

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

B E T W E E N:-



TOWER BRIDGE INTERNATIONAL SERVICES LLP

Claimant

-and-

(1) MICHAEL VINEY

(2) XAVIER ALCAN

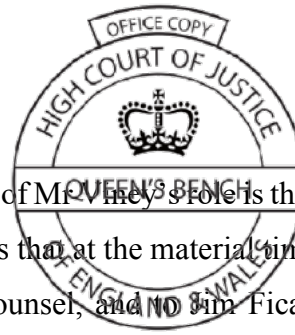
(3) HALLELUJAH KING

Defendants

DEFENCE OF THE SECOND DEFENDANT

I. INTRODUCTION

1. Save where otherwise stated, all paragraph numbers refer to the numbered paragraphs in the Particulars of Claim. This Defence adopts the abbreviations and headings used in the Particulars of Claim for convenience, without prejudice to the substance of the Defence.
2. Save where otherwise stated, Mr Alcan denies each of the facts and matters pleaded in the Particulars of Claim.
3. Paragraph 1 is noted.
4. Paragraph 2 is admitted.
5. The first sentence of paragraph 3 is admitted. The second and third sentences are not admitted as they are beyond Mr Alcan's knowledge.
6. Paragraph 4 is admitted.



7. Paragraph 5 is admitted. Mr Alcan's understanding of Mr Viney's role is that it extended beyond that of simply a tax accountant. He believes that, at the material times Mr Viney reported to the UK CEO and the UK General Counsel, and ~~not~~ Jim Ficaró, the chief global tax officer of BGC Group based in the firm's US global headquarters.
8. Paragraph 6 is admitted. Mr Alcan began employment with Cantor, the precursor to BCG Brokers LP, BCG Services, and TBIS (the "**BCG Group**"), in 1996 and has been continuously employed by the BCG Group since then. He became a partner in Cantor in 1997 or 1998 and ultimately from around 2013 following restructuring of the BGC Group, was a partner or member in BGC Services (Holdings) LLP. At the time of his suspension he was an Executive Managing Director in the London office with specific responsibility for overall rate products in the United Kingdom and was dedicated to the general success of BGC Group's global business.
9. Paragraph 7 is denied in so far as it relates to Mr Alcan. Mr Alcan is a devoted and lifelong employee of the BGC Group. As a partner, he saw and continues to see any loss to the business as inimical to his interests. The fraud against the BGC Group was perpetrated alone by Mr Viney as set out below.
10. Paragraph 8 is admitted, save insofar as it contains an allegation that Mr Alcan was a knowing participant in the frauds, which is denied for the reasons set out in this defence.

II. DUTIES OWED BY MR VINEY AND MR ALCAN

Duties owed by Mr Viney

11. Paragraphs 9 and 10 are not admitted as these are not matters within Mr Alcan's knowledge.

Duties owed by Mr Alcan

12. Paragraphs 11 and 12 are admitted.
13. Paragraphs 13(a)-(e) are admitted. Paragraph 13(f) is partially denied. Whilst it is admitted that Mr Alcan would have been under a duty to report Mr Viney's wrongdoing had he been aware of it, as aforesaid it is denied that Mr Alcan had any knowledge of the frauds perpetrated by Mr Viney.



III. THE FRAUDS

(1) The Diversion of Refunds Fraud

14. The first two sentences of paragraph 14 are admitted. The final sentence is denied. Mr Alcan was not obliged to account to TBIS for the sums received as he had no knowledge or suspicion that he was not their legitimate recipient. He had a high degree of trust and confidence in Mr Viney by virtue of his position within the BGC Group. Mr Viney, at some time in around 2014, told Mr Alcan that the previous employee responsible for partners' tax affairs within the group had not been achieving the appropriate level of tax efficiency, and that he would be able to obtain substantial 'claw-back' of previously paid tax in the form of rebates. Mr Viney also told Mr Alcan that he was the nominated partner for tax purposes, and therefore would sometimes receive large sums that he would then need to partially remit back to the BGC Group or other partners.
15. Mr Alcan had no detailed knowledge or understanding either of the BGC Group's or of his own tax affairs. When he began receiving substantial payments, he believed Mr Viney's explanations that these were made as a result of Mr Viney's ability to 'claw back' tax rebates that were legitimately due to him, or due to his status as the BGC Group's nominated partner for tax purposes.
16. Paragraph 14(a) is admitted. Mr Viney told Mr Alcan in an email of 12.28pm on 14 November 2019 that HMRC had released a refund to Mr Alcan as the nominated partner of the firm, and that Mr Viney would provide further instructions on how much of this sum should be remitted to the BGC Group. Mr Alcan believed this to be true.
17. Paragraph 14(a)(i) is not admitted as the facts therein are beyond Mr Alcan's knowledge.
18. Paragraph 14(a)(ii) is admitted. For the avoidance of doubt, Mr Alcan believed that he genuinely had been appointed the 'Nominated Partner' in respect of these partnerships. As to the final sentence, Mr Alcan believed that if he followed Mr Viney's instructions as to how to deal with any sums received as nominated partner, he would have complied with his obligations to TBIS.
19. Paragraph 14(a)(iii) is not admitted as the facts therein are beyond Mr Alcan's knowledge.



20. As to paragraph 14(a)(iv) it is admitted that Mr Alcan received £4,356,388.63. The remainder of that paragraph is not known to Mr Alcan.
21. Paragraph 14(b)(i) is admitted. On 19 January 2015 Mr Alcan paid £499,807 to account number 40463834 in the name 'BGC Services Holdings'. This was per Mr Viney's instructions. The payment reflected Mr Alcan's belief that the 16 January 2015 payment was a tax rebate from HMRC which was owed partially to him individually and partly to the BGC Group or other partners.
22. Paragraph 14(b)(ii) is admitted. On 12 August 2016 Mr Alcan paid £883,267 to TBIS. He made a further payment of £125,043 to TBIS on 13 September 2016. This second payment caused his account to become overdrawn by £50,311.50. These two payments together meant that Mr Alcan passed on the totality of the 5 August 2016 payment to TBIS in accordance with Mr Viney's instructions.
23. Paragraph 14(b)(iii) is admitted in respect of the amount and destination account. However, it was denied that this payment was made on 1 October 2017. Mr Alcan received the payment on 20 October 2017. He paid out a sum of £606,284 on the same date to an account number 84432882 with the beneficiary name 'LLP' on Mr Viney's instructions. He believed at the time that this payment was being made to the BGC Group, but following Mr Viney's fraud being revealed now suspects that this was a personal account of Mr Viney.
24. As to paragraph 14(c):
- a. It is admitted that there was no legitimate reason for the Jersey Refund Payments to be made to Mr Alcan, and that those payments were instigated and procured by Mr Viney using a similar method to that used in respect of the November 2019 Payment.
 - b. It is denied that Mr Alcan was aware that the payments to him were not legitimate and therefore that he was aware that he was under a duty to account to TBIS for them. As set out above, he believed that each of the payments was a legitimate payment from HMRC due to him or the BGC Group and dealt with the money received according to Mr Viney's instructions.



(2) The Diversion of Payments Fraud

(a) The Payments Intended for HMRC Sub-Fraud

25. The first sentence of paragraph 15 is admitted. The second sentence is not admitted as the facts therein are beyond Mr Alcan's knowledge.
26. Paragraphs 15(a) and 15(a)(i)-(iii) are not admitted as the facts therein are beyond Mr Alcan's knowledge.
27. Paragraph 15(b) is admitted.
28. Paragraphs 15(b)(i)-(iii) are not admitted as the facts therein are beyond Mr Alcan's knowledge. On 18 May 2018, Mr Alcan made a payment of £2,258,803.24 to an account with beneficiary name "BGC Viney" in accordance with a handwritten note of instruction from Mr Viney of the same date.
29. Paragraphs 15(c) and 15(d)(i-v) are not admitted as they are beyond Mr Alcan's knowledge. As to paragraph 15(d)(iv), Mr Alcan was not aware of being a member of any Northern Irish LLP. Mr Alcan notes that a false email account with the address xavalcan24@gmail.com was provided by Mr Viney to Tughans and held out by him as belonging to Mr Alcan but was in fact controlled by Mr Viney. Certain documents that appear to have been produced by Mr Viney to Tughans including those dated 10 December 2019, 18 December 2019, 5 March 2020 and 18 June 2020 appear to bear forged versions of Mr Alcan's signature and in at least one instance a digital signature that Mr Alcan has never used.
30. As to paragraph 15(e):
- a. The first sentence is admitted.
 - b. The second to third sentences are not admitted as they are beyond Mr Alcan's knowledge.
 - c. The final sentence is admitted. Mr Alcan was not aware that the incoming payment was from BGC. He sent an email to Mr Viney on 5 February 2018 which stated "*I have received an amount on my account which does not seem to be for myself. Would you mind telling me what to do with it. Please Sir.*". The



outward payment of the same date was to an account with beneficiary name “MViney Investments HMRC” and “BGC – Property Investment”. Mr Alcan was unaware that this account was in fact controlled by Mr Viney.

(b) The Intended Loan Repayment Sub-Fraud

31. Paragraph 16 is admitted.

32. Paragraphs 17 and 17(a)-(d) are not admitted as the facts and matters therein are beyond Mr Alcan’s knowledge.

(c) The Payments Intended for Individuals Sub-Fraud

33. The first sentence of paragraph 18 is denied in so far as it relates to Mr Alcan. He did not divert any payments due to individual partners, but as above was the unwitting dupe of Mr Viney. The remainder of paragraph 18, and paragraphs 18(a)-(i) are not admitted as the facts and matters therein are outside Mr Alcan’s knowledge.

34. As to paragraph 18(j): it is admitted that a payment of £28,392.86 was made to the Alcan Santander 2178 Account. Mr Alcan believes that he would have been told by Mr Viney that this was money that was due to him. The remainder of the paragraph is not admitted as the facts and matters therein are beyond Mr Alcan’s knowledge.

35. Paragraph 18(k) is not admitted as the facts and matters therein are outside Mr Alcan’s knowledge. Mr Alcan does not possess a copy of the bank statement relating to this payment and has no recollection of it being paid.

36. Paragraphs 18(l)-(m) are not admitted as the facts and matters therein are beyond Mr Alcan’s knowledge.

37. As to paragraphs 18(n) and 18(n)(i)-(iii), it is admitted that:

a. A payment of \$363,859.12 was made into the Alcan 9586 NatWest USD Account on 29 April 2015.

b. A payment of \$126,606.82 was made into the Alcan 9586 NatWest USD Account. This payment was made on 12 June 2015 rather than 15 June 2015.



- c. A payment of \$95,160.00 was made into the Alcan 9586 NatWest USD Account on 13 November 2015.
- d. A payment of £44,722.34 was made into the Alcan 7684 Jersey Account on 3 February 2016.
- e. These payments did not represent monies belonging to the BGC Group. Mr Alcan's bank statement gives a reference of IPO/BNF/Boris Lefebvre. He was asked by one of his friends, Boris Lefebvre, to help him 'warehouse' some of his money whilst he was going through a difficult period with his partner. These payments were due to Mr Lefebvre but were paid to Mr Alcan with the full knowledge and permission of Mr Lefebvre as well as Sean Windeat and Simon Phillips of BGC Group. All of the sums were ultimately repaid to Mr Lefebvre.

38. Paragraph 18(n)(iv) is not admitted as the facts and matters therein are beyond Mr Alcan's knowledge.

(3) National insurance contributions

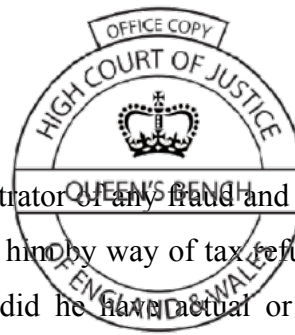
39. Paragraph 19 is not admitted as the facts and matters therein are beyond Mr Alcan's knowledge.

(4) Incorrect booking of payments

40. Paragraph 20 is not admitted as the facts and matters therein are beyond Mr Alcan's knowledge.

IV. DISCOVERY OF FRAUDULENT BEHAVIOUR

41. Paragraphs 21-31 are not admitted as the facts and matters therein are beyond Mr Alcan's knowledge. For the avoidance of doubt, Mr Alcan completely denies any allegations by Mr Viney that he was in any way a participant in Mr Viney's fraud. Mr Alcan had told Mr Viney, in the latter's capacity as Mr Alcan's friend, that he would provide financial assistance if Mr Viney was ever in financial difficulty. This was not unusual – Mr Alcan has made the same offer to many friends and has financially helped many people over the course of his life.

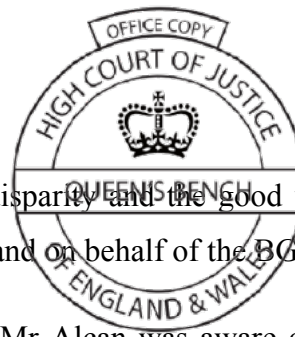


42. Paragraph 32 is denied. Mr Alcan was not a perpetrator of any fraud and believed that the sums he received were legitimate payments to him by way of tax refunds. He was not an active participant in the Frauds, neither did he have actual or constructive knowledge of the same. Mr Alcan was a busy man who did not give much or any attention or thought to his tax and financial affairs. He simply relied on advice from Mr Viney and as such became unwittingly involved in the latter's schemes.
43. Whilst paragraph 32(a) is not admitted, it is averred that if Mr Viney has made such a representation it is a falsehood designed to deflect the blame for the wrongful acts he has committed onto Mr Alcan.
44. The first and second sentence of paragraph 32(b) is admitted. The third sentence is denied. Mr Alcan paid in excess of £7.5m million at the direction of Mr Viney to accounts that he understood and believed were controlled by the BGC Group. He believed, on the representations of Mr Viney, that he was due a large tax rebate dating back many years as a result of his status within BCG, and that balance of the payments that he retained was proportionate to this status.
45. The first sentence of paragraph 32(c) is admitted. The second sentence is denied. Mr Alcan outsourced the entirety of his tax affairs to Mr Viney and his external accountant, Stephen Metcalfe. He had no knowledge of the amount of tax he was paying each year and therefore had no expectations as to the appropriate level of payment.
46. The first sentence of paragraph 32(d) is admitted, save that Mr Alcan believed that Mr Viney, acting as his agent, had informed his accountant of any relevant matters including tax rebates. The second sentence is denied. Mr Alcan did not involve himself with his tax affairs, but instead left them to Mr Viney in the belief that they would be managed properly and legitimately. He trusted Mr Viney implicitly and therefore believed Mr Viney when he was informed that he was to receive a tax rebate from HMRC.
47. Paragraph 32(e) is not admitted and TBIS is put to proof of the same.
48. Paragraph 32(f), is denied. The majority of these payments were made at Mr Viney's request to accounts that Mr Alcan believed to be BGC or TBIS accounts. He had no knowledge that they were controlled by Mr Viney personally. A small number of



payments were made to Mr Viney personally because Mr Alcan felt guilty about the disparity in their income.

49. It is admitted that Mr Alcan made the payments referred to in paragraph 32(f)(i) and (ii). He was instructed as to where to send these by Mr Viney.
50. It is admitted that Mr Alcan made the payment referred to in paragraph 32(f)(iii). He believed that Mr Viney had just managed to obtain a large tax refund on his behalf, and when Mr Viney requested £100,000 for a stock investment he found it difficult to say no in the light of what he believed to be Mr Viney's excellent service.
51. It is admitted that Mr Alcan made the payment referred to in paragraph 32(f)(iv). He believed that this was a payment for the benefit of BGC. He made the payment on the basis of a written instruction from Mr Viney as to where to make the payment.
52. It is admitted that Mr Alcan had a WhatsApp exchange with Mr Viney on or around 24 August 2018 containing an image of a purported solicitor's letter as referred to in paragraph 32(f)(v). Mr Viney asked Mr Alcan for such a letter in the context of domestic issues he said he was experiencing with his wife, the details of which are not known to Mr Alcan. As far as Mr Alcan can recall, the draft letter was prepared by Mr Viney. There was never an intention for Mr Alcan to pass any properties to Mr Viney or his wife and he did not do so.
53. As to the first sentence of paragraph 32(g), whilst it is admitted that Mr Alcan made various payments to Mr Viney over the years by way of gift to him and his family, it is denied that this was an intentional payment of the proceeds of fraud. The second sentence is denied. Mr Alcan is a generous man who, as above, felt guilty that his friend and colleague, who he believed had been instrumental in obtaining substantial tax rebates for him, earned a considerably smaller salary.
54. Paragraphs 32(g)(i)-(ii) is admitted. However, Mr Alcan did not, nor did he ever truly intend to, buy either the flat or the car. He simply had difficulty denying requests for gifts from his friend.
55. Paragraphs 32(g)(iii)-(iv) are admitted, save that it is denied that this is inconsistent with the items being legitimate gifts. Mr Alcan is a generous man who, as above, felt guilty about the disparity in earnings between him and his friend and colleague. He felt that



he should 'spoil' Mr Viney in the light of this disparity and the good work that he believed Mr Viney to be doing both on his behalf and on behalf of the BGC Group.

56. As to paragraph 32(h), whilst it is admitted that Mr Alcan was aware of substantial payments in advance of them being made, it is denied that he was aware that they were fraudulent and that he lied about the purpose of the payments in order to cover his and Mr Viney's tracks. Mr Alcan believed that the payments were legitimate. He had been told by Mr Viney to call his bank and inform them that a large payment was incoming in order prevent the bank from rejecting the payment. He was under a great deal of time pressure and so gave the recipient bank what he thought would be the quickest explanation in order to keep the telephone call as short as possible.
57. The first sentence of paragraph 32(h)(i) is admitted. The second sentence is admitted, but it is averred that this untruth was not told in the facilitation of any fraud, but merely as an expedience to limit time spent on the telephone with the bank.
58. The first three sentences of paragraph 32(h)(ii) are admitted. The final sentence is admitted, save that it is denied that Mr Alcan knowingly made a false representation. He believed that the payment was a legitimate one from HMRC resulting from Mr Viney's efforts to claw back historic tax refunds.
59. Paragraph 32(i) is denied, save that it is admitted that Mr Alcan did delete certain text messages that were irrelevant to the case brought by TBIS, as per paragraph 60 below.
60. Paragraph 32(i)(i) is admitted. This was an error of judgment on Mr Alcan's part which he has previously brought to the attention of TBIS and for which he has apologised. Some of the deleted messages contained inappropriate content of a sexual nature, which he was embarrassed at the prospect of colleagues and/or lawyers being able to see. Others contained inquiries from Mr Alcan to Mr Viney as to whether any more rebates or dividends were due to be paid to him. In a moment of deep stress, Mr Alcan believed that these would be misinterpreted and deleted them. He regrets his actions.
61. The first sentence of paragraph 32(i)(ii) is admitted. The second and third sentences are denied. The WhatsApp messages were unwittingly wiped whilst he was travelling through the Eurostar tunnel, or alternatively whilst he was undertaking a regular erasure of his WhatsApp messages.



62. The first sentence of paragraph 31(i)(iii) is denied. Mr Alcan has not destroyed any further documents. None of those documents would be relevant in any event. The second and third sentences are noted.

63. Paragraph 33 and its subparagraphs and paragraph 34 are denied for the reasons set out in this defence. Mr Alcan had no knowledge of the fraud being perpetrated by Mr Viney and did not persuade, encourage or assist him in any way.

64. The first five sentences of paragraph 34(a) are admitted. The sixth sentence is denied insofar as that it is alleged that this payment constituted Mr Alcan sharing the fruits of dishonesty with Mr Viney. Mr Alcan did cash the cheque, believing that if a refund was necessary the IRS would contact him at which point he would make the repayment. The transfer of £12,500 was unrelated and represented a payment to Mr Viney by way of thanks for the excellent service that Mr Alcan believed Mr Viney to be providing to BGC.

65. As to paragraph 34(b), it is not admitted that the first occasion on which TBIS was defrauded was on 16 January 2015. TBIS itself pleads that investigations are ongoing and that they are unaware of the extent of Mr Viney's fraudulent activities. Whilst it is admitted that the sum of £2,009,931.00 was paid into the Jersey Alcan Account, it is averred that Mr Alcan believed that this was a legitimate payment of a tax rebate owed to him.

66. In the premises, paragraph 34(c) is denied.

(5) Claim in unlawful means conspiracy against Mr Viney and Mr Alcan

67. The first sentence of paragraph 35 is denied. Mr Viney perpetrated these frauds alone. Mr Alcan was entirely unaware of Mr Viney's fraudulent conduct. In the premises, paragraphs 35(a)-(c) are denied.

(6) Claim in dishonest assistance against Mr Viney and Mr Alcan

68. Paragraph 36 is denied in its entirety. As set out above, Mr Alcan did not commit any of the acts which are alleged to have constituted his breaches of fiduciary duty. He had no knowledge that Mr Viney was acting in any improper way. He implicitly trusted Mr



Viney, who was a very senior and highly respected member of the staff of the BGC Group.

(7) Claim in knowing receipt

69. Paragraph 37 is denied in its entirety in so far as it relates to Mr Alcan. As above, he had no knowledge that he received any improper payments. He believed them to be legitimate tax rebates due to him. He paid on any sums that he believed he had received as the BGC Group's nominated tax partner to accounts that he believed to belong to the BGC Group on Mr Viney's instructions.

(8) Claim in unjust enrichment

70. Paragraph 38 is admitted. Mr Alcan was the unknowing recipient of sums to which he is now aware that he was not entitled.

71. Paragraph 39 is denied in so far as it relates to Mr Alcan. He bona fide changed his position as a result of receiving the payments from TBIS, in that the monies were spent by Mr Alcan by way of daily outgoing on expenditures including living expenses, entertainment, travel, holidays, gifts and other things. Copies of Mr Alcan's bank statements identifying these payments have been disclosed to TBIS already in these proceedings.

72. In the premises, TBIS is not entitled to recover the sums specified at paragraph 37.

VII. LOSS AND DAMAGE AND EQUITABLE COMPENSATION

73. Paragraphs 40(a) and (b) are noted.

74. Paragraphs 40(c)-(e) and 41-43 are denied in so far as they relate to Mr Alcan. As set out in this defence above, Mr Alcan did not knowingly undertake any actions that caused the BCG Group loss and damage, or commit any breaches of his fiduciary duties.

VIII. PROPRIETARY AND DECLARATORY CLAIMS

75. Paragraph 44 is denied in so far as it relates to Mr Alcan. As above, Mr Alcan did not participate in any fraud, and to the extent that he received payments as the result of a mistake asserts a change of position defence as per paragraph 71 above.



76. Paragraph 45 is not admitted as the facts and matters therein are beyond Mr Alcan's knowledge.

77. Paragraphs 46-48 are denied in so far as they relate to Mr Alcan. In the circumstances set out in this defence, he has no liability to account to the BGC Group.

IX. INTEREST

78. The entitlement asserted in paragraph 49 is admitted. However, for the avoidance of doubt, it is denied that TBIS is entitled to any interest against Mr Alcan as no sums are due from him to it.


JESSICA CLARK-JONES

XXIV OLD BUILDINGS

3 FEBRUARY 2022

STATEMENT OF TRUTH

The Second Defendant believes that the facts stated in this Defence are true. I am duly authorised by the Second Defendant to sign this statement. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed:

Xavier Alcan, the Second Defendant.

Date: 3 February 2022

Filed and served this 3rd day of February by Taylor Wessing LLP, Solicitors for the Second Defendant (Ref: DDF/ALC26.U1).