10,1982

In the Privy Council

No. 20 of 1980

ON APPEAL

FROM THE SUPREME COURT OF HONG KONG
(APPELLATE JURISDICTION)
CIVIL APPEAL NO. 12 OF 1978

(On appeal from High Court Action No. 2459 of 1976, High Court Miscellaneous Proceedings No. 155 of 1977 and High Court Miscellaneous Proceedings No. 540 of 1977)

BETWEEN

DAVID NG PAK SHING	*1st Appellant*	(The 4th, 5th, 6th and 7th Defendants in High Court Action No. 2459 of 1976, High Court Miscellaneous Proceedings No. 155 of 1977 and High Court Miscellaneous Proceedings No. 540 of 1977)
MELVILLE EDWARD IVES	*2nd Appellant*	
HO CHAPMAN	*3rd Appellant*	
FERMAY COMPANY, LTD.	*4th Appellant*	

and

LEE ING CHEE also known as LEE HAI HOCK	*1st Respondent*	(The Plaintiff in High Court Action No. 2459 of 1976)
LEE KON WAH	*2nd Respondent*	(The Plaintiff in High Court Miscellaneous Proceedings No. 155 of 1977)
MALAYSIA BORNEO FINANCE CORPORATION (M) BERHAD	*3rd Respondent*	(The Plaintiff in High Court Miscellaneous Proceedings No. 540 of 1977)

SUPPLEMENTAL CASE FOR THE 1ST APPELLANT

RECORD

PRELIMINARY

1. This is an appeal from the judgment of the Court of Appeal of Hong Kong (Briggs, C. J., Huggins and Pickering, JJ.A.) dated the 22nd March 1979 whereby they dismissed an appeal by this Appellant (the 4th Defendant in the original proceedings) and by the other Appellants, the 5th, 6th and 7th Defendants

in the original proceedings, against a Judgment dated the 25th January 1978 of the High Court of Hong Kong (Yang, J.) which made absolute charging orders nisi in respect of 15 million shares in San Imperial Corporation Limited ("San Imperial"), a public company, registered in the name of the Appellant Fermay Company Limited ("Fermay") and a garnishee order in respect of HK$2,813,300.00, being the net proceeds of sale of 2,164,200 shares in San Imperial purchased by this Appellant, Mr. Ng. This garnishee is the subject of Mr. Ng's Supplemental Case and separate appeal on this issue. The Court of Appeal allowed the appeal of other Defendants in the Court below, with the result that the charging order made by Yang, J. over the 15 million shares was discharged. Instead the proceeds of sale were attached. But these facts do not alter the substance of the appeal, which is that neither the shares nor the proceeds of sale should have been attached for the reasons given below. Mr. Ng does not appeal separately in respect of the 15 million shares, or the proceeds of sale of those shares. But this Case for Mr. Ng is concerned to deal with that purchase, because all the transactions should be considered together, and many of the factors affecting the 15 million shares, including the approach of the Judges in the Court below apply also to the 2,164,200 shares or, further or in the alternative provide grounds for distinguishing the 15 million share transaction, so as to show that the garnishee order in respect of HK$2,813,300.00 should be set aside.

2. The facts giving rise to the proceedings and to this appeal are set out in the case for the Appellants other than Mr. Ng. They can be briefly summarised as follows so far as relevant for this Supplemental Case of Mr. Ng. The trial was the trial together of proceedings in which Mr. Lee Kon Wah and Mr. Lee Ing Chee ("the Lees") were Plaintiffs and proceedings in which Malaysia Borneo Finance (M) Berhad ("MBF") was the Plaintiff. MBF is a company incorporated under the laws of Malaysia. All the proceedings were for the attachment of shares in San Imperial and for the garnishee of funds representing the proceeds of sale of further shares in San Imperial. The actions in which the Lees were Plaintiffs were consolidated. They were H. C. No. 2459 of 1976 in which Mr. Lee Ing Chee on the 5th July 1977 obtained Judgment in the High Court of Hong Kong against Mr. Choo Kim San ("Mr. San") for M$2,338,651.94 and interest, and H.C.M.P. No. 155 of 1977 in which Mr. Lee Kon Wah sought to enforce a Judgment which he had obtained in Malaysia in Action No. 2445 of 1976 in the High Court of Malaysia in Kuala Lumpur against Mr. San for M$1,354,037.35 and interest. The proceedings in which MBF was Plaintiff were H.C.M.P. No. 540 of 1977 to enforce a Judgment obtained by MBF against Mr. San in the High Court of Malaysia in Kuala Lumpur for M$9,360,831.58 and interest.

3. In all the actions the issue was whether Mr. San had been at the relevant time the beneficial owner of the shares in San Imperial which or the proceeds of sale of which were sought to be attached. The Appellants claim that they had acquired the shares beneficially, and they had ceased to be the property of Mr. San before the proceedings to attach them were effective. The Plaintiff in each case maintained that the various alleged purchases upon which the Appellants relied were shams or facades, that the beneficial interest in the shares remained in Mr. San and that accordingly they were still available to be attached. That is the principal issue in this Appeal.

4. Most of the shares in San Imperial in issue in this case had been acquired by the Appellants Melville Edward Ives ("Mr. Ives"), Mr. Ho Chapman ("Mr. Ho") and Mr. Ng as a syndicate, and these three Appellants are together referred to as "the Syndicate". But some had been acquired by this Appellant Mr. Ng personally. Different considerations applied to him. That is the reason for this Supplemental Case and separate appeal on this issue.

5. Mr. San had failed on the 28th October 1976 to answer to his bail in Victoria District Court in Hong Kong on various criminal charges and had absconded from Hong Kong.

6. At that time the share capital of San Imperial was HK$150,000,000.00 divided into 150,000,000 shares of HK$1 each, of which 48,200,000 had been issued and were fully paid. That is still the issued capital.

7. Mr. San had been a controlling influence in San Imperial, so much so that he had had its name changed from Imperial Hotel Holdings Limited to San Imperial Corporation Limited in order to incorporate his own name into the name of the company.

8. San Imperial is however a public company whose shares were, until dealings were suspended as a result of these proceedings, listed on Stock Exchanges in Hong Kong. The Appellants' case at first instance and in the Court of Appeal was that they had formed the Syndicate with the idea of collecting into one parcel a controlling interest in San Imperial and that they should then sell it to Mr. James Coe. It was accepted, and still is accepted, that they had this purpose or plan.

PURCHASES OF SHARES BY SYNDICATE AND MR. NG

9. Assuming that all the transactions in issue were valid it is common ground that the following purchases were made by the Syndicate or by Mr. Ng alone:

(1) 15 million shares

These shares were purchased by Mr. Ng on behalf of the Syndicate on the 23rd March 1977 by an agreement bearing that date in Taiwan from a Mr. Chow and his wife Hwang, who had got them from Mr. San. There is a dispute about whether Chow and Hwang were nominees for Mr. San, but for reasons more fully explained below this issue is immaterial. The question is whether Mr. Ng on behalf of the Syndicate acquired a beneficial title or whether the Syndicate were nominees for Mr. San. The price was 60¢ a share. This purchase was successfully attacked as being a sham, leaving the beneficial interest in Mr. San. The purchase of the 15 million shares is considered in this Case for Mr. Ng (a) to point the contrast with the purchases below mentioned made by Mr. Ng personally (b) because the two cannot and should not be considered separately but should be considered as part of one financial operation and (c) because the approach of the Courts below which led them to con- *1150*

clude that the purchase of the 15 million shares was a sham was erroneous and the error coloured the Courts' approach to Mr. Ng's separate purchases.

(2) 2,164,200 shares

These were acquired by Mr. Ng on his own account. They were acquired in two parcels. The first was a purchase of 514,200 shares at 20¢ a share from a Mr. Lee and a Mr. Fong, made during a visit Mr. Ng paid to Taiwan between the 9th and the 13th February 1977. The second was a purchase of 1,650,000 shares from Mr. Lee and Mr. Fong at 20¢ a share made during a visit Mr. Ng paid to Taiwan between the 27th February and the 2nd March 1977. These transactions were also successfully attacked as being a sham leaving the beneficial interest in Mr. San and the shares and the proceeds of their sale being therefore subject to attachment.

(3) 3,226,000 shares

These were purchased by the Syndicate on the 30th April 1977 from Malaysian American Finance Corporation (Hong Kong) Limited ("MAF") at a price of HK$1.50 per share. These shares were purchased pursuant to an agreement dated the 30th March 1977 between MAF and Mr. Ng on behalf of the Syndicate whereby MAF granted an option to Mr. Ng to purchase up to 6 million shares in San Imperial. This transaction was unsuccessfully attacked as being a sham.

(4) 2,609,000 shares

These were purchased by Mr. Ng for the Syndicate either privately or on Stock Exchanges in Hong Kong at an aggregate cost of HK$1,576,464.40. No attack was made on these purchases.

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10. The Judgment of the learned Judge records that in the course of final addresses it was agreed by counsel for all parties that they should not be strictly bound by their respective pleadings, but that each party must not go beyond the broad concept of his own pleadings. The learned Judge accepted this approach and the attack upon the first three purchases mentioned in the last preceding paragraph is considered in this appeal on that basis. It is, however submitted, that this approach was erroneous and was a contributory factor in persuading the Courts below that the transactions in issue were a sham, partly on impression and partly upon circumstances which ought not to have led to the conclusion, but were instead fashioned to support a conclusion which had already been reached.

ERRONEOUS APPROACH OF COURT OF FIRST INSTANCE AND COURT OF APPEAL

11. Before dealing with each purchase in issue it is necessary to point out, as will be seen, that the Courts below treated each purchase in isolation. The Agree-

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ment dated the 23rd March 1977 for the purchase of 15 million shares was held

to be a sham, the two purchases by Mr. Ng of 514,000 and 1,650,000 shares were held to be shams, the purchase from MAF was upheld as valid and the purchases of 2,609,000 shares from private purchasers and on the market were not even challenged. The impact of the four taken together was not considered in the Judgments. In the result the Courts below fell into error in the following respects:

(1) All the purchases taken together supported the Defendants' case by showing an independent purpose or plan in putting together a controlling parcel of shares, so as to realise them to best advantage. Mr. Ho had no previous connection with Mr. San. No reason was ever given or proved why he should provide a facade for a sale by Mr. San to himself, or why, if there was a facade, Mr. Ho was a necessary party to it. Yang, J. described him as a businessman of considerable means whose chief role in the Syndicate was to find buyers for the shares in San Imperial which the Syndicate was able to collect. That points to the Syndicate being independent of Mr. San. Yang, J. also found that Mr. Ho had previously been a business associate of Mr. San, but there was no evidence of this, and Pickering, J.A. said that the Judge's belief to this effect was erroneous. Nobody has ever suggested that the purchases of shares from private holders or on the market were carried out for the benefit of Mr. San or as his nominees. This independent purpose or plan, which was accepted by the learned Judge, should have led the Court to reject the allegation that some of the purchases were as nominees for Mr. San and some were not, since the purpose or plan points strongly to the Syndicate acting throughout for its own purposes and on its own behalf. The learned Judge expressly accepted that Mr. Ng, Mr. Ives and Mr. Ho formed the Syndicate with a view to collecting 23 million shares in San Imperial and selling them to Mr. Coe, and that Mr. Ng's role was to acquire shares. Having thus found such a plan or purpose independent of any sham or conspiracy to assist Mr. San, the learned Judge failed to find or accept the implication of such a finding as showing that the purchases complained of were actual sales and not sham transactions between Mr. San and Mr. Ng.

1044:10 *1044:11* *1114:45* *1063:16* *1062:5*

(2) The existence of this purpose or plan strongly negatives the allegation of conspiracy upon which the case of MBF was based, but it is unnecessary to consider this point further since the learned Judge rejected the allegation of conspiracy.

(3) If the Courts had considered the transactions together instead of in isolation, they would have been struck by the fact that the 15 million shares were purchased by the Syndicate at 60¢ a share and the 2,164,200 shares were purchased by Mr. Ng at 20¢ a share. The difference in price, it is submitted, points to the latter purchases not having been made by Mr. Ng for Mr. San as his nominee. The reasons are as follows:

(a) As will be seen below an important ground for deciding that the 15 million share transaction was a sham was the belief that 60¢ a share was far too low a price for so large a block, and that an astute businessman like Mr. San would not have sold at this price. The Appellants do not accept that this is a sound ground for the decision as will appear later in this case. But assuming that it was a good ground for decision over the 15 million shares, it points almost conclusively to the purchases by Mr. Ng having been made on his own behalf. Otherwise, Mr. San, having a parcel of 17,164,000 shares, split it into three parts, consisting of 15 million, 514,200 and 1,650,000, with a result that he only got 20¢ for the two smaller parcels. Such a course of conduct is inconceivable. Yet as will be seen below the learned Judge accepted that such a sale did take place and that Mr. Ng paid the purchase price out of his own moneys. There is no reason, on the hypothesis of the Plaintiffs' case, that while actually negotiating through nominees to sell 15 million shares at 60¢ per share, Mr. San should have been negotiating to sell 2,164,200 shares at 20¢ per share.

(b) Conversely if the 2,164,200 shares at 20¢ per share were a genuine purchase, this goes far to undermine the argument that sale of 15,000,000 shares at 60¢ per share must be a sham, because the price was too low. The 20¢ price would indicate a desperation by Mr. San to sell, assuming as the Plaintiffs asserted, that the shares originally came from Mr. San presumably at less than 20¢. The low price was justified by Mr. San's predicament. He was safe from criminal extradition proceedings to Hong Kong, but he was not safe from civil proceedings in execution of the judgment which had been obtained against him. It was unlikely that civil proceedings would have been taken against him in Taiwan, there being no evidence that Malaysian or Hong Kong judgments can be enforced there. But in so far as his assets consisted of shares in a Hong Kong company, they could have been seized if still his property, the Court could have ordered the execution of transfers, and if need be could have ordered the rectification of the register of members. So Mr. San had an urgent need to sell quickly. That would explain why he was prepared to sell a large block at 60¢, where if he had been a free man under no compulsion and with time to negotiate he could possibly have obtained a higher price for this block. Also, given Mr. San's need for a quick sale, the protracted negotiations for the sale of the 15 million shares, lasting from December 1976 to March 1977 points strongly to the sale being genuine.

(c) If the purchases of all 17,164,200 shares had been shams in the sense that they were made by Mr. San to himself, there is no

reason why the shares should have been split into three parcels, except as part of a conspiracy of deception to hide the fact, if it had been a fact, that all of them were transactions in substance by Mr. San with himself. No such conspiracy was alleged in the pleadings, nor was it within the broad concept of the pleadings within the terms of the agreement that the parties were not to be bound strictly by their pleadings, nor was it even suggested.

12. A consideration of the transactions as a whole in fulfilment of an independent plan or purpose of the Syndicate is important. The case for the Plaintiffs depended to a very great extent on circumstances, on the price, on the past relationship which the members of the Syndicate had had with Mr. San and such like matters of circumstantial evidence. It was important that all countervailing circumstances should be taken into account in the decision in the Court below. The strongest of the circumstances in the shape of the common purpose or object of the Syndicate was not so taken into account at all.

15 MILLION SHARE TRANSACTION

Attack by the Lees

13. In the proceedings in which the Lees were Plaintiffs the sale of the 15 million shares was attacked on the following grounds:

(1) Chow and his wife Hwang were nominees of Mr. San on the ground that Mr. San had absconded, Chow and Hwang as Taiwanese nationals would have required permission to invest in a Hong Kong company and no such permission had been alleged or proved, Mr. San customarily used nominees, an allegation which totally begs the question since every dealing by a nominee involves a third party who is not a nominee, so that the nature of the transaction establishes the status of the parties to it and not the other way about, and Chow when spoken to by Mr. Lee Ing Chee in Taiwan in July 1977 stated that he had had no money to buy shares, he knew nothing about the sale of the 15 million shares, he had never met Mr. Ng, he had never heard the name San Imperial, he had no knowledge of Fermay and that he had not signed any agreement for the sale and purchase of the shares, although he had signed a document at the request of a relative without knowing the contents. See paragraph 20 of the Statement of Claim. *22:8*

(2) Fermay was incorporated on the 8th March 1977 with two subscribers for one share of HK$1 each. A return of allotments showed the purported allotment to Chow and Hwang of 8,999,998 shares of HK$1 each for cash at par, but no such allotment had been made, paragraph 21 of the Statement of Claim. *23:10*

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(3) Amongst other matters set out in paragraph 22 of the Statement of Claim:

(a) Chow and Hwang parted with possession of the share certificates and transfers in return for a deposit of HK$200,000 only.

(b) Mr. San had informed a Mr. Hwang Wei Ming in Taiwan that Mr. Ng was his (Mr. San's) nominee. No evidence was in fact given of this allegation and the point was abandoned.

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(c) Chow and Hwang had not appeared in the action.

(d) The transfers of the 15 million shares to Fermay had been registered on the 28th March 1977 only 5 days after the transfer had taken place, compared with the usual period of one month for registration, the registrars of San Imperial being Malaysia American Finance Corporation (H.K.) Company Limited, of which Mr. San was then and had been a major shareholder.

(e) The transfers had been put through despite an injunction granted on the 15th February 1977 restraining Mr. San by himself his servants or agents from transferring such shares, which injunction had been served on Mr. Henry Loke Kui Kuen, a director of San Imperial, on the 25th March 1977 and notwithstanding that Messrs. Peter Mo & Co., in which Mr. Ives was the senior partner, were solicitors for San Imperial. This injunction, far from proving that the Syndicate were nominees of Mr. San, points to the contrary. Unless Mr. Ives, a solicitor, and the company were prepared to flout and did flout an injunction when detection was virtually certain, the existence of the injunction pointed to their belief that the shares did not belong to Mr. San.

All these circumstances are equivocal in themselves.

Attack on purchase by MBF

14. In the proceedings in which MBF was Plaintiff the purchase of the 15 million shares was attacked on the following grounds:

(1) It was alleged that for the purpose and with the intent to avoid and defeat MBF's Judgment which had been registered in Hong Kong, the Defendants and each of them had from about October 1976 conspired and combined amongst themselves in Hong Kong and elsewhere to sell or cause to be sold on behalf of Mr. San the 15 million shares registered in the name of Fermay, and to obtain on behalf of and for the benefit of Mr. San the proceeds of sale of the same. The relevant Defendants included the Syndicate, Mr. San, Fermay, Chow and Hwang. This conspiracy is alleged in paragraph 7 of Statement of Claim. The allegation depended partly on the relationship, in business

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and professionally, alleged to have subsisted between members of the Syndicate and Mr. San. Such a conspiracy was also alleged to be inferred from facts and matters said to establish that the transaction over the 15 million shares was not bona fide at arm's length and for full value without notice of any defect in the vendor's title. These were: 75:33

(a) Mr. San failed to answer his bail.

(b) Mr. San habitually used nominees to hold and deal with his assets, an allegation which particularly begged the question since any dealing by any nominee in disposing of assets would involve a third party who was not a nominee. If the allegation is right the status of nominees ought to be imputed to the third party. In other words it is the nature of the transaction which establishes the status of the parties to it.

(c) Mr. San had informed Hwang Wei Ming in Taiwan that Mr. Ng was still his nominee. No evidence was given of this allegation and the point was abandoned.

(d) Chow and Hwang had not appeared in the proceedings and they as Taiwan nationals would have required permission to invest in a Hong Kong company, and no such permission had ever been alleged or proved.

(e) In April 1970 Chow's wife Hwang was rejected by the Co-operative Bank of Taiwan as a customer on the ground of her credit unworthiness. 20:32

(f) Chow and Hwang parted with the share certificates and transfer forms for a deposit of HK$200,000 only.

(g) Chow had made the statement summarised in paragraph 11(3) above to the effect that he had had no money to buy shares, he knew nothing of the purchase of the 15 million shares, or of San Imperial or Mr. Ng or Fermay.

(h) That Mr. Ng had been for many years employed by Mr. San and still acted generally as his servant or agent.

(i) Mr. Ng in his affidavit had failed to disclose a certain option agreement dated the 12th May 1977 for the sale of 23 million shares in San Imperial to Rocky Enterprises Limited ("Rocky"). This failure to disclose was considered by the learned Judge to reflect on the credit of Mr. Ng as a witness, although the Court of Appeal did not agree, a matter which is dealt with below. But it did not and could not, it is respectfully submitted, be a circumstance from which the alleged conspiracy ought to have been inferred.

(j) The transfer of the 15 million shares to Fermay was registered on the 28th March 1977 only five days after the transfer and the registrars were MAF which was a wholly owned subsidiary of MAF Credit Limited ("MAF Credit"), of which Mr. San had been and then still was a major shareholder.

(k) The transaction was not effected by money or moneys "dehors the transaction", by which it is understood to be meant that the purchase price was provided by Mr. San himself. That allegation was not expressly made out in evidence except by inference from the fact that the transactions were alleged to be shams. In contrast as will be explained below, the learned Judge found that in respect of his own purchases Mr. Ng had expended his own money.

80:22 (2) As an alternative to the conspiracy, the Statement of Claim of MBF alleged in paragraph 8 that the transactions over the 15 million shares were not bona fide transactions at arm's length for full value without notice of the defect in the vendor's title.

Judgment of Yang, J. on 15 million shares

1041:17 15. The learned Judge dealt first with the case of the Lees. He recorded first a concession that the Lees no longer claimed that the Syndicate, Mr. Ives or Fermay were nominees of Mr. San, but claimed Chow and Hwang were nominees of Mr. San. The learned Judge appears to have misunderstood or misheard what was said by counsel for the Lees, Mr. Charles Ching, Q.C., who made no such concession. But even if he did not the result is the same as if he had done so. The learned Judge, believing such concession to have been made, made no finding of fact or law to the effect that the Syndicate were nominees for Mr. San, or no effective such finding. The case must proceed at lowest on the basis that the Lees did not establish that the Syndicate or Fermay were nominees for Mr. San. It follows that a sale by Chow and Hwang to the Syndicate must be a sale and not a sham under which the beneficial title remained in Mr. San. Yet the learned Judge correctly held that the issue 1042:1 was whether on the date the charging orders nisi were made Mr. San had divested himself of the beneficial title to the shares. That date was the 15th July 1977 in the case of Lees and the 7th September 1977 in the case of MBF. Even within the broad concept of the Lees' pleading, a finding or acceptance that the Syndicate were not nominees for Mr. San is conclusive. The second issue as the learned Judge held was whether any of the purchase price was payable to Mr. San. As far as title 1042:3 to the shares itself goes that is immaterial. As far as Mr. Ng is concerned, the shares he bought personally were paid for at the time of purchase, an important point of distinction between the 15 million shares transaction and Mr. Ng's personal purchases. As far as the Syndicate is concerned the agreed price was paid or is payable for its purpose and will be paid to whoever is found to be entitled to payment.

16. Having stated the issues and dealt with the admission of hearsay evidence, the learned Judge proceeded to assess the character of the various persons involved. 1045 The assessment of Mr. Ng starts on page 1045 of the Record. As this applies to the issue of the 15 million shares and the issue over the remaining shares it is dealt with

here. The Board is not asked to reverse the learned Judge's findings in so far as they survive the Court of Appeal. At a double remove from the learned Judge who heard the witnesses, this would not be a profitable exercise, although it is not admitted that the criticisms were well founded and some of the Judge's criticisms were not accepted by the Court of Appeal as being valid. But the following comments are made. They are based on the judgments in the Courts below and upon inconsistencies between those judgments, and do not, therefore, involve any assessment of the transcript of the evidence or any question of the demeanour of the witnesses:

(1) In so far as they depend on criticism of what Mr. Ng said in affidavit, he was a person whose natural tongue was Cantonese. He gave evidence in that dialect at the trial. In a complicated series of transactions in which the affidavits were clearly drawn by professional advisers, doubt as to what should or should not be put in the affidavit should have been resolved in Mr. Ng's favour. The following are examples:

(a) In paragraph 7 on page 1047 of the Record Mr. Ng is said to have suggested that 8 million shares had been bought in the market, whereas 5,390,200 had been bought from other sources. In fact all had been bought by private treaty. The difference is technical and immaterial. *1047:26*

(b) In paragraph 6 on the same page is an even clearer example. Mr. Ng is accused of having failed to disclose that an agreement dated the 30th April 1977 had been replaced by one dated the 12th May 1977. The Judge could think of no reason for the suppression of this fact. There was no reason, and the Judge's finding that there was none indicates, as it is submitted was a fact, that the omission was irrelevant. If so, the Judge's criticism that Mr. Ng had not made a full and frank disclosure cannot be justified, particularly in inter partes interlocutory proceedings. *1047:12*

(2) To a considerable extent the reasoning in the judgment is circular. It is not clear whether the learned Judge found Mr. Ng to be generally untruthful because he decided against him on the issues, or whether he decided the issue because he found Mr. Ng to be untruthful. The following are examples of the difficulty:

(a) In paragraph 1 on page 1046 of the Record, where the coincidence of finding Mr. San in the same hotel in Taipei is rejected as being just a coincidence. There is nothing so improbable in the meeting to justify the rejection of coincidence. Mr. San was free from any risk of extradition. He did not have to hide. He might well frequent hotels which were used by visitors from Hong Kong in the hope of meeting friends or acquaintances. So here it would appear that the Judge's belief, for which it was difficult "to state precisely" his "reasons", that Mr. Ng was not *1046:00* *1045:34*

a truthful witness, did lead him erroneously to colour a circumstance, equivocal in itself, so as to make it point to an arranged meeting, and so in turn to point to the subsequent purchases being shams.

1046:9 (b) In paragraph 2 on the same page, the learned Judge finds it to be improbable that Chow and Hwang would have bought 15 million shares from San, and this is said to reflect on the truthfulness of Mr. Ng. This paragraph exposes a large number of inconsistencies. First, as is mentioned above, and will be explained more fully with reference later, a principal reason which led the Court below to say the transaction was a sham was the fact that 60¢ a share was too low a price for a controlling interest in the Company. If that is so, it is not at all improbable that Chow and Hwang would have jumped at an opportunity of buying from Mr. San at a price of less than 60¢ a share. It would be worth a gamble. The learned Judge says that they did not know the business of the Company and were not particularly interested to know. On the basis that they were nominees of Mr. San they would certainly know the business of the Company. In so far as they were strangers, Mr. Ng had no means of knowing and was not greatly concerned with knowing the full extent of their knowledge of the business. Their casual conversation with Mr. Ng reported in that paragraph may well have been confirmation of something they already knew. Finally Mr. Ng would not have been concerned to decide the capacity of Chow and Hwang. He knew the shares had belonged to San. He may well have believed that Chow and Hwang were nominees for Mr. San. It would be a matter of belief rather than direct knowledge, contrary to what the learned Judge found at page 1054.5. Mr. Ng would be concerned with the relationship only to the extent of knowing whether Chow and Hwang could give title. This was a problem which would be solved by the use of Fermay. So the matters relied on by the learned Judge in that paragraph 2 do not support a finding that ~~that~~ Mr. Ng was generally untruthful, which was in any case a rather vague impression.

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17. As stated above Mr. Ng does not in this appeal challenge the findings of fact against the truth of his evidence, although he does not accept them to be valid. It is generally unfortunate, however, that the judgment of Yang, J. took the course it did, by opening with an assessment of each witness. It is submitted that this course coloured his judgment and the judgments in the Court of Appeal, with the result ~~the~~ that circumstances which were equivocal in themselves, as shown above, were accepted as pointing to transactions being shams, and important circumstances, such as the difference in price and the sale of the 2,164,200 shares being separated from the sale of the 15 million shares, were not given any or any sufficient weight. Where a case depends largely on circumstantial evidence, as did this one, it is important

that the circumstances should be allowed to speak for themselves. They were not allowed to do so in respect of the 15 million shares, and the consequent finding that the purchase of those shares was a sham, resulted, it is submitted, in the Courts below then failing to allow the circumstances relating to the 2,164,200 to speak for themselves, notwithstanding that they pointed even more strongly and definitely to the purchases of those shares being genuine. It is submitted that if they had been allowed to do so, the result would have been different.

18. The learned Judge found, or perhaps accepted is the better word, that MBF's case in respect of the 15 million shares depended on the conspiracy alleged in paragraph 7 of MBF's Statement of Claim. The learned Judge accepted that no conspiracy was alleged against Mr. Coe. He also found that the allegation of conspiracy against the Syndicate had not been made out. This is sufficient to defeat any case by MBF against the 15 million shares within its Statement of Claim or within the broad concept of MBF's pleadings. It is also respectfully submitted that the alternative claim of MBF in paragraph 8 of its Statement of Claim must also fail. That claim was that the transaction over the 15 million shares was not bona fide at arm's length for full value and without any notice of any defect in the vendor's title. That assumes that the sale of the 15 million shares was a genuine transaction and not one between Mr. San himself through nominees. On that basis there was no defect in the vendor's title. The Plaintiffs claimed that Mr. San owned the shares. They had not been attached by the time of the sale. It did not matter for this purpose whether Chow and Hwang sold as principals or as agents. The transaction would also be at arm's length. For the reasons given above in paragraph 11(3)(b) the price of 60¢ a share was a reasonable price which would have been reached between Mr. San in his predicament as a fugitive from justice and the Syndicate, when compared with the price of 20¢ a share paid by Mr. Ng for the 2,164,200 shares purchased by him. The particulars given in support of the allegation referred to and summarised in para. 14 above do not support the conclusion.

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19. It is important that the claim by MBF and the Lees should be kept separate. If the former fails any charging order which the Lees may hold would not make the shares available to answer MBF's judgment.

20. As to the Lees' judgment the learned Judge found the agreement dated the 23rd March 1977 for the purchase of the 15 million shares from Chow and Hwang to be a sham on the grounds (1) that Chow and Hwang were acting as Mr. San's nominees, (2) the Syndicate must have known that fact, (3) all parties knew that the transactions between the Syndicate and Chow and Hwang were sham, and (4) accordingly, the beneficial interest in the shares remained in Mr. San. The only relevant finding for the conclusion is No. (3), because if the sale from Chow and Hwang to the Syndicate were valid, it does not matter whether they sold as principals or as nominees.

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21. The reasons for the learned Judge's conclusion as to a sham are set out in pages 1054 onwards of the Record. They are as follows:

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(1) In fact these shares were owned by Mr. San. That is irrelevant.

1054:12

RECORD

1054:21
1054:15

(2) Mr. San habitually used nominees. That with respect begs the question, and is not a sound reason, given that the Judge accepted that the Syndicate had an independent object in buying a controlling interest in the Company and selling it to Mr. Coe or his company. Their objective is confirmed by the purchases by the Syndicate from other sources than Mr. San, which sources are not and never have been open to attack.

1056:3

(3) If Mr. San were to sell the 15 million shares in Taipei, he would not be able to get more than 10 to 20¢ a share (thus incidentally validating the price of 20¢ for the 2,164,200 shares), whereas the price of ~~has~~ a controlling interest would be $1.50 to $1.70 per share. It was unlikely, says the Judge, that Mr. San as an astute businessman would sell at about 1/10th of the true value of the shares. Therefore, the sale to the Syndicate was a sham. It is respectfully submitted that this is a true and fair analysis of the Judge's conclusion and the reasons for them are on page 1056 of the Record. The argument is with respect fallacious for the following reasons:

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(a) It assumes that Mr. San could have realised the full price. In his position in Taiwan he may not have been able to do so. He probably was not able to do so. That is the inference from the fact that the price of the 15 million shares at 60¢ per share was greater than for the 2,164,200 purchased by Mr. Ng at 20¢ a share. The 2,164,200 shares were purchased during the period of negotiation for the purchase of the 15 million shares. This points not only to the purchases of the former being genuine purchases, because otherwise Mr. San would not have sold any shares at 20¢ at that time. It also points to the 60¢ price for the latter as representing in Mr. San's circumstances the value of a controlling interest.

(b) This difference in price means that Mr. San did get a higher price for the 15 million shares than he had been able to get before. That may have been the best recognition he could get of the fact that the 15 million shares was a controlling interest. The Judge wrongly assumes that Mr. San could have got HK$1.50 for himself in his position.

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1056 – 1057
1057:20

(4) The agreement dated the 23rd March 1977 for the sale of the 15 million shares was a sham and follows a draft of February 1977 which was also a sham. The basic reason was that Chow and Hwang would not sign an agreement in which the price and the number of the shares were left blank. They would not trust Mr. Ng so far. The learned Judge rejected the Defence's contention that the blanks were to be filled in after the authenticity of the shares had been established. That reasoning of the Judge is with respect erroneous for

A the following reasons:

(a) It was perfectly reasonable for Mr. Ng to insist that the Syndicate would only pay 60¢ a share if the whole parcel proved to be authentic. Otherwise the number would be reduced and so would the price, because for the reason given above 60¢ a share
B recognised that 15 million shares was a controlling interest.

(b) Chow and Hwang would have to part with the shares so that they could be taken into Hong Kong to be authenticated.

(5) The agreement took three months to come into being; there were negotiations probably because the Syndicate wanted to share the
C profit with Mr. San. This also with respect is erroneous and fallacious *1057:27* for the following reasons:

(a) The long period for negotiation might well have been due to difficulties over delivery.

(b) It is in any case inconsistent with the allegation that the Syn-
D dicate were Mr. San's nominees to say that at that stage they would be haggling over a share of the profit. By then the Syndicate had incurred a lot of expenses and done a considerable amount of work. Assuming, which is not accepted, that the Syndicate were nominees, they would not have embarked upon
E the work until their percentage or other remuneration had been agreed.

(c) The learned Judge accepts that there were negotiations over *1057:27* terms of payment by instalments and that Chow and Hwang objected to some of them. The fact that there was a negotiation
F strongly negatives the general case of the Lees that the Syndicate were nominees for Mr. San. The negotiations also negative the view that any sale by Mr. San of the 15 million shares or of any shares was a sham, given that if the purpose was to defeat Mr. San's creditors a quick sale was essential. The Judge's *1057:27*
G explanation for the delay, emphasised by him in his judgment, that "probably . . . the Syndicate wanted to split the profits with C.K. San" is, with respect, speculation. It illustrates the approach of the Court, coloured by its assessment of the witnesses, to circumstances which ought to have pointed to the
H shares having been acquired pursuant to the accepted purpose of the Syndicate of acquiring a controlling interest for resale. These circumstances were inconsistent with the general theory that the sales were shams. So speculative reasons were adopted to account for the delay in negotiations.

I (6) The use of Fermay was unnecessary as a method of authenticating

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1057:35

the shares, and the purpose must have been to get the shares out of the name of Mr. San. That argument is with respect the fallacious, because if Chow and Hwang and the Syndicate were nominees of Mr. San, the transfer to Fermay would not protect the shares from being attached since Mr. San would be beneficially entitled to the shares of Fermay. The existence of Fermay might have been thought rightly or wrongly to conceal the interest of Mr. San until such time as the 15 million shares could be authenticated, and avoid any apparent direct dealing with a criminal who had absconded from Hong Kong. Even if with hindsight the Fermay operation may have been too elaborate, and even deceptive to the extent mentioned, it does not lead to the conclusion that the Syndicate were nominees for Mr. San. *A* *B* *C*

1057:40

(7) Chow and Hwang received only a deposit of HK$92,000 and they authorised the Syndicate to sign contracts on behalf of Fermay, and resigned as Directors of Fermay on the 20th May 1977, relinquishing any control they may have had in Fermay. There was no reason for them to repose such confidence in the Syndicate. In fact it is submitted that there was no reason why a large deposit should be paid until the shares had been authenticated, because it was possible that all were false. Chow and Hwang and Mr. San may have accepted the fact that the Syndicate had to operate Fermay in Hong Kong for the purpose of authenticating the shares, and they may have been prepared or driven to trust the Syndicate. *D* *E*

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1058:10

1058:35

(8) The transfer into Fermay took only one day which was suspicious. The Syndicate and Mr. San, assuming he were the principal, would have a common interest in having a quick registration before creditors of Mr. San could attach the shares, whether the Syndicate was acting as nominees or as principals. The speed of registration does not, therefore, point to the sale of the 15 million shares being a sham. *F*

22. It is submitted that the reasons put forward by the learned Judge with regard to the claim by the Lees do not support a finding that the 15 million share transaction should be set aside as a sham. *G*

1064:17

23. The learned Judge, contrary to the Appellants' contention above, treated the case as presented by the Lees as being also applicable to MBF's alternative contention that the 15 million share transaction was not a bona fide transaction at arm's length for full value without notice of defects in the vendor's title. If the Lees' case was applicable, it does not establish that alternative contention. *H*

15 million share transaction in the Court of Appeal

1097:10

1097:15

24. Huggins, J.A. considered the difficulties raised over the issue of conspiracy as a result of the agreed relaxation of the pleadings, but held that it was open to MBF to allege "that all the transactions from first to last were a mere front to give the impression of a transfer of the beneficial interest when in truth the beneficial *I*

interest was intended to remain in Choo Kim-San". That is the issue but its validity depends upon the Syndicate being nominees for Mr. San. The learned Judge considered this issue, and recorded that Mr. Yorke for MBF was not making any such contention. That is fatal to the argument that no beneficial interest passed from Mr. San to the Syndicate. Mr. Yorke's unequivocal statement is not capable of the limited construction put upon it by the learned Judge, to the effect that the Syndicate did not receive and were not intended to receive a legal title. It is true that it appears that Mr. Ching, counsel for the Lees, did not make this concession, although Yang, J. appears to have thought that he did. This doubt is raised in the Judgment of Pickering, J.A. In any case Pickering, J.A. pointed out that Yang, J. had made no finding that the Syndicate were nominees for Mr. San. As regards the Lees, if the Syndicate were not proved or found to be nominees for Mr. San, the Lees' case must also fail. As regards MBF there was no finding that the Syndicate were nominees for Mr. San. In addition Mr. Yorke, counsel for MBF, made the concession that he was not relying on such nominee status. Mr. Yorke did not withdraw the concession. MBF is bound by it.

1098:2 *1116:10* *1118:36*

25. In considering the assessment which the learned trial Judge made on Mr. Ives, Huggins, J.A. accepted *1107:3*

(a) that the Chows were not in a strong bargaining position,

(b) that $1.60 to $1.70 would be the market rate for the controlling interest which Mr. Coe was seeking to acquire,

(c) that a rough valuation by the Syndicate was possible, because they were going to make a large profit anyway, and all that they would be concerned to do would be to make an offer which the Chows could not refuse, and

(d) that businessmen might make business decisions in a casual manner.

He concluded in relation to these findings that there were no grounds for criticising Mr. Ives over the drafting of the New Rocky Agreement or for reaching the decision to purchase in a casual manner. *1106:35* *1107:20*

26. More important, this reasoning by Huggins, J.A., which is respectfully accepted and adopted, supports the argument set out above that 60¢ a share was not an unreasonably low price for the 15 million shares, because it contained the best recognition which Mr. San or the Chows could obtain of the value of a controlling interest. It also accepts by implication that the sale did pass the beneficial interest from Mr. San or his agents to the Syndicate. If there had been no shift, the price would have been immaterial. For this purpose it does not matter whether the Chows were principals or agents for Mr. San.

27. Pickering, J.A. in his recital of the facts accepted that Mr. Ho, the 3rd member of the Syndicate had had no previous connection with Mr. San, "despite the learned Judge's apparent belief to the contrary". The Plaintiffs had relied strong- *1114:45*

RECORD

ly upon the previous relationship between the members of the Syndicate and Mr. San as a ground for supporting the view that they were his nominees. The fact that Mr. Ho had no previous connection, coupled with the fact that the Syndicate had an independent plan or purpose in acquiring a controlling interest, so they could sell it to Mr. Coe, points strongly to the Syndicate not being nominees or agents for Mr. San. It is this Appellant's contention that no or no sufficient weight has been given in the Courts below to the Syndicate's plan or purpose.

1116:25

28. Pickering, J.A. then accepted that the allegation of conspiracy as pleaded by MBF had not been made out. But he went on to find that the allegation that the 15 million share transaction was a sham carried an implication of conspiracy because otherwise "what was the purpose of the sham". What the learned Judge of Appeal is saying is that:

1120:25

(a) The transaction was a sham on the alternative ground pleaded by MBF in paragraph 8 of its Statement of Claim, namely that the transactions were not bona fide transactions at arm's length for full value without notice of any defect in the vendor's title, therefore

(b) a conspiracy is made out within the broad concept of MBF's pleading. Such a conspiracy adds no weight to the alternative ground. If that fails, as it is submitted above that it should, MBF's claim must fail. The action should have been dismissed.

1121:10
1019:4

29. Pickering, J.A. then found that the Syndicate could have had no other status than nominees of Mr. San because of the learned Judge's findings which he previously accepted that

(a) the agreement of the 23rd March 1977 was a sham,

(b) Chow and Hwang were acting as nominees for Mr. San,

(c) the Syndicate were aware of this, and

(d) the beneficial interest in the shares remained with Mr. San.

But the finding that the Syndicate were nominees for Mr. San was an essential ingredient in finding that the agreement was a sham. The finding that the agreement was a sham cannot, therefore, be a ground for establishing the status of nominees. In any case, the argument, even if otherwise sound, cannot avail MBF, which by its counsel had expressly stated that he was not relying on the Syndicate being nominees of Mr. San.

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30. The learned Judge of Appeal then proceeded to hold that the circumstances pointed to the agreement of the 23rd March 1977 being a sham. The vendors had parted with the shares to Fermay for a deposit of $200,000 in circumstances when they could not have enforced payment of the balance. He held that the Syndicate could complete the transfers of the shares and that Chow and Hwang would be "estopped in regard to the $8,800,000 the balance of the purchase price". It is respectfully submitted that this argument is erroneous for the reasons given

1121:31

1122:10

above, which can be summarised as follows. A small deposit was appropriate because the purchasers would not pay a full one until the shares had been authenticated, and the vendors were in a weak bargaining position. The shares had to be brought to Hong Kong to be authenticated. As the asset of Mr. San in the shape of shares in a Hong Kong company were available to his creditors, he would be concerned to sell quickly. It is submitted that the vendors would not have been estopped. Any allegation that they were would be fraudulent, so that the Court would go behind the facade and establish the real fact of payment. Pickering, J.A. was accordingly in error when he said "the Syndicate could only have been intending either to steal the 15 million San Imperial Shares – of which there is no suggestion – or acting as his nominees".

MR. NG'S PURCHASES OF 2,164,200 SHARES

31. This is the issue which primarily concerns this Appellant. It has to be considered in the context of the whole operation as mentioned above. Much of the argument on this topic depends upon the matters set out above in this Supplemental Case, particularly the importance of recognizing the purpose of the Syndicate, and giving full weight (a) to the difference in price between the 15 million shares and the 2,164,200 shares, and (b) to the fact that the purchases were negotiated over the same period coupled also with the arguments for contending that Mr. Ng was not a nominee of Mr. San and was not a conspirator.

Judgment of Yang, J.

32. Yang, J. dealt with this point of the case from page 1060 onwards in the Record. He found that on the occasion when the 514,200 shares were purchased, Mr. Ng took HK$500,000 to Taiwan, and that he paid for those shares out of his own pocket. He also paid for the 1,650,000 shares out of the HK$500,000. That finding is significant, since as a nominee Mr. Ng would not have had to pay out of his own pocket and would not have done so. *1060* *1061:35* *1062:39* *1062:39*

33. The reasons why the learned Judge found that the transactions over the 2,164,200 shares were shams were really two.

34. The first was that the total worth of Mr. Ng was about $1.5 million. It is hardly likely says the Judge, that he would pay over a quarter of his worth without knowing whether the shares were good or not. As against this finding, Yang, J. accepted that the profit was enormous. This might be a sufficient inducement or Mr. Ng to hazard this amount. *1061:37* *1063:1* *1061:43*

35. The second reason was that there was no reason why the Syndicate should allow Mr. Ng to pocket the whole profit. That reason does not establish that Mr. Ng's purchases were shams. Rather it establishes the contrary. If they were all part and parcel of one operation by Mr. San through nominees, there would be no reason for the spread in price or difference procedure, or for any sharing of profits to be different in respect of any parcel. It was not pleaded or alleged or suggested that this spread was part of the sham, intended to help conceal the alleged status of the *1062:1*

Syndicate as nominees. The reason for allowing Mr. Ng to take the profit may have been more complex than that referred to by the learned Judge, namely, that it was Mr. Ng's reward for doing the leg work. It may well be that they were not prepared to take the gamble themselves. Rather than do so they allowed Mr. Ng to take the risk, and if it paid off to take the profit. Some support for this view is contained in the Judgment of Huggins, J.A. where in relation to the purchase of the 514,200 shares he says "on his return to Hong Kong Ng found that Ho was not happy about this purchase of the 514,200 shares and eventually the Syndicate agreed that Ng would be buying them on his own account".

1062:5

1101:18

36. Yang, J. accepted that Lee and Fong, the vendors to Mr. Ng, must have known that a much higher price could be fetched if the holdings could have been sold together. The learned Judge had already found that Mr. San was an astute businessman. The learned Judge should have drawn the inference from these facts, that the sales to Mr. Ng personally were separate from the sale of the 15 million shares. If so, they were not sold by nominees of Mr. San. If so the charging order on these shares and the proceeds of their sale should not have been made, because the sales were not shams.

1061:5

Judgments in the Court of Appeal

37. The matter was dealt with summarily in the Court of Appeal.

38. Huggins, J.A. found that "there was evidence that these 2,164,200 shares were bought by Ng with his own money on his own behalf". In the context the learned Judge was accepting such evidence. The learned Judge then held that the ostensible vendors, Lee and Fong, were nominees for Mr. San. That may be. But it makes no difference to the validity of the sale to Mr. Ng whether Lee or Fong sold as nominees or as principals so long as Mr. Ng "bought with his own money on his own behalf".

1094:25

39. Huggins, J.A. does not deal further with the Ng transaction as a separate issue.

40. Pickering, J.A. accepted twice that Mr. Ng bought the 2,164,200 shares on his own account.

1115:12 and 1123:36

41. Pickering, J.A. then dealt with the point about why the 2,164,200 shares should be split from the 15 million shares when the result was to get a much lower price for the smaller number. He said "I concede that it is difficult to know why the 2,164,200 shares were dealt with differently and at a different price". But he went on to accept Mr. Yorke's suggestion that we shall never know. It is submitted that this was not a sufficient answer. The proper and inevitable inference was that the purchase price was different because the purchase was a different purchase. It is inconceivable that Mr. San would have spread his holding in this way. If this is the proper inference, then Mr. Ng did acquire a good beneficial title to the 2,164,200 shares which he paid for with his own money. No charging order should have been made in respect to them. The process of reasoning in the Courts below was that Mr.

1124:2

1124:7

Ng was a nominee for Mr. San. So no beneficial title passed to Mr. Ng. The facts of Mr. Ng's purchases do not fit this theory. Therefore the facts must be rejected as being inexplicable. That is with respect wrong. The proper course was to consider the weight of the facts and the inevitable inference from them. On that basis the facts negative any suggestion that the purchases were not real.

CONCLUSION

42. Having regard to the facts and findings in this case, and having regard particularly to the following facts and matters

(1) All the shares in issue were acquired by the Appellants before the dates of the respective charging orders (see para. 9 above),

(2) The allegation of conspiracy was abandoned by the Plaintiffs or rejected by the Courts below (see paras. 11(2), 11 (3)(c), 17 and 27 above),

(3) It was accepted by the Courts below that the Syndicate had an independent purpose or plan in acquiring the shares (see paras. 8 and 11(1) above),

(4) It was conceded by MBF that the Plaintiffs that the Syndicate and Fermay were not nominees for Mr. San, and no finding was made in favour of the Lees that the Syndicate or Fermay were such nominees (see paras. 15 and 24 above),

(5) It was accepted by Yang, J. (see para. 31 above) that Mr. Ng purchased the 2,164,200 shares out of his own moneys and further by Huggins, J.A. (see para. 38) and Pickering, J.A. (see para. 40) that he did so on his own account,

(6) The purchase of the 2,164,200 shares at 20¢ took place over the same period as the sale of the 15 million shares at 60¢ was being negotiated (see para. 9),

it is submitted by this Appellant that the judgment of the Court of Appeal should be reversed in respect of the 2,164,200 shares and in respect of the 15 million shares. In addition in respect of the 15 million shares, this Appellant adopts the reason given in the Case for the other Appellants.

43. The Judgment of the Court of Appeal in respect of the 2,164,200 shares should be reversed for the following among other reasons:–

(1) The learned Judge and the Court of Appeal failed to give full and sufficient weight to the facts that the purchases by this Appellant of such shares were paid for by his own money at a price different from

the price of the 15 million shares. *A*

(2) The learned Judge and the Court of Appeal failed to give full and sufficient weight to the purpose of the Syndicate in buying a controlling interest so as to be able to sell it to Mr. James Coe.

(3) The learned Judge and the Court of Appeal failed to give sufficient weight to the fact that if Mr. San were the beneficial owner of the *B* 2,164,200 shares as well as the 15 million shares it is inconceivable that he would have divided his holding with the result that he obtained 60¢ a share for the 15 million and 20¢ a share for the 2,164,200 by sales negotiated and carried out over the same period. The inference is that Mr. San had ceased to own the smaller parcel *C* before it was sold to this Appellant.

(4) On the findings of the learned Judge in respect of the 2,164,200 shares this Appellant was entitled to judgment in respect of those shares and the proceeds of their sale since no case of nomineeship or conspiracy had been proved against this Appellant in respect of such *D* shares or indeed at all.

(5) That in any case the learned Judge and the Court of Appeal upon the facts and the law ought to have held that MBF was entitled to no relief.

(6) There was no finding or no sufficient finding of fact or of law that *E* Mr. Ng was a nominee for, or a conspirator with Mr. San or otherwise to justify a conclusion that Mr. Ng had not acquired the 2,164,200 shares before the same were effectively attached.

R.A.K. Wright

In the Privy Council

No. 20 of 1980

ON APPEAL

FROM THE SUPREME COURT OF HONG KONG
(APPELLATE JURISDICTION)
CIVIL APPEAL NO. 12 OF 1978

(On appeal from High Court Action No. 2459 of 1976, High Court Miscellaneous Proceedings No. 155 of 1977 and High Court Miscellaneous Proceedings No. 540 of 1977)

BETWEEN

DAVID NG PAK SHING	*1st Appellant*	(The 4th, 5th, 6th and 7th Defendants in High Court Action No. 2459 of 1976, High Court Miscellaneous Proceedings No. 155 of 1977 and High Court Miscellaneous Proceedings No. 540 of 1977)
MELVILLE EDWARD IVES	*2nd Appellant*	
HO CHAPMAN	*3rd Appellant*	
FERMAY COMPANY, LTD.	*4th Appellant*	

and

LEE ING CHEE also known as LEE HAI HOCK	*1st Respondent*	(The Plaintiff in High Court Action No. 2459 of 1976)
LEE KON WAH	*2nd Respondent*	(The Plaintiff in High Court Miscellaneous Proceedings No. 155 of 1977)
MALAYSIA BORNEO FINANCE CORPORATION (M) BERHAD	*3rd Respondent*	(The Plaintiff in High Court Miscellaneous Proceedings No. 540 of 1977)

SUPPLEMENTAL CASE FOR THE 1ST APPELLANT

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