employed as bookkeeper by Monkor Management. She was arrested at 38 Monkor Road on 6 May 2010. Charges were later withdrawn. She worked for Monkor Management and "all the other companies Mr. Meyer had". She was granted bail and returned to work. Mr Meyer was also arrested. Mr Coetser was not available for the arrest, nobody knew

where he was, he disappeared for two weeks. She stopped working at Monkor round about October 2011.

- [170] Mrs Wright said she was arrested because she signed a large number of the VAT returns. Her main functions were to see that staff got paid, levies paid, for other entities she did the submission of VAT returns. She completed the majority of the VAT returns and received the information from Mr Coetser, Stevens or Meyer. They used various ways, emails or the grey box which was couriered from and between Mr Coetser's residence and the office.
- [171] Mrs Wright testified that returns were always mailed. In exhibit B the VAT registration for CCG carries her signature. The state produced Exhibit GG 1 to enable her to refresh her memory about the names. There were no objections.
- [172] Mr Meyer was introduced as a business partner and the brother in law to Coetser. She was the bookkeeper but not for all, Mr Meyer was at Square One and Miss Joubert did the books. The returns per VAT 201's were submitted and signed. The driver would take them to Megawatt Park. The majority were refunds being claimed.
- [173] She received instructions via email. If Mr Coetser was there then obviously verbally. Mr Coetser had an explanation, you never question him. Michelle Why was also involved. Mr Coetser explained that the goods landed at customs and were moved on to other entities in France and other places. The financials were done at that side. He said goods were imported and exported to France, Germany, England, and Australia, she could not remember other places.
- [174] The goods imported were biometric equipment, toothbrush handles, from what she could remember. She saw some boxes. Meta maps and samples containing toothbrush handles. She never saw pallets.
- [175] She raised the invoices from import documents given to her from one of the 3 accused depending on which entity it was. Mr Coetser would email so that she did everything under instruction.
- [176] She would do cheque swops, instructed by email, from one entity to another, to the companies they worked with. Mr Coetser told her to clear the accounting system. She received instructions to make the swop cheques out in cash. The driver would take cheques for the bank.

- [177] The documents she received had SARS stamps on. She never saw SARS stamps at her office.
- [178] Mr Stevens was introduced to her by Mr. Coetser. Mrs Wright was told that he works at the airport at Excise. Mrs Wright said: "So was Cheryl." Mr Coetser also informed her that Stevens was a co-director at Amber Falcon Properties and Copper Sunset. Stevens frequently visited the offices and brought documentation to submit for him or to collect documents or invoices.
- [179] Concerning exhibit WW she testified that she raised cheque swop invoices and waybills. She stored documents in a file. SARS or SAPS might have taken the file. She kept all emails that Mr. Coetser, Meyer and Stevens issued instructions on. She kept them for her personal reference as they were becoming extremely edgy that there was so much money involved. She printed the emails for her records and put them in a file which she kept in her office. She took the file with her after being released on bail, she found the file still at the office. She gave the file to her attorney, Combrink, she did not amend or alter them. Documents were printed over a long period.
- [180] She said that exhibit "WW" represents extracts of some of the emails. "WW" 17 (1) is a billing schedule sent by email. It was sent by Coetser to her. It reads: "Hi Wendy please prepare the invoices for Jan exports as per the attached. Once checked please send to Cliff. Thanks Gac."
- [181] She said WW(1) (a) and (b) were documents attached with schedules. WW 24 (1) is an email and comes from Garth Coetser to Wendy Wright, the subject was "Inter Company July 2008." The contents dealt with change of format and an address to be varied. WW 24 (6): The total VAT claimed R5 156 250.00 for Basfour which is the same amount in B 161. WW24 (7) tallies with B125. The handwritten note on this is her handwriting. WW 24 (12) and B117, VAT for Monkor, same. WW26 is an email from Coetser to Wright, it was about "July VAT inputs." The amounts for July are given for Sunmark, Amber, Monkor Management, Superbrush, CCG Investments, and Coetser says: "I will track the docs down when I return – so please claim in the interim if the vat period is due Jun/Jul 25th August or Jul if monthly". She said returns were submitted and "fairly often amounts without invoices". She said WW 39 was again an email from G Coetser which lists companies and amounts and

says “docs to follow”. The court will merely quote the first one: Amber Falcon R1 249 454.50, there are 7 others.

- [182] Concerning WW 43 she testified that it is an email from Stevens which instructs her not to send one single document to Oliveira. The bottom email on the same page says to Stevens: received “R 1 212 583.19 for GAC Man Con.” She was not sure why Stevens said it was not send, Oliveira was an auditor, they frequently had an audit. About WW 44 (1) she said Moodley sent to her requesting proof of payment. He is from SARS, she assumes an auditor. She sent this email to Coetser and Stevens with Stevens replying. Apart from stating that he spoke to Moodley’s team leader, who guided him in the process. The reply which she had to give was: “All export invoices are VAT ZERO RATED. We fail to understand how the payment of EXPORT invoices worldwide, got any bearing on VAT claim. We have provided the necessary bank statement, which prove Multi Cupboard remit the VAT. Arrangements between Multi Cupboard and its Clients and proof of payment DO NOT NOT SUSTANTIATE payment VAT. We fully hope and trust that this matter is resolved and hope we can expect payment of VAT. Cliff.”
- [183] She said WW 45 (1)-(3) is an email from Stevens , she was not to lodge Basfour if the amount was more than R2 million. In her evidence she also referred to WW 55 and WW 59, WW 59 which was to Anton Meyer where she said they need to do payments from Imports, a cash cheque, she explained that Coetser would instruct her to write out cash cheques and deposit them in the said entities’ bank account. Stevens dealt with the documentation.
- [184] Concerning WW 62 (1) and (2): Wright says the cheque books are here. He replies by asking for VAT numbers for certain entities, referring to her by saying “Hi Doctor”. WW 63: Meyer mentions a VAT billing schedule received from Coetser and asks her for VAT numbers, company numbers and addresses. The companies are: Basfour, CCG Investments, Sunmark Factory, Sunmark Farms, CCG 119 Investments, GAC Management Consultants. He asked for it because he was going to do the invoices, the companies were taken from their offices to his.
- [185] WW 70 is an email from Coetser to her and Meyer. The topic is cheque swops. Coetser says attend to the cheque swops as per the attached and asks that the instructions for the transfer from Investec be emailed. Cheques

to be cash and cleared with Sharron. She does not know why the cheques had to be “cash”.

- [186] Concerning WW72 she said she sent an email to Stevens and Coetser asking for information which was required by Mrs Groblaar, the information required by her, are: Customs code/export number; How are the goods exported? Air or boat. And she says: “I have given her the countries where they are exported to. She is only looking at September at this stage.” Stevens replied with a code: “70707070” and said “All goods are exported by air, hence the Airway Bill.” She testified that Mrs Grobbelaar is a SARS auditor.
- [187] WW 77 is an email from a SARS auditor namely I Moodley, asking for a customs code which Stevens then provided per email, “70707070”, remarking a new code would be forwarded month end upon receipt. WW 80 is another email from a SARS auditor, Earnest Maphumulo, who is described to Stevens as “this man is not accepting just invoices he wants all the questions below answered or they can pay out.” Stevens then replied to this, see the exhibit. WW 81 is another email from the SARS auditor, Earnest Maphumulo, who was not satisfied with the answers given. Stevens replied *inter alia* that the documents had no bearing on VAT, the vendor must prove to SARS that VAT was paid and the bank statement and SAD 500 “proof that”. WW 90: Coetser is asking for refunds and saying “Cliff says they may come in during the day.” She did not know how Stevens would know about this but said he worked closely with SARS or at SARS.
- [188] Wright frequently received SARS audits because of the nature of the refunds, being large. She attached supporting documents namely the invoice, waybill and an import/export document. She fairly frequently transferred money to Miami on instructions from Coetser. Done by IME invoices to a bank in Miami. Coetser went to Miami at least three times per year.
- [189] E 9 is a letter signed by Wright. E 9(3) is the I.D. of Stevens, yet Stevens was not a director but she was told he was. E 9(50) is a cheque which she wrote out and put in different accounts.
- [190] Cheque swops were done by transferring a similar amount to the VAT claimed.
- [191] At this point a point of her evidence, an *in limine* point was made about her facebook status stating she is unemployed, yet she said she was employed.

The court did not hear evidence under oath, if the parties want to then they can proffer legal argument.

- [192] Wright wrote and signed E (9). She testified that C8(12) the amount of R65 000 was paid to Mrs Snyman, Coetser's wife. C 8 (47) shows a payment she made to Mr. Coetser. E 169 (5) was also discussed. IME transfers to Miami was done and she spoke to a Mr Solomon in Miami.
- [193] Mrs Wright was cross examined at length by counsel and both unrepresented accused. (Mr Stevens was unrepresented for some time.)
- [194] Mr Meyer asked Mrs Wright about her employment history. Mrs Wright said that she was employed by Monkor Management and a host of other companies. She worked for ten years and left sometime in 2010 or early 2011. The search and seizure took place on 6 May 2010, they took everything except her file in the corner of her cupboard. They worked from a list. It was very fortunate for her that they did not take her file.
- [195] She said that Michelle Why shared the office with her. Mr Meyer put it to her that she left in October 2011 and she said yes Mr Coetser reduced her salary and she left. It was put to her that it is a fabrication to say she had 3 "bosses": she replied: "I was reporting to all 3 of them. I might have misconstrued that but took instructions from all 3, primarily."
- [196] Mr Meyer asked about doing the books from trial to balance sheet, about the search and seizure. She was questioned on her becoming a state witness, she said there was no deal, she was not fighting for her innocence. The printing of documents was also questioned, she said she printed a lot of documents, maybe from her lawyer's office, she cannot state exactly. She was advised by her attorney to collect evidence, after being released on bail.
- [197] Mr Meyer disputed Wright's testimony that she collected documents in bags. He said he fetched all the documents and so did Ramsamy. She said no, she and Michelle went to fetch documents.
- [198] She initially did not print the documents for evidence. Some were printed before the search and some after.
- [199] Mr Meyer put it to her that he took over the companies handed for him to do in August 2009: her reply: "Thank you".

Version

[200] Mr Meyer put it to her that she made up stories, she might have printed a file for her own experience but she had no access to the evidence: The court assumes that he was saying this because of the computers being seized. Her reply: "I object, it is incorrect."

[201] When cross-examined by counsel for Mr Coetser she said that SAPS never took all the files, they were very specific.

[202] Counsel said that not all documents Wright had, were printed before the search and seizure: Wright replied that she could not remember. She printed on instruction from her attorney. Mr Coetser told her how to do a VAT return.

Version

[203] It was put to Mrs Wright that Mr Coetser never taught her, she replied: "I am saying that he did."

[204] It was put to Wright that she did not have a suspicion? She replied: "Not so." She explained that she spoke to others in the office and to two young auditors. Her basis for suspicion was the audits. Mrs Wright had a file which the SAPS did not take.

[205] It was put to Wright that her interview with the Investigating Officer was on 27 May 2010. She said that she could not remember the date.

WITNESESS FOR MR MEYER:

Arendz JO

[206] Mr Justin Osman Arendz is employed by SARS, Megawatt park in the Computer Forensic Lab, he knows Mr Maharaj, they work in the same department. He was present at the search and seizure. Only in an advisory capacity. They only make contact with the client who in this case was SARS. The procedure would be done by email or phone call. They would not contact anybody except for the investigator. He could not recall Mr Ramsamy but recalled that an Indian person with mohok hair and lots of jewellery came to collect computers. Mr Maharaj was the team leader for the search and seizure. The way the file for the return of the computers was done was not as they were trained to do.

Faber, J

[207] After confirming that Mr Meyer waved his rights to privilege of lawyer, attorney Jenifer Faber testified that she was advised to collect computers from SARS. She was not familiar with the diary of an investigating officer which was

handed in at the trial within a trial. She attended meetings with James and Alan Toweel was there. She dealt with Oliveira many times. Mr Toweel was bombastic. But they attempted to get a deferred arrangement. She signed exhibit KK 004. She did not draft the letter purports to be Mr Meyer in Exh E21 (92) (i)

Phanyane B

[208] Mr Nelson B Phanyane works at SARS as a manager of the digital forensic laboratory. Mr Meyer asked him to explain the procedure when he partakes in a search and seizure. The witness then replied that as SARS officer he was not going to respond (saying “not competent”) on procedures. He did not deal with computers. He then answered in general terms to some questions asked by counsel for Mr Stevens.

Why,M

- [209] Me Michelle Why said she was a bookkeeper to Wendy Wright. Wendy instructe her in all aspects. After the search and seizure all instructions came from Garth. The work was still the same. Wendy was not there for a while. She was present in the office at the time of the search and seizure. SARS wanted a lot of stuff and asked a map indicating “who sat where”. Wendy was arrested. They asked her for the fake stamps. They took all files in the office, cupboard in the passage and bathroom. She could not remember about files not taken. She did not know about Wendy’s file with the emails that were not taken according to Wendy.
- [210] Me Why said she was with Wendy to fetch the file at Megawatt Park. This was done 2-3 weeks after the search and seizure. They connected it again. No access to emails. She got documents from her computer after it was returned to her when SARS asked for them. She did not know when Wendy’s file was printed. Wendy did not speak to her about concerns as to how things were done, she also submitted VAT returns. After the search and seizure she did the Vat returns, Mr Coetser instructed her.
- [211] Wendy said “Garth told me” how to do “stuff”. Everything was marked per company, she cannot remember if there were files left after SARS left.
- [212] When they collected the computer, they received a phone call and Wendy said they can go and collect it. She made a statement and gave information

as far as she could go back. She looked for documents which she found “either in emails or in the files”.

- [213] Counsel for Mr Coetser put it to the witness that the SARS documents were not returned to the offices but taken to the Marlboro warehouse, she replied: “It could have been the current stuff that I had at the office.” They always had to a print-out in all transfers so that they knew what was paid. She made a statement on 20th September 2010, counsel for Coetser said the files were returned in December 2010 and she replied :”We print from the system, go to that day and we print, go into FNB, choose a pay out, get it.” Wendy told her that she got instructions from Mr Coetser. Me Why said she herself made a statement with annexures in excess of 57 pages.

WITNESESS FOR MR COETSER:

Du Toit M

- [214] Mr Morne Du Toit is employed by SARS in the criminal investigation unit. He was requested to attend a search and seizure at Mr. Coetser’ s home. There was a search warrant, he entered the house, he was not alone, there were SAPS people and two ladies from SARS. He found a small white box with stamps and it had SARS impressions on them. A date stamp was notable. He took photos of it on his cellphone. He went to Mrs Coetser and the attorney and informed them.
- [215] Mr Du Toit said that Mrs Coetser asked about the implications and he said it was a serious customs offence. The attorney said that he had planted it. He took the stamps to the SAPS officials, it was sealed in a SARS evidence bag.
- [216] Mr Meyer, when cross examining the witness, asked him who paid for his legal representative. He was stopped by adv Dewrance from answering the question. Adv Dewrance was present in court. The court warned Mr Du Toit of his legal privilege and he decided not to waive it.
- [217] The photos which Mr Du Toit took, were handed in as exhibit SS, SS1 is a photo Mr Coetser’s office before they started the search. SS2 is a photo of the SARS stamp and impression on the stamp. SS3 Mr Coetser’s bedroom. SS4 photo of 2 Pietermaritzburg colleagues. SS5 actual cabinet with a box open with the stamps.

Gouws, C

[218] Mr Christiaan Gouws is a director from the Shelf Company Warehouse. His company lodges registrations daily, manually and electronically, errors do occur.

[219] Mr Gouws was referred to Exhibit files A1-11 to A2-18 but Monkor ransfer Secretaries cannot be a director in terms of section 69(7) (a) of the Companies Act 71 of 2008.

James T

[220] Mr William Trevor James knows Mr Meyer, Mr Coetser and Mr Stevens. He knows Mr Meyer as the brother-in-law to Coetser, Coetser as auditor at a company he was working for and Stevens as a friend, colleague ,business acquaintance of Coetser. In approximately 1990 Mr Coetser assumed the role as financier as majority shareholder of the Square One company. He cannot remember if the shares were bought in Coetser's own name or not.

[221] Mr James was the M.D. and the company was very small, he did not do tax or VAT returns. He knows Lynette Joubert. They had a normal business relationship. He advised her to see an attorney. She could hardly function, she was scared, "petrified to say the least". He could not recall that she raised issues round the VAT returns.

[222] He testified about imports from USA which started in 1993/1994 going on for a fairly long period of time, imported a fair amount of items, saw it in the warehouse.

[223] He said that there was fraud in Australia, they would have asked Miss Joubert to check the records. They imported a great deal from the USA, not just apple products. He was the mediator in the office and tried to settle disagreements in the company. He met with Alan Toweel for the listed Square One Group Ltd. He met with Reginald, Jenny Faber and SARS. Toweel was aggressive in the meeting. He does not know Mr Engelbrecht.

[224] The state asked the witness whether he knew the 18 entities, the names were read out to him. Concerning Legacy IT he set it was set up in 2000 when the Nigeria election took place, it had to import stuff. Concerning Square One Document Solutions in the group, imported techtronics and then bought Xerox in Isando. Square One Power was part of the group but was disposed of in 2006/2007. Activated Learning Company they had early 1990-2000 but was

disposed off and ceased trading in 2003/2004. Square One Imports was a company they had but ceased in 1999. KPMG took it out and put it in Basfour.

[225] The state showed commercial invoice Exhibit E (9) (8) to the witness after being warned in terms of section 203. He had no clue as to why his name was on the document. It also has a Durban telephone number, he never stayed there.

[226] On re-examination he said that he could not recollect what had happened to Activated Learning.

Karam PJ

[227] Mr Patrick J Karam testified about his daughter's account with the bank., he was a signatory to it. An amount of R700 000.00 was deposited into her account. The bank said it was erroneous.

Krause, RC

[228] Before Mr Krause testified, Mr Coetser confirmed waiving his privileged rights.

[229] Mr Roelof Cilliers Krause is an attorney who was instructed by Mr Coetser to review the two magistrate's orders concerning search and seizures. He made arrangements with the prosecutors to get what was seized. Two actions were to take place: the customary interdict and review. He knows adv Barnard who was the DPP's counsel in this matter. All equipment was at SARS. He also dealt with adv Oosthuisen. He was not personally involved, Mr Pieter Du Plessis conducted this , the agreement was made an order of court on 2 December 2010. He did phone Oosthuisen and Barnard in this regard. When Oosthuisen said that they will not use any of the information, then two agreements were reached. He was never informed that the articles were at Megawatt Park.

Moore, D

[230] Mr Dominique Moore is a chartered accountant, he knows Mr Coetser, he did his articles with him. He knows Wendy Wright. He worked in the same house, the set-up was residential property. She did not discuss VAT issues with him. He could not recall if there were files in her office after the search and seizure.

Motsepe J

[231] Mr Josh Motsepe works at SAA Cargo. He testified about airwaybills which had a prefix "083" but the prefix of Lufthansa differs from one airline to

another. Some of the airlines do have a code share. The airlines do not share information, they will not have a record only when Luthansa tells them.

- [232] He was given several airwaybills by Mr Coetser which he checked but he could not get any record. He cannot say why not, he could assume it might have been used by another airline but he cannot say. He knows Fanie Shoeman very well. Fanie is the I/T manager and he agrees with Fanie.

Muzariri RT

- [233] Mr Reginald Tafara Muzariri was part of the Square One Group, inter alia as managing director. He is a chartered accountant. Anton Meyer was financial manager of the Square One Group from 2004 to 2007. He knows Lynette Joubert, she was a senior bookkeeper.
- [234] He could not recall if the audited reports of 2008/9 were qualified or not. 2008 was finalized but not 2009. The group went into liquidation in 2010. There was more than one bank account as there was a separate bank account for a separate function.
- [235] The state asked him whether he had any knowledge of the 18 entities. He replied that the 18 were not part of the group.

Pelser J

- [236] Mr Jacob Pelser is a colonel in the SAPS. He is the investigating officer in the matter, certain documents and goods were seized including stamps. These were booked in at the SAP13 store in Sandton. They were sealed in an exhibit bag. In the bag was one big carton box, a date stamp, two numbering stamps.
- [237] Exhibit SS5 was shown to the witness, he said the stamps look similar to those in SS5.
- [238] The stamp in the box does not look similar and in comparison with exhibit E it also does not look similar to those in the box. He could not explain this. He was not at the scene and according to his observation the chain of evidence was not broken.
- [239] He did not know how many false stamps were used. There is a stamp by Du Toit which is not in the exhibit bag.
- [240] The stamp impressions were handed in as exhibit CCC. The impressions were numbered: Number one shows the numbering stamp 8406, number two shows a numbering stamp 3970. Number 3 shows a stamp with the following words on it, all in capital letters: CUSTOMS O.R. TAMBO INTERNATIONAL

AIRPORT (SIGN)SARS(IN ITALICS) 2008-08-23 ONE REVENUE
COLLECTION.

Radebe S

- [241] Me Sharon Radebe is employed by First National Bank. She knows Mr Coetser and Mr Stevens. They were one of her clients under one of the company groups. There were two accounts for the same company for which she did a check, it is a norm to use more than one account for a company. Exhibit "EEE" was handed in.

Ramsamy JD

- [242] Mr Jason Desgia Ramsamy knows Mr Coetser from the apple store. Mr Coetser's company, Square One Imports, imported for him, multiple occasions and substantive volumes. He met Clifford Stevens at the Square One offices, Clifford is also an apple evangelist. He knows Anton through Mr Meyer and he knows Anton's son. He knows Mr Maharaj a SARS contact with whom he consulted. He cannot understand why Maharaj could not recall him as he is someone to be remembered. He gave Maharaj an editing package which he should still have.
- [243] He has not met with Arendse formally. He did fetch stuff for Coetser but needed a letter of authority. He instructed Martin Smit to help in getting a tax clearance certificate. He referred Coetser to BDK, Ian Small Smit and not to adv Van Der Westhuisen. Adv Frans Van Der Westhuisen is Martin's ex father-in-law. He only knows of him, he was the person to assist them.
- [244] Mr Ramsamy said Garth irritated Toweel ,because of Garth's lifestyle. He assumed that Square One was registered as an importer, the equipment met all the criteria and the boxes had the labels. He had a system in place to track the number of the imports coming from America. There were tracking numbers to validate the warranty for hundreds of items. He, his wife and the store manager did check all. The shipping documentation had the serial numbers.
- [245] Mr Ramsamy was surprised to hear (from the state in cross examination) that only one of the 18 entities were registered.

Spies A

- [246] Me Antonette Spies is a SARS employee. She disagreed with the testimony of Me Oliveira who said that she, Spies, handled refund claims. She did not handle the documents but only handed over her report to Me Oliveira. She still has documents in her cupboard that was handed over to Maria.

Swart J.N

- [247] Before the witness testified, Mr Coetser indicated that he waived his legal privilege.
- [248] Mr Jacobus N Swart ,an attorney, had to go to Mr Coetser's home on 6 May 2010. There was a search and seizure taking place, Mrs Coetser was extremely upset and she was crying, a white male came running outside and he had stamps and showed it to the witness and said to the witness:" What do you say of these?" He had stamps in both hands. He could not remember how many but could be five or six.
- [249] He can remember that he briefed adv Van Der Westhuisen on a tax matter, he believes it was Document Solutions. He cannot remember because the file was destroyed after five years. It was a tax query unrelated to this matter. The advocate became demanding as the last payment to him was done in June 2010.The advocate was not briefed from his office about documents after the search and seizure. If a legal person does not have a mandate then you are accountable to your responsible body.
- [250] There was a free for all at the search and seizure, he would be speculating as he did not know where they came from.

Van Der Merwe LBR

- [251] Mr. Dawid Ryk Van Der Merwe is an admitted attorney who is also a liquidator. He was approached by Mr Coetser in connection with a section 311 Compromise offer. That was in 2008 and the company was Trecor (Pty) Ltd. Mr Coetser approached him for a tax clearance certificate. Affiliated companies use each other's accounts.

Visser,James

- [252] Mr James Gerhard Visser is employed by SARS. Maria asked him if he knew somebody at the airport, asked his assistance. He helped her. He could not recall why he signed and what he signed. He wanted the case to be allocated to him.

- [253] Mr Meyer asked this witness who paid for his legal representation, who is in court and the court refused the question as it is privileged information.

End of Witnesses

SECTION 174 APPLICATION

- [254] At the end of the evidence for the State, Mr Meyer sought a discharge in terms of section 174 of the CPA, the court refused the application and gave short reasons for its refusal. The court in fact dismissed the section 174 application but then realized that it had not given Mr Meyer an opportunity to respond in rebuttal as the state was opposing the application. The order was rescinded immediately and Mr Meyer was given time to prepare a rebuttal. The rescission order was based on section 298 of the CPA, although there is also room for a superior court to rectify its mistakes according to the common law. Mr Meyer's rebuttal was heard and the application dismissed. The court did not elaborate on the reasons as to why it was dismissed.

Witness' credibility

- [255] The court listened to more than twenty witnesses in the trial and in the trials within a trial and can from the outset say that out of all the witnesses who testified, the court could not find one witness who was untrustworthy or whose evidence could be seen as false or a fabrication of the truth. There could be discrepancies and uncertainties but such discrepancies and uncertainties are minor and could mostly be due to the fact that the events happened more than six years ago when they testified. These do not go into the real issues.
- [256] Fact is, all the employees who testified, that is Mrs Wright, Scafturis and Why, did not contradict one another in material ways. The two other staff members, managing directors, Mr Trevor James as well as Mr Reginald Muzariri also corroborated the evidence of the employees. Me Why corroborated Wright about the fetching of documents at Megawatt. Whether they had permission or not, they did go to Megawattpark. Mr Maharaj from SARS confirmed this.
- [257] Me Why said Mrs Wright did not talk to her about the VAT concerns, Wright said she did. Surely this cannot make either of them lying witnesses. The court is of the opinion that Me Why could not remember whether they spoke about this, a couple of reasons could have been the cause, the loss of

memory due to effluxion of time, the fact that she did not primarily deal with the VAT returns. Be that as it may, fact is the VAT returns bothered both Wright and Scafturis who were not from the same offices. Both said that they spoke to Coetser. There is corroboration from the two in this regard.

[258] The only point that could be contested is whether Mrs Wright spoke to Mr Coetser and the auditors. Mr Coetser did not testify which leaves the question open. Mrs Wright was quite sure about this, she said: “Mr Coetser had an explanation, you never question him. Michelle Why was also involved. Mr Coetser explained that the goods landed at customs and were moved on to other entities in France and other places.” The auditor who testified in court, Mr Moore said he did not discuss VAT issues with him. Mr Moore could not remember if there were files left after the search and seizure.

[259] What the employees had in common was the fact that they, Wright, Scafturis and Why, all completed VAT returns on instructions from Mr Coetser or Meyer.

Witnesses' legal representation.

[260] Before dealing with the evidence, I need to point out that several issues were raised concerning the legal representation of a witness. The issues started after the state had closed its case and the defence wanted to call state witnesses who now had become available to the defence. Many of these witnesses were SARS employees. The judgment I gave concerned the right to call witnesses by the defence and the rights of a witness not to testify. The background to this judgment was the application made by SARS to this court to rule that the witnesses who were subpoenaed by the defence, not be called. SARS objected to the calling of the witnesses on two grounds: Non-adherence to formalities and state privilege in terms of the Tax Administration Act, Act 28 of 2011 (“the TAA”). Closely linked to this dispute is a judgment I made concerning the right to consult with a witness, even though the witness might be open to incrimination or not to be a compellable witness. SARS maintained that SARS officials, representing the Commissioner not to be compellable witnesses.

[261] The orders made concerned consultations with the witnesses in the presence of the witness's legal representative. The next issue was whether the witness could have legal representation whilst testifying. This would be tantamount to a watching brief. I allowed this based on the rights as is reflected in our

constitution concerning equality and fairness. Fairness dictates that a person who could face prosecution for disclosing matters which he/she were barred from doing, especially under the TAA, be legally represented for assistance. In any event, the court has a discretion to act as well. The judgments concerning the two issues, the right to call witnesses by the defence and the rights of a witness not to testify. Also, the right of a witness to legal representation had as background the application made by SARS to this court to rule that the witnesses who were subpoenaed by the defence, not be called. SARS objected to the calling of the witnesses on two grounds: Non-adherence to formalities and state privilege in terms of the Tax Administration Act, Act 28 of 2011 ("the TAA"). As mentioned, closely linked to this dispute is a judgment I made concerning the right to consult with a witness, even though the witness might be open to incrimination or not to be a compellable witness. SARS maintained that SARS officials, representing the Commissioner not to be compellable witnesses.

- [262] The first issue the court had to determine was that of the *locus standi* of SARS to bring this application before this court. The question is asked namely on what grounds may SARS approach the court if SARS is not a party to the proceedings, that is if one assumes that the case is about the State versus the accused. Although SARS is the complainant in the matter, the broad approach would be to frown upon a complainant who refuses to testify, whether for the state or for the defence.
- [263] It is not negotiable that in disputes the basis of our law is the rule of law, all parties, including witnesses, must be heard. The logical next step would be to say if a witness wants to be heard and his/her legal representative is in a better position to explain his/her position, then it should be allowed.
- [264] In *S v Heyman*¹ two appellants had been called as witnesses in a criminal trial. Both appellants refused to be sworn in or to make an affirmation. The Court a quo sentenced them to eight and five days imprisonment. Once these sentences had been served, the appellants were called again as witnesses and once again refused to be sworn or make an affirmation. The appellants were then sentenced to imprisonment to which the appellants appealed

¹ [1966] 4 All SA 523 (A)

against. The appeal was based on the Court a quo refusing to allow the appellants legal representation when they faced criminal charges and the severity of the sentences. The legislation applied regarding the refusal to be sworn or make an affirmation has been repealed, namely section 212(1) of the Criminal Procedure Act 56 of 1955. To paraphrase, the Act stated that any witness that refuses to be sworn or make an affirmation may have the court enquire into why the witness has refused unless there is a "just excuse".

- [265] The court stated that there seems to be no ground upon which a witness would be denied legal representation.² This case is not of any assistance in the present situation as it dealt with witnesses who were already in court before a judge. In *Smit v Van Niekerk*³ the respondent wanted legal assistance whilst testifying before a magistrate in terms of section 83 of Act 56 of 1955. Again, not really applicable in our situation. But the person questioned had been allowed legal assistance at the interrogation. In both these cases the ratio was that the witnesses faced or could face prosecution.
- [266] In the U.S.A the case of *In re Groban* 164 Ohio St. 26 (1955) was regarding a statute that allowed fire marshals to hold private investigations regarding the causes of fires. The witnesses called refused to testify unless their legal representatives were present. The court held that a witness cannot insist, constitutionally, on being represented by their legal counsel.⁴
- [267] Many cases deal with an insolvent person's right to legal representation. In *Appelson v. The Master and Others*, 1951 (3) S.A. 141 (T) at p. 146, Dowling, J., observed "it cannot be said at common law that a witness has a right as such to be represented by a legal adviser who would be entitled to intervene in the proceedings" As a general statement that is no doubt correct. It has, however, by no means been unusual for a witness at an enquiry, in insolvency proceedings, for instance, although not then in law entitled thereto, to be allowed professional assistance, where his examination was "a step in litigation hostile to such witness" (*Shamosewitz v Shamosewitz and Schatz's Trustee & Adler, N.O.*, 1913 W.L.D. 213 at p. 218).

² At page 528

³[1976] 2 All SA 111 (E)

⁴ Duke Law Journal, Vol 1960:457

- [268] The insolvent person's right to legal representation is now seen in sec. 65 (6) of the Insolvency Act, 24 of 1936 and it now makes express provision to the effect that an insolvent or other person who is called upon to give evidence at a meeting of creditors is entitled to be assisted at his interrogation by counsel, an attorney or agent.
- [269] The denial of legal assistance, by a trustee to an insolvent person, is denying that person his/her fundamental rights namely to be heard, but not only heard, to be properly heard. If a trustee and especially a provisional trustee, denies to see or consult with the lawyers of the insolvent, how can that trustee justify his/her actions when the trustee has a duty to objectively investigate the financial affairs of the insolvent? Surely this is not the rule of law but rather an arrogant approach.
- [270] The right to equality is not infringed; The defence and the state are equal in court. The public interest is compelling, all relevant evidence should be heard and the court is the place where this is done. To this end it is vital to ensure that persons who are in a position to give important information do not evade supplying it. A witness who was properly subpoenaed is obliged to attend and should raise objections to the presiding officer.
- [271] I know of no ground upon which a witness could be denied the right, after being called as a witness, to consult his legal adviser before deciding upon conduct in court which would there and then expose him to possible criminal charges. In my opinion, a witness who is subjected to incrimination in the light of section 203 of the Criminal Procedure Act, 1977 is entitled to be assisted by his counsel or attorney or to consult his legal adviser, if he genuinely and *bona fide* so desires.
- [272] I, however, had to caution SARS as the following transpired: Suddenly an attorney of record came on board and insisted that counsel who wanted to call a witness, work through their offices and arrange for consultations through their offices. I ruled that this is not how it works. A witness who is approached by the state or defence is obliged to co-operate alternatively a subpoena could be issued or even a court order. The fact that the witness has an attorney merely implies that the witness can make use of the attorney and not that the state or counsel must work "through the attorney."

- [273] The circumstances in which the officials of SARS want to be legally represented now are such that it is perfectly obvious that the request to be represented is not linked to a fear of incrimination but rather a concern about the privileged information which they may have to divulge. The court found that SARS had *locus standi* to approach the court.
- [274] SARS was concerned about the amount of potential SARS witnesses being called merely to testify about procedures or procedural manuals. I repeat what has been said in this case on 29 January 2016 when judgment was given in connection with a *subpoena duces tecum*: At par 32-33 I said: “Constitutional rights are tested by the Constitution not by manuals. Non-adherence to constitutional rights can be seen with or without office manuals. If an office manual makes provision for an inspector to follow procedures X, Y and Z and the inspector only follows procedure X, will that be unconstitutional? It would only be unconstitutional if procedures X, Y and Z itself are unconstitutional. But even if X, Y and Z are not in the manual and they are constitutional requirements, then despite it not being here, the accused may stand on his rights. That is why I said that the compliance to Standing Orders are mere administrative rules. Many rules and manuals have been tested by the values of our constitution. This comes out during a court case when evidence is given and unconstitutional acts come to light.”

Tax Administration Act, Act 28 of 2011

- [275] In the same judgment, I discussed the Tax Administration Act, Act 28 of 2011 (“the TAA”) which prohibits the disclosure of the information sought to be produced. The question to be asked is whether the TAA finds application in *casu* or not.
- [276] The Tax Administration Act, Act 28 of 2011 (“the TAA”) prohibits the disclosure of the information sought to be produced. As seen in section 68(1)(d) of the TAA which makes information related to investigations and prosecutions described in section 39 of PAIA, confidential information. This section read with section 202 of the Criminal Procedure Act of 1977 (“CPA”)

renders the Commissioner not to be a compellable witness unless there are jurisdictional facts which indicate unconstitutional actions.⁵

- [277] However, in the current case the transitional provisions make provision for exceptions to the rule of applying the TAA from date of inception, 1 October 2011, one exception being criminal prosecutions i.e. where prosecution for a tax offence has been instituted the prosecution will proceed based on the original wording of the relevant tax offence and tax appeal proceedings before a court which commenced before the Act came into operation will continue, and be disposed of, by the court as if the Act had not come into operation.
- [278] Section 269 (6) of the TAA reads that the commission of an offence before the commencement date of this Act which is a statutory offence under the provisions of a tax Act repealed by this Act, may be investigated by SARS, in the manner referred to in Chapter 5, and prosecuted as if the statutory offence remained in force.
- [279] Having said this, section 270 of the TAA provides as follows: Subject to this Chapter, this Act applies to an act, omission or proceeding taken, occurring or instituted before the commencement date of this Act, but without prejudice to the action taken or proceedings conducted before the commencement date of the comparable provisions of this Act.
- [280] The following actions or proceedings taken or instituted under the provisions of a tax Act repealed by this Act but not completed by the commencement date of the comparable provisions of this Act, must be continued and concluded under the provisions of this Act as if taken or instituted under this Act:

- (a) ...
- (b) ...
- (c) an inspection, verification, request for information, audit, criminal investigation, inquiry or search and seizure;
- (d) ...

⁵ Section 202 of the Criminal Procedure Act 51 of 1977 provides for protection from disclosure where the public or state interest is concerned and protection where information given for the detection of crime is looked at.

- (e) ...
- (f) ...
- (g) ...

[281] In casu the charges are still in terms of “provisions of a tax Act repealed”. I here refer to the alternative charges in the indictment, that is section 59 (1) (a) of the VAT Act 89 of 1991. This specific section was repealed by the TAA!

[282] In summary therefore:

- i. The TAA makes information relating to investigations and prosecutions confidential.
- ii. Offences prior to the TAA is seen as if the TAA had not come into operation.
- iii. But the TAA is applicable to actions or proceedings NOT completed and must be continued under the TAA referring to specific actions namely an inspection, verification, request for information, audit, criminal investigation, inquiry or search and seizure;

[283] The TAA can therefore only apply to specific actions namely an inspection, verification, request for information, audit, criminal investigation, inquiry or search and seizure after 1 October 2011.

[284] There are new confidentiality provisions contained in the TAA which could differ from the “Preservation of Secrecy” provisions previously contained in section 4 of the Income Tax Act 58 of 1962 ("the Act").

[285] The term “SARS confidential information” is defined in detail in section 68(1) of the TAA and includes items such as information subject to legal professional privilege vested in SARS and information supplied in confidence by a third party to SARS, the disclosure of which could reasonably be expected to prejudice the future supply of similar information, or information from the same source.

[286] In terms of section 68(2)(a) and (b) of the TAA, a person who is a current or former SARS official, may not disclose “SARS confidential information” to a person who is not a SARS official; or a SARS official who is not authorised to have access to the information.

[287] However, in terms of section 68(3) of the TAA, a person who is a SARS official or former SARS official may disclose “SARS confidential information” if: the information is public information; authorised by the Commissioner; disclosure is authorised under any other Act which expressly provides for the disclosure of the information despite the provisions in Chapter 6 of the TAA; access has been granted for the disclosure of the information in terms of the Promotion of Access to Information Act; or required by order of a High Court.

[288] Looking at the nature of the documents required, the second respondent wanted manuals and or policy documents and or guidelines regulating the process. But the documents pertaining to getting information about the companies clearly falls in the category of public privilege. SARS not only needs to be put in a position to query an entity but also needs access to company records to verify information. It is trite that SARS may make use of state departments i.e. police records about directors, when auditing tax returns and VAT returns.

Constitutionality of the TAA

[289] Accused two had in mind that SARS was in a sense setting a trap for the accused. SARS was obtaining documents and information when criminal proceedings were pending or anticipated. However, proceedings are anticipated where a person would say “I better be careful what I say, I might get into trouble, even go to court”. See *United Tobacco Company v Goncalves* 1996 (1) SA 209 (W). On this point the second accused would fail as SARS are auditors with powers to verify forms and all documents lodged with it. No traps are set when they merely do their work.

[290] The law applicable prior to the TAA is in my opinion the law to apply, unless the defence wants to enquire about what had happened after 1 October 2011. I doubt this as the first appearance of the accused was 11 May 2010. (Later for accused 3)

[291] Even if the SARS officials are competent witnesses, the question of relevancy should also be addressed. The court has to consider the rationale for excluding evidence. The Honourable Van Der Merwe, J said the following pertaining to relevancy:⁶ “At the time when the application was brought I

⁶ S v Zuma 2006 (2) SACR 191 (W) at page 199E-F

referred to what was said by Schreiner JA in *R v Matthews and Others* 1960 (1) SA 752 (A) at 758A - B: 'Relevancy is based on a blend of logic and experience lying outside the law.' In the law of evidence much time is usually spent on the question of what evidence is relevant and admissible and what is irrelevant and therefore inadmissible. See eg Zeffertt, Paizes and Skeen *The South African Law of Evidence* at 219 - 25; Schwikkard and Van der Merwe *Principles of Evidence* (2 ed) at 45 - 55; Schmidt *Bewysreg* (4 ed) at 387 - 92. What is clear, though, is that the question of relevancy can never be divorced from the facts of a particular matter before court."

- [292] One should also look at section 210 of the CPA which reads: No evidence as to any fact, matter or thing shall be admissible which is irrelevant or immaterial and which cannot conduce to prove or disprove any point or fact at issue in criminal proceedings.
- [293] In a criminal case, the points in issue are demarcated by the extent to which the allegations in the charge sheet are disputed by the plea (as supplemented by a plea explanation). Evidence that proves or disproves such s point in issue is relevant. There may, however, also be evidence that does not directly prove or controvert a point in dispute but *tends* to do so. Such evidence is, as a rule, admissible. It was said that relevance is based on a mixture of common sense, logic and experience – and not on rules of law (*R v Matthews and Others* 1960 (1) SA 752 (A) at 758A–B).
- [294] In principle, the relevance of a fact is determined by the probative value it has regarding the facts in dispute; and the relevance of a fact determines the admissibility of evidence regarding that fact. But relevant evidence can also be disallowed where the evidential value thereof is overshadowed by the danger of (a) unfair prejudice caused thereby, (b) confusion of points in issue and (c) excessive delay, waste of time or unnecessary duplication of evidence.
- [295] The court ordered SARS witnesses to appear and be assisted by counsel. (this did not give the counsel of a witness the right to ask questions, but it was tantamount to a watching brief.)

Documentation

- [296] This case primarily concerns documentary evidence. When looking at documentary evidence, one should bear in mind that the CPA makes provision for tendering evidence based on documents in sections 212, 236, 234, 221 and 222. There are at least three other acts to look at when dealing with documentary evidence in criminal cases: 1) Section (15) of the Electronic Communications and Transactions Act, 25 of 2002 (ECT Act); 2) The Law of Evidence Amendment Act 45 of 1988; 3) Sections 33 to 38 of the Civil Proceedings Evidence Act.
- [297] The state relied on section 15 (4) of the ECT Act. Starting with 15 (4), it prohibits the “rules of evidence” from excluding the admissibility of a data message merely on the grounds that the message is not an original “if it is the best evidence that the person can adducing it can be expected to obtain.” It states: “In any legal proceedings, the rules of evidence must not be applied so as to deny the admissibility of a data message, in evidence ---- (a) on the mere grounds that it is constituted by a data message; or (b) if it is the best evidence that the person adducing it could reasonably be to obtain, on the ground that it is not in its original form.”
- [298] As was pointed out in *Ndlovu V Minister of Correctional Services*⁷, this subsection facilitates admissibility by excluding evidence rules that deny the admissibility of electronic evidence purely because of its electronic origin. Section 15 places electronic information on the same footing as traditional paper-based transactions, and thus does not do away with the requirements governing the admissibility of documentary evidence which are relevance, authenticity and originality.
- [299] Section 15 (1) does not, however make all data messages automatically admissible. According to the ECT Act data messages are the functional equivalents of documents and therefore, except where the Act specifically provides for exceptions, the ordinary common law requirements for the admissibility of documents must be adhered to.
- [300] In *Ndlovu v Minister of Correctional Services*, (supra) the court held that in common law a document will only be admissible if three requirements are met:

⁷ [2006] 4 All SA 165 (W)

- (a) the statements contained in the document must be relevant and otherwise admissible;
- (b) the authenticity of the document must be proven; and
- (c) the original document must normally be produced.

- [301] According to the Ndlovu case, section 15(1) has not abolished these requirements. In addition in the case of private electronic documents, admissibility can only be achieved through proving: (a) production: The use of data messages as documents is permitted by Section 17(1) provided that certain conditions are met namely: that the method of generating the electronic form of that document provided a reliable means of assuring the maintenance of the integrity of the information contained in that document S17(1)(a); and that it was reasonable to expect that the information contained in the data message would be readily accessible so as to be usable for subsequent reference S17(1)(b).
- [302] Section 14 requires that the integrity of the information contained in the data message be assessed: has it remained complete and unaltered except for the addition or endorsements or changes which arise in the normal course of communication, storage or display (S14(2)). The EFT Act also requires that the information be capable of being displayed or produced to the person to whom it is to be presented (S14(1)(b)).
- [303] Section 16(1) of the Act requires that for data messages to comply with the high evidential requirements, three requirements must be met: (a) the information contained in the data message has to be accessible for subsequent reference; (b) the data message has to be in the format in which it was generated, sent or received or in a format which can be demonstrated to represent accurately the information generated, sent or received; and (c) the origin and destination of the data message and the date and time it was sent or received can be determined.
- [304] In proving the integrity of the data messages it is important that a chain of custody be established and demonstrated for example by demonstrating established electronic storage and restricted access, the use of devices that

limit access without passwords, encoding and entry logs when and by whom documents have been accessed or changed.⁸

- [305] Looking at the authenticity requirement we note that it is defined as the capacity to prove the digital object is what it purports to be. It authenticity is preserved by the use of techniques to prevent the data from being manipulated, altered or falsified deliberately or inadvertently.⁹
- [306] The most common way of proving the authenticity of private documents would be to call the author(s) to identify the documents:¹⁰ The ECT Act does not attempt to enumerate any specific criteria that should be applied, this is due to the fact that there are different types of data messages so it would be difficult to formulate prerequisites for authentication which would apply to all types. In the *Ndlovu* case the court had an opportunity to analyse the authenticity rule as found in Section 15 of the Act but declined to do so.
- [307] The Irish Law Commission provides guidelines that could be considered by a court in determining whether or not the electronic or automated evidence and resulting documents are authentic by determining, these include: (a) whether the secondary media (discs, USB keys) upon which the information was stored have been damaged or interfered with in any way; whether proper record management procedures were in operation; whether proper security procedures were in place to prevent the alteration of the information of the information contained in the drive file or secondary storage device prior to the information being reproduced in permanent legible through a printout.¹¹
- [308] Only once a data message is admitted into evidence, it must be given the due evidential weight in terms of s15(2) of the ECT Act. In assessing the evidential weight of a data message, regard must be had to the reliability of the process of generation, storage and communication of the data, of the

⁸ Papadopoulos and Snail. 'Cyberlaw@SA III. Third Edition 322.

⁹ Mason in Papadopoulos and Snail. 'Cyberlaw@SA III. Third Edition 323

¹⁰ Zaffert and Paizes 2009: 829-839.

¹¹ Irish Law Commission. Consultation Paper. Documentary and Electronic Evidence (LRC CP 57-2009) 153 as cited in Papadopoulos and Snail. 'Cyberlaw@SA III. Third Edition 322.

preservation of integrity, of the identification of the originator (proof of authenticity and any other relevant factor (s 15 (3)).

- [309] The honourable Judge of the Supreme Court, judge Wallis can be quoted:¹²
- “Whilst the best evidence rule seems everywhere to be in retreat that does not mean that a court must accept as accurate secondary evidence of a document or other form of writing, such as a text message. The fact that it has been thought necessary to make elaborate provision in a statute for the admissibility in evidence of such messages demonstrates the need for caution in this regard. Here the original message would have been admissible provided the court was satisfied that it had been generated, stored and communicated in a reliable manner; that its integrity had been maintained in a reliable manner and after taking into account any other relevant factor. Perhaps the oddities about this message would have been explained had the original been produced as it should have been.”
- [310] Schwikkard and Van Der Merwe describes the concept of evidence clearly:
- “Evidence is either admitted or not admitted. It should conceptually not be confused with to what degree weight is given to evidence.”¹³
- [311] The court could not find fault in the documents provided by the state in terms of the EFT Act, as set out in schedule D of the indictment. The documentary evidence was introduced by state witnesses. Mr Engelbrecht introduced the documents which were corroborated by state witnesses. Me Oliveira collected documents, Mrs Wright collected documents and so did Mrs Scafturis. The auditors also collected documents.
- [312] The auditors come in when during the trial the court had to deal with section 34 of the Civil Proceedings Act, 25. The state applied for an order that the affidavits together with the annexures, affirmed under oath by 15 auditors, be allowed without having to call the auditors. The court also dealt with exhibits “E”. A separate judgment concerning the auditors had been given. Even at the end of state case and of the defence case, no evidence emerged to convince the court to re-look at its previous findings.
- [313] The court finds that the state proved the documents per schedule D of the

¹² *Maseti v S*, (353/13)[2013] ZASCA 160 (25 November 2013): Wallis JA at [33]

¹³ Schwikkard & Van der Merwe.2015. Principles of Evidence. Claremont. Juta (Softcover), p20.

indictment. The first conclusion is that the evidence which arose after the trial within a trial and at conclusion of state case and also after defence case, did not alter the judgment of the trial within a trial nor the judgment concerning the auditors.

[314] Taking into consideration the documentation and the evidence concerning the documents, the undisputed common cause evidence is as follows:

1. The 18 entities were all registered for VAT. Mr Coetser was the representative per VAT 101 for all entities except for number 7 (S Carter) and number 15 (Stevens). Mr Meyer was not a representative of any of the entities. This is reflected in exhibits B1 to 198.
2. The four entities fraudulently claimed VAT refunds as per Schedule B taking into account the exhibits mentioned in the schedule.
3. The amounts mentioned in the supporting documents for the VAT refunds are all false.
4. These entities did not trade.
5. SARS paid out the refunds claimed as reflected in Schedule B.
6. The total VAT refunds were withdrawn from the entities' respective accounts within a day or two of being deposited by SARS into their bank accounts.
7. There were many inter account transfers where money was transferred in respect of the VAT refunds as per exhibit C, to other entities and to Mr Coetser and to Mr Stevens. There were also many cheque swops and cash cheques.

[315] The only real factual question to be determined is whether the version of the accused should be believed, namely that the accused had another account from which the VAT refunds were properly administered.

[316] Looking at the evidence concerning forex transactions, it is clear that there were no forex transactions linked to the VAT claims. Mr Engelbrecht testified concerning a few forex entries on the bank statements, for example entity number 15, Amber Falcon, where there appears from the bank statements, C15, page 51, to be a forex entry. Dated the 17th of February 2009, for the amount of R31 248.90. Another entry was spotted at page 63, of C15. The amount of R31 754.90 was purchased, or forex was purchased on the 21st

of August 2009. Another one at page 69, six, nine, a transaction on the 10th of November 2009. A purchase of forex for the amount of R37 709.58. Mr Engelbrecht concluded that "There were no other forex transactions besides these three transactions." Other forex entries were referred to but they cannot be proof of forex transactions relating to the VAT claims. Watts stated that Moncor Management was indeed registered as an importer and exporter. On the schedules that were attached to her statement, there are no exports for the period for the period January 2007 to March 2010. Although there are imports, the largest import recorded, required a VAT payment of R29 485.54. C11, page 117 the entry dated 19 March 2009 is a CAMS transfer inter, inter company bank transfer, of R1 361 603.70, reference for forex payment, it is being transferred from Moncor Management Services to another account within the group. There is a forex transaction at C11 116. On the 23rd of March, there is a forex sale transaction FX, reference Oak Trust ST for R1 361 603.70. That money was transferred into Moncor Management, for the purchase of this sale, of this forex on, four days later, on the 23rd of March.

[317] The importers and exporters of the business entities in whose names the false invoices had been produced were not called. The names are reflected in Schedule F to the indictment. They could also be referred to as agents. Mr Engelbrecht had this to say: "I am saying though that if the Australian Company, if Square One Australia pays the, a company in America for the South African company's debt, then that debt payment, made by the South African, by the Australian company, has to be reflected in the books of the South African company. Then, the question must arise in your mind as to why is the Australian company not interacting and purchasing from the Miami company directly?" He was not aware of one occasion which the entities made use of a clearing agent.

[318] The evidence of Mr Engelbrecht was corroborated by Mr Schoeman, the state witness employed by the South African Airways in the cargo division. He said that if the SAA carries cargo, then the documentation would be an airbill, a manifesto called air cargo manifest. If there were goods coming in, the general rule is that a sales agent would act on behalf of the client. The

account holder would get a range of airbills, bigger agents have their own system. If one imports, i.e. from Miami, then one must be registered with/as "TSA". The documents could be electronically transferred. Mr Schoeman said that exhibit E 9(9) is a SAA Airwaybill. But the following problems are encountered with this Air Waybill: No goods description, you cannot ship if the contents is wrong. He then referred to the agent's code being wrong, it should have started with "001". No issuing agent's name and the SAA did not do flights from Miami! It was terminated in 1999. No routing information. The carrier is SA not SAA. The final destination is not mentioned. The goods description and weight cannot be edited once on the system. The number of pieces is quite large, 26 is mentioned. The aircraft contains baggage, passengers, so weight distribution is very important. The witness investigated 91 Air Waybills and "E" exhibits. None of these were recorded on the system, he did an additional audit and found no skipper or consignee on his system. None of the Waybills were accepted by SAA or a third party. None of the entities appeared on the system. An example: E21 (67) is an export to Greece, SAA does not fly to Greece. The agent code must be on it. Incomplete bills are not accepted. Goods description are in the wrong place. 5800 kg is too heavy. Another example: E21 (87) shows no routing information. Weight is 24750 kg, much more than a flight.

- [319] Watts stated that Moncor Management was indeed registered as an importer and exporter. On the schedules that were attached to her statement, there are no exports for the period for the period January 2007 to March 2010. Although there are imports, the largest import recorded, required a VAT payment of R29 485.54. C11, page 117 the entry dated 19 March 2009 is a CAMS transfer inter, inter company bank transfer, of R1 361 603.70, reference for forex payment, it is being transferred from Moncor Management Services to another account within the group. There is a forex transaction at C11 116. On the 23rd of March, there is a forex sale transaction FX, reference Oak Trust ST for R1 361 603.70. That money was transferred into Moncor Management, for the purchase of this sale, of this forex on, four days later, on the 23rd of March.

- [320] The witness called by the defence, Mr Motsepe corroborated Mr Schoeman and without hesitation said that he agrees with Mr Schoeman.
- [321] The existence of the scam and its *modus operandi* is further corroborated by the admitted documents, which are evidence that the accused registered the entities, submitted the VAT returns and that the VAT refunds that were fraudulently claimed were paid out. The bank statements are objective evidence that the entities did not trade and existed solely to submit false VAT claims, as testified to by the state witnesses.
- [322] In as far as the defence relied on contractions in the evidence of the state witnesses, the court cannot agree that the contradictions were major contradictions.
- [323] Not every error, inconsistency or contradiction made by a witness will affect his or her credibility. A court is enjoined to weigh up the evidence of the witness as against the totality of the evidence produced by the State. The ultimate test is whether after treating the evidence with the due circumspection, the court is satisfied beyond a reasonable doubt that the story told is essentially true.
- [324] There were various versions proffered by the accused during the trial and especially during cross examination. The version put to Mr Engelbrecht by Counsel for accused number two is as follows: "Sir, my instruction is to put it to you that my client's entities had a long-standing arrangement with the company in America, this company in America to which you refer, for them, to buy on account." The reply: "Okay. So, when did they pay for that?" Counsel then replied that she was going to ask him because he inspected the documents. He answered that there was no payment if the invoice was issued, or payment should have been then a payment would be reflected in the bank account of Square One and it is not and besides the fact that you are talking about two different legal entities.
- [325] Counsel argued that there are payments but not at least, to the quantum that we are talking about and put it to the witness that there is mention of Square One Australia. Mr Engelbrecht said he did not investigate whether there were any payments from Square One Australia to the American companies. He does not have access to that information.

- [326] Counsel for accused two then put this version: "I am putting it to you, Sir, that the Australian Square One could have paid the American companies. You cannot, at this stage say that there was not any such payment, seeing the fact that you are unable to access the Australian, as well as the US companies."
- [327] The witness said: "You are quite right. I cannot rebut that. My issue though is, if there were exports to the Australian company, then as well, if that happens, those type of payments have to be reflected in the accounting records of any of the South African companies."
- [328] The witness also said: "I am saying though that if the Australian Company, if Square One Australia pays the, a company in America for the South African company's debt, then that debt payment, made by the South African, by the Australian company, has to be reflected in the books of the South African company. Then, the question must arise in your mind as to why is the Australian company not interacting and purchasing from the Miami company directly?"
- [329] The witness was not aware of one occasion which the entities made use of a clearing agent.
- [330] Closely linked to this version is the version that Monkor Management did all the administration and that the fact that companies can have more than one bank account. This cannot take the matter further.
- [331] The version put to Mr Engelbrecht was that the group of companies made use of a central treasury within the group. Payments done by one of the entities within the group that would administer all the financial bits. The witness replied: "I have not seen that account, and it would have been out of the ordinary, let me put it that way, if that was the case. Because usually companies administer their books for each legal persona."
- [332] Mr Engelbrecht's evidence was partially correct. Me Radebo of FNB confirmed that companies could have inter-company accounts and she was corroborated by the two managing directors, Mr Trevor James and Mr Muzariri.
- [333] The same version from a different angle was put to Mr Engelbrecht namely that if the witness did not have sight of the accounting records he cannot,

or he is unable to comment regarding loans, intercompany loans. The witness replied: "You get intercompany loans. There were references to intercompany loans with the transfer of the VAT refunds received." The follow-up on this version was then put namely that the witness did not have access to the US and Australian counter parts, which still formed part of the Square One group, and therefore cannot comment on any intercompany loans in that effect. The witness replied that he could not. From this the version was put more clearly namely that the central treasury was run by the offshore company, which administrated the intercompany loans. The witness replied that he did have access to any of the offshore company records. Mr Engelbrecht said that he did not follow up how much money was paid offshore by Square One, the listed company. He did not see a direct link between that listed company and these companies. He investigated a syndicate and there were no payments made from Square One, the listed company, to these companies or vice versa.

- [334] Mr Engelbrecht did not recall having seen the import code 707070 on the documents. He added that SARS VAT audit does not regularly speak to customs, had those systems talked to each other, the whole scheme would not have worked. It is a loophole in the system.
- [335] It is trite that the onus rests upon the State to prove the guilt of the accused beyond reasonable doubt, after weighing up all the evidence before court and in a holistic manner. This has been stated in a long line of cases and needs no further elaboration.¹⁴
- [336] It may be, that even if an accused's version is improbable, he is entitled to an acquittal if it is reasonably possibly true. In *Monageng v S*¹⁵ the court described proof beyond reasonable doubt as: ". . . evidence with such a high degree of probability that the ordinary man, after mature consideration, comes to the

¹⁴ *S v Trainor* 2003 (1) SACR 35 (SCA), [also reported as *Trainor v S* [2003] 1 All SA 435 (SCA), *S v van der Meyden* 1999 (2) SA 79 (W), *S v van Aswegen* 2001 (2) SACR 97 (SCA), also reported as *Van Aswegen v S* [2001] JOL 8267 (SCA)

¹⁵ [2009] 1 All SA 237 (SCA).

conclusion that there exists no reasonable doubt that the accused has committed the crime charged.”¹⁶

- [337] The state witnesses agreed that there could be more than one account per company but their investigations showed no further dealings. The defence had the best opportunity to refute this when two managing directors testified. The defence called the two managing directors, Mr Trevor James and Mr Muzariri.
- [338] Mr James testified about imports from USA which started in 1993/1994 going on for a fairly long period of time, they imported a fair number of items, he saw it in the warehouse. In this regard Mr James contradicts Scafturis but he corroborates her in other ways, for example by confirming a Nigerian link, her working “under” him and confirming that he had no knowledge of the VAT returns of the 18 entities. He would have been the better witness to provide the financials and evidence of interaction with other companies especially the listed company.
- [339] In exactly the same fashion Mr Muzariri could have explained the financial situation between the 18 entities and the listed company. Mr Reginald Tafara Muzariri was part of the Square One Group, inter alia as managing director. He is a chartered accountant. The group went into liquidation in 2010. There was more than one bank account as there was a separate bank account for a separate function. The state asked him whether he had any knowledge of the 18 entities. The 18 were not part of the group.
- [340] Still on this issue, one could have expected the liquidators to bring the books and show that the state was wrong. Alternatively, when Me Radebe, who testified as FNB “deal specialist” handed in the accounts confirmation letter of Monkor Management Services (Pty) Ltd, she could have brought along all the bank statements. One should bear in mind that the onus did not shift. But at end of state case there was a prima facie case made otherwise the court would have granted a section 174 acquittal.

¹⁶ See also *R v Mlambo* 1957 (4) SA 727 (A) at 738 also reported at [1957] 4 All SA 326 (A) and *S v Phallo and others* 1999 (2) SACR 558 (SCA) para [10] and [11], also reported as *Phallo and others v S* [1999] JOL 5789 (SCA).

- [341] In addition to the evidence of Me Oliveira, Mrs Wright and Mrs Scafturis as well as the documentary evidence, in that the Mr Coetser and Meyer were the masterminds in supplying the information for the VAT returns. The undisputed facts point to the guilt of all three accused.
- [342] It was not disputed that the entities were registered for VAT. Mr Engelbrecht took the court through exhibit A establishing the 18 entities which were registered for VAT per the VAT101 documents. There were an additional 2 entities which were not registered for VAT.
- [343] The amounts for the Vat claims came from Mr Coetser and Mr Meyer. Mr Stevens made inputs concerning the VAT claims. Mrs Wright, Why and Scafturis testified that the accused received and responded to all correspondence from SARS on behalf of the entities. The accused had access to all the bank statements from which it would have been immediately apparent that the entities received no income other than the VAT refunds. A rough calculation shows that if VAT was refunded in the amount of R147 million and R 600 000, then a total of purchases in excess of R1 billion and R50 million would have had to go through in respect of the 18 entities to justify the VAT that was claimed on their behalf.
- [344] A cursory glance at the bank statements, whose contents are not disputed, would have revealed that these entities do not trade and never had these amounts, or anything vaguely resembling these amounts, in their bank statements. It would have been immediately apparent that refunds in the amounts claimed, or at all, were fraudulent.
- [345] The conclusion is thus that the three accused were involved in the VAT claims. They were involved as was testified by the state witnesses, their names appear on emails where they were the sender, or where they were copied in. The entities were interconnected. Schedule A to the indictment, a reflection and summary of the representatives for VAT purposes, the signatories on the bank accounts and the status of the members in the different companies, show the interaction of all. Similarly, the inter account transfers in schedule C, which is based on documentary proof, reflects this.

Common Purpose

- [346] There is no doubt about this. The question is whether there was a common purpose in this regard to work together or should each be held liable only as far

as the documents proof that they were involved. But then one would be ignoring the evidence of the state witnesses. At first glance, it appears as if Mr Stevens was not involved to a large extend, his name is only linked to two entities namely number 15, Amber Falcon and 17 Sunmark International Distributors. The role he played in the two entities: For entity number 15, Stevens was a VAT 101 representative, he was a member per the CK documents and he was an authorised bank signatory. For entity number 17 Stevens was only a bank signatory.

- [347] The first VAT fraud on record is January 2007, exhibit B14.(Entity 3). Concerning entity number 15: The first VAT that was claimed was in October 2007. See exhibit B147. The last amount claimed was in March 2010. (Exhibit B 160). Concerning entity number 17: The first VAT that was claimed was in February 2007. See exhibit B170. The last amount claimed was in January 2010. (Exhibit B186). The first inter account transfer took place on 16 March 2007 (Entity 17). The first inter account transfer of entity number 15 took place on 1 February 2008 and the last on 27 January 2010. The first inter account transfer of entity number 17 took place on 16 March 2007. The last transfer was made on 21 January 2010.
- [348] By only looking at the two entities where Mr Steven's name features it is apparent that he was involved by at least February 2007. Mr Engelbrecht testified concerning entity 15: Amber Falcon: Mr Garth Coetser, accused 2, signed the letter for Mr Stevens, accused 3, to open a bank account: C15-099. Mr Meyer signed B157 the VAT 201 relating to Amber Falcon. B158 was also signed by Mr Meyer.
- [349] Mr Engelbrecht testified concerning entity number 15, Amber Falcon, counts 147 to 160, there are no documents filed into the Exhibit E. Bank statements, C15, page 51, appears to be a forex entry. Dated the 17th of February 2009, for the amount of R31 248.90. Another one at page 63, of C15. The amount of R31 754.90 was purchased, or forex was purchased on the 21st of August 2009. Another one at page 69, six, nine, a transaction on the 10th of November 2009. A purchase of forex for the amount of R37 709.58. The bank statements of entity number 15 Anglo Falcon, Exhibit C15, were referred to. The witness referred to two specific entries,

the first one being referenced transfer to C L Stevens the amount being R40 000. The second one being transfer with the same credit card number ending 7058 which is also that for Stevens. Then on 30 November there is a general debit with the reference transfer to C Steven the amount of R40 000. The two entries for 14 December the first one being a general debit referenced transfer to C L Stevens the amount being R50 000 and the second one being general debit, transfer to the credit card number ending 7058 the amount of R70 000. Then 22 December there is another transfer to the same credit card account of R25 000.

- [350] Coming back to the dates, the first VAT fraud on record is January 2007, but for entity 17 it is February 2007. Could it be that Mr Stevens was a late comer? I doubt this. The reason why I say this is that one should not look at the directorships. Accused one was director of only two entities, number 9 and 10. Yet it is clear that he was involved with the other entities as well. Although the company where Mr Stevens was a director only claimed a month after the first overall claim was made, one should keep in mind that the claims are done for VAT refunds based on activities the 2 months prior to the claims. Even if this has not been proved, the VAT refunds were not denied.
- [351] The three accused worked together. Mrs Wright explained concerning exhibit WW 45 (1)-(3): This was an email from Stevens, she was not to lodge Basfour if the amount was more than R2 million. In her evidence she also referred to WW 55 and WW 59, WW 59 was to Anton Meyer where she said they need to do payments from Imports cash cheque, she explained that Coetser would instruct her to write out cash cheques and deposit them in the said entities' bank account. This email is a good example of all 3 parties being involved. Coetser and Meyer on email and Stevens mentioned in the email! Coetser asks Meyer to print out the attached "doc for Cliff and the IME invoice and arrange to get to him."
- [352] The evidence of the state clearly demonstrates a common purpose. The requirements for a common purpose is set out in *S v Safatsa and Others* 1988 (1) SA 868 (A), namely that certain prerequisites are to be satisfied. In the first place, presence at the scene, secondly knowledge of the crime being committed and thirdly the intention to make common cause with those who were the perpetrators. Fourthly, he must have manifested his sharing of a

common purpose with the perpetrators by himself performing some act of association with the conduct of the others. Fifthly, he must have had the requisite *mens rea* in respect of the crime which includes that he must have foreseen the possibility of the actions taken place and performed his own act of association with recklessness as to whether or not the crime would take place.

[353] The requirements as set out in *S v Safatsa and Others* pertained to crimes against the person, the same principles apply for crimes against property. The state in its Heads of Argument takes the basic requirements and makes it applicable to crimes against property. In short the state says that the scene of the crime is cyberspace. This is a valid point, the scene in this case varied from cyberspace to various offices, perhaps even state buildings. The accused were well aware, had knowledge of the crime being committed. The accused had the intention to make common cause with those who were the perpetrators. This is evident in all the emails, the inter-company transfers, the cheque swaps. The witnesses testify about the accused working in tandem, as a team. The accused have manifested the sharing of a common purpose by performing acts of association with the conduct of the others. It is a given that the documents contained fictitious information and from this the only inference is that the accused must have had the requisite *mens rea* in respect of the crimes. The conclusion is that the accused acted with a common purpose.

[354] The court found that the accused acted with a common purpose. The court now has to establish what crimes were committed. The crime of fraud according to Snyman can be defined as: "The unlawful and intentional making of a misrepresentation which causes actual prejudices, or which is potentially prejudicial to another."¹⁷

[355] The accused, by allowing the VAT returns to be submitted, intentionally misrepresented the truth. Certain claims were paid out and others not but those VAT claims were potentially prejudicial to SARS, and therefore amount to completed acts of fraud. The accused should, accordingly, be found guilty of fraud on these charges.

¹⁷ CR Snyman *Criminal Law* (6ed) (2014).

- [356] The improbability in the accused's version was that the exculpatory version was withheld from SARS and the police for at least five years. While fully acknowledging an accused's right to remain silent, the probability of the accused never providing their version to the authorities if they were indeed innocent coupled with the evidence in court, are too remote to be probable.
- [357] It is common cause that the following amounts were paid into the accounts of the 18 entities, R 147,647,214.02 and the potential loss, thus amounts not paid out, was R68,721,518.00, this means the total VAT claimed was R216,368,732.02.
- [358] In view of the above and taking the evidence into account in its totality, it is my view that the State has indeed discharged its onus and the accused's involvement in the VAT scam has been proven beyond reasonable doubt. Any inferences to be drawn from the documents are consistent with the proven facts and exclude any other reasonable inference, save that the accused is guilty of fraud as per counts 1 to 198 including certain of the fraud counts, the so-called "potential prejudice counts", where fraudulent VAT claims were submitted, but not paid out.

Forgery, Uttering, Money Laundering.

- [359] What remains to determine is whether the accused are guilty of the other counts, counts 199 to 237 forgery, read with the provisions of section 51(2)(a) of Act 105 of 1997. Counts 238 to 276 uttering, read with the provisions of section 51(2)(a) of Act 105 of 1997. Counts 277 to 356 money laundering, in terms of section 4(b)(i) read with the provisions of sections 1 and 8 of the Prevention of Organised Crime Act 121 of 1998 ("POCA").
- [360] I will discuss the three crimes as separate crimes as they are indeed separate. These are not a duplication of crimes, there are elements of each crime which make each one unique, in other words the test of duplication whether one crime is proof of the other, can be applied. One can take fraud into this scenario as well. Fraud, as we saw *supra*, is the unlawful and intentional making of a misrepresentation which causes actual prejudices, or which is potentially prejudicial to another. Forgery has not been proved when fraud has been proved, for forgery the act of making a false document is needed, see *infra*. Even when forgery is proved, then uttering is not proved. The act for uttering consists in passing off or communicating a false document. Thus a forged

document must come to the knowledge of the victim or potential victim. Similarly, the crime of money laundering is not proved when any of the abovementioned crimes are proved. The act for money laundering, a statutory crime, refers to any act that disguises the criminal nature or the location of the proceeds of a crime. See *infra*.

- [361] The courts have always seen forgery and uttering as two separate crimes: *R v Johnston* 1960 (2) SA 658 (T).

Forgery

- [362] Snyman's definition of forgery is that it "consists in unlawfully and intentionally making a false document to the actual or potential prejudice of another."¹⁸ Joubert defines forgery as follows: Forgery is committed by unlawfully creating a false document with intent to defraud to the actual or potential prejudice of another. It is a species of fraud. In forgery the misrepresentation takes place by way of the falsification of a document. Apart from this, all the requirements of the crime of fraud must be present, such as the intent to defraud and the actual or potential prejudice. However, whereas fraud is completed only where the misrepresentation has come to the notice of the representee, forgery is completed the moment the document is falsified. If the document is then brought to the attention of others, a separate offence is committed, namely uttering the document."¹⁹

- [363] The Supreme Court of Appeal discussed forgery in *S v Banur Investments (Pty) Ltd*²⁰. The Honourable Judge Rumpff quoted *S v Dreyer* as follows: "The essence of forgery seems to me to be that the forged document is in some way an imitation of a genuine document and not merely a document which contains a false statement; it is a counterfeit or spurious representation of a genuine document; or it may suppose the existence of a genuine document, of which the forgery is in some way a false representation. Cf. Burrows, *Words and Phrases*, vol. 2, s.v. 'forgery'."

¹⁸ Snyman, *supra*, at 532

¹⁹ Joubert: *The Law of South Africa*: 2nd Ed: V6 para 317

²⁰ 1970 (3) SA 767 (A)

- [364] The honourable judge Rumpff concluded that our case law shows that forgery of a document takes place when the contents thereof is changed and therefore does not reflect the original contents or when, contrary to the actual facts, purports to be drawn on behalf of or by a person. The learned Judge of the Appeal Court then referred to the English law as follows: “A writing is not a forgery when it merely *contains* statements which are false, but only when it falsely purports to *be* itself that which it is not. Thus in *Re Windsor* it was declared: 'Forgery is the false making of an instrument purporting to be that which it is not, it is not the making of an instrument which purports to be what it really is, but which contains false statements. Telling a lie does not become a forgery because it is reduced into writing.' The simplest and the most effective phrase by which to express this rule is to state that for the purposes of the law of forgery the writing *must tell a lie about itself*. Hence a conveyance which contains false recitals or states incorrectly the price paid is not thereby 'false'. And a letter or telegram sent to a newspaper containing false news is not a forged document; although it would be if it were sent falsely in the name of one (e.g. the official reporter) who did not send or authorise the sending of it, for in such a case it would purport to be *his* message, which it is not.’²¹
- [365] The charges for forgery are summarized in schedule “E”, “Forged Supporting Documents” and are only applicable to the following entities: Counts 9-13: Copper Sunset (2);Counts14-21; Legacy IT Solutions(3);Counts 22-24: Square One(4);Counts 30-47: CCG Rentals (6);Count 56: Superbrush (7); Counts 72-74: Geo Relational (8);Counts 84-91: Square One Power (9);Count 115: Monkor Management (11);Counts 126-129: CCG 119 Investments (12);Count 133:Sunmark Farms (13);Count 143: Square One Imports (14);Counts 170-179: Sunmark International (17);Counts 193 – 198: Multi Cupboard (18).
- [366] It has been proved by the witnesses that the VAT invoices lodged contained false information. The VAT claims were false and were submitted to SARS with the intention of defrauding SARS by securing VAT refund claims. It has also been proved that the documents which were lodged in supporting the

²¹ At bottom page 772 and top page 774

VAT claims, contained false information. I can merely mention the witnesses who testified in this regard: Engelbrecht, Schoeman, Watts, Scafturis and Wright. The supporting documentation contained false information: Me Oliveira tested the SAA Airwaybills, none were found. If none were found on the system, then they were forged. Mr Schoeman investigated 91 Air Waybills and "E" exhibits. None of these were recorded on the system, he did an additional audit and found no skipper or consignee on his system. None of the Air Waybills were accepted by SAA or a third party. None of the entities appeared on the system. An example: E21 (67) is an export to Greece, SAA does not fly to Greece. The agent code must be on it, not on it. Incomplete bills are not accepted. Goods description are in the wrong place. 5800 kg is too heavy. Another example: E21 (87) shows no routing information. Weight is 24750 kg, much more than a flight. He did the spreadsheet.

[367] The evidence is therefore that the accused were aware of, and played a role in the forging of these documents, they acted in common purpose, as discussed *supra*, and must accordingly be found guilty of forgery as charged.

Uttering

[368] Snyman defines the crime of uttering as consisting in "unlawfully and intentionally passing off a false document to the actual or potential prejudice of another."²² It has been proved that false invoices were handed to SARS and that the accused acted in common purpose in forging the documents and it has also been proved that the accused, acting in common purpose, presented the documents to SARS.

[369] The only conclusion to be drawn, is that the accused uttered and presented forged documents to SARS well knowing that they were false and in the knowledge that they would result in actual or potential prejudice to SARS. As a result of the submission of these false documents, VAT refunds which were not owing were paid out as a result of the uttering. The State has, therefore shown beyond reasonable doubt that the accused is guilty of forgery and uttering as per counts 199 to 276.

Money laundering

²² Snyman, *supra* at 535

- [370] The accused, the state alleged, laundered the proceeds of the fraudulent VAT refunds relating to the entities especially by way of intercompany transfers called cheque swaps.
- [371] In essence money laundering means to get “hot money” and then to get rid of the “hot money” and then to recycle it. The money can be camouflaged, filtered through fake companies by means of “cheque swaps”. Company A swap with company B for a fake purpose. The term “swap’ can also read “swop”. Cheque swaps could be a disguise for money laundering.
- [372] Money laundering refers to any act that disguises the criminal nature or the location of the proceeds of a crime.²³ The provisions combating money laundering in South-Africa have broadened this concept to virtually every act or transaction that involves the proceeds of a crime, including the spending of funds that were acquired illegally. POCA defines money laundering as an activity which has or is likely to have the effect of concealing or disguising the nature, source, location, disposition or movement of the proceeds of unlawful activities or any interest which anyone has in such proceeds and includes any activity which constitutes an offence in terms of s 64 of the Act. The courts have relied on the definitions set out in FICA and POCA to define money laundering.
- [373] In section 1 of FICA²⁴ ‘money laundering’ and ‘money laundering activity’ is defined as an activity which has or is likely to have the effect of concealing or disguising the nature, source, location, disposition or movement of the proceeds of unlawful activities or any interest which anyone has in such proceeds and includes any activity which constitutes an offence in terms of section 64 of FICA or section 4, 5 or 6 of POCA. POCA does not define the term ‘money laundering’ but only describes the crime in section 4.
- [374] The concealment element has been discussed in a most recent case by Nicolls J.²⁵ In this case the accused in this matter had been specifically charged in terms of section 4(b)(i) of POCA. The learned Judge said: “What is apparent from the above cases is that in order to be found guilty of money

²³ L de Koker ‘Money laundering trends in South Africa’ (2002) *Journal of Money Laundering Control* (6 No1) 27

²⁴ Financial Intelligence Centre Act 38 of 2001

²⁵ *S v Van der Linde* [2016] 3 All SA 898 (GJ), the accused was found guilty of fraud.

laundering, there must be a clear intention to hide or conceal what is often referred to as “hot” money. This entails the laundering of the illegal funds to convert them into “clean” money, which the criminal can safely spend. As stated in *De Koker*, money laundering is by its very nature a secretive practice. I am not persuaded that by spending the proceeds of fraud, a conviction of money laundering should follow axiomatically. Instead, there has to be an element of concealment which must be proven or inferred”.²⁶

- [375] The honourable Judge then concluded: “In this matter, the monies were merely divided and spent by the parties. On occasion, cheques were deposited into the SPI Brokers bank account. This was an entity wholly owned by the accused and no extensive investigation would have been required to trace the money.”²⁷ Therefore, the conclusion is that the State has to prove some action indicating secrecy or concealment.
- [376] In the *Van Der Linde* case²⁸ the following is said about money laundering: “Money laundering is said to take place in three stages namely placement, layering or integration. Placement takes place when the proceeds of crime enter the banking system. Typically, the criminal with a large sum of cash moves it to another country or location so that placement can take place with greater safety. Frequently a large sum is split up into smaller amounts which can then be deposited into different bank accounts without raising suspicion. The second stage is known as layering, which is the process of separating the funds from their illegal source. The source of money is disguised by moving the funds through accounts of financial institutions, thereby, blurring the trail of the money.”
- [377] The 3 accused in this matter has been specifically charged in terms of section 4(b)(i) read with the provisions of sections 1 and 8 of POCA. Section 1 of POCA defines the proceeds of unlawful activity as: “. . . any property or any service, advantage, benefit or reward which was derived, received or retained directly or indirectly, in the Republic or elsewhere, at any time before or after the commencement of this Act, in connection with or as a result of any

²⁶ *Van Der Linde*, supra, par 124

²⁷ *Van Der Linde*, supra, par 125

²⁸ *Van Der Linde*, supra, page 112

unlawful activity carried on by any person, and includes any property representing property so derived.”

- [378] POCA creates three main general money laundering offences in section 4, section 5 and section 6.²⁹ A person who knows or ought reasonably to have known that property is or forms part of the proceeds of unlawful activities, commits an offence under section 4. Section 5 determines that if a person has known or ought reasonably to have known that another person has obtained the proceeds of unlawful activities and enter in any transactions, agreements or arrangements will commit an offence. Lastly a person will commit an offence under section 6 if the person who acquires, uses or possesses property and who knows or ought reasonably to have known that it is or forms part of the proceeds of unlawful activities of another person.
- [379] Sections 4, 5 and 6 set out certain requirements that need to be met before an accused is guilty of the offence of money laundering. The first requirement is knowledge or reasonable knowledge of property being part of the proceeds of unlawful activities.³⁰ Secondly the person must enter into an agreement or perform an act in connection with such property.³¹ Thirdly, the agreement or act must have a specific and certain effect.³² The effect could result in the concealment and disguising of the property as well as the assistance to disguise or conceal the property.
- [380] In *S v De Vries*³³ the accused were *inter alia* charged with contravening section 4 of POCA. Two accused were selling stolen cigarettes to a third accused. The effect of the transaction with the third accused was to conceal or disguise the source and location of the property forming part of the proceeds of the unlawful activity (robbery). The court ruled that the buyer knew or should reasonably have suspected that the cigarettes were stolen. By buying the cigarettes, the buyer concealed or disguised the source, disposition or movement of property, or its ownership, therefore all three were found guilty of contravening section 4.³⁴ The knowledge of unlawfulness to

²⁹ L de Koker ‘ Money Laundering Trends in South Africa’ (2002) *Journal of Money Laundering Control* (Vol 6 No 1) 28.

³⁰ Section 4, 5 and 6 of POCA.

³¹ Section 4, 5 and 6 of POCA.

³² Section 4(b)(i) and (ii) of POCA.

³³ *S v De Vries and others* 2009 (1) SACR 613 (C).

³⁴ *S v De Vries and others* 2009 (1) SACR 613 (C).

prove intention³⁵ can be divided into two subsections:³⁶ The knowledge of the existence of the particulars of the elements of the crime.³⁷ The knowledge of unlawfulness or awareness of the act committed.³⁸ The accused must at least be aware that there are no grounds of justification to cover his conduct.³⁹

- [381] The offences in section 4, 5 and 6 can be committed either intentionally or negligently.⁴⁰ It is generally accepted that a statutory offence is committed intentionally, unless otherwise stated.⁴¹ The crime can also be committed negligently as we see from the recurrence of the word '*reasonable*'.⁴²
- [382] It is generally accepted that conduct is not unlawful unless it is committed with a guilty mind (*mens rea* or fault).⁴³ *Mens rea* or fault is divided into two further categories, namely intention (*dolus*) or negligence (*culpa*).⁴⁴ The two cannot overlap each other.⁴⁵ When it comes to common law crimes⁴⁶ the State must prove that an accused committed the offence with the necessary intention.⁴⁷
- [383] POCA requires that the effect of the agreement or act must be that of concealing or disguising the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest which anyone may have in respect thereof; or that of enabling or assisting any person who has committed or commits an offence, whether in the Republic or elsewhere- to avoid prosecution; or to remove or diminish any property acquired directly, or indirectly, as a result of the commission of an offence.⁴⁸

³⁵ *S v Ntuli* 1975 1 SA 429 (A) 436

The court states that *dolus* consists of the intention to commit an unlawful act.

³⁶ Snyman, CR *Criminal Law* (2008) 201.

³⁷ Snyman *supra*, 201.

³⁸ Snyman, *supra*, 201.

³⁹ Snyman, *supra*, 97 & 201.

⁴⁰ L de Koker 'Money Laundering Control: The South African Model' (2002) *Journal of Money Laundering* (Vol 6 No 2) 167.

⁴¹ J Burchell *Principles of Criminal Law* (2016) 396

⁴² Section 1(3) of the POCA.

⁴³ J Burchell & J Milton *Principles of Criminal Law* (2005) 151.

⁴⁴ *S v De Blom* 1977 3 SA 513 (A) 529.

J Burchell & J Milton *Principles of Criminal Law* (2005) 152.

⁴⁵ *S v Ngubane* 1985 3 SA 677 (A) 686

Also see JC De Wet & HL Swanepoel *Strafreg* (1985) 160.

⁴⁶ CR Snyman *Criminal Law* (2008) 209; states that the two exceptions to this rule are culpable homicide and contempt of court by a newspaper editor in whose paper commentary is published concerning a pending case.

⁴⁷ J Burchell *Principals of Criminal Law* (2016) 398.

⁴⁸ Section 4(b) of the POCA

- [384] The concealment of the origin of the proceeds can be done in numerous ways. The five broad themes that were identified in South Africa as preferable trends are:⁴⁹
- the purchase of goods and properties;
 - abuse of businesses and business entities;
 - cash and currency;
 - abuse of financial institutions; and
 - the informal sector of the economy.
- [385] The accused are charged with section 4(b)(i) – concealing or disguising the nature and source of the funds which they knew to be from the proceeds of unlawful activities.
- [386] Firstly, it must be shown that they knew or ought to have known that the property formed the proceeds of unlawful activities. The accused were all deeply involved with the VAT fraud scheme and had such knowledge as required by section 4. It is common cause that the VAT refunds were the proceeds of crime. The accused initiated and managed the scheme, and as such, knew the refunds represented the proceeds of unlawful activities, namely fraud.
- [387] In terms of section 4(b) they must perform “any other act in connection with such property, whether it is performed independently or in concert with another person”.
- [388] In the case now before the court, the money was transferred to other “accounts” and some of it was drawn as cash. The term “cheque swop” or “cheque swap” was used. The state averred as follows in the section 105 address: “The accused, it is then alleged, laundered the proceeds of the fraudulent VAT refunds relating to the entities especially by way of intercompany transfers called cheque swops.”
- [389] There were a few witnesses referring to this term. The words “swop” and “swap” were used interchangeably. This does not affect the transactions. It stays the same. Mr Engelbrecht testified that there were very few transactions that he could identify that related to the normal trading activities of the

⁴⁹ L de Koker ‘Money Laundering Trends in South Africa’ (2002) *Journal of Money Laundering Control* (Vol 6 No 1) 31.

business. The majority of the transactions that were reflected on the bank statements were what was referred to by these companies as cheque swaps. Where a cheque is deposited into one account. For instance, into CCG130 and then a cheque is issued by CCG130 and that is deposited into another account. Mr Engelbrecht drafted a four-page schedule. It is printed on A3 paper and although the columns are not numbered there are 13 columns so it is quite a large schedule and it contains 188 entries. This schedule was admitted as exhibit J and Mr Engelbrecht explained that the purpose of the schedule was to show when cheque swaps happened and the month where the counts occurred. Furthermore, Mr Govender confirmed the validity of exhibit J.

[390] Lynette Scafturis testified concerning “cheque swaps” which were done around the 3-page imports. Scafturis was contacted by Wendy Wright in this regard. She said: “We would arrange cheques in their account, they deposit a cheque in our account. Most times what would happen when we need to issue a cheque, not funds, relied on their funds..”

[391] Mrs Wright testified concerning exhibit WW 62 (1) and (2): Wright says the cheque books are here. He replies by asking for VAT numbers for certain entities (always one or more of the 18 entities) referring to her by saying “Hi Doctor”. WW 63: Meyer mentions a VAT billing schedule received from Coetser and asks her for VAT numbers, company numbers and addresses. The companies are: Basfour , CCG Investments, Sunmark Factory, Sunmark Farms, CCG 119 Investments, GAC Management Consultants. He asked for it because he was going to do the invoices, the companies were taken from their offices to his. WW 70: From Coetser to her and Meyer. The topic is cheque swaps. Coetser says attend to the cheque swaps as per the attached and asks that the instructions for the transfer from Investec be emailed. She would do cheque swaps, instructed by email, from one entity to another, to the companies they worked with. Mr Coetser told her to clear the accounting system. She received instructions to make the swop cheques out in cash. The driver would take cheques for the bank.

[392] Mrs Scafturis corroborated this by testifying that she received email instructions for every company. Wright had nothing to do with their companies but they did interact with regards to cheque swaps and other matters. She

testified that all information for the companies came from Mr Meyer, the 3 pages, the follow-ups on VAT returns and the cheque swops. She said she coined it “3 page specials.” When asked what is so special she replied “Hindsight is an amazing thing, they all stand out now.” It was the norm to hand 3 pages in, but all other documents had more than 3 pages.

[393] Concerning the cheque swops, counsel for Coetser said that it still shows a profit. She said the spreadsheet showed an alleged profit, the cheque swops give the money back, she therefore disagrees with the inference that the profit was left there. Counsel then said that the witness is not an auditor. She replied that the emails show there was no cost of sales. It was deemed to be no cost of sale.

[394] The accused performed the following actions in connection with the proceeds of unlawful activities: they received VAT refunds, paid into various accounts of the 18 entities, These proceeds were deposited into the accused’s “other” bank account and could not be traced thereafter.

[395] The final and crucial requirement of section 4(b)(i) is whether the accused’s actions had the effect of concealing or disguising the nature, source, location or disposition of the funds. As far as disguising is concerned, the State submitted that the drawing of the cash cheques disguised the origin of the money. Similarly, the cheques deposited into the other bank accounts by way of cheque swops were likely to disguise the origin. The reasoning is that once deposited or withdrawn or transferred into the other bank accounts, the proceeds co-mingled with other legitimate funds and became difficult to trace. The cheques represented unlawful proceeds which, once deposited into an active account that ordinarily receives deposits from lawful business, had the effect of legitimising these proceeds. Such conduct is said to be money laundering.

[396] On the State’s own version, the accused were the masterminds behind the unlawful VAT scheme. The accused acted in common purpose in this regard. The accused are therefore guilty as charged.

Conclusion

[397] I am satisfied that the State has discharged the onus resting upon it of proving beyond reasonable doubt that the accused Mr Anton Meyer (accused one), Mr

Garth Alan Coetser (accused two) and Mr Clifford Lloyd Stevens (accused three) are guilty of the following counts:

Counts 1 to 198 fraud, read with the provisions of section 51(2)(a) of Act 105 of 1997.

Counts 199 to 237 forgery, read with the provisions of section 51(2)(a) of Act 105 of 1997.

Counts 238 to 276 uttering, read with the provisions of section 51(2)(a) of Act 105 of 1997.

Counts 277 to 356, which is known as money laundering, in terms of section 4(b)(i), read with the provisions of sections 1 and 8 of the Prevention of Organised Crime Act 121 of 1998 ("POCA").

IT IS SO ORDERED

A handwritten signature in blue ink, appearing to read 'A.J. Klein', with a large loop at the end.

KLEIN A/J

For the State: Adv M.R. Oosthuisen and Adv N Reddy

For accused one: In person

For accused two: Adv M Du Preez instructed by Jacobs Incorporated Attorneys, Johannesburg.

For accused three: Adv P Louw instructed by Attorney Bayliss.