



Appendix D - Exhibit 6

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MINUTE PAPER
NEW SOUTH WALES

File No. N87/09209, N88/07987
N93/05393 & N97/02969-3616

Manager
Legal Services

Prosecution of **Peter Tomson aka Vilaysack and Kongkeo Keomalavong**
Represented by Barristers **Parnell** for Keomalavong & **Gray** for Vilaysack
Prosecution by **AGS Lyn Brady & Barristers P Johnson & Paul Lakatos**
Charges: **Customs Act 1901 - sections 233(l)(a); 234(l)(a); 234(1) (d) & 234(l)(e)**
x 5 offences for customs entries 1M72680485(NCS); 1M72181152K(Winelux);
1M72110152B(Gold Vincent); IM71950432B(Steady Export) and 1M80900482N
(Cameron Trading) Crimes Act 1914 - section 4K(3)
Location: **Downing Centre Local Court, Sydney**

Dates of Hearings:

1. 26 - 29 July 1993 (4 days)
2. 18 - 21 April 1994 (4 days)
3. 30/1/95 to 3/2/95 (5 days)
4. 28/4/95 listed for written submissions
5. 27/6/95 **Magistrate's** decision Sutherland Local Court
6. 25/7/95 listed for Appeal before Supreme Court for mention on 25 August 1995 to determine a Hearing date
7. 28/8/95 **call** over relisted for Hearing Supreme Court- adjourned to 3/10/95
8. 3/10/95 listed for Hearing in Applications List Supreme Court
9. 4/12/95 stood over to 26/2/96 Supreme Court
10. Notice of Motion to seek expedition filed by "defendant's solicitor for return date of 25/3/96
11. 10/10/96 change of solicitors (**Barwick & Boitano**) relisted for Hearing & expedition- advice received not listed on 10/10/96 placed on call over list for 15/11/96.
12. 15/11/96 set down for Hearing 27/2/97
13. 27/2/97 Half day Hearing Justice Abadee

Plea: **Not guilty to all Charges**

Pre Hearing History

This matter relates to the long running prosecution into importations of clothing by Paul Vilaysack in conjunction with various family members and others using various business and company names such as Thongson Imports and Exports, New Star Fashions, **Buosane** and Paul Vilaysack trading as Thongson **Imports, Vamani Pty Ltd, Lanwren Pty Ltd etc.**

It first came to notice in June 1987 when Commodity Audit Group One made enquiries into this importing company, in which trade opinion confirmed that importations were grossly undervalued.

Subsequent to those enquiries, requests for information made through Intelligence revealed the following incidents:-

- In 1983, Vilaysack came to notice as importing goods through Parcels Post without paying the correct amount of duty. No further inquiries were made due to lack of evidence.
- On 22 October 1985 he was found guilty for one offence of section 233(1)(a) and 234(1)(e) of the Customs Act 1901, as a result of importing undeclared commercial quantities of new clothing in passenger baggage through SKSA. Vilaysack was fined \$1,800.00 and \$488.00 in costs.

On another occasion in November 1985 he was found not guilty for a different shipment for a similar offence.

As a result of Commodity Audit enquiries, Investigations carried out 214 action on 20 August 1987 resulting in the following significant events:-

- 22/2/1988 seizure of goods for entries 1M72680485K (New Calcutta Store); 1M71950432B (Steady Export); 1M72181152K (Winelux) and 1M72110152B (Gold Vincent) in relation to Thongson Imports & Exports.
- 11/4/1988 meeting held at AGS with Peter Swinton. Swinton advised that due to seriousness of the offences should be dealt with by DPP. On 18/4/1988 DPP agree to take on matter based upon preliminary advice.
- 1/6/1988 DPP advice supporting the gathering of overseas evidential material, after exhausting evidence obtained in Australia. Meeting held with DPP on 18/1/1989 re enforces the importance of obtaining evidence from overseas.
- 27/6/1988 proceedings instituted in the Federal Court under ADJR and Judiciary Act by Vilaysack/Lanwren seeking review of decisions taken in relation to certain imports for release or delivery of goods and access to Customs records.
- 30/6/1988 further 214 action against Paul Vilaysack t/a Thongson Imports & Exports and Lanwren Pty Ltd.
- 22,25/26 July applications heard before Justice Burchett Federal Court. Application withdrawn by Vilaysack/Lanwren Pty Ltd during proceedings. Costs of \$10,434.81 awarded to ACS. Balance outstanding at 24/7/92 is \$7,934.81.

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- 29/9/1988 seizure of goods for entry 1M80900482N (Cameron Trading) in relation to Lanwren Pty Ltd/ KongKeo Keomalavong.
- Overseas evidence obtained in Hong Kong & Bangkok by Officers Grausam and Locker during trip between the period 9/2/1989 and 23/2/1989. DPP advice on 24/2/1989 evaluated the need to return overseas to obtain whatever evidence is available in admissible form from Thai Customs and banks, which were not available at the time from the previous trip.
- 3/8/1989 DPP advise further overseas trip required. Approval granted for Grausam to revisit. Visit occurs between 6/12/1989 and 15/12/1989.
- 14/8/1990 Prosecution Brief of Evidence forwarded to DPP comprises of 18 lever arch files pertaining to 84 importations.
- 27/8/1990 section 208 A Notices issued with respect to entries 1M72680485K(New Calcutta Store); 1M71950432B(Steady Export); 1M72181152K(Winelux) and 1M72110152B(Gold Vincent) in relation to Thongson Imports & Exports and entry 1M80900482N (Cameron Trading) in relation to Lanwren Pty Ltd/ KongKeo Keomalavong.
- 11/12/1990 DPP legal advice located at folios 245-258 of file N88/07987 Part 2 advises insufficient evidence to proceed under s29D or 86 A of the Crimes Act 1914. Suggest that Prosecution Brief be referred to AGS for prosecution under Customs Act 1901, whereby the averment provisions can be advantaged.
- 10/1/1991 Prosecution Brief referred to AGS. Acknowledgement received 23/9/1991 and 14/10/1991 that AGS Lyn Brady has carriage of matter.
- 7 July 1992 conference held with AGS Lyn Brady and Banister Peter Johnson with Investigations Officer Grausam and John Hung. At conference it was decided to proceed only with importations in which seizures occurred. That is, 5 shipments only.
- Informations laid at St James Local Court on 16/7/92 (4 Informations on shipment 1M71950432B (Steady Export) for mention on 7/9/92 re Vilaysack
- Informations laid at St James Local Court on 24/7/92 (4 Informations on shipment 1M72110152B(Gold Vincent) for mention on 7/9/92 re Vilaysack
- Informations laid at St James Local Court on 6/8/92 (4 Informations for shipment 1M72181152K(Winelux) for mention 7/9/92 re Vilaysack.
- Informations laid at St James Local Court on 3/9/92 (4 Informations for shipment 1M72680485K(New Calcutta Store) for mention on 21/9/92 re Vilaysack

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- Informations laid at St James Local Court on 3/9/92 (4 Informations for shipment 1M80900482N (Cameron Trading) for mention on 28/9/92 re Keomalavong/Lanwren Pty Ltd
- 21/6/1993 Conference held with Barrister Peter Johnson, Lyn Brady, Greg Grausam and John Hung to discuss the Barrister's Memorandum of Advice and to discuss the number of witnesses required . Total involved for ACS is 27.
- All matters above were adjourned for Defended Hearing for 4 days on 26-29 July 1993.

Defended Hearing at Downing Centre Local Court 26-29/7/93 (4 days)

The prosecution case to the Court relied upon three categories of evidence to prove beyond reasonable doubt :-

- whether the amounts shown on the produced invoices presented to Customs were incorrect, as compared to documents submitted to various authorities of the exporting countries and seized by Investigation Officers overseas.
- the valuation evidence given by George Prelea for the ACS as compared with the defendant's witness, Ms Yolnapa Chonwanarat and
- the despatch of amounts of money by the defendant overseas, Tomson.

The Court earlier in these proceedings, found that the prosecution had established a prima facie case in respect of each of the informations, i.e. that there was evidence which if accepted could make out the charges on the criminal standard.

Evidence was heard from the following witnesses :-

27/7/93

Thomas Simpson Customs Agent, Patrick Daunt Customs Agent, Malcolm Graham Customs Entry Processing, Gregory Grausam Investigations Case Officer.

28/7/93 to 29/7/93

George Prelea expert witness on all aspects of clothing imports. Mr Prelea's unfinished evidence took two days as a result of the objection by defendant's counsel against the tender of schedules relating to the exhibits. It resulted in Mr Prelea describing each exhibit (198 separate garments) and giving a valuation based upon the conservative F.O.B. value for each of the garments he examined. His evidence was to highlight that the invoice price of the garments shown on the produced documents presented to Customs were less than the cost of the material used in the manufacture of the garment or substantially less than the manufactured cost.

Part Heard at Downing Centre Local Court 18-21/4/94 (4 days)

18/4/94

Completion of George Prelea's evidence and cross examination. The context of the cross examination did not refute his expertise in the clothing industry, but emphasised that his knowledge of the market related to a **different** clientele, as a buying agent for Boutiques and fashion houses. His expert testimony went as far as sizing and costing the fabric to adding the costs of fashion accessories (i.e. buttons, sequins, embroidery) to a structured costing leading to an FOB value for each garment.

19/4/94 - 21/4/94

Commencement of Yolnapa Chonwanarat's (defendant's expert clothing 21/4/94 witness) . Ms Chonwanarat's evidence was presented through a Laotian interpreter on 20 April 1994, as there was no Thai Interpreter available.

Ms Souvannavong, the interpreter could converse in Thai with Ms Chonwanarat, and it was initially accepted by both Counsels and the Court to begin her testimony. However, it was noted on the following day by Mr Parnell, defendant Barrister, that there were subtle differences in dialect and as a result, at least a day's evidence was lost. Proceedings were delayed further through the unavailability of an official Thai interpreter. Magistrate Connor and Pamell could not agree on who was responsible for obtaining an official Thai interpreter.

Ms Chonwanarat's valuation of the exhibits was based upon her expertise as a shop owner and buyer of Asian garments based in Thailand. She described herself as a clothing export broker, in which *"I went to different shops to buy clothes that are kept in stock, put on a big pile and then anyone who is interested to buy, they just sell in very cheap price, very low price..... I cannot choose or pick only the good ones and I need to buy the whole lot and there is no separate quality of the clothes. The whole quality is - they just put it together and I just need to buy the whole lot"*. Her basis of buying depended upon whether the items were out of fashion, were produced as an overrun, the quantity purchased and the demand for the items. She presented a much different approach to Mr Prelea's valuation of the exhibits in which she did not cost the material, labour or take into account the final cost of the item.

Part Heard at Downing Centre Local Court 30/1/95 to 3/2/95 (5 days)

30/1/95 & 31/1/95

Completion of Ms Chonwanarat's evidence included valuing the remainder of the samples in exhibit, and her business relationship with Vilaysack/Tomson, which included the way she carried out business with overseas buyers. Her evidence was of a general nature and her recollection of receiving money from Tomson and her ability to recall how it was disposed of lacked credibility.

Noel Balzary, a former Customs Officer employed in the Dumping Section of the ACS in Central Office (defendant's witness) spoke about the relationship between the invoice and the export declaration and about production overruns. His evidence

supported Tomson in that, as far as he was concerned the export declaration is insufficient as evidence of money price paid. He spoke briefly about production overruns in that surplus manufactured goods could be sold for less than manufactured costs.

1/2/95 - 2/2/95

The defendant Tomson aka **Vilaysack**, with the assistance of an interpreter, gave evidence into his business dealings here and overseas, in particular with Mr Frank **Chien** concerning his payment of monies in respect of an importation, the subject of these proceedings. Tomson was also responsible for the purchase of garments imported by **Lanwren Pty Ltd** of which Keomalavong has been charged with. Tomson seeks to explain his use of other companies to import goods on the basis of his unfair treatment by Customs, the fact that Customs confiscated each of his other shipments. In other words, Keomalavong was merely used to import "goods on **Tomson's** behalf.

Evidence was taken from Souk **Sengehansavang**, who gave a character reference for Keomalavong.

Evidence was provided by Ian Rodda, a customs consultant concerning affidavits taken by him on behalf of both defendants in a Federal Court action which was discontinued.

27/6/95 **Magistrate's decision Sutherland Local Court**

In relation to the falsity of the invoices, Magistrate Connor found that the prosecution had not proved beyond reasonable doubt that the price paid was false. He was satisfied that the defendants took no part in the preparation of the overseas documents, nor did they submit those documents to the various overseas authorities. There was no significant oral evidence before the court as to the relationship between the overseas documents and the invoice presented to Customs.

In relation to the valuation of the garments, he said that Mr **Prelea** was in the clothing industry and gave evidence as to a conservative FOB price for the goods. He found that there was an appreciable difference in the manner in which both Ms **Chonwanarat** and Mr **Prelea** operated. He formed the opinion that Mr **Prelea** did not fully understand or appreciate the market in which Ms **Chonwanarat** functioned, the existence of which was corroborated by Mr **Balzary's** evidence. Mr **Prelea** had expertise in the Asian market but Connor did not believe his experience was relevant to the market in which the defendants operated. There was nothing raised in there evidence, which tended to establish that the details on the invoices were false.

In relation to the despatch of amounts of money by the defendant overseas, Connor referred to the transfer of the **\$81,000** to Mr **Chien** but held that it was not beyond reasonable doubt that the price which had been paid for the goods was false.

He found that both defendants were entitled to have each information dismissed.

An application for costs was made by the **defendants'** Counsel and was rejected stating that section 263 of the Customs Act was the operative section and took precedence over s81(4) of the Justices Act. He said that he had read the Customs Act and that the section was discretionary and that he *may* award costs to a successful **defendant** . .

On or about 25 July 1995 an Appeal to the Supreme Court was lodged by both **Defendants'** Counsel against Magistrate **Connor's** decision not to award costs against the Comptroller General of Customs. This very matter has been in the Supreme Court for at least 18 months in which there have been six appearances made eventuating in a Hearing date set for 27/2/97. On at least three occasions the matter was delayed by defendant Counsel (~~28~~8/95, 3/10/95 and 4/12/95)

27 February 1997

Appeal for costs heard before Justice Abadee. Parker QC and Mr **Parnell** appeared for the applicants and Mr **Lakatos** appeared on our behalf. His Honour decided that Magistrate Connor committed an error of law by having regard to s.81 of the Justices Act when exercising his discretion whether to award costs under s.263 of the Customs Act. He ordered that Magistrate Connor re-exercise his discretion under s.263 of the Customs Act having regard to *Latoudis v Casey*.

CONCLUSION

The issue of costs is the main topic still outstanding. Counsel for both defendants has contacted the AGS (Lyn Brady see folios 607/608) to propose that the ACS consent to an Order for costs, in order to obviate further court time before Magistrate Connor. Defendant Counsel has advised that if costs were contested, some 2 days of court time may be needed.

There will be substantial costs involved even if you discard unnecessary delays which may or could be claimed. The unnecessary delays include as follows :-

- Defendant Counsel not able to advise ACS the order of appearance of ACS witnesses, who were on standby and not required to testify. (Customs Officers Tony Graham \$991.50, Neil **Stockbridge** \$418.00, Jim **Delmenico** (return air fare costs from Brisbane \$200.00?.
- George **Prelea's** requirement to re attend for part heard Hearing (could have been obviated if defendant counsel had accepted schedules) \$16,464.07
- Costs of Translators for Thai Language on standby 26/27 July 1993 \$443.00 who were not required.
- Costs of \$10,434.81 awarded to ACS as a result of Federal Court Application withdrawn by **Vilaysack/Lanwren Pty Ltd**. Balance outstanding at 24/7/92 is \$7,934.81.

- possible delay caused by Defendant Counsel in not accepting George Prelea's valuation schedules. Prelea was required to give 2 1/2 days evidence in valuing each of the 198 samples provided as court exhibits.
- delay of approximately one day in court time in obtaining an official Thai interpreter for defendant's witness, Miss Chonwanarat. Onus was either on the Court or Defendant Counsel to provide.
- 13 court days to complete a prosecution involving 5 shipments caused through delay mainly by defendant Counsel, Parnell in particular. It should have been completed in 5 days.

It is hard to estimate the costs which Defendants' Counsel would be seeking when you consider the following:-

- Tomson/Keomalavong have been represented by at least 3 firms of solicitors being Stacks Law Firm, Marsdens Solicitors and Barwick and Boitano. Barwick & Boitano through the defended Hearing and Appeal for costs.
- Barristers Parnell for Defended Hearing throughout with Ian Rodda in attendance and Barrister Ventry Gray. QC Parker in Appeals on costs.
- costs of their witness from overseas Ms Chonwanarat, and other witnesses.

If you can use our costs alone, approximately \$170,000.00 (costs of \$162,176.00 up to the end of the Defended Hearing plus AGS costs to 27/2/97 \$1,050.00 and representations made by Paul Lakatos in preparing submissions and attendances to the Supreme Court in responding to the Appeal for Costs \$4,000.00) you could be looking at doubling our costs. It would not surprise me if they would claim \$400,000.00. as a conservative estimate.

The only other issue outstanding in this matter is that the seized shipments are condemned, as the owners of the shipments did not take proceedings for restoration of the goods in accordance with S.208A of the Customs Act. Please note also that the exhibits of approximately 198 garments are still held in the evidence room in Investigations.

Prosecution files are now referred to you for your information and further action.

John Hung
 John Hung
 Legal Services
 8 May 1997

Greg Power
 Referred
 whether there has been any response
 to the AGS what Customs is doing
 is reaching a hearing or costs of
 avoid I think the D's costs
 sensible but should be lower than ours.
 28-5-97
 J. O'Neil