

In the Privy Council

10/82

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

and

LEE ING CHEE also known as.....	<i>1st Respondent</i>	(The Plaintiff in High Court Action
LEE HAI HOCK		No. 2459 of 1976)

LEE KON WAH.....	<i>2nd Respondent</i>	(The Plaintiff in High Court
		Miscellaneous Proceedings No. 155 of
		1977)

MALAYSIA BORNEO FINANCE.....	<i>3rd Respondent</i>	(The Plaintiff in High Court
CORPORATION (M) BERHAD		Miscellaneous Proceedings No. 540 of
		1977)

RECORD OF PROCEEDINGS

Volume I

MAXWELL BATLEY & COMPANY
27, Chancery Lane, WC2A 1PA.
London Agents for
PETER MARK & COMPANY
Solicitors for the Appellants.

LOVELL, WHITE & KING
21 Holborn Viaduct,
London EC1A 2DY.
London Agents for
DEACONS
Solicitors for the
1st and 2nd Respondents.

NORTON, ROSE BOTTERELL &
ROCHE
Kempson House,
Camomile St.
London EC3A 7AN.
London Agents for
JOHNSON, STOKES & MASTER
Solicitors for the 3rd Respondent.

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

and

LEE ING CHEE also known as..... *1st Respondent* (The Plaintiff in High Court Action
LEE HAI HOCK No. 2459 of 1976)

LEE KON WAH..... *2nd Respondent* (The Plaintiff in High Court
Miscellaneous Proceedings No. 155 of
1977)

MALAYSIA BORNEO FINANCE..... *3rd Respondent* (The Plaintiff in High Court
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CORPORATION (M) BERHAD Miscellaneous Proceedings No. 540 of
1977)

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

PART I

VOLUME 1

No.	Description of Document	Date	Page
	<i>IN THE SUPREME COURT OF HONG KONG HIGH COURT NO. 2459 of 1976</i>		
1	Writ of Summons with Statement of Claim.....	16th November, 1976	1

INDEX OF REFERENCE – VOLUME I (Contd.)

No.	Description of Document	Date	Page
2	Judgment in Default of Appearance	5th July, 1977	4
3	Charging Order Nisi and Garnishee Order Nisi of Mr. Justice Li	15th July, 1977	5
4	Order of Mr. Justice Zimmern.	20th August, 1977	8
<p><i>IN THE SUPREME COURT OF HONG KONG MISCELLANEOUS PROCEEDINGS NO. 155 of 1977</i></p> <hr/>			
5	Order of Mr. Registrar Cameron for Registration of Foreign Judgment	31st March, 1977	10
6	Charging Order Nisi and Garnishee Order Nisi of Mr. Justice Li	15th July, 1977	12
7	Order of Mr. Justice Zimmern.	20th August, 1977	15
<p><i>IN THE SUPREME COURT OF HONG KONG HIGH COURT ACTION NO. 2459 OF 1976 & HIGH COURT MISCELLANEOUS PROCEEDINGS NO. 155 of 1977 (consolidated pursuant to the Order of Mr. Justice Zimmern dated 20th August 1977)</i></p> <hr/>			
8	Amended Statement of Claim	23rd August, 1977	17
9	Defence & Counterclaim of the 4th, 5th, 6th & 7th Defendants	3rd September, 1977	28
10	Defence & Counterclaim of the 10th Defendant.	5th September, 1977	37
11	Amended Reply & Defence to Counterclaim of the 4th, 5th, 6th & 7th Defendants	12th September, 1977	46
12	Amended Reply & Defence to Counterclaim of the 10th Defendant	12th September, 1977	49
13	Hearsay Notice of the 4th, 5th, 6th & 7th Defendants (Statements made in certain documents).	7th October, 1977	52
14(A)	Hearsay Notice of the Plaintiffs (Statements made by Choo Kim San).	15th October, 1977	53
14(B)	Hearsay Notice of the Plaintiffs (Statements from Chow Chaw-I to Lee Ing Chee)	15th October, 1977	61
15	Rejoinder of the 4th, 5th, 6th & 7th Defendants	19th October, 1977	62
16	Rejoinder of the 10th Defendant	20th October, 1977	63
17	Surrejoinder	20th October, 1977	64

INDEX OF REFERENCE – VOLUME I (Contd.)

No.	Description of Document	Date	Page
<p><i>IN THE SUPREME COURT OF HONG KONG MISCELLANEOUS PROCEEDINGS NO. 540 OF 1977</i></p> <hr/>			
18	Order of Mr. Registrar O’Dea for Registration of Foreign Judgment	19th August, 1977	65
19	Charging Order Nisi and garnishee Order Nisi of Mr. Registrar Stapp.	7th September, 1977	67
20	Garnishee Order Nisi of Mr. Registrar Stapp	14th September, 1977	69
21	Statement of Claim	23rd September, 1977	70
22	Order of Mr. Justice Yang	23rd September, 1977	82
23	Order of Mr. Justice Yang	23rd September, 1977	83
24	Defence & Counterclaim of the 4th, 5th, 6th & 7th Defendants	30th September, 1977	84
25	Request for Further & Better Particulars of the Defence of the 4th, 5th, 6th & 7th Defendants.	3rd October, 1977	92
26	Defence & Counterclaim of the 10th Defendant.	4th October, 1977	94
27	Reply & Defence to Counterclaim of the 4th, 5th, 6th & 7th Defendants	4th October, 1977	102
28	Reply & Defence to Counterclaim of the 10th Defendant.	7th October, 1977	103
29	Hearsay Notice of the 4th, 5th, 6th & 7th Defendants (Statements from Choo Kim San to David Nig)	7th October, 1977	104
30	Hearsay Notice of the 4th, 5th, 6th & 7th Defendants (Statements from Chow Chaw-I to David Ng).	7th October, 1977	105
31	Hearsay Notice of the 4th, 5th, 6th & 7th Defendants (Statements from Chow Chaw-I to David Ng).	13th October, 1977	106
32	Further & Better Particulars of the Defence of the 4th, 5th, 6th & 7th Defendants	17th October, 1977	108
33	Rejoinder of the 4th, 5th, 6th & 7th Defendants	19th October, 1977	110
34	Rejoinder of the 10th Defendant	20th October, 1977	111
35	Further & Better Particulars of the Statement of Claim	27th October, 1977	112
<p><i>IN THE SUPREME COURT OF HONG KONG HIGH COURT ACTION NO. 2459 OF 1976, HIGH COURT MISCELLANEOUS PROCEEDINGS No. 155 OF 1977 & HIGH COURT MISCELLANEOUS PROCEEDINGS NO. 540 OF 1977 (tried at the same time before the same judge pursuant to the Order of Mr. Justice Yang dated 23rd September, 1977)</i></p> <hr/>			

INDEX OF REFERENCE – VOLUME I (Contd.)

No.	Description of Document	Date	Page
36	Hearsay Notice of the 4th, 5th, 6th & 7th Defendants (Statements from Choo Kim San to David Ng).	20th October, 1977	113
37	Hearsay Notice of the 4th, 5th, 6th & 7th Defendants (Statements from Chow Chaw-I to David Ng).	20th October, 1977	114
38	Hearsay Notice of the 4th, 5th, 6th & 7th Defendants (Statements from Chow Chaw-I to David Ng).	20th October, 1977	116
39	Hearsay Notice of the 4th, 5th, 6th & 7th Defendants (Statements from Lee & Fong to David Ng).	20th October, 1977	120
40	Transcript of Court Reporters' Shorthand Notes.		121-268 (VOLUME I) 269-556 (VOLUME II) 557-844 (VOLUME III) 845-981 (VOLUME IV)

INDEX OF REFERENCE – VOLUME IV (Contd.)

41	Judge's Notes – (A) Opening of Plaintiffs * (B) Opening for the Defence * (C) Final Submission * (D) Questions from Judge to Counsel		983
42	Judgment of Mr. Justice Yang.	25th January, 1978	1038
43	Orders Absolute of Mr. Justice Yang in High Court Action No. 2459 of 1976 & High Court Miscellaneous Proceedings No. 155 of 1977	25th January, 1978	1077
44	Orders Absolute of Mr. Justice Yang in High Court Miscellaneous Proceedings No. 540 of 1977	25th January, 1978	1079
	<p><i>IN THE SUPREME COURT OF HONG KONG COURT OF APPEAL CIVIL APPEAL NO. 12 OF 1978 (on appeal from High Court Action No. 2459 of 1976, High Court Miscellaneous Proceedings No. 155 of 1977 & High Court Miscellaneous Proceedings No. 540 of 1977)</i></p>		
45	Notice of Appeal of the 4th, 5th, 6th & 7th Defendants.	30th January, 1978	1081
46	Notice of Appeal of the 10th Defendant.	6th February, 1978	1086

INDEX OF REFERENCE – VOLUME IV (Contd.)

No.	Description of Document	Date	Page
47	Respondents' Notice (filed by Lee Ing Chee and Lee Kon Wah)	24th April, 1978	1087
48	Cross Notice of Appeal of Malaysia Borneo Finance Corporation (M) Berhad.	26th April, 1978	1088
49	Respondents' Notice (filed by Lee Ing Chee and Lee Kon Wah)	29th April, 1978	1091
50	Supplementary Notice of Appeal of the 10th Defendant	17th November, 1978	1092
51	Letter from Mr. Registrar Mayo to Peter Mark & Company . . .	9th February, 1979	1093
52	Judgment of Huggins, J.A.	22nd March, 1979	1094
53	Judgment of Pickering, J.A.	22nd March, 1979	1112
54	Order of the Court of Appeal	22nd March, 1979	1127
55	Notice of Application for Leave to Appeal to Privy Council . . .	26th March, 1979	1129
56	Notice of Motion for Leave to Appeal to Privy Council	27th March, 1979	1130
57	Order of the Court of Appeal granting Leave to Appeal to Privy Council.	11th April, 1979	1131

PART II

VOLUME V

A DOCUMENTS FROM AGREED BUNDLE OF DOCUMENTS REFERRED TO AT THE TRIAL.

Mark	Description of Document	Date	Page
Y1-6	Letter from Tai Pan Building Management Ltd. to I.C. Lee. . . .	12th February, 1976	1135
Y1-9	Agreement between Malaysia America Finance Investment Ltd. & Oceania & Land Corp. Ltd. with Cancellation Agreement annexed.	18th January, 1977	1136
Y1-10	Appointment of First Directors of Fermay Company Ltd.	23rd March, 1977	1144
Y1-11	Resolution to Increase Authorised Capital of Fermay Company Ltd.	23rd March, 1977	1145
Y1-12	Minutes of Extraordinary General Meeting of Members of Fermay Company Ltd. on 23rd March 1977.		1146
Y1-13	Minutes of a Meeting of Directors of Fermay Company Ltd. on 23rd March 1977		1147
Y1-14	Minutes of a Meeting of Directors of Fermay Company Ltd. on 23rd March 1977 Appointing Authorised Signatories.		1148
Y1-15	Return of Allotment of Fermay Company Ltd. made on 23rd March 1977.		1149
Y1-16-16A	Agreement between Chaw-I Chow & Shang-Pai Hwang & David Ng, Ho Chapman & M.E. Ives	23rd March, 1977	1150
Y1-17	Bought & Sold Notes with 2 Instruments of Transfer in respect of 15 million shares of San Imperial Corporation Ltd.	28th March, 1977	1152
Y1-18	Agreement between Malaysia America Finance Corporation (HK) Ltd. & David Ng & Ho Chapman	30th March, 1977	1155

INDEX OF REFERENCE – VOLUME V (Contd.)

Mark	Description of Document	Date	Page
Y1-21	Letter from Malaysia America Finance Corporation (HK) Ltd. to Peter Mo & Company	31st March, 1977	1157
Y1-22	Return of Directors of Fermay Company Ltd.	31st March, 1977	1158
Y1-23	Notice of Increase in Nominal Capital of Fermay Company Ltd.	31st March, 1977	1159
Y1-25	Letter from Malaysia America Finance Corporation (HK) Ltd. to Peter Mo & Company	1st April, 1977	1160
Y1-26	Notice given by Lee Ing Chee in South China Morning Post . . .	13th April, 1977	1161
Y1-27	Letter from Malaysia America Finance Corporation (HK) Ltd. to Peter Mo & Company	15th April, 1977	1162
Y1-30	Letter from Peter Mo & Company to Malaysia America Finance Corporation (HK) Ltd.	22nd April, 1977	1163
Y1-32	Letter from Malaysia America Finance Corporation (HK) Ltd. to Peter Mo & Company	25th April, 1977	1164
Y1-34	Receipt from Philip K.H. Wong & Company for 2 cheques. . . .	29th April, 1977	1165
Y1-35	Notice given by Johnson Stokes & Master in South China Morning Post on 29th April 1977		1166
Y1-37	Guarantee from James Coe to David Ng Pak Shing	30th April, 1977	1167
Y1-38	Memorandum of an Agreement between David Ng Pak Shing & James Coe	30th April, 1977	1168
Y1-39	Guarantee from Ho Chapman to Rocky Enterprises Company Ltd.	30th April, 1977	1169
Y1-40	Agreement between David Ng Pak Shing & Rocky Enterprises Company Ltd.	30th April, 1977	1170
Y1-41	Supplemental Agreement between David Ng Pak Shing & Rocky Enterprises Company Ltd.	30th April, 1977	1175
Y1-42	Undertaking from David Ng Pak Shing to Rocky Enterprises Company Ltd.	30th April, 1977	1177
Y1-43	Undertaking from James Coe to Ho Chapman & Associates Ltd.	30th April, 1977	1178
Y1-44	Letter from Peter Mo & Company to Philip K.H. Wong & Company.	2nd May, 1977	1179
Y1-46	Letter from Malaysia America Finance Corporation (HK) Ltd. to David Ng Pak Shing & Ho Chapman	2nd May, 1977	1180
Y1-47	Receipt from Peter Mo & Company for \$1.5 million.	2nd May, 1977	1181
Y1-48	Minutes of a Meeting of Directors of San Imperial Corporation Ltd. on 3rd May, 1977	3rd May, 1977	1182
Y1-51	Cutting from South China Morning Post's issue on 5th May, 1977	5th May, 1977	1183
Y1-52	Letter from Philip K.H. Wong & Company to Peter Mo & Company.	6th May, 1977	1185

INDEX OF REFERENCE – VOLUME V (Contd.)

Mark	Description of Document	Date	Page
Y1-54	Agreement between David Ng Pak Shing & Rocky Enterprises Company Ltd.....	12th May, 1977	1186
Y1-55	Guarantee from James Coe to David Ng Pak Shing	12th May, 1977	1192
Y1-56	Guarantee from Ho Chapman to Rocky Enterprises Company Ltd.....	12th May, 1977	1193
Y1-62	Minutes of a Meeting of Director of Fermay Company Ltd. on 20th May 1977		1194
Y1-63	Letter from Peter Mo & Company to Philip K.H. Wong & Company.....	23rd May, 1977	1195
Y1-68	Return of Directors of Fermay Company Limited	4th June, 1977	1197
Y1-69	Receipt from Philip K.H. Wong & Company for \$1.5 million ..	8th June, 1977	1198
Y1-71	Loan Agreement between James Coe and David Ng Pak Shing .	9th June, 1977	1199
Y1-72	Receipt from James Coe for \$16,200,000.00	9th June, 1977	1201
Y1-73	Receipt from David Ng Pak Shing for \$13,200,000.00	9th June, 1977	1202
Y1-74	Revised Finder's Fee Undertaking.....	9th June, 1977	1203
Y1-79	Receipt from David Ng Pak Shing for \$4,000,000.00	9th June, 1977	1204
Y1-80	Receipt from Ho Chapman & Associates Ltd. for \$3,000,000.00	9th June, 1977	1205
Y1-81	Letter from Malaysia America Finance Corporation (HK) Ltd. to Peter Mo & Co.....	14th June, 1977	1206
Y1-82	Letter from Peter Mo & Company to Oceania Finance & Land Corporation Ltd.....	15th June, 1977	1207
Y1-88	Letter from David Ng Pak Shing to James Coe	25th June, 1977	1208
Y1-98	Letter from Y.S. Cheng & Company to Malaysia America Finance Corporation (HK) Ltd.....	23rd July, 1977	1209
Y2-119	Not printed		
	(The same document as Y1-22)		
Y2-123	Telex from Peter Mo & Company to A. Kramer	3rd January, 1977	1210
Y2-124	Telex from A. Kramer to Peter Mo & Company	5th January, 1977	1211
Y2-127	Not printed		
	(The Bought and Sold Notes and the Instrument of Transfer in respect of the 10 Million shares of San Imperial Corporation Ltd. referred to under this mark are the same as those printed under Y1-17)		
Y2-128(A)	Bought & Sold Notes in respect of 515,000 shares of San Imperial Corporation Ltd.....	29th March, 1977	1212
Y2-128(B)	Instrument of Transfer in respect of 514,200 shares of San Imperial Corporation Ltd.....	29th March, 1977	1213
Y2-129	Bought & Sold Notes with Instrument of Transfer in respect of 1,650,000 shares of San Imperial Corporation Ltd.....	29th March, 1977	1214
Y3-12	Certified English Translation of "Record of Foreign Currencies brought in by Passengers".....		1216
Y3-13	– do –		1217

INDEX OF REFERENCE – VOLUME V (Contd.)

Mark	Description of Document	Date	Page
Y3-14	– do –		1218
Y3-20	Letter from David Ng Pak Shing to M.E. Ives	7th July, 1977	1219
Y3-21	Letter from Philip K.H. Wong & Company to Peter Mo & Company.	7th July, 1977	1220
Y3-24	Wing On Bank draft for US\$20,000.00	21st January, 1977	1221
Y3-30,31	2 share Certificates of San Imperial Corporation Ltd.	28th March, 1977	1222
Y3-32,33	2 blank Instruments of Transfer		1224
Y3-34	Letter from Chaw-I Chow & Shang-Pai Hwang to Fermay Company Ltd.	Undated	1226
Y3-40	6 telexes between Peter Mo & Company and K.C. Ding	13th October, 1977 – 27th October, 1977	1227
Y4-38	Letter from MAF Investment Ltd. to Hong Kong Estates Ltd.	17th July, 1976	1233
Y4-39	Letter from Hong Kong Estate Ltd. to MAF Investment Ltd. . .	17th January, 1977	1234
Y5-41	Receipt from Registrar of Companies for \$36,036.00.	2nd April, 1977	1235
*Red 2 PP 8-14	Affidavit of M.E. Ives	23rd June, 1977	1236
*Red 2 PP 15-18	Affidavit of David Ng Pak Shing	23rd June, 1977	1240
*Red 2 PP 50-58	Affidavit of David Ng Pak Shing	27th July, 1977	1243

INDEX OF REFERENCE – VOLUME V (Contd.)

PART II

B EXHIBITS

Mark	Description of Document	Date	Page
P6	Affidavit of David Ng Pak Shing and Exhibits thereto.	29th June, 1977	1249
P7	Not printed (The same document as Y1-15)		
P8	Note of Interview with Chaw-I Chow made by Lee Ing Chee . .	11th July, 1977	1277
P10	Draft of Sale and Purchase Agreement in respect of 15,515,000 shares of San Imperial Corporation Ltd.		1279
P11A	Not printed (The Instrument of Transfer in respect of 5 Million shares of San Imperial Corporation Limited exhibited under this mark is the same as the one printed under Y1-17)		
P11B	Not printed (The Instrument of Transfer in respect of 10 Million shares of San Imperial Corporation Limited exhibited under this mark is the same as the one printed under Y1-17)		

INDEX OF REFERENCE – VOLUME V (Contd.)

Mark	Description of Document	Date	Page
*P12	Share Transfer Chart.....		1280
P14	Bundle of Ledger Accounts of San Imperial Corporation Ltd. & Malaysia America Finance Corporation (HK) Ltd.....		1281
D8	Not printed..... The documents exhibited under this mark were: A. Bought & Sold Notes and Instrument of Transfer in respect of 514,200 shares of San Imperial Corporation (the same documents as Y2-128(A), (B)) B. 2 blank Instruments of Transfer (the same documents as Y3-32) C. Bought & Sold Notes and Instrument of Transfer in respect of 1,650,000 shares of San Imperial Corporation Ltd. (the same documents as Y2-129)		
D9	Certified English Translation of Testimonial of Lau Mui Chow	22nd day of the 6th Month of the 66th Year of the Republic of China	1304
D16	Estimate of Assets and Liabilities of San Imperial Corporation Ltd.....		1306
*D17	Letter from Asiatic Nominees Ltd. to Y.S. Cheng & Company	13th August, 1976	1308

* Documents required by the Respondents but objected to by the Appellants

LIST OF DOCUMENTS OMITTED TO BE PRINTED

PART I

No.	Description of Document	Date
<p><i>IN THE SUPREME COURT OF HONG KONG HIGH COURT NO. 2459 OF 1976</i></p> <hr style="width: 30%; margin: auto;"/>		
1	Summons Ex Parte	16th November, 1976
2	Affidavit of Lee Ing Chee and Exhibits thereto	3rd December, 1976
3	Order of Mr. Registrar Barnett	4th December, 1976
4	Affirmation of Leung Fook Wah and Exhibits thereto	6th December, 1976
5	Praecipe for a Warrant.	10th December, 1976
6	Affirmation of Service.	18th May, 1977
7	Summons Ex Parte	1st June, 1977
8	Affirmation of Lee Ing Chee and Exhibits thereto	1st June, 1977
9	Order of Mr. Registrar O'Dea	2nd June, 1977
10	Affirmation of Leung Fook Wah and Exhibits thereto	4th July, 1977
11	Certificate of Non-appearance.	4th July, 1977
12	Summons Inter partes.	15th July, 1977
13	Summons Ex Parte	15th July, 1977
14	Affirmation of Lee Ing Chee and Exhibits thereto	15th July, 1977
15	Affirmation of Li Sung Sing	18th July, 1977
16	Affirmation of Denis Ko	19th July, 1977
17	Affirmation of Leung Fook Wah.	19th July, 1977
18	Affirmation of Li Sun Sing	21st July, 1977
19	Affirmation of Leung Fook Wah.	22nd July, 1977
20	Affirmation of Jackson Poon and Exhibits thereto	22nd July, 1977
21	Affirmation of Denis Ko and Exhibits thereto	26th July, 1977
22	Affidavit of James Coe and Exhibits thereto	27th July, 1977
23	Affidavit of Tsang Ngai Siu Fong	27th July, 1977
24	Affidavit of Tsang Tak Fai	27th July, 1977
25	Exhibits to Affidavit of David Ng Pak Shing made on 27th July, 1977.	
26	Order of Mr. Justice Li	27th July, 1977
27	Affirmation of Leung Fook Wah.	3rd August, 1977
28	Affirmation of Leung Fook Wah and Exhibits thereto	5th August, 1977
29	Order of Mr. Justice Zimmern.	9th August, 1977
30	Order of Mr. Justice Zimmern	24th August, 1977
31	Summons for Directions	25th August, 1977

No.	Description of Document	Date	
<p><i>IN THE SUPREME COURT OF HONG KONG MISCELLANEOUS PROCEEDINGS NO. 155 OF 1977</i></p> <hr/>			
32	Originating Summons	3rd March, 1977	
33	Affidavit of Munusamy Sivalingam and Exhibits thereto.	3rd March, 1977	
34	Notice of Registration of Foreign Judgment	22nd April, 1977	
35	Summons Ex Parte	31st May, 1977	
36	Affidavit of Lee Ing Chee and Exhibits thereto.	31st May, 1977	
37	Order.	1st June, 1977	
38	Summons Ex Parte	15th July, 1977	
39	Summons Inter Partes.	15th July, 1977	
40	Affidavit of Lee Eng Chee.	15th July, 1977	
41	Affirmation of Li Sun Sing	18th July, 1977	
42	Affirmation of Leung Fook Wah.	19th July, 1977	
43	Affirmation of Denis Ko	19th July, 1977	
44	Affirmation of Li Sun Shing	21st July, 1977	
45	Affirmation of Leung Fook Wah.	22nd July, 1977	
46	Affirmation of Denis Ko and Exhibits thereto	26th July, 1977	
47	Affidavit of Tsang Ngai Siu Fong	27th July, 1977	
48	Affidavit of Tsang Tak Fai	27th July, 1977	
49	Affidavit of James Coe	27th July, 1977	
50	Summons Inter Partes.	27th July, 1977	
51	Exhibits to Affidavit of David Ng Pak Shing made on 27th July, 1977.		
52	Order of Mr. Justice Li	27th July, 1977	
53	Affirmation of Leung Fook Wah and Exhibits thereto	5th August, 1977	
54	Order of Mr. Justice Zimmern.	8th August, 1977	
55	Summons	24th August, 1977	
56	Affidavit of James Coe	24th August, 1977	
57	Order of Mr. Justice Zimmern.	24th August, 1977	
58	Summons for directions	25th August, 1977	
59	Bond of The H.K. & Shanghai Banking Corporation (Released to Deacons on 11/10/78 see letter dated 5/10/78)	25th August, 1977	
60	Affirmation of Leung Fook Wah and Exhibits thereto	3rd September, 1977	
<p><i>IN THE SUPREME COURT OF HONG KONG HIGH COURT ACTION NO. 2459 OF 1976 & HIGH COURT MISCELLANEOUS PROCEEDINGS NO. 155 OF 1977 (consolidated pursuant to the Order of Mr. Justice Zimmern dated 20th August 1977)</i></p> <hr/>			

No.	Description of Document	Date	
61	Bond of The H.K. & Shanghai Banking Corporation (Released to Deacons on 11/10/78 see letter dated 5/10/78 in M.P. 155/77).....	25th August, 1977	
62	Affidavit of David Ng Pak Shing and Exhibits thereto.....	31st August, 1977	
63	Certificate of Urgency.....	1st September, 1977	
64	Summons Inter Partes.....	1st September, 1977	
65	Affidavit of James Coe and Exhibits thereto.....	2nd September, 1977	
66	Certificate of Urgency.....	2nd September, 1977	
67	Summons Inter Partes.....	2nd September, 1977	
68	Affirmation of Yeung Wai Luen and Exhibits thereto.....	5th September, 1977	
69	Summons Ex Parte.....	5th September, 1977	
70	Summons Ex Parte.....	5th September, 1977	
71	Solicitor's Certificate.....	5th September, 1977	
72	Order of Mr. Registrar Stapp.....	6th September, 1977	
73	Order of Mr. Justice Zimmern.....	8th September, 1977	
74	Summons.....	14th September, 1977	
75	Summons.....	14th September, 1977	
76	Summons.....	20th September, 1977	
77	Affidavit of David Ng Pak Shing.....	20th September, 1977	
78	Summons.....	20th September, 1977	
79	Affidavit of James Coe.....	20th September, 1977	
80	Affidavit of David Ng Pak Shing.....	21st September, 1977	
81	Affidavit of Yeung Wai Luen and Exhibits thereto.....	22nd September, 1977	
82	Order of Mr. Justice Yang.....	23rd September, 1977	
83	Order of Mr. Justice Yang.....	23rd September, 1977	
84	Application to set down a case for Trial.....	27th September, 1977	
85	Notice of Setting down.....	27th September, 1977	
86	Order of Mr. Justice Zimmern.....	27th August, 1977	
87	List of Documents of the Plaintiff.....	29th September, 1977	
88	List of Documents of the 4th, 5th, 6th and 7th Defendants... ..	30th September, 1977	
89	List of Documents of the 10th Defendant.....	1st October, 1977	
90	Further List of Documents of the 4th, 5th, 6th and 7th Defendants.....	6th October, 1977	
91	Praeipce of Subpoena.....	6th October, 1977	
92	Writ of Subpoena.....	6th October, 1977	
93	Bond of H.K. & Shanghai Bank (Released to J.S.M. on 12/10/78 see letter dated 5/10/78 in M.P. 155/77).....	7th October, 1977	
94	Further List of Documents of the 10th Defendant.....	10th October, 1977	
95	Counter Notice Requiring Person to be Called.....	10th October, 1977	
96	Counter Notice Requiring Person to be Called.....	10th October, 1977	
97	Counter Notice Requiring Person to be Called.....	10th October, 1977	
98	Supplementary List of Documents of Plaintiffs.....	10th October, 1977	
99	Counter Notice Requiring Person to be Called.....	13th October, 1977	
100	Counter Notice Requiring Person to be Called.....	17th October, 1977	

No.	Description of Document	Date
101	Notice to Admit Facts.	18th October, 1977
102	Further List of Documents of the 4th, 5th, 6th and 7th Defendants	19th October, 1977
103	Further List of Documents of the 4th, 5th, 6th and 7th Defendants	20th October, 1977
104	Praeceptum for Writ of Subpoena.	20th October, 1977
105	Writ of Subpoena	20th October, 1977
106	Affirmation of Li Sun Sing	22nd October, 1977
107	Notice Requiring Persons to be Called.	22nd October, 1977
108	Affidavit of Melville Edward Ives and Exhibits thereto	25th October, 1977
109	Further List of Documents of the 4th, 5th, 6th and 7th Defendants	27th October, 1977
110	Further Supplementary List of Documents of the 10th Defendant	27th October, 1977
111	Notice to Admit Facts.	27th October, 1977
112	Supplementary List of Documents of Plaintiffs.	27th October, 1977
113	Notice to Admit Facts.	28th October, 1977
114	Hearsay Notice of the 4th, 5th, 6th and 7th Defendants.	29th October, 1977
115	Writ of Subpoena	5th November, 1977
116	Further List of Documents of the 4th, 5th, 6th and 7th Defendants	7th November, 1977
117	Further List of Documents of the 10th Defendant	7th November, 1977
118	Summons	8th November, 1977
119	Summons	8th November, 1977
120	Subpoena	22nd November, 1977
121	Subpoena	22nd November, 1977
122	Subpoena	25th November, 1977
123	Order of Mr. Justice Yang	8th December, 1977
124	Summons	12th December, 1977
125	Affirmation of Peter Bun Yeung	19th December, 1977
126	Affidavit of James Coe	20th December, 1977
127	Affidavit of M.E. Ives	20th December, 1977
128	Order of Mr. Justice Yang	21st December, 1977
129	Affirmation of Leung Fook Wah.	4th January, 1978
130	Summons	30th January, 1978
131	Summons	30th January, 1978
132	Summons	30th January, 1978
133	Summons	1st February, 1978
134	Affirmation of Denis Ko	1st February, 1978
135	Affirmation of Yeung Wai Luen	1st February, 1978
136	Order of Mr. Justice Yang	2nd February, 1978
137	Order of Mr. Justice Yang	3rd February, 1978
138	Affirmation of Yeung Wai Luen	10th February, 1978
139	Affirmation of Yeung Wai Luen	15th February, 1978

No.	Description of Document	Date
140	Affidavit of Peter Yeung & Notice under O. 50 r.11	2nd March, 1978
141	Affirmation of Denis Ko	10th March, 1978
142	Summons Inter Partes	13th May, 1978
143	Summons	13th May, 1978
144	Notice of payment into Court.	15th May, 1978
145	Order of Mr. Justice Cons	15th May, 1978
146	Notice of payment into Court.	15th June, 1978
147	Consent Summons.	25th September, 1978
148	Order of Mr. Registrar Cameron	27th September, 1978
149	Memorandum of Appearance	16th November, 1978
<p><i>IN THE SUPREME COURT OF HONG KONG MISCELLANEOUS PROCEEDINGS NO. 540 OF 1977</i></p> <hr/>		
150	Affirmation of Chong Kah Keng and Exhibits thereto	17th August, 1977
151	Certificate of Urgency	18th August, 1977
152	Originating Summons	18th August, 1977
153	Summons Ex Parte	18th August, 1977
154	Affidavit of Christopher Raymond Wilson and Exhibits thereto	18th August, 1977
155	Affidavit of Christopher Raymond Wilson and Exhibits thereto	19th August, 1977
156	Notice of Registration of Foreign Judgment	21st August, 1977
157	Affirmation of Tang Ping Kong and Exhibits thereto	27th August, 1977
158	Affirmation of Tang Ping Kong and Exhibits thereto	1st September, 1977
159	Summons Ex Parte	6th September, 1977
160	Affidavit of C.R. Wilson and Exhibits thereto.	7th September, 1977
161	Affidavit of C.R. Wilson and Exhibits thereto.	7th September, 1977
162	Affirmation of Hezan Shah and Exhibits thereto	7th September, 1977
163	Summons Inter Partes	10th September, 1977
164	Affirmation of Tang Ping Kong and Exhibits thereto	12th September, 1977
165	Summons Ex Parte	13th September, 1977
166	Affidavit of Christopher Raymond Wilson	13th September, 1977
167	Affidavit of Christopher Raymond Wilson and Exhibits thereto	14th September, 1977
168	Affidavit of Christopher Raymond Wilson and Exhibits thereto	14th September, 1977
169	Affidavit of Christopher Raymond Wilson.	14th September, 1977
170	Affirmation of Tang Ping Kong.	15th September, 1977
171	Affirmation of Tang Ping Kong.	15th September, 1977
172	Notice of Charging Order	20th September, 1977
173	Affirmation of Tang Ping Kong.	21st September, 1977
174	Affirmation of Tang Ping Kong and Exhibits thereto	29th September, 1977
175	Application to set down	30th September, 1977
176	Notice to set down	30th September, 1977

No.	Description of Document	Date
177	Praecipe of Writ of Subpoena	5th October, 1977
178	Writ of Subpoena	6th October, 1977
179	Affirmation of Hezan Shah verifying List of Documents.	6th October, 1977
180	Summons	6th October, 1977
181	Notice to Admit Facts.	7th October, 1977
182	Affirmation of Tang Ping Kong.	7th October, 1977
183	List of Documents of the 4th, 5th, 6th and 7th Defendants	7th October, 1977
184	Affirmation of Tang Ping Kong.	7th October, 1977
185	Writ of Subpoena	10th October, 1977
186	Notice to call witness	10th October, 1977
187	Plaintiff's Supplementary List of Documents	10th October, 1977
188	Writ of Subpoena	10th October, 1977
189	Affirmation of Samuel Sih-Yu Yang	11th October, 1977
190	List of Documents.	11th October, 1977
191	Praecipe for Writ of Subpoena.	11th October, 1977
192	Notice to Act of the 2nd Defendant	11th October, 1977
193	Summons Ex Parte	11th October, 1977
194	Affirmation of Rosanna Wong.	11th October, 1977
195	Hearsay Notice	12th October, 1977
196	Praecipe for Writ of Subpoena & Subpoena.	12th October, 1977
197	Affirmation of Ricky So and Exhibits thereto	12th October, 1977
198	Writ of Subpoena	12th October, 1977
199	Counter Notice Requiring Persons to be Called.	12th October, 1977
200	Counter Notice Requiring Persons to be Called.	12th October, 1977
201	Praecipe & Writ of Subpoena.	13th October, 1977
202	Notice	14th October, 1977
203	Notice to Admit Facts.	17th October, 1977
204	Affidavit of Christopher Raymond Wilson	17th October, 1977
205	Affirmation of Charles C.K. Tse	17th October, 1977
206	Further List of Documents of the 4th, 5th, 6th and 7th Defendants	19th October, 1977
207	Order of Mr. Registrar Barnett	19th October, 1977
208	Certificate	19th October, 1977
209	Affirmation of Li Sun Sing	22nd October, 1977
210	List of Documents for Specific Discovery Against the 5th Defendant	25th October, 1977
211	Supplementary List of Documents of Malaysia Borneo Finance Corporation (M) Berhad	28th October, 1977
212	Hearsay Notice of Malaysia Borneo Finance Corporation (M) Berhad.	28th October, 1977
213	Supplementary List of Documents of the 4th, 5th, 6th and 7th Defendants	29th October, 1977
214	Counter Notice	31st October, 1977
215	Counter Notice	1st November, 1977

No.	Description of Document	Date	
216	Order of Mr. Justice Yang	7th November, 1977	
217	Affidavit of Simon Ip	9th November, 1977	
218	Supplementary List of Documents of Malaysia Borneo Finance Corporation (M) Berhad	10th November, 1977	
219	Affirmation of Tang Kai Cheong	11th November, 1977	
220	Affirmation of Tang Ping Kong	11th November, 1977	
221	Order of Mr. Justice Yang	14th November, 1977	
222	Affirmation of Tang Kai Cheong	21st November, 1977	
223	Affirmation of Tang Ping Kong	22nd November, 1977	
224	Affidavit of Simon Ip	20th December, 1977	
225	Affirmation of Tang Kai Cheong	2nd February, 1978	
226	Affirmation Tang Ping Kong	2nd February, 1978	
227	Affirmation of Tang Kai Cheong	13th February, 1978	
228	Affirmation of Tang Ping Kong	15th February, 1978	
229	Affirmation of Tang Ping Kong	17th February, 1978	
230	Affidavit of Simon Ip & Notice under O. 50 r. 11	25th February, 1978	
231	Affirmation of Tang Kai Cheong	27th February, 1978	
232	Affirmation of Tang Kai Cheong	27th February, 1978	
233	Affirmation of Tang Ping Kong	27th February, 1978	
234	Summons	27th February, 1978	
235	Affidavit of Simon Ip	27th February, 1978	
236	Order.	27th February, 1978	
237	Summons	27th February, 1978	
238	Affirmation of Tang Ping Kong and Exhibits thereto	27th February, 1978	
239	Order.	27th February, 1978	
240	Summons Ex Parte	3rd March, 1978	
241	Order of Mr. Justice Yang	3rd March, 1978	
242	Affidavit of Simon Ip	3rd March, 1978	
243	Affirmation of Tang Ping Kong and Exhibits thereto	5th March, 1978	
244	Affirmation of Tang Ping Kong	6th March, 1978	
245	Summons Inter Partes	6th March, 1978	
246	Summons Inter Partes	6th March, 1978	
247	Affirmation of Tang Ping Kong	6th March, 1978	
248	Affirmation of Tang Ping Kong	6th March, 1978	
249	Affirmation of Tang Kai Cheong	8th March, 1978	
250	Affirmation of Tang Ping Kong	11th March, 1978	
251	Affirmation of Tang Ping Kong	11th March, 1978	
252	Affirmation of Tang Ping Kong	11th March, 1978	
253	Affirmation of Tang Ping Kong	13th March, 1978	
254	Affirmation of Tang Ping Kong	13th March, 1978	
255	Affirmation of Tang Ping Kong	13th March, 1978	
256	Affirmation of Tang Ping Kong	13th March, 1978	
257	Affirmation of Samuel S.Y. Yang	14th March, 1978	
258	Affidavit of Vincent Cheung and Exhibits thereto	20th March, 1978	

No.	Description of Document	Date
259	Affidavit of Simon Ip and Exhibits thereto	30th March, 1978
260	Affirmation of Tang Ping Kong and Exhibits thereto	1st April, 1978
261	Summons	6th April, 1978
262	Affidavit of Simon Ip and Exhibits thereto	6th April, 1978
263	Summons	6th April, 1978
264	Affidavit of Simon Ip and Exhibits thereto	6th April, 1978
265	Affirmation of Tang Kai Cheong and Exhibits thereto	10th April, 1978
266	Affirmation of Tang Kai Cheong and Exhibits thereto	10th April, 1978
267	Affirmation of Tang Kai Cheong and Exhibits thereto	10th April, 1978
268	Affirmation of Tang Kai Cheong and Exhibits thereto	10th April, 1978
269	Affirmation of Tang Kai Cheong and Exhibits thereto	10th April, 1978
270	Affirmation of Tang Kai Cheong and Exhibits thereto	10th April, 1978
271	Affirmation of Tang Kai Cheong and Exhibits thereto	10th April, 1978
272	Affirmation of Tang Kai Cheong and Exhibits thereto	10th April, 1978
273	Affirmation of Tang Kai Cheong and Exhibits thereto	10th April, 1978
274	Affirmation of Tang Kai Cheong and Exhibits thereto	10th April, 1978
275	Order of Mr. Justice Yang	13th April, 1978
276	Order of Mr. Justice Yang	13th April, 1978
277	Summons Inter Partes	13th May, 1978
278	Order of Mr. Justice Cons	17th May, 1978
279	Memorandum of appearance	15th November, 1978

PART II

Abbreviations

- “Bentley” – Bentley Securities Company
- “Fermay” – Fermay Company Limited
- “JSM” – Johnson, Stokes & Master, Solicitors
- “Oceania” – Oceania Finance & Land Corporation Limited
- “MAF” – Malaysia America Finance Corporation (HK) Limited
- “Peter Mo” – Peter Mo & Company, Solicitors
- “Philip Wong” – Philip K.H. Wong & Company, Solicitors
- “San Imperial” – San Imperial Corporation Limited
- “SKC” – Siu King Cheung Hing Yip Company Limited
- “Tai Pan” – Tai Pan Building Management Limited

A. FROM BUNDLES OF AGREED DOCUMENTS

Mark	Description of Document	Date
Y1-1	Tax Return of Bentley	1st November, 1974

Mark	Description of Document	Date
Y1-2	Annual Return of Romo Co. Ltd.	31st December, 1974
Y1-3	Letter from San Imperial to Tai Pan	1st April, 1975
Y1-5	Letter from Tai Pan to I.C. Lee.	2nd May, 1975
Y1-7	Affidavit of Choo Kim San	21st February, 1976
Y1-19	Resolution of the Board of Directors of SKC	30th March, 1977
Y1-20	Letter from Peter Mo to Philip Wong	30th March, 1977
Y1-24	Draft Agreement prepared by Philip Wong	undated
Y1-28	Letter from MAF to Peter Mo.	22nd April, 1977
Y1-29	Letter from City Nominees Ltd. to Dr. Ooi Weng Poy	22nd April, 1977
Y1-31	Letter from Peter Mo to Philip Wong	23rd April, 1977
Y1-33	Letter from Philip Wong to Peter Mo	29th April, 1977
Y1-36	Official Receipt from Philip Wong for \$1,500,000.00.	30th April, 1977
Y1-49	Letter from San Imperial to City Nominees Ltd..	4th May, 1977
Y1-53	Letter from MAF to Fermay.	11th May, 1977
Y1-57	Cutting from South China Morning Post	13th May, 1977
Y1-75	Letter from James Coe to David Ng	9th June, 1977
Y1-76	Receipt from Peter Mo for \$1,500,000.00	9th June, 1977
Y1-77	Receipt for 23,000,000 shares of SKC	undated
Y1-78	Receipt from David Ng to James Coe for 37 Share Certificates	9th June, 1977
Y1-83	Sold Note in respect of 7,631,000 shares of San Imperial.	15th June, 1977
Y1-84	Bought Note in respect of 7,631,000 shares of San Imperial.	15th June, 1977
Y1-86	Testimonial of Law Mui Chow (with translation)	22nd June, 1977
Y1-89	Receipt from Bentley for \$200,000.00	25th June, 1977
Y1-90	Copy of Business Registration Certificate of Bentley	28th June, 1977
Y1-92	Letter from Bentley to James Coe.	2nd July, 1977
Y1-93	Bought Note in respect of 369,000 shares of San Imperial	4th July, 1977
Y1-94	Sold Note in respect of 369,000 shares of San Imperial	4th July, 1977
Y1-100	Letter from Peter Mo to MAF Investments Ltd.	13th August, 1977
Y2-106	9 Cheques	
Y2-107	3 Cheques	
Y2-108	A cheque for \$200,000.00 drawn by James Coe in favour of David Ng.	15th August, 1977
Y2-109	3 cheques	
Y2-110	A Bundle of international call bills	
Y2-120	Record of Foreign Currencies brought in by Passengers No. 130232	
Y2-122	Record of Foreign Currencies brought in by Passengers No. 136848	
Y2-125	Advice of Drawing given by The Wing On Bank Ltd..	21st January, 1977
Y2-126	Notice of Outward Payment from the Wing On Bank Ltd. to Tai Pan	28th February, 1977
Y2-130	A Cheque for \$50,000.00 drawn by Bentley in favour of MAF	31st March, 1977
Y2-131	Letter from MAF to David Ng and Ho Chapman.	14th June, 1977
Y2-132	Letter from Bentley to Oceania.	17th June, 1977

Mark	Description of Document	Date
Y2-133	Letter from MAF to David Ng	18th June, 1977
Y2-135	Statement of Account of San Imperial	undated
Y3-3	Writ of Summons in Action No. 1026 of 1972 in the Supreme Court of Hong Kong	27th April, 1972
Y3-15	(i) Minutes of a meeting of directors of Tai Pan held on 31st January, 1977 (ii) Minutes of a meeting of directors of Tai Pan held on 3rd July, 1976.	
Y3-23	8 Cheques	
Y3-25	3 letters of appointment from Harilela's to Tai Pan.	all 16th December, 1974
Y3-26	(i) Agreement between Hotel Holdings Ltd. and Tai Pan (ii) Agreement between Harilela's Properties & Investments Ltd. and Tai Pan (iii) Agreement between Ashoka Investments Ltd. and Tai Pan	2nd July, 1976 29th June, 1976 30th March, 1975
Y3-27	11 Cheques	
Y3-28	5 Cheques	
Y3-29	Accounts of David Ng's shareholding in Harilela's Properties & Investments Ltd.	
Y3-38	5 cheques all drawn on the Chase Manhattan Bank N.A.	
Y3-41	Declaration of Trust by Ho Chung Po and Rita Lee in favour of Choo Kim San.	March, 1974
Y3-42	Declaration of Trust by Lee Kee Sang and Pang Wing Fan in favour of Choo Kim San	March, 1974
Y3-43	Letter from MAF to Peter Mo.	4th March, 1974
Y3-137	Bundles of Bought and Sold Notes on acquisition of 2.2796 million of San Imperial shares	various dates
Y4-1	Extract of the minutes of the Annual General meeting of SKC held on 5th November, 1976.	
Y4-2	Minutes of a meeting of directors of SKC held on 22nd June, 1977	
Y4-3	Agreement between San Imperial and SKC	22nd June, 1977
Y4-4	Undertaking from SKC to San Imperial.	22nd June, 1977
Y4-5	Minutes of a meeting of directors of SKC held on 23rd June, 1977	
Y4-6	Instruments of Transfer from Choo Kim San to San Imperial with Declaration of Trust attached	27th June, 1977
Y4-7	Letter from Philip Wong to Far East Exchange Ltd.	28th June, 1977
Y4-8	Letter from Philip Wong to Far East Exchange Ltd.	29th June, 1977
Y4-9	Letter from Philip Wong to Kowloon Stock Exchange Ltd.	29th June, 1977
Y4-10	Letter from Philip Wong to Hong Kong Stock Exchange Ltd.	29th June, 1977
Y4-11	Letter from Philip Wong to Kam Ngan Stock Exchange Ltd.	29th June, 1977
Y4-12	Letter from SKC to Peter Chan (Secretaries) Ltd.	29th June, 1977

Mark	Description of Document	Date
Y4-13	Bought & Sold Notes with Instrument of Transfer in respect of one share of Oceania	30th June, 1977
Y4-14	Bought & Sold Notes with Instrument of Transfer in respect of 49,999 shares of Oceania	30th June, 1977
Y4-15	Return of Allotment made by SKC on 30th June, 1977	
Y4-16	Valuation Report of Bangkok Hotel	4th July, 1977
Y4-17	Letter from Philip Wong to Kowloon Stock Exchange Ltd.	8th July, 1977
Y4-18	Letter from Far East Exchange Ltd. to Philip Wong	8th July, 1977
Y4-19	Notice of Meeting given by SKC	8th July, 1977
Y4-20	Letter from Philip Wong to Far East Exchange Ltd.	12th July, 1977
Y4-21	Letter from Far East Exchange Ltd. to Philip Wong	26th July, 1977
Y4-22	Letter from Philip Wong to Far East Exchange Ltd.	28th July, 1977
Y4-23	Extract from the minutes of an Exordinary General Meeting of SKC held on 3rd August, 1977	
Y4-24	Letter from SKC to Peter Chan (Secretaries) Ltd.	6th August, 1977
Y4-25	Return of Allotment made by SKC on 13th August, 1977	
Y4-26	Letter from Philip Wong to Far East Exchange Ltd.	24th August, 1977
Y4-27	Letter from Philip Wong to Far East Exchange Ltd.	25th August, 1977
Y4-28	Letter from Far East Exchange Ltd. to Philip Wong	2nd September, 1977
Y4-29	Letter from Philip Wong to Far East Exchange Ltd.	5th September, 1977
Y4-30	Letter from Kowloon Stock Exchange Ltd. to Philip Wong	8th September, 1977
Y4-31	Letter from Far East Exchange Ltd. to Philip Wong	10th September, 1977
Y4-32	4 cheques	
Y4-33a	6 loan records	all 27th June, 1977
Y4-33	Account of Oceania and pay-in slips showing repayment of loans	
Y4-33A	3 cheques	
Y4-35	13 cheques	
Y4-36	A cheque for \$3,000,000.00 drawn by James Coe in favour of Ho Chapman & Associates Ltd.	24th October, 1977
Y4-37	Minutes of a meeting of directors of San Imperial.	10th June, 1977
Y4-40	Letter from Peter Mo to Oceania.	15th June, 1977
Y4-41	Letter from Hong Kong Estates Ltd. to MAF	27th June, 1977
Y4-42	Letter from James Coe to Ming Kee Trading Co. Ltd.	27th June, 1977
Y4-43	Letter from Ming Kee Trading Co. Ltd. to David Ng.	27th June, 1977
Y4-44	Letter from Oceania to Bentley.	27th June, 1977
Y4-45	Letter from James Coe to MAF.	27th June, 1977
Y4-46	2 cheques	
Y4-47	Certificate of Deposit issued by Oceania	27th June, 1977
Y5-1	James Coe's share account with David Ng	undated
Y5-1A-M	Shares dealings accounts	
Y5-2-6	Statement of David Ng's account with Chase Manhattan Bank N.A.	

Mark	Description of Document	Date
Y5-7	Debit advice from Hong Kong Industrial & Commercial Bank Ltd. to David Ng	26th October, 1977
Y5-8-13	Statement of David Ng's account with Hong Kong Industrial & Commercial Bank Ltd.	
Y5-14	3 cheques	
Y5-15	3 cheques	
Y5-16	3 cheques	
Y5-17-20	Statement of Bentley's account with Hong Kong Metropolitan Bank Ltd.	
Y5-21	Debit advice from Hong Kong Industrial & Commercial Bank Ltd. to Bentley	31st May, 1977
Y5-22-27	Statements of Bentley's account with Hong Kong Industrial & Commercial Bank Ltd..	
Y5-28	Debit advice from Hong Kong Industrial & Commercial Bank Ltd. to Bentley	30th June, 1977
Y5-29	Debit advice from Hong Kong Industrial & Commercial Bank Ltd. to Bentley	30th July, 1977
Y5-30-32	Satements of Bentley's account with Hong Kong Industrial & Commercial Bank Ltd..	
Y5-42-89	Interim Reports of the affairs of MAF Credit Ltd.	October, 1977
Y5-90	Credit advice from the Wing On Bank Ltd. to Tai Pan.	10th March, 1977
Y5-91	Notice of Outward Payment from the Wing On Bank Ltd. to Tai Pan	13th May, 1977
Y5-92-109	Annual Report of San Imperial	ending 30th June, 1977
Y5-110-117	Interim Report of San Imperial.	1976/77
Y5-118-125	Syndicate Account	
Y5-126	A cheque for \$500,000.00 drawn by Bentley in favour of James Coe	23rd July, 1977
Y5-127a	A cheque for \$200,000.00 drawn by Chapman Ho in favour of James Coe.	23rd July, 1977
Y5-131	Companies Registry Search Card in respect of Restormel Ltd.	12th October, 1977

AND

- (1) All the pleadings and interlocutory proceedings in High Court Miscellaneous Proceedings No. 159 of 1977 except
 - (a) The affidavit of M.E. Ives made on 23rd June, 1977; and
 - (b) The affidavit of David Ng made on 23rd June, 1977.
- (2) All the pleadings and interlocutory proceedings in High Court Miscellaneous Proceedings No. 252 of 1977.
- (3) The following affidavits filed in High Court Action No. 1674 of 1977

	Name of Deponent	Date
(a)	David John Lawrence	8/7/1977
(b)	David Ng Pak Shing	29/6/1977
(c)	David Ng Pak Shing	5/8/1977
(d)	David Ng Pak Shing	13/8/1977
(e)	David Ng Pak Shing	27/8/1977
(f)	David Ng Pak Shing	2/9/1977
(g)	Alfred Donald Yap	25/7/1977
(h)	Alfred Donald Yap	17/9/1977
(i)	Alfred Donald Yap	23/7/1977
(j)	Alfred Donald Yap	21/9/1977
(k)	Alfred Donald Yap	22/9/1977

- (4) Letter from JSM to Peter Mo dated 13/10/1977
(5) Letter from Peter Mo to JSM dated 24/10/1977
(6) Letter from Peter Mo to JSM dated 27/10/1977
(7) Letter from JSM to Peter Mo dated 28/10/1977
(8) Letter from Peter Mo to JSM dated 2/11/1977

B. EXHIBITS

Mark	Description of Document	Date
P1	Schedule of MAF Companies in Hong Kong	
P2	A bundle of Returns of Particulars of Directors of Asiatic Nominees Ltd..	
P3	Annual Return of Asiatic Nominees Ltd. made up to 31st December, 1976	
P4	Details of directors and shareholders of Hong Kong Companies owned by Choo Kim San.	
P5	Particulars of directors and shareholders of MAF Companies In Hong Kong	
P9	Visiting card of Chow Chaw-I	
P9A	Certified English translation of the visiting card of Chow Chaw-I.	
P13	Chart of incomings and outgoings of the Syndicate and James Coe and others	undated
P13A	Summary of the above chart	undated
P15	Turnover of shares of San Imperial in the months of August, 1976 to June, 1977.	
P15A	- do -	

Mark	Description of Document	Date
P16	Transfers list of shares of San Imperial	
P17A & B	Two Instruments of Transfer.	
P18	Writ of Summons in High Court Action No. 1674 of 1977	29th June, 1977
P19A	Trading Barometer in 3 stock exchanges in respect of shares of San Imperial	
P19B	Appendix	
P20	Agreements & Security Documents.	
P21	Transactions chart.	
P22	Land Search Register.	
P23	3 Declarations of Trust by IPC Nominees Ltd. in favour of Rocky Enterprises Co. Ltd.	15th June, 1977 18th July, 1977 28th July, 1977
P24	Annual Report of SKC	
P25	Statement of Charges by the Attorney General against Choo Kim San	23rd October, 1976
P26	Diagram of pyramid of credit	undated
PD1	Visiting Card of Chow Chaw-I.	
PD2	— do —	
D3	Balance sheet of MAF	
D4	Quoted investments of MAF Credit Ltd.	
D5	The Syndicate's trading account & balance sheet	
D6	Certificate of Identity of David Ng	
D7	Exit Permit from the Republic of China to David Ng	
D10	List of Companies of Ho Chapman	
D11	Power of Attorney from Harilela to Ho Chapman.	30th June, 1972
D12	22 cheques	
D13	Bundle of Share Certificates issued by San Imperial	
D14	2 cheques	
D15A	Letter from the Wing On Bank Ltd. to SKC	22nd November, 1977
B	Letter from Chekiang First Bank Ltd. to SKC.	22nd November, 1977
C	Letter from Chekiang First Bank Ltd. to IPC Holdings Ltd. . . .	22nd November, 1977
D	Letter from Chekiang First Bank Ltd. to Rockson Ltd.	22nd November, 1977
D18	Letter from MAF To Y.S. Cheng & Co.	4th October, 1976

limited for entering an appearance, otherwise judgment may be entered against him without notice.

No. 1

Writ of Summons
with Statement of
Claim
dated 16.11.1976

STATEMENT OF CLAIM

1. At all material times the Plaintiff was the agent of the Defendant and in respect of the debt hereinafter referred to the Defendant has made a trust deed dated the 29th day of March 1974. The Plaintiff will at the trial of this action refer to the said trust deed for its full term and effect.

2. On or about the 29th day of March 1974 the Plaintiff acting as such agent of the Defendant and at the Defendant's request and for the Defendant's own benefit borrowed a sum of M\$2,100,000.00 together with interest thereon at the rate of 15% per annum (hereinafter called the said loan and interest) from Malaysia Borneo Finance Corporation (M) Berhad of 9 Jalan Haji Openg Kuching (hereinafter called the said Finance Company). 10

3. By a Deed of Acknowledgement and Indemnity dated the 29th day of March 1974 the Defendant agreed, inter alia, to repay the said loan and interest to the said Finance Company and also undertook to indemnify the Plaintiff against any claims damages losses whatsoever whether in respect of repayment of the said loan and interest or otherwise that may be brought against the Plaintiff in respect of the said loan including all legal costs of and incidental thereto. The Plaintiff will at the trial of this action refer to the said Deed of Acknowledgement and Indemnity for its full terms and effect. 20

4. The Defendant wrongfully failed and/or refused to repay the said loan and interest to the said Finance Company. As a result, the said Finance Company commenced proceedings against the Plaintiff being Civil Suit No. 134 of 1975 in the High Court in Borneo (Kuohing Registry) and obtained judgment on the 19th day of July 1976 against the Plaintiff for a sum of M\$2,338,651.94 together with interest thereon at the rate of 15% per annum from the 1st day of April 1975 to the 19th day of July 1976 and at the rate of 6% per annum from the date of judgment to the date of payment.

5. In breach of the covenants contained in the said Deed of Acknowledgement and Indemnity, the Defendant has wrongfully failed and/or refused to indemnify the Plaintiff against the claims brought by the said Finance Company against the Plaintiff in respect of the said loan and interest. 30

6. In the premises, the Plaintiff has suffered loss and damage.

And the Plaintiff claims:—

(a) Under paragraph 4 hereof the sum of M\$2,338,651.94 together with interest thereon at the rate of 15% per annum from the 1st day of April 1975 to the 19th day of July 1976 and thereafter at the rate of 6% per annum from the 19th day of July 1976 until payment.

(b) Costs of Civil Suit No. K134 of 1975.

(c) Damages. 40

- (d) Costs of this action.
- (e) Further or other relief.

Supreme Court
of Hong Kong
High Court

(Sd.) Deacons
Solicitors for the Plaintiff

No. 1

Writ of Summons
with Statement of
Claim
dated 16.11.1976

And \$ 400.00 (or such sum as may be allowed on taxation) for costs, and also, if the Plaintiff obtains an order for substituted service, the further sum of \$ 500.00 (or such sum as may be allowed on taxation). If the amount claimed and costs be paid to the Plaintiff or his Solicitor within 8 days after service hereof, (inclusive of the day of service) further proceedings will be stayed.

10 This Writ was issued by MESSRS. DEACONS, of Tung Ying Building Rooms 1417/18, 14th Floor, 100 Nathan Road, Kowloon, Hong Kong, Solicitors for the Plaintiff, who resides at 13A, Kam Wah Building, 516 Nathan Road, Kowloon in the Colony of Hong Kong.

(Sd.) Deacons

Supreme Court
of Hong Kong
High Court

JUDGMENT IN DEFAULT OF APPEARANCE

No. 2

Judgment in
Default of
Appearance
dated 5.7.1977

No appearance having been entered by the Defendant herein IT IS THIS DAY ADJUDGED that the Defendant do pay the Plaintiff M\$2,338,651.94 together with interest thereon at the rate of 15% per annum from the 1st day of April 1975 to the 19th day of July 1976 and thereafter at the rate of 6% per annum from the 19th day of July 1976 until payment and \$1,226.00 fixed costs.

(Sd.) S. H. MAYO
Registrar.
(L.S.)

CHARGING ORDER NISI AND GARNISHEE ORDER

Supreme Court
of Hong Kong
High Court

NISI OF MR. JUSTICE LI

No. 3

Upon hearing Counsel for the Plaintiff and upon reading the Affirmation of Lee Ing Chee filed herein on the 15th day of July 1977.

Charging Order
Nisi and
Garnishee Order
Nisi of Mr.
Justice Li
dated 15.7.1977

IT IS ORDERED that unless sufficient cause to the contrary be shown before the Honourable Mr. Justice Li in Chambers on Wednesday, the 27th day of July 1977 at 10.00 o'clock in the forenoon, the following shares namely:—

- 10 (a) 15,000,000 shares of \$1.00 each in the San Imperial Corporation Limited whose registered office is situate at 32-34, Nathan Road, Kowloon in the Colony of Hong Kong previously held in the name of Asiatic Nominees Limited whose registered office is situate at 59, Des Voeux Road Central, Victoria in the Colony of Hong Kong and now held in the name of the Fermay Company Limited whose registered office is situate at Bank of Canton Building, 4th Floor, Des Voeux Road Central, Victoria in the Colony of Hong Kong,
- (b) 7,631,000 shares of \$1.00 each in the said San Imperial Corporation Limited now held in the name of IPC Nominees Limited whose registered office is situate at Rooms 1102-3, Wong House, 26-30, Des Voeux Road West, in the Colony of Hong Kong,
- 20 (c) 400,000 shares of \$1.00 each in the said San Imperial Corporation Limited now held in the name of the Triumphant Nominees Limited whose registered office is situate at 36, King's Road, 3rd Floor, in the Colony of Hong Kong,
- (d) 422,560 shares of \$1.00 each in the said San Imperial Corporation Limited now held in the name of the said Asiatic Nominees Limited,

30 shall and it is ordered that in the meantime they do stand charged with the payment of M\$2,338,651.94 with interest thereon at the rate of 15% per annum from 1st April 1975 to 19th July 1976 and thereafter at the rate of 6% per annum from 19th July 1976 until payment and M\$1,226.00 fixed costs due under the judgment herein together with the costs of this application to the Plaintiff.

AND IT IS ORDERED that the sum of \$8,800,000.00 allegedly due and owing from David Ng Pak Shing or David Ng Pak Shing and Melville Edward Ives and Ho Chapman to one Chow Chaw-I and one Hwang Shang Pai but in fact to the abovenamed Defendant as consideration for the said 15,000,000 shares in the said San Imperial Corporation Limited to the said David Ng Pak Shing or the said David Ng Pak Shing, Melville Edward Ives and Ho Chapman or to their order by and through the use of the said Fermay Company Limited or so much thereof as is sufficient to satisfy the costs of this application and the judgment herein be attached to answer the said judgment and costs.

AND IT IS ORDERED that the Garnishees, the said David Ng Pak Shing, Melville Edward Ives and Ho Chapman do attend before the Honourable Mr. Justice Li in Chambers at the Supreme Court, Victoria, Hong Kong on the 27th day of July 1977 at 10.00 o'clock in the forenoon on an application by the abovenamed Plaintiff that the said Garnishees do pay to the abovenamed Plaintiff the said sum of \$8,800,000.00 or so much thereof as may be sufficient to satisfy the said judgment together with the costs of the garnishee proceedings.

AND UPON the abovenamed Plaintiff by his Counsel undertaking to abide by an Order which this Court may make as to damages in case the Court should hereafter be of the opinion that this part of this Order should not have been made. 10

IT IS ORDERED AND DIRECTED that:—

- (i) the said David Ng Pak Shing, Melville Edward Ives and Ho Chapman whether by themselves, their servants or agents or howsoever otherwise be restrained and an Injunction is hereby granted restraining them from selling, transferring, disposing of, dealing with or causing to be sold, transferred, disposed of or dealt with all or any of the said shares referred to in paragraphs (a), (b), (c) and (d) hereof until after the hearing of a Summons returnable on the 27th day of July 1977 or until further order,
- (ii) the said Fermay Company Limited whether by itself, its servants or agents or howsoever otherwise be restrained and an Injunction is hereby granted restraining them from selling, transferring, disposing of, dealing with or causing to be sold, transferred, disposed of or dealt with all or any of the said 15,000,000 shares referred to in paragraph (a) hereof until after the hearing of the said Summons returnable on the 27th day of July 1977 or until further order, 20
- (iii) the said IPC Nominees Limited whether by itself, its servants or agents or howsoever otherwise be restrained and an Injunction is hereby granted restraining them from selling, transferring, disposing of, dealing with or causing to be sold, transferred, disposed of or dealt with all or any of the said 7,631,000 shares referred to in paragraph (b) hereof until after the hearing of the said Summons returnable on the 27th day of July 1977 or until further Order, 30
- (iv) the said Triumphant Nominees Limited whether by itself, its servants or agents or howsoever otherwise be restrained and an Injunction is hereby granted restraining them from selling, transferring, disposing of, dealing with or causing to be sold, transferred, disposed of or dealt with all or any of the said 400,000 shares referred to in paragraph (c) hereof until after the hearing of the said Summons returnable on the 27th day of July 1977 or until further order, 40
- (v) the said Asiatic Nominees Limited whether by itself, its servants or agents or howsoever otherwise be restrained and an Injunction is

hereby granted restraining them from selling, transferring, disposing of, dealing with or causing to be sold, transferred, disposed of or dealt with all or any of the said 422,560 shares referred to in paragraph (d) hereof until after the hearing of the said Summons returnable on the 27th day of July 1977 or until further order.

Supreme Court
of Hong Kong
High Court

No. 3

AND IT IS ORDERED that this Order be served on David Ng Pak Shing, Melville Edward Ives, Ho Chapman, Asiatic Nominees Limited, Fermay Company Limited, IPC Nominees Limited and Triumphant Nominees Limited.

Charging Order
Nisi and
Garnishee Order
Nisi of Mr.
Justice Li
dated 15.7.1977

10 AND IT IS ORDERED that service of this Order be effected on the Defendant by an advertisement in one Chinese newspaper and one English newspaper in Hong Kong and in one Chinese newspaper in Taipei, Taiwan.

AND IT IS ORDERED that service of this Order be effected on Chow Chaw-I and Hwang Shang Pai by the said advertisement ordered in relation to the Defendant and in addition by a copy of this Order being sent by registered post to their address at Room 205, No. 200, Nan King East Road, Section 3, Taipei, Taiwan.

AND IT IS ORDERED that the costs of this application be reserved with Certificate for Counsel.

Dated the 15th day of July, 1977.

20

(Sd.) P.A.G. Cameron
Acting Registrar.
(L.S.)

ORDER OF MR. JUSTICE ZIMMERN

No. 4

UPON HEARING Counsel for the Plaintiff and Counsel for Fermay Company Limited, IPC Nominees Limited, Messrs. Melville Edward Ives, David Ng Pak Shing and Ho Chapman and by consent IT IS ORDERED that:—

Order of
Mr. Justice
Zimmern
dated 20.8.1977

1. That the judgment creditor Lee Ing Chee be the Plaintiff and Choo Kim San, Chow Chaw-I, Hwang Shang Pai, Fermay Company Limited, IPC Nominees Limited, David Ng Pak Shing, Melville Edward Ives, Ho Chapman, Triumphant Nominees Limited and Asiatic Nominees Limited be the Defendants.
2. That the Plaintiff serves a Statement of Claim on the Defendants on or before 23rd August 1977. 10
3. That the Defendants serve their Defence with Counterclaim if any on the Plaintiff on or before 3rd September 1977.
4. That the Plaintiff serves his Reply and Defence to Counterclaim if any on the Defendants on or before 8th September 1977.
5. That there be mutual discovery by the Plaintiff and the Defendants on oath on or before 22nd September 1977.
6. That the evidence at the trial shall be by the examination of the witnesses orally, subject to the directions to be given under Paragraph 12 hereunder. 20
7. That the Plaintiff and the Defendants exchange lists of witnesses with a brief statement of the proposed evidence to be given by that witness on or before 29th September 1977.
8. That this Action be consolidated with Miscellaneous Proceedings Action 155 of 1977.
9. That the issues be tried in the High Court before a Judge and to be set down within three days, the estimated length being 5 weeks.
10. That all parties be at liberty to apply generally, including applications for extension of time and where appropriate abridgements of time.
11. The question whether David Ng Pak Shing, Melville Edward Ives and Ho Chapman can be heard on the garnishee proceedings to be raised on the pleadings. 30
12. The use of affidavits and the cross-examination of the deponents thereon to be argued after the close of pleadings.

13. Upon application by IPC Nominees Limited to set aside registration of the judgment in Miscellaneous Proceedings Action No. 155 of 1977, the same directions to apply thereto.

Supreme Court
of Hong Kong
High Court

14. Costs of this application be costs in the cause with Certificate for two Counsel.

No. 4

Dated the 20th day of August 1977.

Order of
Mr. Justice
Zimmern
dated 20.8.1977

(Sd.) S. H. MAYO
Registrar
(L.S.)

IN THE SUPREME COURT OF HONG KONG
MISCELLANEOUS PROCEEDINGS

No. 5

Order of
Mr. Registrar
Cameron for
Registration of
Foreign Judgment
dated 31.3.1977

IN THE MATTER of the Foreign Judgments
(Reciprocal Enforcement) Ordinance,
Chapter 319 of the Laws of Hong Kong.

and

IN THE MATTER of a Judgment of the
High Court in Malaya at Kuala Lumpur
obtained in Civil Suit No. 2445 of
1976 and dated the 28th day of
January 1977.

10

BETWEEN

LEE KON WAH

Plaintiff

and

CHOO KIM SAN

Defendant

ORDER OF MR. REGISTRAR CAMERON FOR REGISTRATION
OF FOREIGN JUDGMENT

Upon hearing the Solicitors for the Plaintiff and upon reading the affidavit of Munusamy Sivalingam filed herein on the 3rd day of March, 1977 and the exhibits therein referred to.

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IT IS ORDERED that the Judgment dated the 28th day of January 1977 of the High Court in Malaya at Kuala Lumpur obtained in Civil Suit No. 2445 of 1976 whereby it was adjudged that the abovenamed Defendant CHOO KIM SAN, Merchant, of Imperial Hotel, Nathan Road, Kowloon in the Colony of Hong Kong do pay the Plaintiff LEE KON WAH, Merchant, of Second Floor, 113-115, Jalan Sultan, Kuala Lumpur M\$1,354,037.35 with interest thereon at the rate of 12% per annum from 1st October 1976 until payment and M\$120.00 costs, which is equivalent in Hong Kong Currency to HK\$2,559,130.59 with interest thereon at the rate of 12% per annum from 1st October 1976 until payment and HK\$226.80 costs be registered as a Judgment in the Supreme Court of Justice, Hong Kong pursuant to Section 4 of the Foreign Judgments (Reciprocal Enforcement) Ordinance, Chapter 319 of the Laws of Hong Kong.

30

AND IT IS ORDERED that the above-named Defendant CHOO KIM SAN be at liberty to apply to set aside the said registration within 14 days after service upon him of notice of such registration pursuant to Order 71, Rule 7 of the Rules of Supreme Court, 1967, and execution upon the said Judgment shall not issue until after

the expiration of that period or any extension of that period granted by the Court; or if an application be made to set aside registration until such application has been disposed of.

Supreme Court
of Hong Kong
High Court

AND THAT the costs of and incidental to this application and the registration be taxed and added to the Judgment as registered.

No. 5

Dated the 31st day of March, 1977.

Order of
Mr. Registrar
Cameron for
Registration of
Foreign Judgment
dated 31.3.1977

(Sd.) S. H. MAYO
Registrar
(L.S.)

CHARGING ORDER NISI AND GARNISHEE ORDER NISI OF MR. JUSTICE LI

Upon hearing Counsel for the Plaintiff and upon reading the Affirmation of Lee Ing Chee filed herein on the 15th day of July 1977.

No. 6

Charging Order
Nisi and
Garnishee Order
Nisi of Mr.
Justice Li
dated 15.7.1977

IT IS ORDERED that unless sufficient cause to the contrary be shown before the Honourable Mr. Justice Li in Chambers on Wednesday, the 27th day of July 1977 at 10.00 o'clock in the forenoon, the following shares namely:—

- (a) 15,000,000 shares of \$1.00 each in the San Imperial Corporation Limited whose registered office is situate at 32-34, Nathan Road, Kowloon in the Colony of Hong Kong previously held in the name of the Asiatic Nominees Limited whose registered office is situate at 59, Des Voeux Road Central, Victoria in the Colony of Hong Kong and now held in the name of the Fermay Company Limited whose registered office is situate at Bank of Canton Building, 4th Floor, Des Voeux Road Central, Victoria in the Colony of Hong Kong, 10
- (b) 7,631,000 shares of \$1.00 each in the said San Imperial Corporation Limited now held in the name of IPC Nominees Limited whose registered office is situate at Rooms 1102-3, Wong House, 26-30, Des Voeux Road West, in the Colony of Hong Kong,
- (c) 400,000 shares of \$1.00 each in the said San Imperial Corporation Limited now held in the name of the Triumphant Nominees Limited whose registered office is situate at 36, King's Road, 3rd Floor, in the Colony of Hong Kong, 20
- (d) 422,560 shares of \$1.00 each in the said San Imperial Corporation Limited now held in the name of the said Asiatic Nominees Limited,

shall and it is ordered that in the meantime they do stand charged with the payment of M\$1,354,037.35 with interest thereon at the rate of 12% per annum from 1st October 1976 until payment and M\$120.00 costs, which is equivalent in Hong Kong Currency to HK\$2,599,130.59 with interest thereon at the rate of 12% per annum from 1st October 1976 until payment and HK\$226.00 costs due under the judgment registered herein together with the costs of this application to the Plaintiff. 30

AND IT IS ORDERED that the sum of \$8,800,000.00 allegedly due and owing from David Ng Pak Shing or David Ng Pak Shing and Melville Edward Ives and Ho Chapman to one Chow Chaw-I and one Hwang Shang Pai but in fact to the above-named Defendant as consideration for the said 15,000,000 shares in the said San Imperial Corporation Limited to the said David Ng Pak Shing or the said David Ng Pak Shing, Melville Edward Ives and Ho Chapman or to their order by and through the use of the said Fermay Company Limited or so much thereof as is sufficient to satisfy the costs of this application and the judgment registered herein be attached to answer the said judgment and costs.

AND IT IS ORDERED that the Garnishees, the said David Ng Pak Shing, Melville Edward Ives and Ho Chapman do attend before the Honourable Mr. Justice Li in Chambers at the Supreme Court, Victoria, Hong Kong on the 27th day of July 1977 at 10.00 o'clock in the forenoon on an application by the abovenamed Plaintiff that the said Garnishees do pay to the abovenamed Plaintiff the said sum of \$8,800,000.00 or so much thereof as may be sufficient to satisfy the said judgment registered herein together with the costs of the garnishee proceedings.

Supreme Court
of Hong Kong
High Court

No. 6

Charging Order
Nisi and
Garnishee Order
Nisi of Mr.
Justice Li
dated 15.7.1977

10 AND UPON the abovenamed Plaintiff by his Counsel undertaking to abide by an Order which this Court may make as to damages in case the Court should hereafter be of the opinion that this part of this Order should not have been made.

IT IS ORDERED AND DIRECTED that:—

- (i) the said David Ng Pak Shing, Melville Edward Ives and Ho Chapman whether by themselves, their servants or agents or howsoever otherwise be restrained and an Injunction is hereby granted restraining them from selling, transferring, disposing of, dealing with or causing to be sold, transferred, disposed of or dealt with all or any of the said shares referred to in paragraphs (a), (b), (c) and (d) hereof until after the hearing of a Summons returnable on the 27th day of July 1977 or until further order,
- 20 (ii) the said Fermay Company Limited whether by itself, its servants or agents or howsoever otherwise be restrained and an Injunction is hereby granted restraining them from selling, transferring, disposing of, dealing with or causing to be sold, transferred, disposed of or dealt with all or any of the said 15,000,000 shares referred to in paragraph (a) hereof until after the hearing of the said Summons returnable on the 27th day of July 1977 or until further order,
- 30 (iii) the said IPC Nominees Limited whether by itself, its servants or agents or howsoever otherwise be restrained and an Injunction is hereby granted restraining them from selling, transferring, disposing of, dealing with or causing to be sold, transferred, disposed of or dealt with all or any of the said 7,631,000 shares referred to in paragraph (b) hereof until after the hearing of the said Summons returnable on the 27th day of July 1977 or until further order,
- 40 (iv) the said Triumphant Nominees Limited whether by itself, its servants or agents or howsoever otherwise be restrained and an Injunction is hereby granted restraining them from selling, transferring, disposing of, dealing with or causing to be sold, transferred, disposed of or dealt with all or any of the said 400,000 shares referred to in paragraph (c) hereof until after the hearing of the said Summons returnable on the 27th day of July 1977 or until further order,
- (v) the said Asiatic Nominees Limited whether by itself, its servants or

Supreme Court
of Hong Kong
High Court

No. 6

Charging Order
Nisi and
Garnishee Order
Nisi of Mr.
Justice Li
dated 15.7.1977

agents or howsoever otherwise be restrained and an Injunction is hereby granted restraining them from selling, transferring, disposing of, dealing with or causing to be sold, transferred, disposed of or dealt with all or any of the said 422,560 shares referred to in paragraph (d) hereof until after the hearing of the said Summons returnable on the 27th day of July 1977 or until further order.

AND IT IS ORDERED that this Order be served on David Ng Pak Shing, Melville Edward Ives, Ho Chapman, Asiatic Nominees Limited, Fermay Company Limited, IPC Nominees Limited and Triumphant Nominees Limited.

AND IT IS ORDERED that service of this Order be effected on the Defendant by an advertisement in one Chinese newspaper and one English newspaper in Hong Kong and in one Chinese newspaper in Taipei, Taiwan. 10

AND IT IS ORDERED that service of this Order be effected on Chow Chaw-I and Hwang Shang Pai by the said advertisement ordered in relation to the Defendant and in addition by a copy of this Order being sent by registered post to their address at Room 205, No. 200, Nan King East Road, Section 3, Taipei, Taiwan.

AND IT IS ORDERED that the costs of this application be reserved with Certificate for Counsel.

Dated the 15th day of July, 1977.

(sd.) P.A.G. CAMERON
Acting Registrar.
(L.S.)

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ORDER OF MR. JUSTICE ZIMMERN

Supreme Court
of Hong Kong
High Court

UPON HEARING Counsel for the Plaintiff and Counsel for Fermay Company Limited, IPC Nominees Limited, Messrs. Melville Edward Ives, David Ng Pak Shing and Ho Chapman and by consent IT IS ORDERED that:—

No. 7

Order of
Mr. Justice
Zimmern
dated 20.8.1977

1. That the judgment creditor Lee Kon Wah be the Plaintiff and Choo Kim San, Chow Chaw-I, Hwang Shang Pai, Fermay Company Limited, IPC Nominees Limited, David Ng Pak Shing, Melville Edward Ives, Ho Chapman, Triumphant Nominees Limited and Asiatic Nominees Limited be the Defendants.
- 10 2. That the Plaintiff serve a Statement of Claim on the Defendants on or before 23rd August 1977.
3. That the Defendants serve their Defence with Counterclaim if any on the Plaintiff on or before 3rd September 1977.
4. That the Plaintiff serve his Reply and Defence to Counterclaim if any of the Defendants on or before 8th September 1977.
5. That there be mutual discovery by the Plaintiff and the Defendants on oath on or before 22nd September 1977.
- 20 6. That the evidence at the trial shall be by the examination of the witnesses orally, subject to the directions to be given under Paragraph 12 hereunder.
7. That the Plaintiff and the Defendants exchange lists of witnesses with a brief statement of the proposed evidence to be given by that witness on or before 29th September 1977.
8. That this Action be consolidated with High Court Action No. 2459 of 1976.
9. That the issues be tried in the High Court before a Judge and to be set down within three days, the estimated length being 5 weeks.
10. That all parties be at liberty to apply generally, including applications for extension of time and where appropriate abridgement of time.
- 30 11. The question whether David Ng Pak Shing, Melville Edward Ives and Ho Chapman can be heard on the Garnishee proceedings to be raised on the pleadings.
12. The use of affidavits and the cross-examination of the deponents thereon to be argued after the close of pleadings.

Supreme Court
of Hong Kong
High Court

No. 7

Order of
Mr. Justice
Zimmern
dated 20.8.1977

13. Upon application by IPC Nominees Limited to set aside registration of the Judgment in this action, the same directions to apply thereto.
14. Costs of this application be costs in the cause with Certificate for two Counsel.

Dated the 20th day of August 1977.

(Sd.) S. H. MAYO
Registrar.
(L.S.)

1976 No. 2459

Supreme Court
of Hong Kong
High Court

IN THE SUPREME COURT OF HONG KONG
HIGH COURT

No. 8

BETWEEN:

LEE ING CHEE

Plaintiff

and

Amended
Statement of
Claim
dated 23.8.1977

CHOO KIM SAN
ASIATIC NOMINEES, LTD.
TRIUMPHANT NOMINEES, LTD.
DAVID NG PAK SHING
MELVILLE EDWARD IVES
HO CHAPMAN
FERMAY COMPANY, LTD.
CHOW CHAW-I
HWANG SHANG PAI
IPC NOMINEES, LTD.

1st Defendant
2nd Defendant
3rd Defendant
4th Defendant
5th Defendant
6th Defendant
7th Defendant
8th Defendant
9th Defendant
10th Defendant

10

1977 No. 155

IN THE SUPREME COURT OF HONG KONG
MISCELLANEOUS PROCEEDINGS

Amended pursuant to an
order of Mr. Justice Yang
made at trial on
10th October 1977.

20

IN THE MATTER of the Foreign
Judgments (Reciprocal Enforcement)
Ordinance, Chapter 319 of the Laws
of Hong Kong.

and

IN THE MATTER of a Judgment of
the High Court in Malaya at Kuala
Lumpur obtained in Civil Suit
No. 2445 of 1976 and dated the
28th day of January 1977.

BETWEEN:

LEE KON WAH

Plaintiff

and

CHOO KIM SAN
ASIATIC NOMINEES, LTD.
TRIUMPHANT NOMINEES, LTD.
DAVID NG PAK SHING
MELVILLE EDWARD IVES

1st Defendant
2nd Defendant
3rd Defendant
4th Defendant
5th Defendant

30

Supreme Court
of Hong Kong
High Court

No. 8

HO CHAPMAN
FERMAY COMPANY, LTD.
CHOW CHAW-I
HWANG SHANG PAI
IPC NOMINEES, LTD.

6th Defendant
7th Defendant
8th Defendant
9th Defendant
10th Defendant

Amended
Statement of
Claim
dated 23.8.1977

Consolidated pursuant to the Order of Mr. Justice Zimmern
dated the 20th day of August, 1977.

AMENDED STATEMENT OF CLAIM

1. On the 5th day of July, 1977, in High Court Action No. 2459 in this Colony, the Plaintiff therein, Lee Ing Chee (hereinafter 'Lee Ing Chee'), obtained judgment against the Defendant therein, Choo Kim San (hereinafter 'Choo Kim San') in the sum of ~~M\$2,388,651.94~~ M\$2,338,651.94 together with interest thereon at the rate of 15% per annum from the 1st day of April, 1975, to the 19th day of July, 1976, and thereafter at the rate of 6% per annum from the 19th day of July, 1976, until payment with HK\$1,226.00 fixed costs. No part of the above mentioned sums or interest has been paid by Choo Kim San or has been otherwise recovered by Lee Ing Chee.

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2. In an action in the High Court in Malaya at Kualur Lumpur intituled Civil Suit No. 2445 of 1976, Lee Kon Wah, the Plaintiff in Miscellaneous Proceedings No. 155 of 1977 in this Colony (hereinafter 'Lee Kon Wah') obtained judgment against Choo Kim San in the sum of M\$1,354,037.35 with interest thereon at the rate of 12% per annum from the 1st day of October, 1976, until payment and M\$120.00 costs. Such judgment has been duly registered in this Colony under the provisions of the Foreign Judgments (Reciprocal Enforcement) Ordinance, Cap. 319, by way of the said Miscellaneous Proceedings. The said registration of such judgment has never been set aside. No part of the above mentioned sums or interest has been paid by Choo Kim San or has been otherwise recovered by Lee Kon Wah.

20

3. The 1st Defendant, Choo Kim San, is the beneficial owner of shares in San Imperial Corporation, Ltd., (hereinafter 'San Imperial') as set out hereinafter.

4. The 2nd Defendant, Asiatic Nominees, Ltd., (hereinafter 'Asiatic') was at all material times and is still a company wholly owned by Choo Kim San, the shareholders and directors of which were and are the nominees of Choo Kim San. The present shareholders and directors of Asiatic are one Ho Chung Po and one Lee Fai To. Asiatic acted and acts as nominee for Choo Kim San and for nobody else and as such nominee held and still holds shares in San Imperial. At the date hereof Asiatic holds 422,560 such shares.

30

5. The 3rd Defendant, Triumphant Nominees, Ltd., (hereinafter 'Triumphant') was also at all material times and is still a company wholly owned by Choo Kim San, the shareholders and directors of which were and are the nominees of Choo Kim San. The present shareholders and directors are the said Ho Chung Po and Lee Fai To. At

the date hereof Triumphant holds 400,000 shares in San Imperial on behalf of Choo Kim San.

Supreme Court
of Hong Kong
High Court

No. 8

Amended
Statement of
Claim
dated 23.8.1977

10 6. Malaysia Borneo Finance Corporation (M) Berhad (hereinafter 'MBF') instituted in this Colony 2 actions against Choo Kim San, namely High Court Action No. 252 of 1977 and Miscellaneous Proceedings No. 159 of 1977. MBF secured judgment against Choo Kim San in the High Court in Malaya at Kualur Lumpur on 22nd February, 1977, in the sum of M\$7,023,548.26 with interest thereon at the rate of 15% per annum from 1st April, 1976, until payment and M\$120.00 costs under Civil Suit No. 2887 of 1976. Such judgment was registered in this Colony on 6th April, 1977 under the provisions of the aforesaid Cap. 319. The said registration has been set aside but the order so setting aside is presently under appeal.

7. The 4th Defendant, David Ng Pak Shing (hereinafter 'David Ng') for many years was employed by or otherwise acted generally as the servant or agent of Choo Kim San. David Ng still so acts.

8. The 5th Defendant, Melville Edward Ives (hereinafter 'Ives') is a solicitor of the Supreme Court of this Colony and was at all material times and is still a senior partner of Messrs. Peter Mo and Co., Solicitors. At all times material to this action the said Messrs. Peter Mo and Co. were solicitors for:—

(a) San Imperial.

20 (b) Cando, Ltd., a company wholly owned by Choo Kim San which company was a shelf company purchased by Choo Kim San from the said Messrs. Peter Mo and Co. in or about January of 1973. The shareholders and directors of Cando, Ltd., were always and are the nominees of Choo Kim San.

At diverse times Ives acted as solicitor and/or director for or of various companies owned or controlled by Choo Kim San including Cando, Ltd., and San Imperial. Ives also wholly owns or otherwise controls City Nominees, Ltd., (hereinafter 'City').

30 9. The 6th Defendant, Ho Chapman (hereinafter 'Ho Chapman') was previously employed by or otherwise associated with Choo Kim San. David Ng, Ives and Ho Chapman formed or purported to form a partnership or syndicate ostensibly for the purchase of shares in San Imperial and thereafter to sell the same to one James Coe. James Coe formed or caused to be formed Rocky Enterprises Co., Ltd., (hereinafter 'Rocky') for the purposes of such purported purchase by him.

10. For the purposes of the said purported purchase and sale of the said shares, David Ng, Ives and Ho Chapman formed or caused to be formed or otherwise utilised the 7th Defendant, Fermay Company, Ltd., (hereinafter 'Fermay'). The present registered shareholders of Fermay are purportedly the 8th Defendant, Chow Chaw-I (hereinafter 'Chow') and his wife the 9th Defendant, Hwang Shang Pai (hereinafter 'Hwang'). The present directors of Fermay purport to be Chow, Hwang and David Ng.

40 11. By an alleged agreement dated 23rd March, 1977, Chow and Hwang have

purported to sell 15,000,000 shares in San Imperial registered in the name of Asiatic to David Ng, Ives and Ho Chapman. Such shares were transferred or purportedly transferred into the name of Fermay on 28th March, 1977.

12. The 10th Defendant, IPC Nominees, Ltd., (hereinafter 'IPC') was incorporated on the 1st day of April, 1977, and purports to be a nominee company of the said James Coe. IPC is now registered as the holder of 7,631,000 shares in San Imperial.

13. MAF Nominees, Ltd., (hereinafter 'MAF Nominees') is a nominee company wholly owned by MAF Credit, Ltd., of which Choo Kim San was a major shareholder in the name of Asiatic and of which Choo Kim San was in effective control. At all times material to this action the directors of MAF Nominees, were and are still nominees of Choo Kim San. The present directors of MAF Nominees are the aforesaid Ho Chung Po and one K. Y. Woo. MAF Nominees, also held shares in San Imperial on behalf of Choo Kim San. 10

14. Lee Ing Chee and Lee Kon Wah assert that the

- (a) 15,000,000 shares in San Imperial purportedly transferred to Fermay on 28th March, 1977,
- (b) 7,631,000 shares in San Imperial in the name of IPC,
- (c) 422,560 shares in San Imperial still registered in the name of Asiatic and 20
- (d) 400,000 shares in San Imperial still registered in the name of Triumphant

are still beneficially owned by Choo Kim San.

15. On the 10th day of December, 1976, the Bailiff of this Honourable Court was ordered in High Court Action No. 2459 of 1976 to call upon Choo Kim San and to bring him before the Court that he may show cause why he should not give security for his appearance to answer any judgment that may be given against him in such action and to attach certain of his property including 17,421,960 shares in San Imperial. In fact at the date of such order Asiatic was registered as the holder of 15,939,760 such shares. The Bailiff was unable to execute the said order and on the 13th day of April, 1977, Lee Ing Chee advertised in the South China Morning Post in this Colony that he had obtained interim attachment of shares owned by Choo Kim San including 16,500,000 shares in San Imperial registered in the name of Asiatic. 30

16. In High Court Action No. 252 of 1977, MBF obtained an injunction on or about 15th February, 1977, restraining Choo Kim San by himself, his agents or servants or any of them from selling, disposing of, realising, transferring or otherwise dealing with his assets in this Colony including 17,421,960 shares in San Imperial until after the hearing of a summons returnable on the 22nd day of February, 1977. On that date the said injunction was extended to 15th March, 1977, or further order and on

the last mentioned date it was ordered that the said injunction be further extended. The said orders of 15th February, 1977, and 15th March, 1977, were served upon:—

Supreme Court
of Hong Kong
High Court

- (a) One Henry Loke Kui Kuen, then a director of San Imperial, on 25th March, 1977.
- (b) One Johannes Jorgensen, then a director of San Imperial, on 30th March, 1977.
- (c) Asiatic on 2nd April, 1977.
- (d) One Tam Chun Kwan, previously a director of Asiatic, for and on behalf of Asiatic on 2nd April, 1977.
- 10 (e) The said Tam Chun Kwan, then a director of Cando, Ltd., for and on behalf of Cando, Ltd., on 2nd April, 1977.

No. 8

Amended
Statement of
Claim
dated 23.8.1977

The said injunctions were discharged in August, 1977.

17. Also in High Court Action No. 252 of 1977, MBF obtained an injunction on 25th April, 1977, by which Choo Kim San by himself, his agents or servants and in particular the aforesaid Lee Fai To, Ho Chung Po and Asiatic were restrained from selling, disposing of, realising, transferring or otherwise dealing with, inter alia, 17,421,960 shares in San Imperial held in the name of Asiatic. Such injunction was advertised in the said South China Morning Post on 28th April, 1977, and 14th May, 1977. The said injunction still continues.

- 20 18. On 27th May, 1977, MBF in Miscellaneous Proceedings No. 159 of 1977 obtained an injunction by which Choo Kim San, his servants or agents and in particular Fermay, Asiatic and San Imperial were restrained from selling, disposing of, realising, transferring or otherwise dealing with, inter alia, any of the shares in San Imperial held and registered in the name of Fermay and Asiatic. The said injunction was advertised in the said South China Morning Post on the 28th day of May, 1977, and was discontinued upon an undertaking given by Fermay on the 27th day of June, 1977.

- 30 19. By the said purported agreement dated 23rd March, 1977 Chow and Hwang purportedly agreed to sell 15,000,000 shares in San Imperial held in the name of Asiatic for the sum of HK\$9,000,000 upon the terms and conditions therein contained. By such terms and conditions it was provided, inter alia, that:—

- (a) Fermay had been incorporated on the 8th day of March, 1977, and had on 23rd March, 1977, a paid-up capital of HK\$9,000,000.
- (b) The entire share capital of Fermay had been allotted and Chow and Hwang were the beneficial owners thereof.
- (c) The sole asset of Fermay was the said 15,000,000 shares in San Imperial.

- (d) Chow and Hwang would sell the whole of the issued share capital of Fermay to David Ng, Ives and Ho Chapman.
- (e) The purchase price was to be HK\$9,000,000 of which HK\$200,000 was paid by way of deposit.

Lee Ing Chee and Lee Kon Wah will refer to the said agreement for the full terms and effect thereof.

20. In fact, Chow and Hwang were not the owners of the said shares and could not sell the same. Lee Ing Chee and Lee Kon Wah will rely, inter alia, on the following.

Particulars

- (a) Choo Kim San failed to answer to his bail in the Victoria District Court of this Colony on the 28th day of October, 1976, on numerous criminal charges and appears at some time to have fled this Colony. 10
- (b) Chow and Hwang are Taiwanese nationals and would have needed permission to invest in a Hong Kong company. No such permission has ever been alleged or shown.
- (c) Choo Kim San habitually used nominees to hold and deal with his assets.
- (d) In the month of July, 1977, in Taiwan, Lee Ing Chee spoke with Chow. At such time Chow informed Lee Ing Chee that:—
 - (1) He would have no money to buy shares. 20
 - (2) He knew nothing of any transaction by which the said 15,000,000 shares or any of them had been purchased. All he knew was that a relative in the United States of America had told him that he (the relative) had bought or agreed to buy some shares and wished to use Chow's name.
 - (3) He did not know when any such sale had taken place nor the price per share.
 - (4) He had never heard of the name 'San Imperial'.
 - (5) He had never met David Ng.
 - (6) He had not signed any agreement for the sale and purchase of the said shares although he had signed a document at the request of a relative without knowing the contents thereof. 30
 - (7) He claimed not to know through which bank any such transaction may have taken place but upon being asked if it was the Bank of

Trade in the United States of America, a Bank in which Choo Kim San holds an interest, made no reply.

Supreme Court
of Hong Kong
High Court

(8) He had no knowledge of Fermay, its incorporation or how the capital thereof was paid.

No. 8

(9) He had received nothing upon any alleged sale of Fermay by him and Hwang to David Ng, Ives and Ho Chapman.

Amended
Statement of
Claim
dated 23.8.1977

Lee Ing Chee and Lee Kon Wah will also rely on such other particulars as may appear from discovery, at trial and the matters pleaded in paragraphs 21 and 22 hereunder.

10 21. Fermay was in fact incorporated on the 8th day of March, 1977, with 2 subscriber shares of HK\$1.00 each. By a return of allotment submitted through City, dated 23rd March, 1977, there was purportedly an allotment to Chow and Hwang of 8,999,998 shares of HK\$1.00 each said to be payable in cash. Such shares were never in fact paid for in cash.

22. The said agreement of 23rd March, 1977, was not a genuine one. Lee Ing Chee and Lee Kon Wah will rely upon the matters set out in paragraphs 20 and 21 hereof and upon the following.

Particulars

20 (a) David Ng has alleged that he was introduced to Chow by one Madam Lau but Chow has denied the same or any introduction.

(b) Chow and Hwang parted with possession of the share scrips and transfer forms in return for a deposit of HK\$200,000 only.

(c) Choo Kim San informed one Hwang Wei Ming in Taiwan that David Ng was still assisting him (Choo Kim San) and was his (Choo Kim San's) nominee.

(d) Notwithstanding the terms of the said agreement and the alleged sale. Chow and Hwang have not appeared to these proceedings.

30 (e) The said shares were transferred into the name of Fermay on 28th March, 1977, 5 days after the alleged agreement. Transfers in San Imperial usually take about a month. On 28th March, 1977, the registrars of San Imperial were Malaysia America Finance Corporation (H.K.) Ltd., which is wholly owned by MAF Credit, Ltd., of which Choo Kim San was and is a major shareholder. 2 of the directors of MAF Credit, Ltd., are the aforesaid Ho Chung Po and K.Y. Woo, both nominees of Choo Kim San.

(f) The said transfer of the said shares into the name of Fermay was put through notwithstanding that the order referred to in paragraph 16

hereof was served on the said Henry Loke Kui Kuen on the 25th day of March, 1977, and notwithstanding that Messrs. Peter Mo and Co., of which Ives is a senior partner, were then the solicitors for San Imperial.

No. 8

Lee Ing Chee and Lee Kon Wah will also rely on such other matters as may appear on discovery or at trial.

Amended
Statement of
Claim
dated 23.8.1977

23. If it be found that the said agreement of 23rd March, 1977, was a genuine one, Chow and Hwang were acting as nominees for Choo Kim San and in this respect Lee Ing Chee and Lee Kon Wah will rely on the matters set out in paragraphs 21 and 22 hereof and on such other matters as may appear on discovery and at trial. If it be found that the said agreement was a genuine one Lee Ing Chee and Lee Kon Wah seek to have made absolute the garnishee orders nisi made on the 27th day of July, 1977, for so much of the aforesaid HK\$8,800,000 as may be necessary to satisfy their judgment referred to in paragraphs 1 and 2 hereof. 10

24. If it be found that the said agreement of 23rd March, 1977, was not a genuine one, Lee Ing Chee and Lee Kon Wah seek to have made absolute the charging orders nisi made in relation to the said 15,000,000 shares on the 27th day of July, 1977. Lee Ing Chee and Lee Kon Wah also seek to have made absolute the charging order nisi made on the same date in relation to the shares set out in (c) and (d) of paragraph 14 hereof.

25. By a purported agreement dated 30th April, 1977, David Ng purported to agree with Rocky to sell to Rocky 23,000,000 shares in San Imperial at the price of \$1.50 per share upon the terms and conditions therein contained. By such agreement it was provided, inter alia, that such sale should be effected by:— 20

- (a) David Ng selling to Rocky the whole of the issued and fully paid-up shares of Fermay.
- (b) David Ng exercising an option in favour of Rocky, in respect of 3,500,000 shares in San Imperial.
- (c) David Ng causing City to transfer to Rocky 4,500,000 shares in San Imperial held by City, on behalf of David Ng.

Lee Ing Chee and Lee Kon Wah will refer to the said purported agreement for the full terms and effect thereof. 30

26. By a further purported agreement (hereinafter 'the option agreement') dated 12th May, 1977, made between David Ng and Rocky the purported agreement referred to in paragraph 25 hereof was allegedly superseded. By the option agreement it was provided, inter alia, that David Ng should sell to Rocky 23,000,000 shares in San Imperial and that such sale should be effected by:—

- (a) David Ng granting to Rocky an option to purchase the whole of the issued and fully paid up shares of Fermay or the 15,000,000 shares in San Imperial. Such option was to be permanent and irrevocable.

(b) David Ng causing City to transfer to Rocky not less than 7,000,000 nor more than 8,000,000 shares in San Imperial held by City for and on behalf of David Ng.

Supreme Court
of Hong Kong
High Court

(c) Rocky paying to David Ng the sum of HK\$4,000,000 for the option referred to in (a) hereof.

No. 8

Lee Ing Chee and Lee Kon Wah will refer to the option agreement for the full terms and effect thereof.

Amended
Statement of
Claim
dated 23.8.1977

10 27. By a further alleged option agreement dated 30th March, 1977, (hereinafter 'the MAF agreement') MAF Corporation (HK), Ltd., purported to grant to David Ng and Ho Chapman an option to purchase 6,000,000 shares in San Imperial at the price of \$1.50 per share in consideration of the sum of HK\$50,000. Lee Ing Chee and Lee Kon Wah will refer to the MAF agreement for the full terms and effect thereof.

28. On 29th March, 1977, the following shares in San Imperial were purportedly transferred into the name of MAF Nominees:—

(a) 1,650,000 from Triumphant.

(b) 514,000 from Asiatic.

2,164,000

20 In an affidavit filed in High Court Action No. 2459 of 1976 on 27th July, 1977, David Ng has alleged that he purchased such shares from persons who had purchased the same from Choo Kim San in Taiwan.

29. On 25th April, 1977, MAF Nominees, purported to transfer 5,388,000 shares in San Imperial to City. On 15th June, 1977, City purported to transfer to IPC 7,631,000 shares in San Imperial. Lee Ing Chee and Lee Kon Wah are unable until discovery to deal further with the source of the said 7,631,000 San Imperial shares registered in the name of IPC but for the reasons asserted, inter alia, in the paragraph following hereunder allege that such shares are beneficially owned by Choo Kim San.

30. None of the agreements referred to in paragraphs 25, 26 and 27 hereof was genuine.

Particulars

30 (a) David Ng still acts as agent or nominee of Choo Kim San.

(b) Notwithstanding that Rocky was allegedly incorporated as the nominal purchaser on behalf of James Coe, 7,631,000 shares in San Imperial were transferred to IPC. IPC was also allegedly incorporated as the nominee of James Coe and the transfer to IPC of the said shares was effected in an attempt to deceive and to mislead.

- (c) The said shares were transferred to IPC notwithstanding that by the purported agreement referred to in paragraph 25 hereof and by the option agreement the same were purchased or to be purchased by Rocky.
- (d) The 2,164,000 shares referred to in paragraph 28 hereof are admitted by David Ng to have been purchased by unspecified persons from Choo Kim San.
- (e) There was no reason for the transfer of such 2,164,000 shares into the name of MAF Nominees. Such transfer was again an attempt to deceive and to mislead. 10
- (f) MAF Nominees, held shares in San Imperial for and on behalf of Choo Kim San.
- (g) The price to be paid for shares under the MAF agreement was \$1.50 per share, the same price at which Rocky, was to buy.
- (h) Notwithstanding that there were continuing proceedings and affidavits filed by David Ng, he failed to disclose the existence of the option agreement until 27th July, 1977.
- (i) By the said option agreement no provision is made for the return or repayment of the \$4,000,000 in the event that no shares in San Imperial could be delivered. 20

Lee Ing Chee and Lee Kon Wah will also rely upon such matters as may appear upon discovery and at trial.

31. By reason of the foregoing Lee Ing Chee and Lee Kon Wah seek to have made absolute the charging orders nisi made on 27th July, 1977, in relation to the 7,631,000 San Imperial shares held in the name of IPC.

And Lee Ing Chee and Lee Kon Wah claim:--

- (a) That the charging orders nisi in relation to the 15,000,000 San Imperial shares registered in the name of Fermay be made absolute.
- (b) That the charging orders nisi in relation to the 7,631,000 San Imperial shares registered in the name of IPC be made absolute. 30
- (c) In the alternative to (a) hereof, that the garnishee orders nisi in relation to the HK\$8,800,000 said to be the balance of the purchase price of 15,000,000 San Imperial shares or so much as is necessary to satisfy their judgments be made absolute.
- (d) That the charging orders nisi in relation to the 422,560 San Imperial shares registered in the name of Asiatic be made absolute.

- (e) That the charging orders nisi in relation to the 400,000 San Imperial shares registered in the name of Triumphant be made absolute.
- (f) That they be paid the costs of these proceedings.
- (g) That they should have such further or other relief as may be just.

Supreme Court
of Hong Kong
High Court

No. 8

Amended
Statement of
Claim
dated 23.8.1977

Dated the 23rd day of August, 1977.

(Sd.) Deacons
DEACONS
Solicitors for the Plaintiffs

DEFENCE AND COUNTERCLAIM OF THE 4TH, 5TH,
6TH & 7TH DEFENDENTS

No. 9

DEFENCE

Defence and
Counterclaim of
the 4th, 5th, 6th
& 7th Defendants
dated 3.9.1977

1. (i) The judgment pleaded in paragraph 1 of the Statement of Claim is admitted.
 - (ii) It is not admitted that Lee Ing Chee was or is entitled to be paid the sum of M\$2,388,651.94 together with interest thereon at the rate of 15% per annum as alleged or at all.
 - (iii) Lee Ing Chee's claim in High Court Action No. 2459 is for an indemnity and as such Lee Ing Chee is only entitled to be paid so much money as may be necessary to indemnify him against the proper claims of Malaysia Borneo Finance Corporation (M) Berhad, the Plaintiff in Civil Suit K 134 of 1975 in the High Court in Borneo. 10
 - (iv) It is not admitted that the judgment against Lee Ing Chee in Civil Suit K 134 of 1975 truly or correctly represents the liability of Choo Kim San and/or Lee Ing Chee or that it has not been fully or partially satisfied.
 - (v) Lee Ing Chee is put to proof of his allegation that a sufficient indemnity against the aforesaid liability or judgment is in the sum of \$2,388,651.94 plus interest thereon at the rate of 15% per annum from 1st April 1975 to 19th July 1976 and thereafter at the rate of 6% per annum from 19th July 1976 until payment. 20
2. As to paragraph 2 of the Statement of Claim –
- (i) It is admitted that judgment in the sum alleged has been obtained by Lee Kon Wah against Choo Kim San in Civil Suit No. 2445 of 1976 in the High Court in Malaya at Kuala Lumpur.
 - (ii) It is not admitted that Lee Kon Wah was or is entitled to be paid the sum of M\$1,354,037.35 together with interest thereon at the rate of 12% per annum as alleged or at all.
 - (iii) Lee Kon Wah's claim therein was for an indemnity and as such Lee Kon Wah is only entitled to be paid so much money as may be necessary to indemnify him against the proper claims of Malaysia Borneo Finance Corporation (M) Berhad, Plaintiff in the Kuala Lumpur Civil Suit No. 1474 of 1975. 30
 - (iv) It is not admitted that the said judgment truly or correctly represents the liability of Choo Kim San and/or Lee Kon Wah, or that it has not been satisfied in full or in part.

10

(v) Lee Kon Wah is put to proof of his allegation that a sufficient indemnity against the aforesaid liability or judgment is in the sum of M\$1,354,037.35 with interest thereon at the rate of 12% per annum from 1st October 1976 until payment.

(vi) It is admitted that the judgment in Civil Suit No. 2445 of 1976 has been registered in this Colony under the provisions of the Foreign Judgments (Reciprocal Enforcement) Ordinance.

(vii) It is denied that the said judgment is registrable in this Colony under the Foreign Judgments (Reciprocal Enforcement) Ordinance or that the aforesaid registration is not liable to be set aside.

(viii) By an application dated 27th July 1977 the 4th, 5th, 6th and 7th Defendants applied to have the said registration set aside on the following grounds, namely, that the High Court in Malaya did not have jurisdiction in the circumstances of the case and that Choo Kim San did not receive notice of the proceedings in sufficient time to enable him to defend the proceedings and did not appear.

(ix) The 4th, 5th, 6th and 7th Defendants say that the said registration is liable to be set aside on the grounds or any one of them pleaded in subparagraph (viii) hereof.

20

(x) Save as aforesaid paragraph 2 of the Statement of Claim is denied.

3. Paragraph 3 of the Statement of Claim is denied.

4. Save that the present shareholders and directors of Asiatic Nominees Ltd are Ho Chung Po and Lee Fai To, no admission is made to any part of paragraph 4 of the Statement of Claim.

5. Save that the present shareholders and directors of Triumphant Nominees Ltd are Ho Chung Po and Lee Fai To no admission is made to any part of paragraph 5 of the Statement of Claim.

6. Paragraph 6 of the Statement of Claim is admitted save that no admission is made that the sums in either action (which are the same) are owing by Choo Kim San.

30 7. Paragraph 7 of the Statement of Claim is denied. The 4th Defendant, David Ng Pak Shing was never the servant or agent of Choo Kim San or acted as such.

8. As to paragraph 8 of the Statement of Claim —

(i) It is admitted that the 5th Defendant Ives is a solicitor of the Supreme Court of Hong Kong and that he was and is a senior partner of Messrs. Peter Mo & Co. solicitors.

- (ii) Messrs. Peter Mo & Co. from time to time acted for San Imperial Corporation Ltd. and Cando Ltd but other solicitors also acted for them, and in particular Messrs. Woo, Kwan, Lee & Lo. Messrs. Peter Mo & Co. have also acted against San Imperial Corporation Ltd. and Choo Kim San.
 - (iii) It is admitted that Cando Ltd was a shelf company which was purchased by Choo Kim San from Messrs. Peter Mo & Co.
 - (iv) It is admitted that Ives is a director and shareholder of City Nominees Limited.
 - (v) It is admitted that for a period of several months commencing in July 1972 Ives was a director of San Imperial. 10
 - (vi) It is admitted that for about 6 months Ives was a director of Luen On Co. Ltd. (now known as MAF Credit Ltd.) and Bladon Investment Co. Ltd. (now known as Harilela's Properties and Investment Limited). It is admitted that the aforesaid companies were at one time controlled by Choo Kim San.
 - (vii) Save as aforesaid paragraph 8 of the Statement of Claim is denied.
9. As to paragraph 9 of the Statement of Claim –
- (i) It is denied that the 6th Defendant Ho Chapman was ever employed by or associated with Choo Kim San. 20
 - (ii) David Ng, Ives and Ho Chapman (hereinafter collectively referred to as "the syndicate") formed a syndicate in or about January 1977 to purchase shares in San Imperial and thereafter to sell the same for a profit but not necessarily to James Coe.
 - (iii) It is admitted that Rocky Enterprises Co. Ltd. was formed by James Coe for the purpose of acquiring San Imperial shares.
 - (iv) Save as aforesaid paragraph 9 of the Statement of Claim is denied.
10. As to paragraph 10 of the Statement of Claim –
- (i) The 7th Defendant Fermay was formed by agreement of the syndicate and the 8th Defendant Chow Chaw-I and his wife the 9th Defendant Hwang Shang Pai for the purpose of proving the authenticity of the San Imperial share certificates and transfers in the possession of Chow and Hwang by the submission of the said certificates and transfers to the registrars of San Imperial Corporation Ltd and having them registered in the name of the 7th Defendant and as a convenient vehicle for the transfer of the San Imperial shares. 30

(ii) The present registered shareholders of Fermay are Chow and Hwang.

Supreme Court
of Hong Kong
High Court

(iii) The present directors of Fermay are Chow, Hwang and David Ng.

11. As to paragraph 11 of the Statement of Claim –

No. 9

(i) It is admitted and asserted that the syndicate and Chow and Hwang entered into an agreement dated 23rd March 1977 in order to impliment the purchase and sale of 15,000,000 San Imperial shares owned by Chow and Hwang, which was to be accomplished by the syndicate purchasing from Chow and Hwang the whole of the issued share capital of the 7th Defendant. The 4th, 5th, 6th and 7th Defendants will refer to the said agreement at the trial for its full terms true meaning and effect.

Defence and
Counterclaim of
the 4th, 5th, 6th
& 7th Defendants
dated 3.9.1977

10

(ii) By the said agreement Chow and Hwang agreed to sell and the syndicate agreed to purchase the whole of the issued share capital of Fermay for \$9,000,000.

(iii) It was a condition of the said sale and purchase that Fermay should be registered as the holder of 15,000,000 shares of San Imperial.

(iv) It is admitted and asserted that on 28th March 1977, 15,000,000 shares then registered in the name of Asiatic were transferred to Fermay and that Fermay has become since 28th March 1977 the registered holder of 15,000,000 San Imperial shares.

20

(v) Save as aforesaid paragraph 11 of the Statement of Claim is not admitted.

12. It is admitted that IPC Nominees Limited was incorporated on 1st April 1977 and that it is the holder of 7,631,000 shares in San Imperial. These do not form part of the 15,000,000 shares above referred to. IPC is a nominee company of Rocky Enterprises Co. Ltd., which is in turn a nominee company of James Coe.

13. Save that MAF Nominees Ltd. is a nominee company wholly owned by MAF Credit Ltd. and that the present directors thereof are Ho Chung Po and K.Y. Wu, no admission is made to any part of paragraph 13 of the Statement of Claim.

30 14. (i) The assertion of Lee Ing Chee and Lee Kon Wah that the 15,000,000 shares in San Imperial now registered in the name of Fermay and the 7,631,000 shares in San Imperial now registered in the name of IPC are beneficially owned by Choo Kim San is denied.

(ii) Save as aforesaid paragraph 14 of the Statement of Claim is not admitted.

Supreme Court
of Hong Kong
High Court

No. 9

Defence and
Counterclaim of
the 4th, 5th, 6th
& 7th Defendants
dated 3.9.1977

15. As to paragraph 15 of the Statement of Claim –
- (i) The order made on 10th December 1976 in High Court Action No. 2459 of 1976 is admitted.
 - (ii) It is admitted that on 10th December 1976 Asiatic was registered as the holder of 15,939,760 shares in San Imperial.
 - (iii) It is admitted that the Bailiff was unable to execute the said order because Choo Kim San was without the Colony at the material time.
 - (iv) It is admitted that Lee Ing Chee advertised as alleged on 13th April 1977.
 - (v) This was the first time that the 4th, 5th, 6th or 7th Defendants were aware of the said action or of any claims to the San Imperial shares by alleged creditors of Choo Kim San. 10
 - (vi) The 7th Defendant has commenced proceedings in the High Court of Justice Hong Kong against Lee Ing Chee entitled Miscellaneous Proceedings No. 420 of 1977 for inter alia, a declaration that the said order of 20th December 1976 was wrongly made and/or null and void and of no effect. The 4th, 5th, 6th and 7th Defendants will refer to the originating summons in the aforesaid proceedings for its full terms and effect and contend that insofar as the said order of 10th December 1976 may be relevant to the present proceedings (which is not admitted) the said order was wrongly made, null and void or otherwise of no effect. 20
16. As to paragraph 16 of the Statement of Claim –
- (i) It is admitted that MBF obtained an injunction in High Court Action No. 252 of 1977 on 15th February 1977. The 4th, 5th, 6th and 7th Defendants will refer to the said injunction order at the trial hereof for its full terms true meaning and effect. They have no knowledge of the subsequent discharge.
 - (ii) Save as aforesaid paragraph 16 of the Statement of Claim is not admitted. 30
17. Paragraph 17 of the Statement of Claim is admitted.
18. Paragraph 18 of the Statement of Claim is admitted.
19. Save that by the agreement of 23rd March 1977 Chow and Hwang agreed to sell all the issued capital of Fermay to the 4th, 5th and 6th Defendants and not in terms (sic) (of) the 15,000,000 shares in San Imperial, paragraph 19 of the Statement of Claim is admitted.

20. As to paragraph 20 of the Statement of Claim –

Supreme Court
of Hong Kong
High Court

(i) It is denied that Chow and Hwang were not the owners of the said shares or that they could not sell the same.

No. 9

(ii) Sub-paragraph (a) is admitted.

(iii) Sub-paragraph (b) is not admitted.

Defence and
Counterclaim of
the 4th, 5th, 6th
& 7th Defendants
dated 3.9.1977

(iv) Sub-paragraph (c) is admitted.

(v) (a) Each and every allegation in sub-paragraph (d) of paragraph 20 of the Statement of Claim is denied.

10 (b) On or about 8th July 1977 Chow telephoned David Ng from Taiwan and informed David Ng that a Taiwanese lawyer by the name of Hwang Tsa Ching had been to see him and that Hwang Tsa Ching said to Chow that he was instructed by solicitors in Hong Kong to make enquires and when Chow was asked where he purchased the 15,000,000 shares in San Imperial from, Chow's reply was that it was no concern of Hwang.

20 (c) On or about 11th July 1977 Chow telephoned David Ng again and informed him that Hwang Tsa Ching and a European solicitor from Messrs. Johnson, Stokes and Master had been to see him and that Chow refused to answer any question put to him by either of them.

(d) On or about 16th July 1977, David Ng telephoned Chow and informed him of the allegation made by Lee Ing Chee in his affirmation dated 15th July 1977 affirmed and filed in High Court Action No. 2459 of 1976 on 15th July 1977 which allegations have been repeated in sub-paragraph (d) of paragraph 20 of the Statement of Claim and described Lee Ing Chee to Chow, Chow informed David Ng that he had never met with or spoken to Lee Ing Chee or a person of that description.

(v) Save as aforesaid, paragraph 20 of the Statement of Claim is denied.

30 21. Save that the 8,999,998 shares were paid for by Chow and Hwang by means of a simultaneous sale by them of 15,000,000 shares in San Imperial to Fermay for \$9,000,000, paragraph 21 of the Statement of Claim is admitted.

22. (i) Paragraph 22 of the Statement of Claim is denied.

(ii) The 4th, 5th, 6th and 7th Defendants repeat paragraph 20 hereof.

(iii) It is denied that the particulars pleaded in paragraph 22 of the Statement of Claim either singly or together prove or could prove

that the said agreement of 23rd March 1977 was not genuine.

- (iv) In further reply to the said particulars the 4th, 5th, 6th and 7th Defendants say as follows:—
- (a) Paragraph 20 above is repeated.
 - (b) Chow and Hwang sent the above certificates and transfers to the Registrars for transfer into the name of Fermay and thereby retained control over the said certificates.
 - (c) Sub-paragraph (c) is denied.
 - (d) Sub-paragraph (d) is admitted.
 - (e) Save that the transfers were registered on 28th March 1977, and the registrars were Malaysia America Finance Corporation (H.K.) Ltd. which is wholly owned by MAF Credit Ltd, the directors of which are Ho Chung Po and K.Y. Woo, no admission is made to sub-paragraph (e). 10
 - (f) The 4th, 5th, 6th and 7th Defendants have no knowledge of the service of the order on Henry Loke Kui Kuen as alleged. The order itself did not restrain registration of transfers.
- (v) It is denied that on or about 28th March 1977 as alleged or at all Messrs. Peter Mo & Co. were solicitors for San Imperial.
23. (i) It is denied that Chow and Hwang were acting as nominees for Choo Kim San and the Plaintiffs are put to strict proof thereof. 20
- (ii) It is denied that Lee Ing Chee and Lee Kon Wah or either of them is entitled to have made absolute the garnishes orders nisi made on 27th July 1977 as alleged or at all.
- (iii) The 4th, 5th, 6th and 7th Defendants will contend that garnishee proceedings are misconceived and inappropriate where money is payable not to the judgment debtor but to a third party.
24. It is denied that Lee Ing Chee and/or Lee Kon Wah are entitled to the relief claimed in paragraph 24 of the Statement of Claim in respect of the 15,000,000 shares.
25. The agreement of 30th April 1977 is admitted. David Ng was acting on behalf of the syndicate. 30
26. The agreement dated 12th May 1977 is admitted.
27. The agreement dated 30th March 1977 is admitted. David Ng and Ho Chapman were acting on behalf of the syndicate.

- | | | |
|-----|--|---|
| 28. | As to paragraph 28 of the Statement of Claim, it is admitted that the shares pleaded therein were transferred into the name of MAF Nominees and that they were purchased by David Ng from persons who had purchased the same from Choo Kim San in Taiwan. It was agreed by the syndicate that David Ng should have these 2,164,000 shares as his private investment. | Supreme Court of Hong Kong High Court |
| | | No. 9 |
| 29. | (i) The transfers pleaded in paragraph 29 of the Statement of Claim are admitted. | Defence and Counterclaim of the 4th, 5th, 6th & 7th Defendants dated 3.9.1977 |
| | (ii) It is denied that the shares are beneficially owned by Choo Kim San. | |
| 30. | As to paragraph 30 of the Statement of Claim -- | |
| 10 | (i) It is denied that the particulars pleaded therein together or singly do or can prove that the agreements referred to in paragraphs 25, 26 and 27 of the Statement of Claim were not genuine. The agreements were genuine. | |
| | (ii) Sub-paragraph (a) is denied. | |
| | (iii) IPC was a nominee company for Rocky Enterprises Limited and the transfer was made to IPC on the direction of Rocky Enterprises Limited. Both companies were nominees of James Coe. There was no attempt to deceive or mislead. | |
| | (iv) In reply to sub-paragraph (c), sub-paragraph (iii) above is repeated. | |
| 20 | (v) Sub-paragraph (d) is admitted. | |
| | (vi) Sub-paragraph (e) is denied. These shares were put in the name of MAF Nominees in order to distinguish them from the other shares of the syndicate. | |
| | (vii) MAF Nominees held shares for Choo Kim San and for other as well. | |
| | (viii) Sub-paragraph (g) is admitted. | |
| | (ix) Sub-paragraph (h) is admitted. | |
| | (x) Sub-paragraph (i) is admitted. | |
| 30 | 31. Lee Ing Chee and Lee Kon Wah are not entitled to the relief claimed in paragraph 31 of the Statement of Claim nor to any of the reliefs claimed in (a), (b) or (c) of the prayer. | |

C O U N T E R C L A I M

No. 9

Defence and
Counterclaim of
the 4th, 5th, 6th
& 7th Defendants
dated 3.9.1977

32. (i) The 4th, 5th, 6th and 7th Defendants repeat the Defence.
- (ii) By an application dated 27th July 1977 the 4th, 5th, 6th and 7th Defendants applied in Miscellaneous Proceedings 155 of 1977 to have the registration of the judgment in Civil Suit No. 2445 of 1976 set aside.
33. (i) Civil Suit No. 2445 of 1976 was commenced by Lee Kon Wah in the High Court in Malaya at Kuala Lumpur on 19th October 1976.
- (ii) By order dated 31st December 1976 substituted service of the notice of the said Civil Suit was ordered to be made by advertising in the New Straits Times once. 10
- (iii) The advertisement was made on a date sometime between 31st December 1976 and 28th January 1977.
- (iv) During the period pleaded above, Choo Kim San was not present within the jurisdiction of the said High Court in Malaya nor was Choo Kim San at the material time resident within Malaya and/or Malaysia.
- (v) At the time of the said advertisement Choo Kim San was in Taiwan.
- (vi) The New Straits Times was not available in Taiwan.
- (vii) The Malaya High Court did not have jurisdiction in the circumstances of the case and/or Choo Kim San did not receive notice of these proceedings in sufficient time to enable him to defend the proceedings and did not appear. 20
- (viii) In the premises, the 4th, 5th, 6th and 7th Defendants say that the registration of the judgment in the said Civil Suit in Miscellaneous Proceedings No. 155 of 1977 ought to be set aside by reason of the foregoing and by virtue of section 6 (1) of the Foreign Judgments (Reciprocal Enforcement) Ordinance.

AND the 4th, 5th, 6th and 7th Defendants counterclaim for an order that the registration of the judgment obtained by Lee Kon Wah against Choo Kim San in Civil Suit No. 2445 of 1976 in Miscellaneous Proceedings 155 of 1977 be set aside.

Dated this 3rd day of September, 1977. 30

ROBERT C. TANG
Counsel for the 4th, 5th,
6th & 7th Defendants

DEFENCE AND COUNTERCLAIM OF THE 10TH DEFENDANT

Supreme Court
of Hong Kong
High Court

D E F E N C E

No. 10

Defence and
Counterclaim
of the 10th
Defendant
dated 5.9.1977

1. (i) The judgment pleaded in paragraph 1 of the Statement of Claim is admitted.
- (ii) It is not admitted that Lee Ing Chee was or is entitled to be paid the sum of M\$2,388,651.94 together with interest thereon at the rate of 15% per annum as alleged or at all.
- 10 (iii) Lee Ing Chee's claim in High Court Action No. 2459 is for an indemnity and as such Lee Ing Chee is only entitled to be paid so much money as may be necessary to indemnify him against the proper claims of Malaysia Borneo Finance Corporation (M) Berhad the Plaintiff in Civil Suit K 134 of 1975 in the High Court in Borneo.
- (iv) It is not admitted that the judgment against Lee Ing Chee in Civil Suit K 134 of 1975 truly or correctly represents the liability of Choo Kim San and/or Lee Ing Chee or that it has not been fully or partially satisfied.
- 20 (v) Lee Ing Chee is put to proof of his allegation that a sufficient indemnity against the aforesaid liability or judgment is in the sum of \$2,388,651.94 plus interest thereon at the rate of 15% per annum from 1st April 1975 to 19th July 1976 and thereafter at the rate of 6% per annum from 19th July 1976 until payment.
2. As to paragraph 2 of the Statement of Claim –
- (i) It is admitted that judgment in the sum alleged has been obtained by Lee Kon Wah against Choo Kim San in Civil Suit No. 2445 of 1976 in the High Court in Malaya at Kuala Lumpur.
- (ii) It is not admitted that Lee Kon Wah was or is entitled to be paid the sum of M\$1,354,037.35 together with interest thereon at the rate of 12% per annum as alleged or at all.
- 30 (iii) Lee Kon Wah's claim therein was for an indemnity and as such Lee Kon Wah is only entitled to be paid so much money as may be necessary to indemnify him against the proper claims of Malaysia Borneo Finance Corporation (M) Berhad, Plaintiff in the Kuala Lumpur Civil Suit No. 1474 of 1975.
- (iv) It is not admitted that the said judgment truly or correctly represents the liability of Choo Kim San and/or Lee Kon Wah, or that it has not been satisfied in full or in part.

- (v) Lee Kon Wah is put to proof of his allegation that a sufficient indemnity against the aforesaid liability or judgment is in the sum of M\$1,354,037.35 with interest thereon at the rate of 12% per annum from 1st October 1976 until payment.
- (vi) It is admitted that the judgment in Civil Suit No. 2445 of 1976 has been registered in this Colony under the provisions of the Foreign Judgments (Reciprocal Enforcement) Ordinance.
- (vii) It is denied that the said judgment is registrable in this Colony under the Foreign Judgments (Reciprocal Enforcement) Ordinance or that the aforesaid registration is not liable to be set aside. 10
- (viii) By an application dated 24th August 1977 the Defendant applied to have the said registration set aside on the following grounds, namely, that the High Court in Malaya did not have jurisdiction in the circumstances of the case and that Choo Kim San did not receive notice of the proceedings in sufficient time to enable him to defend the proceedings and did not appear.
- (ix) The 10th Defendant says that the said registration is liable to be set aside on the grounds or any one of them pleaded in sub-paragraph (viii) hereof.
- (x) Save as aforesaid paragraph 2 of the Statement of Claim is denied. 20
3. Paragraph 3 of the Statement of Claim is denied.
4. Save that the present shareholders and directors of Asiatic Nominees Ltd are Ho Chung Po and Lee Fai To, no admission is made to any part of paragraph 4 of the Statement of Claim.
5. Save that the present shareholders and directors of Asiatic Nominees Ltd are Ho Chung Po and Lee Fai To, no admission is made to any part of paragraph 5 of the Statement of Claim.
6. Paragraph 6 of the Statement of Claim is admitted save that no admission is made that the sums in either action (which are the same) are owing by Choo Kim San. 30
7. Paragraph 7 of the Statement of Claim is denied.
8. As to paragraph 8 of the Statement of Claim –
- (i) It is admitted that the 5th Defendant Ives is a solicitor of the Supreme Court of Hong Kong and that he was and is a senior partner of Messrs. Peter Mo & Co. solicitors.

(ii) It is admitted that Ives is a director and shareholder of City Nominees Limited.

Supreme Court
of Hong Kong
High Court

(iii) Save as aforesaid paragraph 8 of the Statement of Claim is not admitted.

No. 10

9. As to paragraph 9 of the Statement of Claim –

(i) David Ng, Ives and Ho Chapman (hereinafter collectively referred to as “the syndicate”) formed a syndicate in or about January 1977 to purchase shares in San Imperial and thereafter to sell the same for a profit.

Defence and
Counterclaim
of the 10th
Defendant
dated 5.9.1977

10 (ii) It is admitted that Rocky Enterprises Co. Ltd. was formed by James Coe for the purpose of acquiring San Imperial shares from the syndicate.

(iii) Save as aforesaid paragraph 9 of the Statement of Claim is denied.

10. As to paragraph 10 of the Statement of Claim the 10th Defendant adopts the Defence herein of the 4th, 5th, 6th and 7th Defendants namely:–

(i) The 7th Defendant Fermay was formed by agreement of the syndicate and the 8th Defendant Chow Chaw-I and his wife the 9th Defendant Hwang Shang Pai for the purpose of proving the authenticity of the San Imperial share certificates and transfers in the possession of Chow and Hwang by the submission of the said certificates and transfers to the registrars of San Imperial Corporation Ltd and having them registered in the name of the 7th Defendant and as a convenient vehicle for the transfer of the San Imperial shares.

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(ii) The present registered shareholders of Fermay are Chow and Hwang.

(iii) The present directors of Fermay are Chow, Hwang and David Ng.

11. As to paragraph 11 of the Statement of Claim the 10th Defendant adopts the Defence herein of the 4th, 5th, 6th and 7th Defendants namely:–

(i) It is admitted that the syndicate and Chow and Hwang entered into an agreement dated 23rd March 1977 in order to impliment the purchase and sale of 15,000,000 San Imperial shares owned by Chow and Hwang, which was to be accomplished by the syndicate purchasing from Chow and Hwang the whole of the issued share capital of the 7th Defendant.

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(ii) By the said agreement Chow and Hwang agreed to sell and the syndicate agreed to purchase the whole of the issued share capital of Fermay for \$9,000,000.

(iii) It was a condition of the said sale and purchase that Fermay should be registered as the holder of 15,000,000 shares of San Imperial.

(iv) It is admitted that on 28th March 1977, 15,000,000 shares then registered in the name of Asiatic were transferred to Fermay and that Fermay has become since 28th March 1977 the registered holder of 15,000,000 San Imperial shares.

(v) Save as aforesaid paragraph 11 of the Statement of Claim is not admitted.

12. It is admitted that IPC Nominees Limited the 10th Defendant was incorporated on 1st April 1977 and that it is the holder of 7,631,000 shares in San Imperial. These do not form part of the 15,000,000 shares above referred to. IPC is a nominee company of Rocky Enterprises Co. Ltd., which is in turn a nominee company of James Coe. 10

13. Save that MAF Nominees Ltd. is a nominee company wholly owned by MAF Credit Ltd. and that the present directors thereof are Ho Chung Po and K.Y. Wu, no admission is made to any part of paragraph 13 of the Statement of Claim.

14. (i) The assertion of Lee Ing Chee and Lee Kon Wah that the 15,000,000 shares in San Imperial now registered in the name of Fermay and the 7,631,000 shares in San Imperial now registered in the name of IPC are beneficially owned by Choo Kim San is denied.

(ii) Save as aforesaid paragraph 14 of the Statement of Claim is not admitted. 20

15. As to paragraph 15 of the Statement of Claim –

(i) The order made on 10th December 1976 in High Court Action No. 2459 of 1976 is admitted.

(ii) It is admitted that on 10th December 1976 Asiatic was registered as the holder of 15,939,760 shares in San Imperial.

(iii) It is admitted that the Bailiff was unable to execute the said order because Choo Kim San was without the Colony at the material time.

(iv) It is admitted that Lee Ing Chee advertised as alleged on 13th April 1977.

(v) It was only after this advertisement that the 10th Defendant was aware of the said action or of any claims to the San Imperial shares by alleged creditors of Choo Kim San. 30

(vi) The 7th Defendant has commenced proceedings in the High Court of Justice Hong Kong against Lee Ing Chee entitled Miscellaneous Proceedings No. 420 of 1977 for inter alia, a declaration that the said order of 20th December 1976 was wrongly made and/or null and void and of no effect. The 10th Defendant will refer to the originating

summons in the aforesaid proceedings for its full terms and effect and contend that insofar as the said order of 10th December 1976 may be relevant to the present proceedings (which is not admitted) the said order was wrongly made, null and void or otherwise of no effect.

Supreme Court
of Hong Kong
High Court

No. 10

16. As to paragraph 16 of the Statement of Claim –

(i) It is admitted that MBF obtained an injunction in High Court Action No. 252 of 1977 on 15th February 1977. The 10th Defendant will refer to the said injunction order at the trial hereof for its full terms true meaning and effect. The 10th Defendant has no knowledge of the subsequent discharge.

Defence and
Counterclaim
of the 10th
Defendant
dated 5.9.1977

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(ii) Save as aforesaid paragraph 16 of the Statement of Claim is not admitted.

17. Paragraph 17 of the Statement of Claim is admitted.

18. Paragraph 18 of the Statement of Claim is admitted.

19. Save that by the agreement of 23rd March 1977 Chow and Hwang agreed to sell all the issued capital of Fermay to the 4th, 5th and 6th Defendants and not in terms (sic) (of) the 15,000,000 shares in San Imperial, paragraph 19 of the Statement of Claim is admitted.

20. As to paragraph 20 of the Statement of Claim –

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(i) It is denied that Chow and Hwang were not the owners of the said shares or that they could not sell the same.

(ii) Sub-paragraph (a) is admitted.

(iii) Sub-paragraph (b) is not admitted.

(iv) The 10th Defendant has no knowledge of sub-paragraph (c).

(v) Each and every allegation in sub-paragraph (d) of paragraph 20 of the Statement of Claim is denied. In further reply thereto the 10th Defendant adopts the Defence herein of the 4th, 5th, 6th and 7th Defendants, namely:–

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(a) On or about 8th July 1977 Chow telephoned David Ng from Taiwan and informed David Ng that a Taiwanese lawyer by the name of Hwang Tsa Ching had been to see him and that Hwang Tsa Ching said to Chow that he was instructed by solicitors in Hong Kong to make enquires and when Chow was asked where he purchased the 15,000,000 shares in San Imperial from, Chow's reply was that it was no concern of Hwang.

Supreme Court
of Hong Kong
High Court

No. 10

Defence and
Counterclaim
of the 10th
Defendant
dated 5.9.1977

(b) On or about 11th July 1977 Chow telephoned David Ng again and informed him that Hwang Tsa Ching and a European solicitor from Messrs. Johnson, Stokes and Master had been to see him and that Chow refused to answer any question put to him by either of them.

(c) On or about 16th July 1977, David Ng telephoned Chow and informed him of the allegation made by Lee Ing Chee in his affirmation dated 15th July 1977 affirmed and filed in High Court Action No. 2459 of 1976 on 15th July 1977 which allegations have been repeated in sub-paragraph (d) of paragraph 20 of the Statement of Claim and described Lee Ing Chee to Chow, Chow informed David Ng that he had never met with or spoken to Lee Ing Chee or a person of that description.

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(v) Save as aforesaid, paragraph 20 of the Statement of Claim is denied.

21. Save that the 8,999,998 shares were paid for by Chow and Hwang by means of a simultaneous sale by them of 15,000,000 shares in San Imperial to Fermay for \$9,000,000, paragraph 21 of the Statement of Claim is admitted.

22. Paragraph 22 of the Statement of Claim is denied. The 10th Defendant adopts the Defence herein of the 4th, 5th, 6th and 7th Defendants, namely:—

(i) The 10th Defendant repeats paragraph 20 hereof.

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(ii) It is denied that the particulars pleaded in paragraph 22 of the Statement of Claim either singly or together prove or could prove that the said agreement of 23rd March 1977 was not genuine.

(iii) In further reply to the said particulars the 10th Defendant says as follows:—

(a) Paragraph 20 above is repeated.

(b) Chow and Hwang sent the above certificates and transfers to the Registrars for transfer into the name of Fermay and thereby retained control over the said certificates.

(c) Sub-paragraph (c) is denied.

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(d) Sub-paragraph (d) is admitted.

(e) Save that the transfers were registered on 28th March 1977, and the registrars were Malaysia America Finance Corporation (H.K.) Ltd. which is wholly owned by MAF Credit Ltd, the directors of which are Ho Chung Po and K.Y. Woo, no admission is made to sub-paragraph (e).

(f) The 10th Defendant has no knowledge of the service of the order on Henry Loke Kui Kuen as alleged. The order itself did not restrain registration of transfers.

Supreme Court
of Hong Kong
High Court

(iv) It is denied that on or about 25th March 1977 as alleged or at all Messrs. Peter Mo & Co. were solicitors for San Imperial.

No. 10

23. (i) It is denied that Chow and Hwang were acting as nominees for Choo Kim San and the Plaintiffs are put to strict proof thereof.

Defence and
Counterclaim
of the 10th
Defendant
dated 5.9.1977

(ii) It is denied that Lee Ing Chee and Lee Kon Wah or either of them is entitled to have made absolute the garnishee orders nisi made on 27th July 1977 as alleged or at all.

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24. It is denied that Lee Ing Chee and/or Lee Kon Wah are entitled to the relief claimed in paragraph 24 of the Statement of Claim in respect of the 15,000,000 shares.

25. The agreement of 30th April 1977 is admitted. David Ng was acting on behalf of the syndicate.

26. The agreement dated 12th May 1977 is admitted.

27. The agreement dated 30th March 1977 is admitted. David Ng and Ho Chapman were acting on behalf of the syndicate.

28. As to paragraph 28 of the Statement of Claim, it is admitted that the shares pleaded therein were transferred into the name of MAF Nominees and that they were purchased by David Ng from persons who had purchased the same from Choo Kim San in Taiwan. It was agreed by the syndicate that David Ng should have these 2,164,000 shares as his private investment.

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29. (i) The transfers pleaded in paragraph 29 of the Statement of Claim are admitted.

(ii) It is denied that the shares are beneficially owned by Choo Kim San.

30. As to paragraph 30 of the Statement of Claim –

(i) It is denied that the particulars pleaded therein together or singly do or can prove that the agreements referred to in paragraphs 25, 26 and 27 of the Statement of Claim were not genuine. The agreements were genuine.

30

(ii) Sub-paragraph (a) is denied.

(iii) IPC was a nominee company for Rocky Enterprises Limited and the transfer was made to IPC on the direction of Rocky Enterprises Limited. Both companies were nominees of James Coe. There was no attempt to deceive or mislead.

- (iv) In reply to sub-paragraph (c), sub-paragraph (iii) above is repeated.
- (v) Sub-paragraph (d) is admitted.
- (vi) Sub-paragraph (e) is denied. These shares were put in the name of MAF Nominees in order to distinguish them from the other shares of the syndicate.
- (vii) MAF Nominees held shares for Choo Kim San and for other as well.
- (viii) Sub-paragraph (g) is admitted.
- (ix) Sub-paragraph (h) is admitted.
- (x) Sub-paragraph (i) is admitted.

31. Lee Ing Chee and Lee Kon Wah are not entitled to the relief claimed in paragraph 31 of the Statement of Claim nor to any of the reliefs claimed in (a), (b) or (c) of the prayer. 10

C O U N T E R C L A I M

- 32. (i) The 10th Defendant repeats the Defence.
- (ii) By an application dated 24th August, 1977 the 10th Defendant applied in Miscellaneous Proceedings 155 of 1977 to have the registration of the judgment in Civil Suit No. 2445 of 1976 set aside.
- 33. (i) Civil Suit No. 2445 of 1976 was commenced by Lee Kon Wah in the High Court in Malaya at Kuala Lumpur on 19th October 1976.
- (ii) By order dated 31st December 1976 substituted service of the notice of the said Civil Suit was ordered to be made by advertising in the New Straits Times once. 20
- (iii) The advertisement was made on a date sometime between 31st December 1976 and 28th January 1977.
- (iv) During the period pleaded above, Choo Kim San was not present within the jurisdiction of the said High Court in Malaya nor was Choo Kim San at the material time resident within Malaya and/or Malaysia.
- (v) At the time of the said advertisement Choo Kim San was in Taiwan.
- (vi) The New Straits Times was not available in Taiwan.
- (vii) The Malaya High Court did not have jurisdiction in the circumstances of the case and/or Choo Kim San did not receive notice of these 30

proceedings in sufficient time to enable him to defend the proceedings and did not appear.

Supreme Court
of Hong Kong
High Court

(viii) In the premises, the 10th Defendant says that the registration of the judgment in the said Civil Suit in Miscellaneous Proceedings No. 155 of 1977 ought to be set aside by reason of the foregoing and by virtue of section 6 (1) of the Foreign Judgments (Reciprocal Enforcement) Ordinance.

No. 10

Defence and
Counterclaim
of the 10th
Defendant
dated 5.9.1977

AND the 10th Defendant counterclaims for an order that the registration of the judgment obtained by Lee Kon Wah against Choo Kim San in Civil Suit No. 2445 of 1976 in Miscellaneous Proceedings 155 of 1977 be set aside.

Dated the 5th day of September, 1977.

(Sd.) Robert Tang
ROBERT TANG
Counsel for the 10th Defendant

AMENDED REPLY AND DEFENCE TO THE COUNTERCLAIM
OF THE 4TH, 5TH, 6TH & 7TH DEFENDANTS

No. 11

Amended
Reply and
Defence to the
Counterclaim
of the 4th, 5th,
6th & 7th
Defendants
dated 12.9.1977

1. Save in so far as the same consist of admissions and save in so far as is expressly admitted hereunder, the Plaintiff, Lee Ing Chee and Lee Kon Wah, join issue with the 4th, 5th, 6th and 7th Defendants upon their Defence.

2. Paragraph 1(iii) of the Defence of the 4th, 5th, 6th and 7th Defendants is admitted. In further reply to sub-paragraphs (iv) and (v) of the said paragraph 1, on or above 29th March, 1974, Lee Ing Chee borrowed from MBF in his own name but for the benefit of Chee Kim San the sum of M\$2,100,000.00 with interest thereon at the rate of 15% per annum. By a trust deed and by an acknowledgement and indemnity both dated 29th March, 1974, Choo Kim San undertook to indemnify Lee Ing Chee in relation to such loan and interest, MBF instituted the said Civil Suit K134 of 1975 in the High Court of Borneo against Lee Ing Chee in respect of the said loan and secured judgment therein on the 19th July, 1976 for the said sum of M\$2,338,651.94 together with interest thereon at the rate of 15% per annum from the 1st April, 1975, to the date of the said judgment and thereafter at the rate of 6% per annum until payment. 10

3. Paragraph 2(iii) of the Defence of the 4th, 5th, 6th and 7th Defendants is admitted. In further reply to sub-paragraph (iv) and (v), Lee Ken Wah in his own name but for the benefit of Chee Kim San borrowed certain sums carrying interest at 12% per annum from MBF and Choo Kim San agreed to indemnify him in respect of such loan. MBF instituted against Lee Kon Wah the said Civil Suit No. 1474 of 1975 obtained judgment against Lee Kon Wah in the sum of M\$1,354,037.35 with interest thereon at 12% per annum. Lee Kon Wah then instituted Civil Suit No. 2445 of 1976 in the High Court in Malaya at Kuala Lumpur against Choo Kim San and secured judgment therein on the 28th January, 1977, in the sum of M\$1,354,037.35 with interest thereon at 13% per annum from the 1st October, 1976, until payment. 20

4. Paragraph 2(viii) of the Defence of the 4th, 5th, 6th and 7th Defendants is admitted.

5. It is admitted that the proceedings set out in paragraph 15(vi) of the Defence of the 4th, 5th, 6th and 7th Defendants have been commenced. 30

6. In further reply to sub-paragraph (v) of paragraph 20 of the Defence of the 4th, 5th, 6th and 7th Defendants, it is admitted that the said Hwang Toa Ching spoke to the said Chow Chaw-I. Save as aforesaid, no admission is made as to (a) of the said sub-paragraph. In further reply to (b) of the said sub-paragraph, it is denied that any European or other solicitors from Messrs. Johnson, Stokes & Master ever went to see the said Chow Chaw-I as alleged or at all.

DEFENCE TO COUNTERCLAIM

7. Lee Ing Chee and Lee Kon Wah repeat the Statement of Claim herein and the Reply hereinbefore.

Amended pursuant to an order of Mr. Justice Yang made at trial on 10th October 1977.

8. Sub-paragraph (ii) of Paragraph 32 of the Counterclaim of the 4th, 5th, 6th and 7th Defendants is admitted. On the 31st March, 1977, it was ordered that the said judgment in 11 Suit No. 2445 of 1976 be registered as a judgment in the Supreme Court of this Colony pursuant to Section 4 of the Foreign Judgments (Reciprocal Enforcement) Ordinance Cap. 319. It was further ordered that Choo Kim Sun should be at liberty to apply to set aside such registration within 14 days of service upon him of the notice of such registration. Such notice was service upon Choo Kim San by way of substituted service by:

- 10
- (i) Delivering a sealed copy of the same to an adult inmate at 41, Hill Wood Road, 11th Floor, Kowloon in this Colony;
 - (ii) Sending the same by prepaid post to Choo Kim San at the aforesaid address:
 - (iii) Advertising the same by one insertion in the Wah Kiu Yat Po and the Sing Tao Yih Po.

20 In pursuance of (i) above a sealed copy of the Order for Registration of Foreign Judgment was delivered to an adult inmate at the aforesaid address on 23rd June 1977. Upon the same day a further sealed copy of such order was sent to Choo Kim San by prepaid post to the aforesaid address in compliance with (ii) above. In compliance with (iii) above, the advertisement accordingly appeared on the 23rd June 1977.

9. Sub-paragraphs (i) to (iii) of paragraph 33 of the Counterclaim of the 4th, 5th, 6th and 7th Defendants are admitted. Sub-paragraphs (iv) to (vii) of the said paragraph 33 are denied. Further and in the alternative, at all material times Choo Kim San was resident in Malaya and/or Malaysia. Further and in the final alternative the said transactions were effected through or at an office or place of business of Choo Kim San in Malaya and/or Malaysia.

30 10. Further or in the alternative to paragraph 9 hereof, it is not a ground upon which Choo Kom San or the 4th, 5th, 6th and 7th Defendants can reply in seeking to set aside the said registration that Choo Kim San did not, as alleged, receive notice of the proceedings in sufficient time to enable him to defend these proceedings and did not appear therein.

11. Further or in the further alternative, no application to set aside the said registration was made within 14 days of the service of the Order for Registration of Foreign Judgment aforesaid wherefore the said registration cannot now be set aside.

12. Further or in the final alternative, the 4th, 5th, 6th or 7th Defendant has no locus standi to apply as to set aside.

40 13. Save as hereinbefore expressly admitted, each and every allegation of the Counterclaim of the 4th, 5th, 6th and 7th Defendants is denied as if each were set out herein and traversed seriatim and it is denied that the 4th, 5th, 6th and 7th Defendants or any of them is entitled to the relief claimed or to any relief.

Supreme Court
of Hong Kong
High Court

Patrick Fung
Counsel for the Plaintiff.

Dated this 12th day of September 1977.

No. 11

Amended
Reply and
Defence to the
Counterclaim
of the 4th, 5th,
6th & 7th
Defendants
dated 12.9.1977

AMENDED REPLY AND DEFENCE TO THE COUNTERCLAIM
OF THE 10TH DEFENDANT

Supreme Court
of Hong Kong
High Court

No. 12

Amended
Reply and
Defence to the
Counterclaim
of the 10th
Defendant
dated 12.9.1977

1. Save in so far as the same consists of admissions and save in so far as in expressly admitted hereunder, the Plaintiffs, Lee Ing Chee and Lee Kon Wah, join issue with the 10th Defendant, IPC Nominees Limited, upon its Defence.

2. Paragraph 1(iii) of the Defence of the 10th Defendant is admitted. In further reply to sub-paragraphs (iv) and (v) of the said paragraph 1, on or about the 29th March 1974, Lee Ing Chee borrowed from MBF in his own name but for the benefit of the 1st Defendant, Choo Kim San, the sum of M\$2,100,000.00 with
10 interest thereon at the rate of 15% per annum. By a trust deed and by an acknowledgement and indemnity both dated 29th March 1974 Choo Kim San undertook to indemnify Lee Ing Chee in relation to such loan and interest. MBF instituted the said Civil Suit R134 of 1975 in the High Court of Borneo against Lee Ing Chee in respect of the said loan and secured judgment therein on the 19th July 1976 for the said sum of M\$2,338,651.94 together with interest thereon at the rate of 15% per annum from the 1st April 1975 to the date of the said judgment and thereafter at the rate of 6% per annum until payment.

3. Paragraph 2(iii) of the Defence of the 10th Defendant is admitted. In further reply to sub-paragraphs (iv) and (v) of the said paragraph 2. Lee Kon Wah in
20 his own name but for the benefit of Choo Kim San borrowed certain sums carrying interest at 12% per annum from MBF and Choo Kim San agreed to indemnify him in respect of such loans. MBF instituted against Lee Kon Wah the said Civil Suit No. 1474 of 1975 and obtained Judgment against Lee Kon Wah in the sum of M\$1,354,037.35 with interest thereon at 12% per annum. Lee Kon Wah then instituted Civil Suit No. 2445 of 1976 in the High Court in Malaysia at Kuala Lumpur against Choo Kim San and secured judgment therein on the 28th January 1977 in the sum of M\$1,354,037.35 with interest thereon at 12% per annum from the 1st October 1976 until payment.

4. Paragraph 2 (viii) of the Defence of the 10th Defendant is admitted.

30 5. It is admitted that the proceedings set out in paragraph 15(vi) of the Defence of the 10th Defendant have been commenced.

6. In further reply to sub-paragraph (v) of paragraph 30 of the Defence of the 10th Defendant, it is admitted that the said Hwang Tsa Ching spoke to the said Chow Chaw-I. Save as aforesaid, no admission is made as to (a) of the said sub-paragraph. In further reply to (b) of the said sub-paragraph, it is denied that any European or other solicitors from Messrs. Johnson, Stokes & Master ever went to see the said Chow Chaw-I as alleged or at all.

DEFENCE TO COUNTERCLAIM

7. Lee Ing Chee and Lee Kon Wah repeat the Statement of Claim herein and
40 the Reply hereinbefore.

Amended pursuant to an order of Mr. Justice Yang made at trial on 10th October 1977.

8. Sub-paragraph (ii) of paragraph 32 of the Counterclaim of the 10th Defendant is admitted. On the 31st March 1977 it was ordered that the said judgment in Civil Suit No.2445 of 1976 be registered as a judgment in the Supreme Court of this Colony pursuant to Section 4 of the Foreign Judgments (Reciprocal Enforcement) Ordinance Cap. 319. It was further ordered that Choo Kim San should be at liberty to set aside such registration within 14 days of service upon him of the notice of registration. Such notice was served upon Choo Kim San by way of substituted service by:

- (i) Delivering a sealed copy of the same to an adult inmate at 41, Hill Wood Road, 11th floor, Kowloon in this Colony;
- (ii) Sending the same by prepaid post to Choo Kim San at the aforesaid address; 10
- (iii) Advertising the same by one insertion in the Wah Kiu Yat Po and the Sing Tao Yih Po.

In pursuance of (i) above a sealed copy of the Order for Registration of Foreign Judgment was delivered to an adult inmate at the aforesaid address on 23rd June 1977. Upon the same day, a further sealed copy of such Order was sent to Choo Kim San by prepaid post to the aforesaid address in compliance with (ii) above. In compliance with (iii) above an advertisement accordingly appeared on 23rd June 1977.

9. Sub-paragraphs (i) to (iii) of paragraph 33 of the Counterclaim of the 10th Defendant are admitted. Sub-paragraphs (iv) to (viii) of the said paragraph 33 are denied. Further and in the alternative, at all material times Choo Kim San was resident in Malaya and/or Malaysia. Further and in the final alternative the said transactions were effected through or at an office or place of business of Choo Kim San in Malaya and/or Malaysia. 20

10. Further or in the alternative to paragraph 9 hereof, it is not a ground upon which Choo Kim San or IPC can rely in seeking to set aside the said registration that Choo Kim San did not, as alleged, receive notice of the proceedings in sufficient time to enable him to defend those proceedings and did not appear therein.

11. Further or in the further alternative, no application to set aside the said registration was made within 14 days of the service of the Order for Registration of Foreign Judgment aforesaid wherefore the said registration cannot now be set aside. 30

12. Further or in the final alternative, IPC has no locus standi to apply for setting aside the said registration.

13. Save as hereinbefore expressly admitted, each and every allegation made in the Counterclaim of the 10th Defendant is denied as if each were set out herein and traversed seriatim and it is denied that IPC is entitled to the relief claimed or to any relief.

**Patrick Fung
Counsel for the Plaintiff.**

**Supreme Court
of Hong Kong
High Court**

Dated this 12th day of September 1977.

No. 12

**Amended
Reply and
Defence to the
Counterclaim
of the 10th
Defendant
dated 12.9.1977**

HEARSAY NOTICE OF THE 4TH, 5TH, 6TH & 7TH DEFENDANTS
(STATEMENTS MADE IN CERTAIN DOCUMENTS)

No. 13

Hearsay Notice
of the 4th, 5th,
6th & 7th
Defendants
(Statements made
in Certain
Documents)
dated 7.10.1977

TAKE NOTICE that at the trial of this action the 4th, 5th, 6th and 7th Defendants desire to give in evidence the statements made in the following documents, namely:—

1. Telex from Kirkwood to Peter Mo & Co. dated 23.6.1977.
2. Letter from Danal & Associates Law Office to Thai MAF Trust Co., Ltd. with enclosures and translations thereof — dated 18.7.1977.
3. Written Agreement between 1st Defendant & G.A. Prior dated 1.7.1974. 10
4. Testimonial of Lau Mui Chow with its certified translation dated 22.6.66.

A copy of each of the said documents are annexed hereto.

AND FURTHER TAKE NOTICE that the particulars relating to the said statements are as follows:—

1. Kirkwood are a firm of lawyers practising in Taiwan. Kirkwood sent the telex to Peter Mo & Co. in reply to a telex sent to them by Peter Mo & Co.
2. This letter was received from the lawyers in Thailand by Thai MAF Trust Co. Ltd. with its enclosures in answer to a request by Thai MAF Trust Co. Ltd. for particulars regarding the status of the warrant against Lee Ing Chee. 20
3. This agreement was found amongst certain papers apparently belonging to Choo Kim San and lying in the office of MAF Credit Limited or San Imperial Corporation Limited and apparently relates to a transaction between Choo Kim San and the principal plaintiffs in Kuala Lumpur.
4. Previously Lau Mui Chow had been asked if she would swear an affidavit in Taiwan for use in the previous interlocutory proceedings in Hong Kong. She sent this testimonial instead.

AND FURTHER TAKE NOTICE that the said documents cannot be called as a witness (sic) at the trial because it beyond the seas. (sic)

Dated the 7th day of October 1977.

30

Sd. Peter Mo & Co.
Solicitors for the 4th, 5th, 6th & 7th Defendants.

HEARSAY NOTICE OF THE PLAINTIFFS
(STATEMENTS MADE BY CHOO KIM SAN)

Supreme Court
of Hong Kong
High Court

No. 14A

Hearsay Notice
of the Plaintiffs
(Statements
Made by
Choo Kim San)
dated 15.10.1977

TAKE NOTICE that at the trial of these actions the Plaintiff desire to give in evidence the following statements made by Choo Kim San:—

- 10
- A) That Choo Kim San instructed Lee Ing Chee to purchase shelf companies to hold shares for him as his nominees.
- B) That Choo Kim San orally authorized Lee Ing Chee to appoint persons to be directors and shareholders in the nominee companies.
- C) That Choo Kim San told Lee Ing Chee that it would be better for nominees to hold his shares so that he could speculate on the stock market and so that he could avoid execution by his creditors and subsequently Choo Kim San instructed Lee Ing Chee to purchase another shelf company for him.
- D) That Choo Kim San told Lee Ing Chee to tell Lee Kee Seng and Pang Wing Fan to go to the office of Melville Edward Ives of Messrs. Peter Mo & Co. to sign a deed of trust drawn up by Melville Edward Ives.
- 20
- E) That Choo Kim San told Lee Ing Chee that he had a company called San International and that he was going to use this company as his nominee to hold shares on his behalf.
- F) That Choo Kim San told Lee Ing Chee that Bladon International Investments Limited held a lot of shares in San Holdings Berhad.
- G) That Choo Kim San told Lee Ing Chee that Bladon International Investments Limited was his nominee company and asked Lee Ing Chee to be a director thereof.
- H) That Choo Kim San told Lee Ing Chee that he wanted to appoint David Ng, Lee Ing Chee, Melville Edward Ives, Wong Kai Lam and himself as directors in Bladon International Investments Limited.
- 30
- I) That Choo Kim San told Lee Ing Chee that he wanted to sell an estate in Malaysia and he had taken advice from a lawyer and an accountant who had advised him to acquire a Hong Kong Company to purchase the property and to re-sell to a Malaysian party and in this way to evade Malaysian income tax and that he had already bought a company called Cando Company Limited for this purpose from Messrs. Peter Mo & Co.
- J) That Choo Kim San asked Lee Ing Chee to appoint directors in Cando Company Limited from the staff of MAF Corporation and to deal generally with the directorship of Cando Company Limited as he could not be bothered with such small matters.

- K) That Choo Kim San told Lee Ing Chee that the sale and purchase of the land had almost been completed and instructed Lee Ing Chee to sign the sale and purchase agreement for and on behalf of Cando.
- L) That Choo Kim San told Lee Ing Chee to put his shares in the name of Asiatic Nominees Ltd.
- M) That in all the companies set out in the schedule annexed hereto, the directors were appointed by Choo Kim San at directors meetings attended by Lee Ing Chee.
- N) That Choo Kim San asked Lee Ing Chee to take a deed of trust to Tunku Abdullah in relation to shares in MBF and to ask Tunku Abdullah to sign it because Tunku Abdullah was holding shares in MBF on his behalf. 10
- O) That Choo Kim San told Lee Ing Chee that some shares in San Holdings Berhad were held on his behalf by Bladon International Investments Limited.
- P) That Choo Kim San told Lee Ing Chee to become a subscriber for him in Manhattan Properties, and to put the rest of the shares into the name of Choong Chee Seng.
- Q) That Choo Kim San told Lee Ing Chee to obtain a trust deed in relation to Choong Chee Seng's shareholding in Manhattan Properties from K.C. Lee for Choong Chee Seng to sign. 20
- R) deleted
- S) That Choo Kim San told Lee Ing Chee that he wanted to buy a controlling interest in the Bank of Trade in the United States of America, that he has entered an agreement so to do, that he had paid a sum of money as deposit but later changed his mind and did not want to go through with the agreement and asked the Vendor to give him back the deposit. However the Vendor refused and as a result he told Lee Ing Chee to instruct Messrs. Gunston & Chow to try to get it back. Lee Ing Chee accompanied Choo Kim San to the offices of Messrs. Gunston & Chow where he gave all of the details to Mr. Bernard Gunston and eventually Choo Kim San withdrew instructions from Messrs. Gunston & Chow and told Lee Ing Chee that he had found someone else to buy the shares namely one Amos Dawe. Choo Kim San later told Lee Ing Chee that he had failed to sell the shares to Amos Dawe and that the Vendor had agreed to release him from the contract to buy the controlling interest in the Bank and would settle with him by giving him shares for the amount of his deposit. 30 40

T) That Choo Kim San told Lee Ing Chee that he had sold out all his shareholdings in San Holdings Berhad.

Supreme Court
of Hong Kong
High Court

U) That Choo Kim San said to Lee Ing Chee that he was in trouble, he had no money and that most of his shares were not in his own name so that even if Lee Ing Chee should sue him, Lee Ing Chee could get back nothing as there were no assets in his name.

No. 14A

V) That Choo Kim San asked Lee Ing Chee to sign a book of blank cheques upon the account of Manhattan Properties.

Hearsay Notice
of the Plaintiffs
(Statements
Made by
Choo Kim San)
dated 15.10.1977

10 AND FURTHER TAKE NOTICE that each of the above statements was made by Choo Kim San to Lee Ing Chee and that they were made in the following circumstances:—

STATEMENTS A & B

That it was made:—

- 1) Immediately after Choo Kim San took over control of Imperial Hotel Holdings Limited in October 1972.
- 2) In Room 204, Imperial Hotel very late at night.
- 3) During a conversation between Choo Kim San and Lee Ing Chee.

STATEMENT C

That it was made:—

- 20
- 1) Towards the end of 1972.
 - 2) At Room 204, Imperial Hotel at night.
 - 3) During a conversation between Choo Kim San and Lee Ing Chee.

STATEMENT D

That it was made:—

- 1) Sometime in 1974.
- 2) At MAF Corporation in Choo Kim San's private room at 59 Des Voeux Road Central, Hong Kong.
- 3) During a conversation between Choo Kim San and Lee Ing Chee.

STATEMENT E

That it was made:—

- 1) On a date Lee Ing Chee cannot recall.
- 2) At MAF Corporation in Choo Kim San's private office.
- 3) During a conversation between Choo Kim San and Lee Ing Chee.

STATEMENT F

That it was made:—

- 1) In about early 1972.
- 2) At Choo Kim San's private office in MAF Corporation at 59 Des Voeux Road Central, Hong Kong.
- 3) During a conversation between Choo Kim San and Lee Ing Chee.

10

STATEMENT G

That it was made:—

- 1) In about November 1972.
- 2) At Choo Kim San's private office in MAF Corporation at 59 Des Voeux Road Central, Hong Kong.
- 3) During a conversation between Choo Kim San and Lee Ing Chee.

STATEMENT H

That it was made:—

- 1) At or about the time Bladon was to apply for a public listing.
- 2) At Choo Kim San's private office in MAF Corporation at 59 Des Voeux Road Central, Hong Kong.
- 3) During a conversation between Choo Kim San and Lee Ing Chee.

20

STATEMENTS I and J

That it was made:—

- 1) At about January 1973.

2) At Choo Kim San's private office at MAF Corporation at 59 Des Voeux Road Central, Hong Kong.

Supreme Court
of Hong Kong
High Court

3) During a conversation between Choo Kim San and Lee Ing Chee.

No. 14A

STATEMENTS K

That it was made:—

1) In the beginning of 1974.

2) At Choo Kim San's private office at MAF Corporation at 59 Des Voeux Road Central, Hong Kong.

3) During a conversation between Choo Kim San and Lee Ing Chee when Choo Kim San produced the sale and purchase agreement.

Hearsay Notice
of the Plaintiffs
(Statements
Made by
Choo Kim San)
dated 15.10.1977

10

STATEMENT L

That it was made:—

1) In or about December 1972 when Choo Kim San bought Luen On.

2) At the office of MAF Corporation.

3) During a conversation between Choo Kim San and Lee Ing Chee.

STATEMENT M

That it was made:—

1) On various dates Lee Ing Chee cannot recall.

2) At various places details of which Lee Ing Chee cannot recall.

3) While Lee Ing Chee was employed by Choo Kim San.

20

STATEMENT N

That it was made:—

1) In or about 1974.

2) At Room 204 Imperial Hotel.

3) During a conversation between Choo Kin San and Lee Ing Chee when Choo Kim San produced the trust deed.

STATEMENT O

That it was made:—

- 1) At or about the time when Lee Ing Chee was appointed a director of Bladon.
- 2) At Room 204 Imperial Hotel.
- 3) During a conversation between Choo Kim San and Lee Ing Chee.

STATEMENTS P, Q and R

That it was made:—

- 1) In or about November 1973.
- 2) At Room 204 Imperial Hotel.
- 3) During a conversation between Choo Kim San and Lee Ing Chee.

10

STATEMENT S

That it was made:—

- 1) In about 1973.
- 2) At Room 204 Imperial Hotel.
- 3) During a conversation between Choo Kim San and Lee Ing Chee.

STATEMENT T

That it was made:—

- 1) At about the end of 1973.
- 2) At MAF Corporation at 59 Des Voeux Road Central, Hong Kong.
- 3) Lee Ing Chee cannot recall the circumstances in which this was said.

20

STATEMENT U

That it was made:—

- 1) On or about the 28th June 1976.
- 2) At the Hyatt Hotel in Hong Kong.

- 3) When Lee Ing Chee told Choo Kim San that he would sue Choo Kim San for the loan.

Supreme Court
of Hong Kong
High Court

STATEMENT V

No. 14A

That it was made:—

- 1) In or about November 1973.
- 2) In Hong Kong but Lee Ing Chee cannot recall the exact place.
- 3) Immediately after Manhattan Properties was formed and banks accounts opened in Kuala Lumpur at the Chase Manhattan Bank and the Chung Khiaw Bank.

Hearsay Notice
of the Plaintiffs
(Statements
Made by
Choo Kim San)
dated 15.10.1977

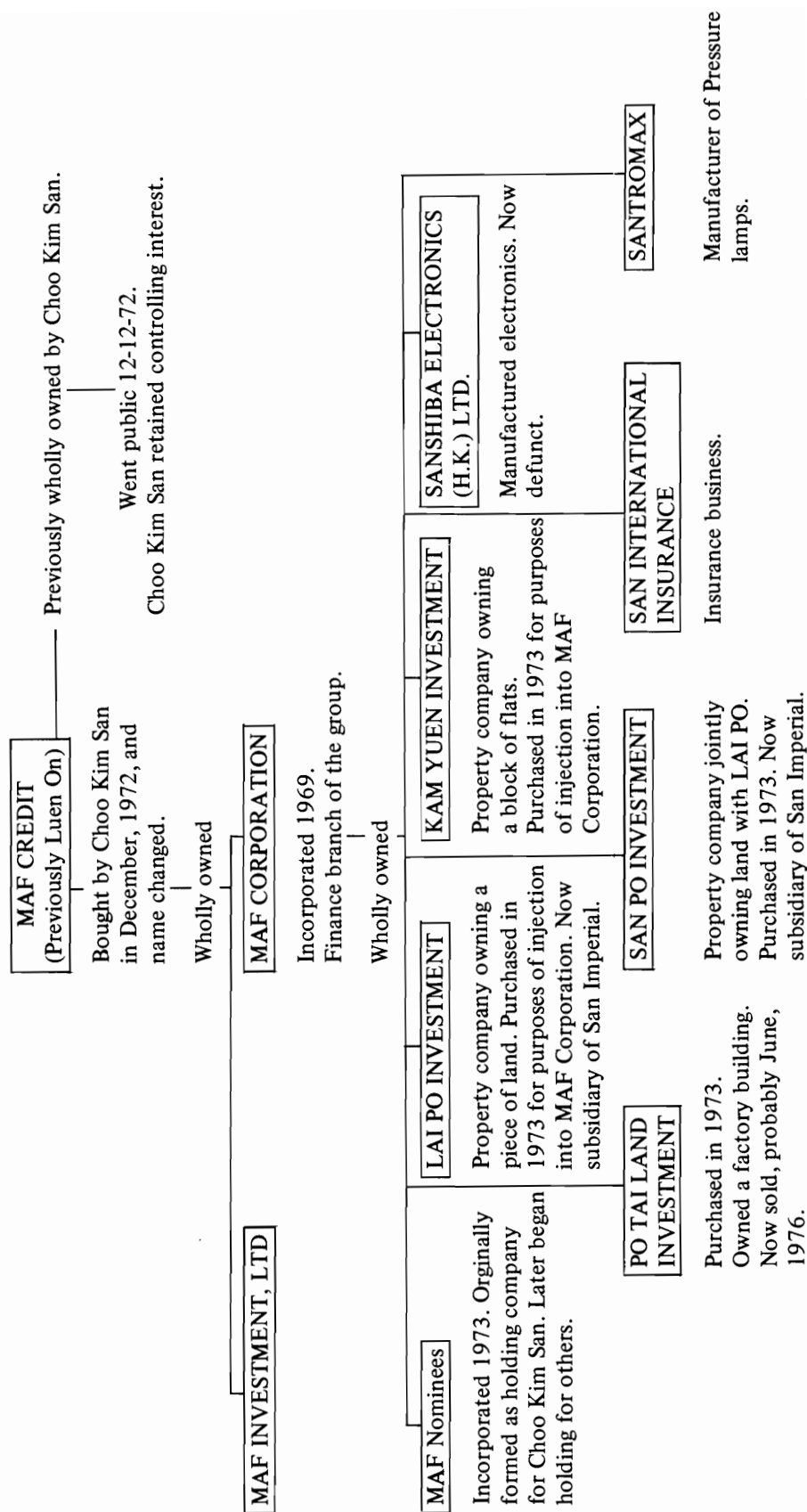
10 AND FURTHER TAKE NOTICE that the said Choo Kim San cannot be called as a witness at the trial because he is beyond the seas and is an opposite party.

Dated the 15th day of October 1977.

(Sd.) Deacons
(Deacons)
Solicitors for the Plaintiffs

Hearsay Notice
of the Plaintiffs
(Statements
Made by
Choo Kim San)
dated 15.10.1977

SCHEDULES OF MAF COMPANIES IN HONG KONG



HEARSAY NOTICE OF THE PLAINTIFFS
(STATEMENTS FROM CHOW CHAW-I TO LEE ING CHEE)

Supreme Court
of Hong Kong
High Court

No. 14B

Hearsay Notice
of the
Plaintiffs
(Statements
from Chow
Chaw-I to
Lee Ing Chee)
dated 15.10.1977

TAKE NOTICE that at the trial of these actions the Plaintiffs desire to give in evidence the following statements made by Chow Chaw-I on the 11th July 1977 in circumstances when Lee Ing Chee having gone to Taiwan to make enquiries, met with Chow Chaw-I at the VIP House in Taiwan. Chow Chaw-I told Lee Ing Chee that:—

- (1) He would have no money to buy shares.
- (2) He knew nothing of any transaction by which 15,000,000 shares in San Imperial or any of them had been purchased. All he knew was that a relative in the United States of America had told him that he (the relative) had bought or agreed to buy some shares and wished to use Chow's name.
- (3) He did not know when any such sale had taken place nor the price per share.
- (4) He had never heard of the name 'San Imperial'.
- (5) He had never met David Ng.
- (6) He had not signed any agreement for the sale and purchase of the said shares although he had signed document at the request of a relative without knowing the contents thereof.
- (7) He claimed not to know through which bank any such transaction may have taken place but upon being asked if it was the Bank of Trade in the United States of American, made no reply.
- (8) He had no knowledge of Fermay, its incorporation or how the capital thereof was paid.
- (9) He had received nothing upon any alleged sale of Fermay by him and Hwang to David Ng, Ives and Ho Chapman.

AND FURTHER TAKE NOTICE that the said Chow Chaw-I cannot be called as a witness at the trial because he is beyond the seas and is an opposite party.

Dated the 15th day of October 1977.

(Sd.) Deacons
(Deacons)
Solicitors for the Plaintiffs

REJOINDER OF THE 4TH, 5TH, 6TH & 7TH DEFENDANTS

No. 15

Rejoinder of the
4th, 5th, 6th &
7th Defendants
dated 19.10.1977

1. The Defendants join issue with the Plaintiff Lee Kon Wah on his Reply and Defence to Counterclaim save in so far as the same consists of admissions.

2. As to paragraph 12 of the Defence to Counterclaim, the 4th, 5th, 6th and 7th Defendants say that they have locus standi to apply to set aside the said registration on the following grounds or anyone of them:

(i) the Plaintiff Lee Kon Wah has enforced seeks to enforce and is enforcing the said registered judgment against the 4th, 5th, 6th and 7th Defendants in that:

(a) the Plaintiff Lee Kon Wah by an ex parte application dated 15th July 1977 applied for and obtained a charging order nisi, a garnishee order nisi and an injunction on 15th July 1977 against the 4th, 5th, 6th and 7th Defendants. The Defendants will refer to the order made on 15th July 1977 herein at the trial hereof for its full terms true meaning and effect, 10

(b) the Plaintiff Lee Kon Wah is by the statement of claim herein applying for the charging order nisi and garnishee order nisi to be made absolute,

(c) the charging order nisi, garnishee order nisi and injunction are subsisting;

(ii) the Plaintiff Lee Kon Wah has by the aforesaid application obtained a benefit, namely, the aforesaid order and injunction and has thereby enforced the said registered judgment against the 4th, 5th, 6th and 7th Defendants. In the premises the Plaintiff Lee Kon Wah is estopped from asserting that the 4th, 5th, 6th and 7th Defendants have no locus standi or that the 4th, 5th, 6th and 7th Defendants have not been injuriously affected by the said registered judgment. Further or in the alternative the Plaintiff Lee Kon Wah cannot approbate and reprobate by on the one hand, enforcing the registered judgment against the Defendants as aforesaid, and on the other hand, averring that the Defendants are not parties against whom the said registered judgment may be enforced. 20

Date the 19th day of October 1977.

(Sd.) Robert Tang
Counsel for the 4th, 5th, 6th
and 7th Defendants.

30

REJOINDER OF THE 10TH DEFENDANT

Supreme Court
of Hong Kong
High Court

No. 16

Rejoinder of the
10th Defendant
dated 20.10.1977

1. The 10th Defendant joins issue with the Plaintiff Lee Kon Wah on his Reply and Defence to Counterclaim save in so far as the same consists of admissions.

2. As to paragraph 12 of the Defence to Counterclaim, the 10th Defendant says that it has locus standi to apply to set aside the said registration on the following grounds or anyone of them:—

(1) The Plaintiff Lee Kon Wah has enforced, seeks to enforce and is enforcing the said registered judgment against the 10th Defendant in that:—

10 (a) The Plaintiff Lee Kon Wah by an ex parte application dated 15th July 1977 applied for and obtained a charging order nisi and an injunction on 15th July 1977 against the 10th Defendant. The 10th Defendant will refer to the order made on 15th July 1977 herein at the trial hereof for its full terms true meaning and effect;

(b) The Plaintiff Lee Kon Wah is by the Statement of Claim herein applying for the charging order nisi to be made absolute;

(c) The charging order nisi and injunction are subsisting;

20 (ii) The Plaintiff Lee Kon Wah has by the aforesaid application obtained a benefit, namely, the aforesaid order and injunction and has thereby enforced the said registered judgment against the 10th Defendant. In the premises the Plaintiff Lee Kon Wah is estopped from asserting that the 10th Defendant has no locus standi or that the 10th Defendant has not been injuriously affected by the said registered judgment. Further or in the alternative, the Plaintiff Lee Kon Wah cannot approbate and reprobate by, on the one hand, enforcing the registered judgment against the 10th Defendant as aforesaid, and on the other hand, averring that the 10th Defendant is not a party against whom the said registered judgment may be enforced.

30 Dated the 20th day of October 1977.

(Sd.) Philip K.H. Wong & Co.
Philip K.H. Wong & Company.
Solicitors for the 10th Defendant.

SURREJOINDER

No. 17

Surrejoinder
dated 20.10.1977

1. It is denied that the matters pleaded in Paragraph 2 of the Rejoinder or any of them confer upon the 4th, 5th, 6th and 7th Defendants or any of them any locum standi to set aside the registration of Lee Kon Wah's Malaysian judgment.

2. In particular reply to Paragraph 2(i) of the Rejoinder it is denied that Lee Kon Wah has enforced, seeks to enforce and is enforcing the said judgment against the 4th, 5th, 6th and 7th Defendants or any of them. Lee Kon Wah is seeking to enforce such judgment against the 1st Defendant, Choo Kim San and against the assets of the 1st Defendant, Choo Kim San.

3. The matters contained in subparagraphs (a), (b) and (c) of Paragraph 2(i) of the Rejoinder are admitted but it is denied that Lee Kon Wah has thereby enforced or is enforcing or seeks to enforce the said judgment against the 4th, 5th, 6th and 7th Defendants or any of them. 10

4. It is denied that Lee Kon Wah has obtained any benefit by reason of the orders and injunctions as alleged in Paragraph 2(ii) of the Rejoinder. It is further denied that Lee Kon Wah has thereby enforced the said judgment against the 4th, 5th, 6th and 7th Defendants or any of them. Lee Kon Wah does not understand the last sentence of Paragraph 2(ii) of the Rejoinder but denied that he is estopped as alleged or at all and denies that the 4th, 5th, 6th and 7th Defendants or any of them has been injuriously affected as alleged or at all. 20

Dated the 20th day of October 1977.

PATRICK FUNG

Counsel for the Plaintiffs.

IN THE SUPREME COURT OF HONG KONG

MISCELLANEOUS PROCEEDINGS

No. 18

IN THE MATTER of the Foreign
Judgments (Reciprocal Enforcement)
Ordinance, Chapter 319 of the Laws
of Hong Kong

Order of Mr.
Registrar O'Dea
for Registration
of Foreign
Judgment
dated 19.8.1977

and

IN THE MATTER of a Judgment of the
High Court in Malaya at Kuala Lumpur
obtained in Civil Suit No. 1631 of
1977 and dated the 11th day of
August 1977.

10

BETWEEN

MALAYSIA BORNEO FINANCE
CORPORATION (M) BERHAD

Plaintiffs

and

CHOO KIM SAN

Defendant

ORDER OF MR. REGISTRAR O'DEA FOR REGISTRATION
OF FOREIGN JUDGMENT

20

Upon hearing the Solicitors for the Plaintiffs and upon reading the affirmation of Chong Kah Keng filed herein on the 18th day of August, 1977 and the exhibits therein referred to and the affidavit of Christopher Raymond Wilson filed herein on the 19th day of August, 1977 and the exhibits therein referred to.

30

IT IS ORDERED THAT the Judgment dated the 11th day of August, 1977 of the High Court in Malaya at Kuala Lumpur obtained in Civil Suit No. 1631 of 1977 whereby it was adjudged that the above-named Plaintiffs MALAYSIA BORNEO FINANCE CORPORATION (M) BERHAD, a company duly incorporated in Malaysia and having its registered office at 9th Floor, Wisma Central, Jalan Ampang, Kuala Lumpur, Malaysia do recover against the above-named Defendant CHOO KIM SAN, Merchant, of Imperial Hotel, Nathan Road, Kowloon in the Colony of Hong Kong the sum of M\$9,036,831.58 and interest at the rate of 15% per annum from 1st April 1976 until payment and the sum of M\$120.00 costs, which is equivalent in Hong Kong currency to the sum of HK\$17,079,611.69 and

Supreme Court
of Hong Kong
High Court

interest at the rate of 15% per annum from 1st April 1976 until payment for debt and the sum of HK\$226.80 for costs be registered as a Judgment in the Supreme Court of Hong Kong pursuant to the Ordinance.

No. 18

Order of Mr.
Registrar O'Dea
for Registration
of Foreign
Judgment
dated 19.8.1977

IT IS FURTHER ORDERED that the above-named Defendant CHOO KIM SAN be at liberty to apply to set aside the said registration within 14 days after service upon him within the jurisdiction and Taiwan of notice of such registration pursuant to Order 71, Rule 7 of the Rules of Supreme Court, 1976. If he has grounds for so doing, and execution upon the said Judgment will not issue until after the expiration of that period or any extension of that period granted by the Court; or if an application be made to set aside registration until such application has been disposed of. 10

IT IS ORDERED THAT the costs of this application and the registration be to the Plaintiffs.

Dated the 19th day of August, 1977.

(Sd.) P.A.G. Cameron
Acting Registrar.
(L.S.)

CHARGING ORDER NISI AND GARNISHEE ORDER NISI
OF MR. REGISTRAR STAPP

Supreme Court
of Hong Kong
High Court

No. 19

Charging Order
Nisi and
Garnishee Order
Nisi of Mr.
Registrar Stapp
dated 7.9.1977

UPON hearing the Solicitor for the Plaintiffs and upon reading the Affidavits of Christopher Raymond Wilson filed herein on the 7th day of September 1977 and upon reading the Affirmations of Tang Ping Kong filed herein on respectively the 27th August, 1977 and 1st September, 1977.

IT IS ORDERED that unless sufficient cause to the contrary be shown before Registrar Stapp in Chambers on Wednesday, the 14th day of September 1977 at 9.30 o'clock in the forenoon the following shares namely:—

- 10 a). 15 million shares of \$1.00 each in San Imperial Corporation Limited whose registered office is situate at 32-34 Nathan Road, Kowloon in the Colony of Hong Kong previously held in the name of Asiatic Nominees Limited whose registered office is situate at 59 Des Voeux Road Central, Victoria in the Colony of Hong Kong and now held in the name of Fermay Company Limited whose registered office is situate at Bank of Canton Building, 4th floor, Des Voeux Road Central, Victoria in the Colony of Hong Kong.
- 20 b). 7,631,000 shares of \$1.00 each in the said San Imperial Corporation Limited now held in the name of IPC Nominees Limited whose registered office is situate at Room 1102-3, Wong House 26-30, Des Voeux Road West, Victoria in the Colony of Hong Kong.
- c). 400,000 shares of \$1.00 each in the said San Imperial Corporation Limited now held in the name of the Triumphant Nominees Limited whose registered office is situate at 36, King's Road, 3rd floor, in the Colony of Hong Kong.
- d). 422,560 shares of \$1.00 each in the said San Imperial Corporation Limited now held in the name of the said Asiatic Nominees Limited.
- e). 57,600 shares of \$1.00 each in the said San Imperial Corporation Limited held in the name of the Defendant.

30 shall and it is ordered that in the meanwhile they do stand charged with the payment of M\$9,036,831.58 with interest thereon at the rate of 15% per annum from the 1st April 1976 until payment and M\$120.00 costs; which is equivalent in Hong Kong Currency to HK\$17,079,611.69 with interest thereon at the rate of 15% per annum from 1st April 1976 until payment and HK\$226.80 costs due under the judgment registered herein together with the costs of this application to the Plaintiffs.

AND IT IS ORDERED that the sum of HK\$8,800,000 allegedly due and owing from David Ng Pak Shing or David Ng Pak Shing and Melville Edward Ives and Ho Chapman to one Chow Chaw-I and one Hwang Shang Pai but in fact to the abovenamed Defendant as consideration for the sale of the said 15,000,000 shares in

Supreme Court
of Hong Kong
High Court

No. 19

Charging Order
Nisi and
Garnishee Order
Nisi of Mr.
Registrar Stapp
dated 7.9.1977

the said San Imperial Corporation Limited to the said David Ng Pak Shing or the said David Ng Pak Shing, Melville Edward Ives and Ho Chapman or to their order by and through the use of the said Fermay Limited or so much thereof as is sufficient to satisfy the costs of this application and the judgment herein be attached to answer the said judgment and costs.

AND IT IS ORDERED that the Garnishees, the said David Ng Pak Shing, Melville Edward Ives and Ho Chapman do attend before Registrar Stapp in Chambers at the Supreme Court, Victoria in the Colony of Hong Kong on the 14th day of September 1977 at 9.30 o'clock in the forenoon on an application by the abovenamed Plaintiffs that the said Garnishees do pay to the abovenamed Plaintiffs the said sum of HK\$8,800,000 or so much thereof as may be sufficient to satisfy the said Judgment registered herein together with the costs of the Garnishee Proceedings. 10

AND IT IS ORDERED that this Order be served on David Ng Pak Shing, Melville Edward Ives, Ho Chapman, Asiatic Nominees Limited, Fermay Company Limited, IPC Nominees Limited and Triumphant Nominees Limited.

AND IT IS ORDERED that the service of this Order be effected on the Defendant when advertised in one Chinese newspaper and one English newspaper in Hong Kong and in one Chinese newspaper in Taipei, Taiwan on or before 11th September, 1977.

AND IT IS ORDERED that the service of this Order be effected on Chow Chaw-I and Hwang Shang Pai by the said advertisement ordered in relation to the Defendant and in addition by a copy of this Order being sent by registered post to their address at Room 205, No. 200, Nanking East Road, Section 3, Taipei, Taiwan. 20

AND IT IS ORDERED that the costs of this application be reserved.

Dated the 7th day of September, 1977

(Sd.) S.H. MAYO
Registrar.
(L.S.)

GARNISHEE ORDER NISI OF MR. REGISTRAR STAPP

Supreme Court
of Hong Kong
High Court

No. 20

Garnishee Order
Nisi of Mr.
Registrar Stapp
dated 14.9.1977

UPON hearing the solicitors for the Plaintiffs and upon reading the Affidavits of Christopher Raymond Wilson filed herein on the 13th day of September 1977 and 14th day of September 1977.

IT IS ORDERED that the sum of HK\$11,466,500.00 received by one David Ng Pak Shing or David Ng Pak Shing and one Melville Edward Ives and one Ho Chapman from Rocky Enterprises Company Limited as consideration for the sale of 7,631,000 shares of \$1 each in San Imperial Corporation Ltd. to the said Rocky Enterprises Company Limited be attached to answer the said judgment
10 herein and costs.

AND IT IS ORDERED that the time for hearing of this application be abridged and the Garnishees, the said David Ng Pak Shing, Melville Edward Ives, and Ho Chapman do attend before Registrar Stapp in Chambers at the Supreme Court, Victoria in the Colony of Hong Kong on the 16th day of September 1977 at 2.30 o'clock in the afternoon on an application by the abovenamed Plaintiffs that the said Garnishees do pay to the abovenamed Plaintiffs the said sum of HK\$-11,466,500.00 to satisfy the said judgment registered herein together with the costs of the Garnishee Proceedings.

AND IT IS ORDERED that this Order be served upon David Ng Pak
20 Shing, Melville Edward Ives and Ho Chapman.

AND IT IS ORDERED that the service of this Order upon the Defendant be dispensed with.

AND IT IS ORDERED that the costs of this application be reserved.

Dated the 14th day of September 1977.

(Sd.) S.H. MAYO
Registrar.
(L.S.)

STATEMENT OF CLAIM

No. 21

Statement of
Claim
dated 23.9.1977

1. On 11th August 1977, the Plaintiffs in an Action in the High Court in Malaya at Kuala Lumpur entitled Civil Suit No. 1631 of 1977 obtained judgment against the 1st Defendant Choo Kim San (hereinafter called "Choo Kim San") in the sum of Malayan \$9,036,831.58 with interest thereon at the rate of 15 per cent per annum from 1st April 1976 until payment and Malayan \$120.00 costs (hereinafter called "the Malaysian Judgment").

2. On 19th August 1977, the Plaintiffs registered in this Colony the Malaysian Judgment as a judgment in the High Court of Justice Hong Kong pursuant to Section 4 of the Foreign Judgments (Reciprocal Enforcement) Ordinance Chapter 319 (hereinafter called "the Registered Judgment"). The Registered Judgment has never been set aside. 10

3. At all material times and in particular the time of the said registration of the Malaysian Judgment Choo Kim San was and still is the beneficial owner of about 30,000,000 shares in San Imperial Corporation Limited (hereinafter called "San Imperial") including the shares as particularized hereinafter.

PARTICULARS

(a) 15,000,000 shares of \$1.00 each previously held or registered in the name of the 2nd Defendant Asiatic Nominees Limited (hereinafter called "Asiatic", particulars whereof are hereinafter set forth in Sub-paragraph (A) (2) (e) of Paragraph 7 hereof) which since 28th March 1977 have been held or registered in the name of the 7th Defendant Fermay Company Limited (hereinafter called "Fermay", particulars whereof are hereinafter set forth in Sub-paragraph (A) (2) (c) of Paragraph 7 hereof). The said 15,000,000 shares will be referred to hereinafter as "the 15,000,000 shares in the name of Fermay". 20

(b) 7,631,000 shares of \$1.00 each held or registered in the name of the 10th Defendant IPC Nominees Limited (hereinafter called "IPC", particulars whereof are hereinafter set forth in Sub-paragraph (B) (2) (f) of Paragraph 7 hereof). The said 7,631,000 shares will be referred to hereinafter as "the 7,631,000 shares in the name of IPC". 30

(c) 400,000 shares of \$1.00 each held or registered in the name of the 3rd Defendant Triumphant Nominees Limited (hereinafter called "Triumphant", particulars whereof are hereinafter set forth in Sub-paragraph (B) (2) (c) of Paragraph 7 hereof).

(d) 422,560 shares of \$1.00 each held or registered in the name of Asiatic.

(e) 57,600 shares of \$1.00 each held or registered in Choo Kim San's own name.

4. As Choo Kim San failed and has failed to satisfy the Registered Judgment debt or any part thereof the Plaintiffs as they were entitled to do sought and still seek to enforce the Registered Judgment by way of execution upon the assets of Choo Kim San which were and still are within the jurisdiction of this Honourable Court. The said assets include the said shares as hereinbefore particularized in Paragraph 3 hereof.

Supreme Court
of Hong Kong
High Court

No. 21

5. On 7th September 1977, the Plaintiffs pursuant to the Rules of the Supreme Court of the Supreme Court Ordinance Chapter 4 obtained the following Orders from this Honourable Court:

Statement of
Claim
dated 23.9.1977

10 (a) Charging Orders nisi in respect of the said shares as hereinbefore particularized in Paragraph 3 hereof.

20 (b) A Garnishee Order in respect of the sum of \$8,800,000.00 allegedly due and owing from the 4th Defendant David Ng Pak Shing (hereinafter called "David Ng") the 5th Defendant Melville Edward Ives (hereinafter called "Ives") and the 6th Defendant Ho Chapman (hereinafter called "Ho Chapman") to the 8th Defendant Chow Chaw-I (hereinafter called "Chow") and the 9th Defendant Hwang Shang Pai (hereinafter called "Hwang") but in truth and in fact to Choo Kim San as consideration for the purported sale of the 15,000,000 shares in the name of Fermay to David Ng, Ives and Ho Chapman by Chow and Hwang. Particulars of David Ng, Ives, Ho Chapman, Chow and Hwang will be set forth hereinafter in Sub-paragraphs (A)(1)(a), (b), (c), (d) and (e) respectively of Paragraph 7 hereof.

30 6. Further on 14th September 1977, the Plaintiffs pursuant to the aforesaid Rules obtained from this Honourable Court a Garnishee Order in respect of the sum of \$11,446,500.00 out of \$12,000,000.00 allegedly having been paid by one James Coe (hereinafter called "James Coe" and the particulars whereof are hereinafter set forth in Sub-paragraph (A)(1)(f) of Paragraph 7 hereof) or his agent or nominee one Rocky Enterprises Company Limited hereinafter called "Rocky" and the particulars whereof are hereinafter set forth in Sub-paragraph (A)(2)(d) of Paragraph 7 hereof) to David Ng as consideration for the sale of 8,000,000 shares of \$1.00 each in San Imperial (which shares include the 7,631,000 shares in the name of IPC) by David Ng, Ives and Ho Chapman to James Coe and/or Rocky. In truth and in fact the said sum of \$11,446,500.00 is due and owing from David Ng and/or Ives and/or Ho Chapman to Choo Kim San.

CONSPIRACY

40 7. For the purpose of and with the intent to avoid and/or defeat the execution of the Registered Judgment by the Plaintiffs as aforesaid and to defraud Choo Kim San's creditors generally the Defendants and each of them together with persons unknown from about October 1976 onwards conspired and combined amongst themselves in Hong Kong and elsewhere to sell or cause to be sold on behalf of Choo Kim San the 15,000,000 shares in the name of Fermay and the 7,631,000 shares in the name of IPC and to obtain on behalf and for the benefit of Choo Kim San the proceeds of the sale of the same.

PARTICULARS

In furtherance of the said conspiracy, the Defendants together with persons unknown did and/or participated in the following overt acts namely:—

(A) Transaction in respect of the 15,000,000 shares in the name of Fermay

(1) Persons concerned:

(a) David Ng:—

- (i) David Ng was for many years employed by or otherwise acted and still acts generally as the servant or agent of Choo Kim San.

(b) Ives:—

- (i) Ives is a Solicitor of the Supreme Court of this Colony and at all material times was and is a senior partner of Messrs. Peter Mo and Company, Solicitors.

- (ii) At all material times the said Messrs. Peter Mo and Company were Solicitors for San Imperial and one Cando Limited a shelf company wholly owned by Choo Kim San purchased by Choo Kim San from the said Messrs. Peter Mo and Company in or about January 1973.

- (iii) At divers times Ives acted as Solicitor for and/or director of various companies owned or controlled by Choo Kim San including the said Cando Limited and San Imperial.

(c) Ho Chapman:—

- (i) Ho Chapman was previously employed by or otherwise associated with Choo Kim San.

(d) Chow:—

- (i) Chow is a national of Taiwan and at all material times resided and still resides in Taipei, Taiwan.

(e) Hwang:—

- (i) Hwang is a national of Taiwan and at all material times resided and still resides with her husband Chow in Taipei, Taiwan.

(f) James Coe:—

- (i) At all material times James Coe and/or his nominees was the

purported purchaser of the 15,000,000 shares in the name of Fermay and the 7,631,000 shares in the name of IPC.

Supreme Court
of Hong Kong
High Court

- (ii) As James Coe is immaterial to the Plaintiffs in the Action herein save in relation to the relief claimed by the Plaintiffs no allegation is made against him as to whether or not he was a party to the conspiracy pleaded herein.

No. 21

Statement of
Claim
dated 23.9.1977

(2) Parties to the transaction:

(a) The Syndicate:—

- (i) In or about December 1976 the syndicate was formed or purported to be formed by David Ng, Ives and Ho Chapman for the purposes of purchasing shares in San Imperial and thereafter selling the same to James Coe.

(b) City Nominees Limited:—

- (i) City Nominees Limited (hereinafter called “City”) is a company wholly owned or otherwise controlled by Ives.

(c) Fermay:—

- (i) Fermay was a company incorporated by the said Messrs. Peter Mo and Company on 8th March 1977 with 2 subscriber shares of \$1.00 each. Its registered office was and still is at the office of the said Messrs. Peter Mo and Company at Bank of Canton Building, 4th Floor, 6 Des Voeux Road Central, Hong Kong.

- (ii) Fermay was incorporated or caused to be incorporated or otherwise utilized by David Ng, Ives and Ho Chapman and/or the Syndicate for the ostensible purposes of the aforesaid purchase and sale of shares in San Imperial.

- (iii) The present registered shareholders of Fermay are purportedly Chow and Hwang. The present directors of Fermay purport to be Chow, Hwang and David Ng.

- (iv) By a return of allotment dated 23rd March 1977 submitted to the Companies Registry through City, there was purportedly an allotment to Chow and Hwang of 8,999,998 shares of \$1.00 each in Fermay purported to be paid in cash. In truth and in fact such shares were never paid for in cash or at all.

(d) Rocky:—

- (i) Rocky is a company formed or caused to be formed by James Coe for the ostensible purpose of purchasing from the syndicate or Fermay the said shares in San Imperial.

(e) Asiatic:—

- (i) At all material times Asiatic was and still is a company wholly owned by Choo Kim San the shareholders and directors of which were and still are one Ho Chung Po and one Lee Fai To who at all material times acted and still act as agents or nominees of Choo Kim San.

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(3) Nature of the transaction:

(a) At all times material to the transaction herein David Ng purported to act for and on behalf of the Syndicate.

(b) By a purported agreement dated 23rd March 1977, Chow and Hwang purportedly agreed to sell and the Syndicate agreed to buy 15,000,000 shares in San Imperial held in the name of Asiatic for the sum of \$9,000,000.00 upon the terms and conditions therein contained. By such terms and conditions it was provided, inter alia, that:—

(i) Fermay had been incorporated on 8th March 1977 and had on 23rd March 1977 a paid-up capital of \$9,000,000.00.

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(ii) The entire share capital of Fermay had been allotted and Chow and Hwang were the beneficial owners thereof.

(iii) The sole asset of Fermay was the said 15,000,000 shares in San Imperial.

(iv) Chow and Hwang would sell the whole of the issued share capital of Fermay to the Syndicate.

(v) The purchase price was to be \$9,000,000.00 of which \$200,000.00 was paid by way of deposit.

(c) Purportedly in pursuance of the said agreement of 23rd March 1977 15,000,000 shares in San Imperial previously held or registered in the name of Asiatic were transferred into Fermay on 28th March 1977 (the 15,000,000 shares in the name of Fermay).

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(d) By another purported agreement dated 30th April 1977 between David Ng and Rocky, David Ng purportedly agreed to sell and Rocky agreed to buy at the price of \$1.50 per share 23,000,000

shares of \$1.00 each in San Imperial upon the terms and conditions therein contained. The said 23,000,000 shares include the 15,000,000 shares in the name of Fermay.

Supreme Court
of Hong Kong
High Court

(e) By the purported agreement of 30th April 1977 aforesaid, it was provided (inter alia) that the purported sale of the said 23,000,000 shares would be effected as follows:—

No. 21

Statement of
Claim
dated 23.9.1977

(i) David Ng would sell to Rocky the whole of the issued and fully paid-up shares of Fermay, the registered owner of the 15,000,000 shares in the name of Fermay;

10

(ii) David Ng would exercise an option in favour of Rocky in respect of 3,500,000 shares in San Imperial; and

(iii) David Ng would cause City to transfer to Rocky 4,500,000 shares in San Imperial held by City purportedly on behalf of David Ng.

(f) Further, by another purported agreement dated 12th May 1977 made between David Ng and Rocky (hereinafter called “the option agreement of 12th May 1977”) the purported agreement of 30th April 1977 aforesaid was allegedly superseded.

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(g) By the option agreement of 12th May 1977 it was provided (inter alia) that David Ng would sell and Rocky would buy at the price of \$1.50 per share 23,000,000 shares in San Imperial (including the 15,000,000 shares in the name of Fermay) and that such sale would be effected as follows:—

(i) In consideration of the payment of the sum \$4,000,000.00 to David Ng by Rocky, David Ng would grant to Rocky a permanent and irrevocable option to purchase the whole of the issued and fully paid-up shares of Fermay or the 15,000,000 shares in the name of Fermay; and

30

(ii) David Ng would cause City to transfer to Rocky or the nominee of Rocky not less than 7,000,000 nor more than 8,000,000 shares in San Imperial held by City for and on behalf of David Ng.

(4) Matters relied upon by the Plaintiffs that the transaction herein was not bona fide at arm's length and for full value without notice of any defect in the vendor's title:

(a) Choo Kim San failed to answer to his bail in the Victoria District Court of Hong Kong on 28th October 1976 on various criminal charges and appears at some time to have fled this Colony.

- (b) Choo Kim San habitually used nominees to hold and deal with his assets.
- (c) Choo Kim San informed one Hwang Wei Ming in Taiwan that David Ng was assisting him (Choo Kim San) and was still his (Choo Kim San's) nominee.
- (d) Chow and Hwang who have not appeared to these proceedings are Taiwanese nationals and would have needed permission to invest in a Hong Kong company. No such permission has ever been alleged or shown.
- (e) In or about April 1970, Chow's wife Hwang was rejected by the Co-operative Bank of Taiwan as its customer on the ground of her credit unworthiness. 10
- (f) Chow and Hwang parted with possession of the scripts of the 15,000,000 shares in the name of Fermay and the transfer forms therefor in return for an alleged deposit of \$200,000.00 only.
- (g) In the month of July 1977 in Taiwan one Lee Ing Chee the Plaintiff in High Court Action No. 2459 of 1976 in the Supreme Court of Hong Kong was informed by Chow that:—
 - (i) He had no money to buy shares.
 - (ii) He knew nothing of any transaction by which the said 15,000,000 shares in the name of Fermay or any of them had been purchased. All he knew was that a relative in the United States of America had told him that he (the relative) had bought or agreed to buy some shares and wished to use Chow's name. 20
 - (iii) He did not know when any such sale had taken place nor the price per share.
 - (iv) He had never heard of the name 'San Imperial'.
 - (v) He had never met David Ng.
 - (vi) He had not signed any agreement for the sale and purchase of the said capital of Fermay or the 15,000,000 shares in the name of Fermay although he had signed a document at the request of a relative without knowing the contents thereof. 30
 - (vii) He claimed not to know through which bank any such transaction might have taken place but upon being asked if it was the Bank of Trade in the United States of America, a Bank in which Choo Kim San holds an interest, made no reply.

(viii) He had no knowledge of Fermay, its incorporation or how the capital thereof was paid.

Supreme Court
of Hong Kong
High Court

(ix) He had received nothing upon any alleged sale of Fermay by him and Hwang to the Syndicate.

No. 21

(h) The Plaintiffs repeat Sub-paragraph (A) (1) (a) herein.

Statement of
Claim
dated 23.9.1977

(i) Notwithstanding that there were continuing proceedings and affidavits filed by David Ng, he failed to disclose the existence of the option agreement of 12th May 1977 until 27th July 1977.

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(j) The said 15,000,000 shares previously held or registered in the name of Asiatic were transferred into the name of Fermay on 28th March 1977, only 5 days after the purported agreement of 23rd March 1977. On the date of the transfer aforesaid the registrars of San Imperial were Malaysia America Finance Corporation (H.K.) Limited which is wholly owned by MAF Credit Limited (hereinafter called "MAF Credit") of which Choo Kim San was and still is a majority shareholder and in effective control.

(k) The transaction herein was not effected by money or monies dehors the transaction.

20

(l) The Plaintiffs will further rely on such other matters as may appear on discovery or at trial.

(B) Transaction in respect of 7,631,000 shares in the name of IPC

(1) Persons concerned:

(a) David Ng:—

(i) The Plaintiffs repeat Sub-paragraph (A) (i) (a) herein.

(b) Ives:—

(i) The Plaintiffs repeat Sub-paragraph (A) (1) (b) herein.

(c) Ho Chapman:—

(i) The Plaintiffs repeat Sub-paragraph (A) (1) (c) herein.

(d) James Coe:—

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(i) The Plaintiffs repeat Sub-paragraph (A) (1) (f) herein.

(2) Parties to the transaction:

(a) The Syndicate:—

(i) The Plaintiffs repeat Sub-paragraph (A) (2) (a) herein.

(b) Asiatic:—

(i) The Plaintiffs repeat Sub-paragraph (A) (2) (e) herein.

(c) Triumphant:—

(i) At all material times Triumphant was and still is a company wholly owned by Choo Kim San the shareholders and directors of which were and still are the said Ho Chung Po and the said Lee Fai To who at all material times acted and still act as agents or nominees of Choo Kim San.

10

(d) MAF Nominees Limited:—

(i) MAF Nominees Limited (hereinafter called “MAF Nominees”) was and still is a nominee company wholly owned by MAF Credit.

(ii) MAF Credit is a company of which Choo Kim San was and still is a majority shareholder in the name of Asiatic and in effective control.

(iii) The present directors of MAF Nominees are the said Ho Chung Po and one K.Y. Woo or Wu another agent or nominee of Choo Kim San.

20

(e) City:—

(i) The Plaintiffs repeat Sub-paragraph (A) (2) (b) herein.

(f) IPC:—

(i) IPC was incorporated on 1st April 1977 and purports to be a nominee company of James Coe and/or Rocky.

(g) Rocky:—

(i) The Plaintiffs repeat Sub-paragraph (A) (2) (d) herein.

(3) Nature of the transaction:

(a) Stage I – Transfer of shares into MAF Nominees:

(i) At all material times the parties to the transfer herein were Asiatic, Triumphant, David Ng and MAF Nominees.

30

(ii) In accordance with the ledger entries of Asiatic, Asiatic between November 1976 and March 1977 transferred into MAF Nominees a total of 1,214,200 shares of \$1.00 each in San Imperial.

Supreme Court
of Hong Kong
High Court

No. 21

(iii) In accordance with the ledger entries of Triumphant, Triumphant between January 1977 and March 1977 transferred into MAF Nominees a total of 1,650,000 shares of \$1.00 each in San Imperial.

Statement of
Claim
dated 23.9.1977

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(iv) In an affidavit filed in the said High Court Action No. 2459 of 1976 on 27th July 1977 David Ng alleged that he had purchased in Taiwan a total of 2,165,000 shares of \$1.00 each in San Imperial from persons who had in turn purchased the same from Choo Kim San in Taiwan. The said 2,165,000 shares were duly transferred into MAF Nominees.

(v) The Plaintiffs say that the transfer of the aforesaid shares was in truth and in fact collected into a parcel for the purpose of selling the same to some innocent persons.

(b) Stage II – Transfer of shares into City:–

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(i) In accordance with the ledger entries of MAF Nominees, MAF Nominees in or about April 1977 transferred into City, which is controlled by Ives who was a party to the transaction in respect of the 15,000,000 shares in the name of Fermay aforesaid, a total of 5,622,000 shares of \$1.00 each in San Imperial which shares include the shares transferred in Stage I aforesaid.

(ii) The Plaintiffs say that the transfer of the aforesaid shares was in truth and in fact collected into a parcel for the purpose of selling the same to some innocent persons.

30

(iii) The Plaintiffs are unable to identify the source of each and every single share in the transfer herein until after proper discovery.

(c) Stage III – Purported sale of shares to IPC:–

(i) At all material times the parties to the purported sale herein were David Ng, Ives, the Syndicate, City, James Coe, Rocky and IPC.

(ii) The Plaintiffs repeat Sub-paragraphs (A) (3) (a), (d), (e), (f) and (g) herein.

(iii) Purportedly in pursuance of the conditions of the option

agreement of 12th May 1977 as set forth in Sub-paragraph (A) (3) (g) (ii) herein, City on 15th June 1977 transferred into IPC, which purports to be the nominee of Rocky and/or James Coe, a total of 7,631,000 shares of \$1.00 each in San Imperial which shares include the shares transferred in Stage II aforesaid.

(iv) The Plaintiffs are unable to identify the source of each and every single share in the transfer herein until after proper discovery.

(4) Matters relied upon by the Plaintiffs that the transaction herein was not bona fide at arm's length and for full value without notice of any defect in the vendor's title. 10

(a) The Plaintiffs repeat Sub-paragraphs (A) (4) (a), (b), (c), (h), (i), (k) and (l) herein.

(b) In relation to Sub-paragraph (B) (3) (a) (iv) herein the Plaintiffs say that as the persons from whom David Ng purchased the said 2,165,000 shares has not registered themselves as members of San Imperial, accordingly David Ng's title thereto, if any, derives from and subject to all the equities to which Choo Kim San's title is subject in particular the liability under the Registered Judgment to which Choo Kim San is subject. 20

TRANSACTIONS NOT BONA FIDE

8. Further or in the alternative, the Plaintiffs allege that the transaction or transactions hereinbefore particularized in Paragraph 7 hereof were not bona fide at arm's length and for full value without notice of any defect in the vendor's title.

PARTICULARS

The Plaintiffs repeat Sub-paragraphs (A) (4) and (B) (4) of Paragraph 7 hereof.

9. Further or in the alternative, by reason of the matters hereinbefore set forth the Plaintiffs allege that the shares transacted as hereinbefore particularized in Paragraph 7 hereof were derived from or through Choo Kim San and/or his servants and/or his agents or nominees and the Plaintiffs put the Defendants and each of them to strict proof of their titles to the said shares such that each of them was the bona fide purchaser for the said shares or any of them for value and without notice of Choo Kim San's title in respect of the same. 30

AND the Plaintiffs claim:—

(a) That the Charging Order nisi in relation to the 15,000,000 San Imperial shares registered in the name of Fermay be made absolute.

- (b) That the Charging Order nisi in relation to the 7,631,000 San Imperial shares registered in the name of IPC be made absolute. Supreme Court of Hong Kong High Court
- (c) That the Charging Order nisi in relation to the 400,000 San Imperial shares registered in the name of Triumphant be made absolute. No. 21
- (d) That the Charging Order nisi in relation to the 422,560 San Imperial shares registered in the name of Asiatic be made absolute. Statement of Claim dated 23.9.1977
- (e) That the Charging Order nisi in relation to the 57,600 San Imperial shares registered in the name of Choo Kim San be made absolute.
- 10 (f) In the alternative to (a) hereof, that the Garnishee Order nisi in relation to the \$8,800,000.00 said to be the balance of the purchase price of the said 15,000,000 San Imperial shares or so much as is necessary to satisfy the Registered Judgment be made absolute.
- (g) In the alternative to (b) hereof that the Garnishee Order nisi in relation to the \$11,446,500.00 said to be the purchase price of the said 7,631,000 San Imperial shares or so much as is necessary to satisfy the Registered Judgment be made absolute.
- (h) That they be paid the costs of these proceedings.
- (i) That they should have such further or other relief as may be just.

Dated the 23rd day of September, 1977.

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WINSTON POON
Counsel for the Plaintiffs

ORDER OF MR. JUSTICE YANG

No. 22

Order of Mr.
Justice Yang
dated 23.9.1977

UPON hearing the Solicitors for the Plaintiff and Counsel for Fermay Company Limited, IPC Nominees Limited, Messrs. Melville Edward Ives, David Ng Pak Shing and Ho Chapman IT IS ORDERED that:—

1. The judgment creditor, Malaysia Borneo Finance Corporation (M) Berhad be the Plaintiff and Choo Kim San, Chow Chaw-I, Hwang Shang Pai, Fermay Company Limited, IPC Nominees Limited, David Ng Pak Shing, Melville Edward Ives, Ho Chapman, Triumphant Nominees Limited and Asiatic Nominees Limited be the Defendants.
2. The Plaintiff serves:— 10
 - a) A Statement of Claim on the Defendant Fermay Company Limited, IPC Nominees Limited, David Ng Pak Shing, Melville Edward Ives, and Ho Chapman on or before the 24th day of September 1977.
 - b) A Notice of Proceedings in lieu of a Statement of Claim upon Choo Kim San on or before the 27th day of September 1977 by advertising the same in one edition of a Chinese newspaper and an English newspaper in Hong Kong and in one edition of a Chinese newspaper in Taipei, Taiwan.
 - c) A Notice of Proceedings in Lieu of a Statement of Claim upon Chow Chaw-I and Hwang Shang Pai on or before the 27th September 1977 20 by advertising the same in one edition of a Chinese newspaper and an English newspaper in Taipei, Taiwan and by sending the same by registered post to their last known address at Room 205, No. 200 Nanking East Road, Section 3, Taipei, Taiwan and
 - d) A Statement of Claim upon Triumphant Nominees Limited and Asiatic Nominees Limited on or before the 24th day of September 1977.
3.
 - a) The Defendants, Fermay Company Limited, IPC Nominees Ltd., David Ng Pak Shing, Melville Edward Ives and Ho Chapman serve their Defence and/or Counterclaim if any on the Plaintiff on or 30 before the 12th day of October 1977.
 - b) The Defendants, Choo Kim San, Chow Chaw-I, Hwang Shang Pai, Triumphant Nominees Ltd. and Asiatic Nominees Ltd. serve their Defence and/or Counterclaim if any on the Plaintiff on or before the 4th day of October 1977.
4. The Plaintiff serves his Reply and Defence to Counterclaim if any on:
 - a) Defendants, Fermay Company Ltd., IPC Nominees Ltd., David Ng Pak Shing, Melville Edward Ives and Ho Chapman on or before the

4th day of October 1977.

Supreme Court
of Hong Kong
High Court

b) Upon Choo Kim San on or before the 6th day of October 1977.

c) Upon Chow Chaw-I and Hwang Shang Pai on or before the 6th day of October 1977.

No. 22

d) Upon Triumphant Nominees Ltd. and Asiatic Nominees Ltd. on or before the 4th day of October 1977.

Order of Mr.
Justice Yang
dated 23.9.1977

5. There be mutual discovery by the Plaintiff and

a) The Defendants, Fermay Company Limited, IPC Nominees Ltd., David Ng Shing, Melville Edward Ives and Ho Chapman on oath on or before the 6th day of October 1977.

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b) The Defendants, Choo Kim San, Chow Chaw-I, Hwang Shang Pai, Triumphant Nominees Ltd. and Asiatic Nominees Ltd. on oath on or before the 8th day of October 1977.

6. The evidence at the trial shall be by examination of the witnesses orally, subject to the directions to be given under paragraph 12 hereunder.

7. a) The Plaintiff and the Defendants Fermay Company Limited, IPC Nominees Ltd., David Ng Pak Shing, Melville Edward Ives and Ho Chapman exchange lists of witnesses with a brief statement of the proposed evidence to be given by that witness on or before the 7th day of October 1977.

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b) The Plaintiff and the Defendants, Choo Kim San and Chow Chaw-I, Hwang Shang Pai, Triumphant Nominees Ltd. and Asiatic Nominees Ltd. may, if agreed, exchange lists of witnesses with a brief statement of the proposed evidence to be given by that witness on such date as may be agreed.

8. This action be tried at the same time as High Court Action No. 2459 of 1976 and Miscellaneous Proceedings Action No. 155 of 1977 on 10th October, 1977 before Mr. Justice Yang.

9. All parties be at liberty to apply generally, including applications for extension of time and where appropriate abridgements of time.

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10. The question whether the Defendants, David Ng Pak Shing, Melville Edward Ives and Ho Chapman and IPC Nominees Ltd. can be heard on the Garnishee Proceedings to be raised on the pleadings.

11. The use of affidavits and cross-examination of the deponents thereon to be argued after the filing of the last pleadings.

Supreme Court
of Hong Kong
High Court

No. 22

Order of Mr.
Justice Yang
dated 23.9.1977

12. The same directions to apply to the application by Fermay Company Limited, Melville Edward Ives, David Ng Pak Shing and Ho Chapman and IPC Nominees Ltd. to set aside the registration of the Judgment in this action.
13. Service of this order or any subsequent orders made herein under the foregoing parts of this Summons upon Choo Kim San, Chow Chaw-I and Hwang Shang Pai be dispensed with until further order.
14. Costs of this application be reserved with certificate for two Counsel.

Dated the 23rd day of September, 1977.

(Sd.) S.H. Mayo 10
S.H. Mayo
Registrar.
(L.S.)

ORDER OF MR. JUSTICE YANG

Supreme Court
of Hong Kong
High Court

UPON hearing the Solicitors for Malaysia Borneo Finance Corporation (F) Berhad, Counsel for Messrs. David Ng Pak Shing, Helville Edward Ives, Ho Chapman, Termay Co., Ltd., and IPC Nominees Ltd., and Counsel for Lee Ing Chee and Lee Kon Wah

No. 23

IT IS ORDERED that:—

Order of Mr.
Justice Yang
dated 23.9.1977

1. The application by Plaintiff Malaysia Borneo Finance Corporation (M) Berhad be allowed and the above-mentioned actions be listed and tried at the same time before the same judge and that the costs be to the Plaintiff Malaysia Borneo Finance Corporation (M) Berhad.
2. The application by Messrs. David Ng Pak Shing, Helville Edward Ives, Ho Chapman, Fermay Co., Ltd., and IPC Nominees Ltd. for an order that the above-mentioned actions be consolidated or alternatively that H.C.M.P. No. 540 of 1977 be stayed until after the determination of Action No. 2459 of 1976 and H.C.M.P. No. 155 of 1977 be dismissed with costs to the above-named Plaintiffs Lee Ing Chee, Lee Kon Wah and Malaysia Borneo Finance Corporation (M) Berhad with Certificate for two Counsel..

Dated the 23rd day of September, 1977.

(Sd.) S. H. Mayo

Registrar.
(L.S.)

DEFENCE AND COUNTERCLAIM
OF THE
4th, 5th, 6th AND 7th DEFENDANTS

No. 24

Defence and
Counterclaim
of the 4th, 5th,
6th and 7th
Defendants
dated 30.9.1977

DEFENCE

1.
 - (i) The judgment pleaded in paragraph 1 of the Statement of Claim is admitted.
 - (ii) It is not admitted that the Plaintiff is entitled to be paid by the 1st Defendant the sum of Malayan \$9,036,831.58 with interest thereon at the rate of 15 per cent per annum from 1st April 1976 until judgment and Malayan \$120.00 costs as alleged or at all. 10
 - (iii) It is not admitted that the said judgment truly or correctly represents the liability of Choo Kim San or that it has not been fully or partially satisfied.

2. As to paragraph 2 of the Statement of Claim –
 - (i) It is admitted that the Malaysian Judgment was registered 13th August 1977.
 - (ii) It is denied that the Malaysian judgment is registrable in this Colony under the Foreign Judgments (Reciprocal Enforcement) Ordinance or that the aforesaid registration is not liable to be set aside.
 - (iii) By an application dated 10th September, 1977 the 4th, 5th, 6th and 7th Defendants applied to have the said registration set aside on the following grounds, namely, that the High Court in Malaya did not have jurisdiction in the circumstances of the case and that Choo Kim San did not receive notice of the proceedings in sufficient time to enable him to defend the proceedings and did not appear. 20
 - (iv) The 4th, 5th, 6th and 7th Defendants say that the said registration is liable to be set aside on the grounds or any one of them pleaded in sub-paragraph (iii) hereof.

3. As to paragraph 3 of the Statement of Claim –
 - (i) It is denied that Choo Kim San on 19th August 1977, or at any time material to these proceedings, was and/or is the beneficial owner of the 15,000 (sic) (15,000,000) shares in the name of Fermay or the 7,631,000 shares in the name of IPC. 30

- (ii) Save as aforesaid no admission is made to paragraph 3 of the Statement of Claim.

Supreme Court
of Hong Kong
High Court

4. Save that the Plaintiffs are seeking to enforce the registered judgment, paragraph 4 of the Statement of Claim is denied.

No. 24

5. (i) As to paragraph 5 of the Statement of Claim, it is admitted that the orders pleaded therein were obtained as alleged. Save as aforesaid paragraph 5 is not admitted.

Defence and
Counterclaim
of the 4th, 5th,
6th and 7th
Defendants
dated 30.9.1977

- 10 (ii) It is denied that the Plaintiff was or is entitled to the charging order nisi or to have the same made absolute as alleged or at all in that at the time of the said order and at all material times Choo Kim San did not have any interest therein. It is denied that the Plaintiff was or is entitled to the garnishee order or to have the same made absolute as alleged or at all in that the said sum of \$8,800,000.00 was and is not payable to Choo Kim San.

6. (i) As to paragraph 6 of the Statement of Claim, it is admitted that the order pleaded therein was obtained by the Plaintiffs. Save as aforesaid, paragraph 6 of the Statement of Claim is admitted.

- 20 (ii) It is denied that the Plaintiff was or is entitled to the garnishee order or to have the same made absolute as alleged or at all in that the said sum of \$11,446,500.00 was never due or owing to Choo Kim San.

7. The conspiracy pleaded in paragraph 7 of the Statement of Claim or any conspiracy is denied. In reply to the particulars thereto the 4th, 5th, 6th and 7th Defendants say as follows:—

(A) (1) (a) (i) It is denied that David Ng was ever employed by or acted as servant or agent of Choo Kim San.

(b) (i) It is admitted that the 5th Defendant Ives is a solicitor of the Supreme Court of Hong Kong and that he was and is a senior partner of Messrs. Peter Mo & Co., Solicitors.

30 (ii) (iii) Messrs. Peter Mo & Co. from time to time acted for San Imperial Corporation Ltd. and Cando Ltd. but other solicitors also acted for them, and in particular Messrs. Woo, Kwan, Lee & Lo. Messrs. Peter Mo & Co. have also acted against San Imperial Corporation Ltd. and Choo Kim San. It is admitted that Cando Ltd. was a shelf company which was purchased by Choo Kim San from Messrs. Peter Mo & Co. It is admitted that for a period of several months commencing in July 1972 Ives was a director of San Imperial.

instructed by solicitors in Hong Kong to make enquiries and when Chow was asked where he purchased the 15,000,000 shares in San Imperial from, Chow's reply was that it was no concern of Hwang.

(ii) On or about 11th July 1977 Chow telephoned David Ng again and informed him that Hwang Tsa Ching and a European solicitor from Messrs. Johnson, Stokes and Master had been to see him and that Chow refused to answer any question put to him by either of them.

(iii) On or about 16th July 1977 David Ng telephoned Chow and informed him of the allegation made by Lee Ing Chee in his affirmation dated 15th July 1977 affirmed and filed in High Court Action No. 2459 of 1976 on 15th July 1977 which allegations have been repeated in sub-paragraph (4) (g) of the Statement of Claim and described Lee Ing Chee to Chow, Chow informed David Ng that he had never met with or spoken to Lee Ing Chee or a person of that description. 10

(h) (i) It is admitted that David Ng did not disclose the option agreement of 12th May 1977 until 27th July 1977. The non-disclosure was innocent. 20

(j) Save that the transfers were registered on 28th March 1977, and the registrars were Malaysia America Finance Corporation (H.K.) Limited which is wholly owned by MAF Credit Ltd., the directors of which are Ho Chung Po and K.Y. Woo, no admission is made to sub-paragraph (4) (j).

(k) Sub-paragraph (4) (k) is not admitted.

(B) (1) In answer to paragraph 7 (B) (1) of the Statement of Claim the 4th, 5th, 6th and 7th Defendants repeat only paragraph (A) (1) (a) to (f) herein.

(2) (a) The 4th, 5th, 6th and 7th Defendants repeat sub-paragraph A (2) (a) herein. 30

(b) The 4th, 5th, 6th and 7th Defendants repeat sub-paragraph A (2) (e) herein.

(c) Save that it is admitted that Ho Chung Po and Lee Fai To were and are the shareholders and directors of Triumphant, no admission is made to sub-paragraph (B) (2) (c).

(d) (i) Sub-paragraph B (2) (d) (i) is admitted.

(ii) Sub-paragraph B (2) (d) (ii) is not admitted.

(iii) It is admitted that the present directors of MAF Nominees are Ho Chung Po and K.Y. Woo or Wu, save as aforesaid sub-paragraph (B) (2) (d) (iii) is not admitted.

Supreme Court
of Hong Kong
High Court

(e) The 4th, 5th, 6th and 7th Defendants repeat sub-paragraph (A) (2) (b) herein.

No. 24

(f) IPC was incorporated on 1st April 1977 and is a nominee company of Rocky which is in turn a nominee company of James Coe.

Defence and
Counterclaim
of the 4th, 5th,
6th and 7th
Defendants
dated 30.9.1977

(g) The 5th, 6th and 7th Defendants repeat sub-paragraph (A) (2) (d) herein.

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(3)(a)(i)(ii)(iii) Save that David Ng transferred 2,165,000 shares into MAF Nominees, no admission is made to sub-paragraphs (B)(3)(a)(i)(ii) and (iii).

(iv) Sub-paragraph (3) (a) (iv) is admitted.

(v) To the extent that the 4th, 5th, 6th and 7th Defendants have acted innocently and that James Coe and the 10th Defendants also acted innocently sub-paragraph (3) (a) (v) is admitted.

(b) (i) It is admitted that MAF Nominees in or about April 1977 transferred into City a total of 5,622,000 San Imperial shares.

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(ii) As to sub-paragraph (b) (ii), the 4th, 5th, 6th and 7th Defendants repeat sub-paragraph (v) above.

(c) (i) It is admitted that the parties to the sale were the syndicate and James Coe through Rocky and IPC.

(ii) The Defendants repeat their defence thereto.

(iii) The transfer from City to IPC on 15th June 1977 of 7,631,000 shares of \$1.00 each in San Imperial is admitted. The transfer was made pursuant to the said agreement of 12th May 1977.

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(4) Sub-paragraph (B) (4) is denied.

8. Paragraph 8 of the Statement of Claim is denied. The 4th, 5th, 6th and 7th Defendants repeat paragraph 7 hereof.

9. In reply to paragraph 9 of the Statement of Claim the Defendants repeat their aforesaid defence and in addition say as follows:—

- (a) The 15,000,000 "Fermay" shares were purchased from the 8th Defendant Chow Chaw-I and the 9th Defendant Hwang Shang Pai. If, which is denied, they were acting as the servants, agents or nominees of Choo Kim San, the Defendants have nevertheless obtained good title to the said shares.
- (b) The 7,631,000 "IPC" shares were acquired by the syndicate as to
(i) 3,226,000 shares by purchase from MAF Corporation (H.K.) Ltd. pursuant to the option agreement dated 30th March 1977
(ii) 2,279,600 shares purchased in the open market in Hong Kong
(iii) 2,164,000 shares purchased by David Ng from various vendors in Taiwan. If, which is denied, any of the aforesaid vendors in (i), (ii) or (iii) above were acting as servants, agents or nominees of Choo Kim San, the Defendants have nevertheless obtained good title to the said shares. 10
- (c) At no material time were the 4th, 5th, 6th and 7th Defendants aware of any title of Choo Kim San to the shares in (a) or (b) above or any of them. If, which is denied, Choo Kim San had title to any of the shares, notice on the part of the 4th, 5th, 6th and 7th Defendants would not deprive the 4th, 5th, 6th and 7th Defendants of their rights to the said shares required by purchase as aforesaid. 20
- (d) The 4th, 5th, 6th and 7th Defendants first became aware that there were claims against Choo Kim San when Lee Ing Chee advertised on 13th April, 1977 that he had obtained interim attachment of shares allegedly owned by Choo Kim San.
- (e) The purchases by the syndicate were bona fide and for value and are not defective by notice on the part of the 4th, 5th, 6th and 7th Defendants of any alleged defect in title of Choo Kim San (both defect and notice are denied). Any defect in title on the part of Choo Kim San could stem only from the fact as alleged that he was indebted to the Plaintiffs. Such defect, if it exists, does not prevent Choo Kim San making a valid sale of the shares. 30

10. Save hereinbefore expressly admitted the 4th, 5th, 6th and 7th Defendants deny each and every allegation contained in the Statement of Claim as if the same were herein set forth and traversed seriatim.

COUNTERCLAIM

AND the 4th, 5th, 6th and 7th Defendants counterclaim for an order that the registration of the judgment obtained by the Plaintiff on 11th August, 1977 in an Action in the High Court at Kuala Lumpur entitled Civil Suit No. 1631 of 1977 be set aside.

Dated this 30th day of September, 1977.

Robert Tang
Counsel for the 4th, 5th,
6th and 7th Defendants

Supreme Court
of Hong Kong
High Court

No. 24

Defence and
Counterclaim
of the 4th, 5th,
6th and 7th
Defendants
dated 30.9.1977

REQUEST FOR FURTHER AND BETTER PARTICULARS OF DEFENCE
OF THE 4TH, 5TH, 6TH & 7TH.
DEFENDANTS

No. 25

Request for
Further and
Better Particular
of Defence of the
4th, 5th, 6th &
7th Defendants
dated 3.10.1977

Under Paragraph 7 (2) (a) (i)

of the allegation that the syndicate was formed in or about January 1977 for the purpose of purchasing shares in San Imperial and thereafter selling the same "at a profit".

State all facts and matters relied upon as showing that the syndicate could purchase shares at a lower price than they could sell, identify documents.

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Under Paragraph 7 (2) (c) (ii)

- (1) Of the allegation that "Fermay was formed by agreement".

State whether the agreement was oral or in writing; if oral, state when where and between whom made and the full terms thereof; if in writing, identify documents.

- (2) Of the allegation that "Fermay was formed . . . for the purpose of proving the authenticity of the San Imperial Shares Certificates"

(i) State the nature of any doubt existing at any material time as to the authenticity of the Share Certificates.

(ii) State precisely in what manner the formation of Fermay was expected to contribute to the resolution of that or any doubt as to the authenticity of such Share Certificates. Identify any statutory or regulatory provisions relied upon.

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- (3) Of the allegation that "Fermay was . . . a convenient vehicle for the transfer of the San Imperial shares".

State each and every respect in which it is alleged Fermay was a "convenient vehicle"; state whether any advantages are claimed over a transfer direct from the 8th and 9th Defendants to the syndicate: if so, state precisely the nature of such advantages.

Under Paragraph 7 (2) (c) (iv)

Of the allegation that Chow and Hwang made "a sale . . . of 15,000,000 shares" to Fermay for \$9,000,000.

State whether it is alleged that Chow and Hwang sold as beneficial

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owners or on some other and what behalf. If it be alleged that they sold as beneficial owners, state when where and how they acquired such title.

Supreme Court
of Hong Kong
High Court

Under Paragraph 7 (4) (f)

No. 25

Of the allegation that Chow and Hwang “sent the San Imperial Certificates and transfers to the Registrars . . .”.

Request for
Further and
Better Particular
of Defence of the
4th, 5th, 6th &
7th Defendants
dated 3.10.1977

State in whose name the Certificates were at that time registered and who was the transferor in respect of each Certificate; identify documents.

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JOHNSON, STOKES & MASTER,
Solicitors for the Plaintiffs.

DEFENCE AND COUNTERCLAIM OF THE 10TH DEFENDANT

No. 26

DEFENCE

Defence and
Counterclaim
of the 10th
Defendant
dated 4.10.1977

1.
 - (i) The judgment pleaded in paragraph 1 of the Statement of Claim is admitted.
 - (ii) It is not admitted that the Plaintiff is entitled to be paid by the 1st Defendant the sum of Malayan \$9,036,831.58 with interest thereon at the rate of 15 per cent per annum from 1st April 1976 until judgment and Malayan \$120.00 costs as alleged or at all.
 - (iii) It is not admitted that the said judgment truly or correctly represents the liability of Choo Kim San or that it has not been fully or partially satisfied. 10

2. As to paragraph 2 of the Statement of Claim –
 - (i) It is admitted that the Malaysian judgment is registrable on 13th August 1977.
 - (ii) It is denied that the Malaysian judgment is registrable in this Colony under the Foreign Judgments (Reciprocal Enforcement) Ordinance or that the aforesaid registration is not liable to be set aside.
 - (iii) By an application dated the 10th day of September 1977 the 4th, 5th, 6th and 7th Defendants applied to have the said registration set aside on the following grounds, namely, that the High Court in Malaya did not have jurisdiction in the circumstances of the case and that Choo Kim San did not receive notice of the proceedings in sufficient time to enable him to defend the proceedings and did not appear. 20
 - (iv) The 10th Defendant says that the said registration is liable to be set aside on the grounds or any one of them pleaded in sub-paragraph (iii) hereof and hereby adopts the 4th, 5th, 6th and 7th Defendants' said application.

3. As to paragraph 3 of the Statement of Claim –
 - (i) It is denied that Choo Kim San on 19th August 1977, or at any time material to these proceedings was and/or is the beneficial owner of the 15,000 (sic) (15,000,000) shares in the name of Fermay Company Limited or the 7,631,000 shares in the name of IPC Nominees Limited. 30

(ii) Save as aforesaid no admission is made to paragraph 3 of the Statement of Claim.

Supreme Court
of Hong Kong
High Court

4. Save that the Plaintiff is seeking to enforce the registered judgment, paragraph 4 of the Statement of Claim is denied.

No. 26

5. (i) As to paragraph 5 of the Statement of Claim, it is admitted that the orders pleaded therein were obtained as alleged. Save as aforesaid paragraph 5 is not admitted.

Defence and
Counterclaim
of the 10th
Defendant
dated 4.10.1977

10 (ii) It is denied that the Plaintiff was or is entitled to the charging order nisi or to have the same made absolute as alleged or at all in that at the time of the said order and at all material times Choo Kim San did not have any interest therein. It is denied that the Plaintiff was or is entitled to the garnishee order or to have the same made absolute as alleged or at all in that the said sum of \$8,800,000.00 was and is not payable to Choo Kim San.

6. (i) As to paragraph 6 of the Statement of Claim it is admitted that the order pleaded therein was obtained by the Plaintiffs. Save as aforesaid, paragraph 6 of the Statement of Claim is admitted.

20 (ii) It is denied that the Plaintiff was or is entitled to the garnishee order or to have the same made absolute as alleged or at all in that the said sum of \$11,446,500.00 was never due or owing to Choo Kim San.

7. As to paragraph 7 of the Statement of Claim, the 10th Defendant denies the alleged or any conspiracy and adopts the Defence herein of the 4th, 5th, 6th and 7th Defendants, namely –

(A) (1) (a) (i) It is denied that David Ng was ever employed by or acted as servant or agent of Choo Kim San.

(b) (i) It is admitted that the 5th Defendant Ives is a solicitor of the Supreme Court of Hong Kong and that he was and is a senior partner of Messrs. Peter Mo & Company, Solicitors.

30 (ii) (iii) Messrs. Peter Mo & Company from time to time acted for San Imperial Corporation Limited and Cando Limited but other solicitors also acted for them, and in particular Messrs. Woo, Kwan, Lee & Lo. Messrs. Peter Mo & Company have also acted against San Imperial Corporation Limited and Choo Kim San. It is admitted that Cando Limited was a shelf company which was purchased by Choo Kim San from Messrs. Peter Mo & Company. It is admitted that for a period of several months commencing in July 1972 Ives was a

director of San Imperial Corporation Limited. It is admitted that for about 6 months Ives was a director of Luen On Company Limited (now known as MAF Credit Limited) and Bladon Investment Company Limited (now known as Harilela's Properties and Investment Limited). It is admitted that the aforesaid companies were at one time controlled by Choo Kim San. Save as aforesaid sub-paragraphs (1)(b)(ii) and (iii) are denied.

- (c) (i) It is denied that Ho Chapman was ever employed by or had ever been associated with Choo Kim San. 10
- (d) (i) Sub-paragraph (1) (d) (i) is not admitted.
- (e) (i) Sub-paragraph (1) (e) (i) is not admitted.
- (f) (i) James Coe through his nominees Rocky Enterprises Company Limited and IPC Nominees Limited was the purchaser of the shares in question and the 10th Defendant will refer to the agreements dated 30th April 1977 and 12th May 1977 with Rocky Enterprises Company Limited for their full terms, true meaning and effect.
- (2) (a) (i) It is admitted the syndicate was formed by David Ng, Ives and Ho Chapman in or about January 1977 for the purpose of purchasing shares in San Imperial Corporation Limited and thereafter selling the same at a profit. 20
- (b) (i) It is admitted that Ives is a director and shareholder of City Nominees Limited.
- (c) (i) Sub-paragraph 2 (c) (i) is admitted.
- (ii) The 7th Defendant Fermay Company Limited was formed by agreement of the syndicate and the 8th Defendant Chow Chaw-I and his wife the 9th Defendant for the purposes of proving the authenticity of the San Imperial Corporation Limited share certificates and transfers in the possession of Chow and Hwang by the submission of the said certificates and transfers to the registrars of San Imperial Corporation Limited and as a convenient vehicle for the transfer of the San Imperial Corporation Limited shares. 30
- (iii) The present registered shareholders of Fermay Company Limited are Chow and Hwang.
- (iv) The 8,999,998 shares were paid for by Chow and Hwang by means of a simultaneous sale by them of 15,000,000 shares 40

in San Imperial Corporation Limited to Fermay Company Limited for \$9,000,000.00.

Supreme Court
of Hong Kong
High Court

(d) (i) Rocky Enterprises Company Limited is a company formed or caused to be formed by James Coe for the purpose of purchasing from the syndicate the said shares in San Imperial Corporation Limited.

No. 26

(e) (i) Save that Ho Chung Po and Lee Fai To are the shareholders and directors of Asiatic Nominees Limited, sub-paragraph (2) (e) (i) is not admitted.

Defence and
Counterclaim
of the 10th
Defendant
dated 4.10.1977

10 (3) (a) It is admitted that at all times material to these proceedings David Ng acted for and on behalf of the syndicate.

(b) Save that by the agreement of 23rd March 1977 Chow and Hwang agreed to sell all the issued capital of Fermay Company Limited to the 4th, 5th, and 6th Defendants and not in terms of the 15,000,000 shares in San Imperial Corporation Limited, sub-paragraph (3)(b) of the Statement of Claim is admitted.

(c) The transfer of the 15,000,000 shares into the name of Fermay Company Limited is admitted.

20 (d) (e) The agreement of 30th April 1977 is admitted. It is admitted that the said 23,000,000 shares include the 15,000,000 shares in the name of Fermay Company Limited. The 10th Defendant will refer to the said agreement for its full terms true meaning and effect.

(f) (g) The agreement of 12th May 1977 is admitted.

(4) (a) Sub-paragraph (4) (a) is admitted.

(b) Sub-paragraph (4) (b) is not admitted.

(c) Sub-paragraph (4) (c) is denied.

(d) Sub-paragraph (4) (d) is not admitted.

(e) Sub-paragraph (4) (e) is not admitted.

30 (f) Chow and Hwang received a deposit of \$200,000.00 and Chow and Hwang sent the San Imperial Corporation Limited certificates and transfers to the Registrars for transfer into the name of Fermay Company Limited and thereby retained control over the said certificates.

- (g) Each and every allegation contained in sub-paragraph (4) (g) is denied. In further answer to sub-paragraph (4) (g) the Defendant says as follows:—
- (i) On or about 8th July 1977 Chow telephoned David Ng from Taiwan and informed David Ng that a Taiwanese lawyer by the name of Hwang Tsa Ching had been to see him and that Hwang Tsa Ching said to Chow that he was instructed by solicitors in Hong Kong to make enquiries and when Chow was asked where he purchased the 15,000,000 shares in San Imperial Corporation Limited from, Chow's reply was that it was no concern of Hwang. 10
- (ii) On or about 11th July 1977 Chow telephoned David Ng again and informed him that Hwang Tsa Ching and an European solicitor from Messrs. Johnson, Stokes and Master had been to see him and that Chow refused to answer any question put to him by either of them.
- (iii) On or about 16th July 1977, David Ng telephoned Chow and informed him of the allegation made by Lee Ing Chee in his affirmation dated 15th July 1977 affirmed and filed in High Court Action No. 2459 of 1976 on 15th July 1977 which allegations have been repeated in sub-paragraph (4) (g) of the Statement of Claim and described Lee Ing Chee to Chow, Chow informed David Ng that he had never met with or spoken to Lee Ing Chee or a person of that description. 20
- (sic) (h) (i) It is admitted that David Ng did not disclose the option agreement of 12th May 1977 until 27th July 1977. The non-disclosure was innocent.
- (j) Save that the transfers were registered on 28th March 1977 and the registrars were Malaysia America Finance Corporation (H.K.) Limited which is wholly owned by MAF Credit Limited the directors of which are Ho Chung Po and K.Y. Woo, no admission is made to sub-paragraph (4) (i). 30
- (k) Sub-paragraph (4) (k) is not admitted.
- (B) (1) In answer to paragraph 7(B) of the Statement of Claim the 10th Defendant repeats only paragraph (A) (1) (a) to (f) herein.
- (2) (a) The 10th Defendant repeats sub-paragraph A (2) (a) herein.
- (b) The 10th Defendant repeats sub-paragraph A (2) (e) herein.
- (c) Save that it is admitted that Ho Chung Po and Lee Fai To were and are the shareholders and directors of Triumphant Nominees

Limited, no admission is made to sub-paragraph (b) (2) (c).

Supreme Court
of Hong Kong
High Court

(d) (i) Sub-paragraph B (2) (d) (i) is admitted.

(ii) Sub-paragraph B (2) (d) (ii) is not admitted.

No. 26

(iii) It is admitted that the present directors of MAF Nominees are Ho Chung Po and K.Y. Woo or Wu, save as aforesaid sub-paragraph (B) (2) (d) (iii) is not admitted.

Defence and
Counterclaim
of the 10th
Defendant
dated 4.10.1977

(e) The 10th Defendant repeats sub-paragraph (A) (2) (b) herein.

(f) IPC Nominees Limited was incorporated on 1st April 1977 and is a nominee company of Rocky Enterprises Company Limited which is in turn a nominee company of James Coe.

(g) The 10th Defendant repeats sub-paragraph (A) (2) (d) herein.

(3) (a) (i) (ii) (iii)

Save that David Ng transferred 2,165,000 shares into MAF Nominees Limited no admission is made to sub-paragraphs (B)(3)(a)(i)(ii) and (iii).

(iv) Sub-paragraph (3) (a) (iv) is admitted.

(v) To the extent that the 4th, 5th, 6th and 7th Defendants have acted innocently and that James Coe and the 10th Defendant also acted innocently sub-paragraph (3) (a) (v) is admitted.

(b) (i) It is admitted that MAF Nominees in or about April 1977 transferred into City Nominees Limited a total of 5,622,000 San Imperial Corporation Limited shares.

(ii) As to sub-paragraph (b) (ii), the 10th Defendant repeats sub-paragraph (v) above.

(c) (i) It is admitted that the parties to the sale were the syndicate and James Coe through Rocky Enterprises Company Limited and IPC Nominees Limited.

(ii) The 10th Defendant repeats its defence thereto.

(iii) The transfer from City Nominees Limited to IPC Nominees Limited on 15th June 1977 of 7,631,000 shares of \$1.00 each in San Imperial Corporation Limited is admitted. The transfer was made pursuant to the said agreement of 12th May 1977.

(4) Sub-paragraph (B) (4) is denied.

8. Paragraph 8 of the Statement of Claim is denied. The 10th Defendant repeats paragraph 7 hereof.

9. In reply to paragraph 9 of the Statement of Claim the 10th Defendant repeats its aforesaid defence and in addition adopts the Defence herein of the 4th, 5th, 6th and 7th Defendants, namely:—

(a) The 15,000,000 “Fermary” shares were purchased from the 8th Defendant Chow Chaw-I and the 9th Defendant Hwang Shang Pai. If, which is denied, they were acting as the servants, agents or nominees of Choo Kim San, the 4th, 5th, 6th and 7th Defendants have nevertheless obtained good title to the said shares. 10

(b) The 7,631,000 “IPC” shares were acquired by the syndicate as to
(i) 3,226,000 shares by purchase from MAF Corporation (H.K.) Limited pursuant to the option agreement dated 30th March 1977
(ii) 2,279,600 shares purchased in the open market in Hong Kong
(iii) 2,164,000 shares purchased by David Ng from various vendors in Taiwan. If, which is denied, any of the aforesaid vendors in (i), (ii) or (iii) above were acting as servants, agents or nominees of Choo Kim San, the 4th, 5th, 6th and 7th Defendants have nevertheless obtained good title to the said shares.

(c) At no material time were the 4th, 5th, 6th and 7th Defendants aware of any title of Choo Kim San to the shares in (a) or (b) above or any of them. If, which is denied, Choo Kim San had title to any of the said shares, notice on the part of the 4th, 5th, 6th and 7th Defendants would not deprive the 4th, 5th, 6th and 7th Defendants of their rights to the said shares acquired by purchase as aforesaid. 20

(d) The 4th, 5th, 6th and 7th Defendants first became aware that there were claims against Choo Kim San when Lee Ing Chee advertised on 13th April 1977 that he had obtained interim attachment of shares allegedly owned by Choo Kim San. 30

(e) The purchase by the syndicate were bona fide and for value and are not defective by notice on the part of the 4th, 5th, 6th and 7th Defendants of any alleged defect in title of Choo Kim San (both defect and notice are denied). Any defect in title on the part of Choo Kim San could stem only from the fact as alleged that he was indebted to the Plaintiffs. Such defect, if it exists, does not prevent Choo Kim San making a valid sale of the shares.

10. Alternatively, the 10th Defendant says as follows:—

(a) The 10th Defendant IPC Nominees Limited first became aware that there were claims against Choo Kim San on 29th April 1977. 40

(b) The 10th Defendant IPC Nominees Limited has obtained good title to the 7,631,000 shares by purchase from the syndicate.

Supreme Court
of Hong Kong
High Court

11. Save as hereinbefore expressly admitted the 10th Defendant denies each and every allegation contained in the Statement of Claim as if the same were herein set forth and traversed seriatim.

No. 26

COUNTERCLAIM

Defence and
Counterclaim
of the 10th
Defendant
dated 4.10.1977

AND the 10th Defendant counterclaims for an order that the registration of the judgment obtained by the Plaintiff on 11th August 1977 in an Action in the High Court at Kuala Lumpur entitled Civil Suit No. 1631 of 1977 be set aside.

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Dated this 4th day of October, 1977.

(Sd.) Philip K.H. Wong & Company
Philip K.H. Wong & Company
Solicitors for the 10th Defendant

REPLY AND DEFENCE TO COUNTERCLAIM OF THE 4TH, 5TH,
6TH & 7TH DEFENDANTS
REPLY

No. 27

Reply and
Defence to
Counterclaim
of the 4th, 5th,
6th & 7th
Defendants
dated 4.10.1977

1. The Plaintiffs join issue with the 4th, 5th, 6th, and 7th Defendants on their Defence save for admissions contained therein and save as expressly admitted thereunder.

2. It is admitted that the 4th, 5th, 6th, and 7th Defendants made an application dated 10th September, 1977 to set aside the registration of the Malaysian judgment. The said judgment has not been set aside and is not liable to be set aside and insofar as may be necessary the Plaintiffs will rely on the following matters:— 10

(i) The 4th, 5th, 6th, and 7th Defendants have no locus standi to set aside the said registration on the grounds put forward or at all;

(ii) In any event, the Court in Malaysia had jurisdiction;

(iii) The 1st Defendant at all material times carried on business through himself and through agents in Malaysia; among his agents was Manhattan Properties Sdn. Berhad of 1st Floor, Bangunan Mah Sing, 113-114 Jalan Pudu, Kuala Lumpur;

(iv) Further and/or alternatively the 1st Defendant, being a Defendant in the Court in Malaysia, had an office or place of business in the country of that Court and the proceedings in the Malaysian Court 20 were in respect of a transaction effected through or at that office or place.

3. If, which is denied, any of the transactions relied upon by the said Defendants is genuine the same did not have the effect of passing the beneficial interest of the 1st Defendant.

4. The Plaintiff further and/or in the alternative disputes the locus standi of the said Defendants to be heard on the garnishee proceedings.

DEFENCE TO COUNTERCLAIM

5. The Plaintiffs repeat the Reply herein and say that the Defendants are not entitled to the relief as claimed or at all. 30

Dated this 4th day of October, 1977.

(Sd.) Denis Chang
COUNSEL FOR THE PLAINTIFFS

**REPLY AND DEFENCE TO
COUNTERCLAIM OF 10TH DEFENDANT**

Supreme Court
of Hong Kong
High Court

R E P L Y

No. 28

Reply and
Defence to
Counterclaim
of 10th
Defendant
dated 7.10.1977

1. The Plaintiffs join issue with the 10th Defendant on their Defence save for admissions contained therein and save as expressly admitted hereunder.

2. It is admitted that the 4th, 5th, 6th and 7th Defendants made an application dated 10th September, 1977 to set aside the registration of the Malaysian judgment. The said judgment has not been set aside and is not liable to be set aside and insofar as may be necessary the Plaintiffs will rely on the following matters:—

10 (i) The 4th, 5th, 6th, 7th and/or 10th Defendants have no locus standi to set aside the said registration on the grounds put forward or at all;

(ii) In any event, the Court in Malaysia had jurisdiction;

(iii) The 1st Defendant at all material times carried on business through himself and through agents in Malaysia; among his agents was Manhattan Properties Sdn. Berhad of 1st Floor, Bangunan Mah Sing, 113-114 Jalan Pudu, Kuala Lumpur;

20 (iv) Further and/or alternatively the 1st Defendant, being a Defendant in the Court in Malaysia, had an office or place of business in the country of that Court and the proceedings in the Malaysian Court were in respect of a transaction effected through or at that office or place.

3. If, which is denied, any of the transactions relied upon by any of the said Defendants is genuine the same did not have the effect of passing the beneficial interest of the 1st Defendant.

4. The Plaintiff further and/or in the alternative disputes the locus standi of the said Defendants to be heard on the garnishee proceedings.

DEFENCE TO COUNTERCLAIM

30 5. The Plaintiffs repeat the Reply herein and say that the Defendants are not entitled to the relief as claimed or at all.

Dated this 7th day of October, 1977.

(Sd.) Denis Chang

COUNSEL FOR THE PLAINTIFFS

HEARSAY NOTICE OF THE 4TH, 5TH, 6TH & 7TH DEFENDANTS
(STATEMENTS FROM CHOO KIM SAN TO DAVID NG)

No. 29

Hearsay Notice
of the 4th, 5th,
6th & 7th
Defendants
(Statements from
Choo Kim San
to David Ng)
dated 7.10.1977

TAKE NOTICE that at the trial of these action the 4th, 5th, 6th and 7th Defendants desire to give in evidence the following statement made by Choo Kim San in a conversation with David Ng on the 31st December 1976 at 9.30 a.m. in the Coffee Shop of the President Hotel, Taipei, namely that he sold his shareholding in San Imperial Corporation Limited to a Mr. Chow, on or about 30th November 1976.

AND FURTHER TAKE NOTICE that the Particulars relating to the said statement are as follows: that it was made by Choo Kim San to David Ng on 31st December 1976 at about 9 a.m. in the Coffee Shop at the Imperial (Taiwan) Hotel in the following circumstances, namely, when Choo Kim San was told by David Ng that he was interested in buying any share which he might have in San Imperial Corporation Limited.

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AND FURTHER TAKE NOTICE that the said Choo Kim San cannot be called as a witness at the trial because he is beyond the seas.

Dated this 7th day of October 1977.

(Sd.) Peter Mo & Co.

(Peter Mo & Co.)

Solicitors for the 4th, 5th, 6th and 7th Defendants.

HEARSAY NOTICE OF THE 4TH, 5TH, 6TH & 7TH DEFENDANTS
(STATEMENTS FROM CHOW CHAW-I TO DAVID NG)

Supreme Court
of Hong Kong
High Court

No. 30

Hearsay Notice
of the 4th, 5th,
6th & 7th
Defendants
(Statements made
Chow Chaw-I to
David Ng)
dated 7.10.1977

TAKE NOTICE that at the trial of these actions the 4th, 5th, 6th and 7th Defendants desire to give evidence of the following statements made by Chow Chaw-I namely:—

1. That in a conversation with David Ng on the 1st January 1977 at 9.00 a.m. at the Imperial (Taiwan) Hotel Coffee Shop he confirmed to David Ng that he had purchased 15 million shares in the capital of San Imperial Corporation Limited and that he was interested in selling the same as a result of conversation between him and David Ng on the previous day when David Ng informed Chow that he understood Chow had a substantial number of San Imperial shares for sale and that he was interested in buying them.
2. That on or about the 27th February Chow Chaw-I at his office in Taiwan agreed with David Ng that David Ng should acquire a shelf company to enable Chow Chaw-I to transfer the San Imperial Corporation shares held by him to that company.
3. On or about the 8th July 1977 Chow Chaw-I telephoned David Ng from Taiwan and informed David Ng that a Taiwanese lawyer by the name of Hwang Tsa Ching had been to see him and that Hwang Tsa Ching said to Chow Chaw-I that he was instructed by solicitors in Hong Kong to make enquiries and when Chow Chaw-I was asked where he purchased the 15 million shares in San Imperial from, Chow's reply was that it was no concern of Hwang's.
4. On or about the 11th July 1977 Chow Chaw-I telephoned David Ng again and informed David Ng that Hwang Tsa Ching and a European solicitor from Messrs. Johnson, Stokes & Master had been to see him and that Chow Chaw-I refused to answer any question put to him by either of them.
5. On or about the 16th July 1977 David Ng telephoned Chow Chaw-I and informed him of the allegation made by Lee Ing Chee in the affirmation of Lee Ing Chee dated 15th July 1977 affirmed and filed in High Court Action No. 2459 of 1976 and described Lee Ing Chee to him. Chow Chaw-I informed David Ng that he had never met or spoken to Lee Ing Chee or a person of that description.

AND FURTHER TAKE NOTICE that the said Chow Chaw-I cannot be called as witness at the trial because he is beyond the seas.

Dated the 7th day of October 1977.

(Sd.) Peter Mo & Co.
Solicitors for the 4th, 5th, 6th and 7th Defendants.

HEARSAY NOTICE OF THE 4TH, 5TH, 6TH & 7TH DEFENDANTS
(STATEMENTS FROM CHOW CHAW-I TO DAVID NG)

No. 31

TAKE NOTICE that at the trial of this matter, the 4th, 5th, 6th and 7th Defendants desire to give in evidence the following statements:—

Hearsay Notice
of the 4th, 5th,
6th & 7th
Defendants
(Statements from
Chow Chaw-I to
David Ng)
dated 13.10.1977

- A). That Chow Chaw-I had friends who also had purchased shares in San Imperial from Choo Kim San to the extent of 2,100,000 and wanted to sell them at 30 cents per share.
- B). That these friends of Chow Chaw-I agreed to sell the said shares at just under 20 cents per share.

AND FURTHER TAKE NOTICE that the Particulars relating to the said statements are as follows:— 10

STATEMENT A

That it was made:

- 1). By Chow Chaw-I.
- 2). To David Ng Pak Shing.
- 3). On or about the 23rd to 27th January 1977.
- 4). At a dinner party given by Chow Chaw-I at the Kowloon Restaurant in Taipei.
- 5). In the following circumstances, during a conversation between Chow Chaw-I and David Ng Pak Shing. 20

STATEMENT B

That it was made:

- 1). By Chow Chaw-I.
- 2). To David Ng Pak Shing.
- 3). On or about the 9th to 13th February 1977.
- 4). At the Kowloon Restaurant in Taipei.
- 5). In the following circumstances, during a conversation between Chow Chaw-I and David Ng Pak Shing.

AND FURTHER TAKE NOTICE that the said Chow Chaw-I cannot be

called as a witness at the said trial because he is beyond the seas.

Supreme Court
of Hong Kong
High Court

Dated the 13th day of October 1977.

No. 31

(Sd.) Peter Mo & Co.
Solicitors for the 4th, 5th, 6th and 7th Defendants.

Hearsay Notice
of the 4th, 5th,
6th & 7th
Defendants
(Statements from
Chow Chaw-I to
David Ng)
dated 13.10.1977

FURTHER AND BETTER PARTICULARS OF THE DEFENCE
OF THE 4TH, 5TH, 6TH & 7TH DEFENDANTS

No. 32

UNDER PARAGRAPH 7 (2) (a) (i)

Further & Better
Particulars of the
Defence of the
4th, 5th, 6th &
7th Defendants
dated 17.10.1977

The syndicate was formed with a view to acquiring shares in San Imperial Corporation Limited and to sell them at a profit. This expectation arose from the following facts:—

- (i) the interest which James Coe had expressed in the purchase of a controlling interest in San Imperial shares;
- (ii) the fact that shares representing a controlling interest can be sold at a price higher than if they were to be sold in smaller parcels. 10
- (iii) the then prevailing market price of the San Imperial shares was substantially below its net assets value.

UNDER PARAGRAPH 7 (2) (c) (ii)

(1) The agreement was oral. It was made by David Ng on behalf of the syndicate with Mr. Chow Chaw-I on his and his wife's (Hwang) behalf in Taipei. Discussions concerning the formation of such a company occurred during February & March 1977 and culminated in the agreement of 23rd March, 1977. It was agreed that a Hong Kong company was to be used in the sale of the San Imperial shares by Chow and Hwang in that the San Imperial shares would first be sold to this Hong Kong Company, which would be wholly owned by Chow and Hwang. When the San Imperial shares were registered in the name of the Hong Kong Company the sale would be completed by a transfer to the syndicate of the Hong Kong Company's shares. 20

- (2) (i) The doubt was there was no certainty that either the share certificates or the transfer forms were genuine.
- (ii) If the transfer forms and the share certificates were accepted by the Registrars of San Imperial Corporation Limited and new shares issued in the name of the transferee then the authenticity of the share certificates and the transfer forms would have been proved. In so far as Fermay was chosen to be the transferee, Fermay was the vehicle for the proving of such authenticity, and so contributed to the resolution of the aforesaid doubt. 30

(3) Fermay was a convenient vehicle because it brought the transaction from Taiwan to Hong Kong, and sale of the Fermay shares would carry with it ownership of the San Imperial shares.

UNDER PARAGRAPH 7 (2) (c) (iv)

Chow and Hwang sold as beneficial owners. They became beneficial owners

on 30th November 1976 in Taipei by purchasing the shares from Choo Kim San and acquiring from him the share certificates, and the transfer forms executed by the transferor in blank.

Supreme Court
of Hong Kong
High Court

UNDER PARAGRAPH 7 (4) (f)

No. 32

The certificates were in the name of Asiatic Nominees Limited who was also the transferor named in the transfer forms. The documents are documents 46 in the 4th, 5th, 6th and 7th Defendants' list of documents and share certificate numbers referred to therein.

Further & Better
Particulars of the
Defence of the
4th, 5th, 6th &
7th Defendants
dated 17.10.1977

Dated the 17th day of October, 1977.

10

(Sd.) Peter Mo & Co.
Solicitors for the 4th, 5th,
6th & 7th Defendants

REJOINDER OF THE 4TH, 5TH, 6TH & 7TH DEFENDANTS

1. The Defendants join issue with the Plaintiff Lee Kon Wah on his Reply and Defence to Counterclaim save in so far as the same consists of admissions.

2. As to paragraph 2(i) of the Reply, the 4th, 5th, 6th and 7th Defendants say that they have locus standi to apply to set aside the said registration on the following grounds or any one of them:

(i) the Plaintiff has enforced seeks to enforce and is enforcing the said registered judgment against the 4th, 5th, 6th and 7th Defendants in that:

(a) the Plaintiff by an ex parte application dated 7th Sept., 1977 applied for and obtained on 7th Sept. 1977 a charging order nisi against the 7th Defendant's shares in San Imperial Corporation Limited and a garnishee order against the 4th, 5th and 6th Defendants. The Defendants will refer to the order made on the 7th Sept. 1977 at the trial for its full terms true meaning the effect,

10

(b) the Plaintiff is by the claim herein applying for the charging order nisi and the garnishee order nisi to be made absolute,

(c) the charging order nisi and the garnishee order nisi are subsisting;

(ii) the Plaintiff has by the aforesaid application obtained a benefit, namely, the aforesaid orders and has thereby enforced the said registered judgment against the 4th, 5th, 6th and 7th Defendants. In the premises the Plaintiff is estopped from asserting that the 4th, 5th, 6th and 7th Defendants have no locus standi or that they have not been injuriously affected by the said registered judgment. Further or in the alternative the Plaintiff cannot approbate and reprobate by, on the one hand, enforcing the registered judgment against the Defendants as aforesaid, and on the other hand, averring that the Defendants are not parties against whom the said registered judgment may be enforced.

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Dated the 19th day of October 1977.

(Sd.) Robert Tang
Counsel for the 4th, 5th, 6th
and 7th Defendants

30

REJOINDER OF THE 10TH DEFENDANT

Supreme Court
of Hong Kong
High Court

1. The 10th Defendant joins issue with the Plaintiff on its Reply and Defence to Counterclaim save in so far as the same consists of admissions.

No. 34

2. As to paragraph 2(i) of the Reply, the 10th Defendant says that it has locus standi to apply to set aside the said registration on the following grounds or anyone of them:—

Rejoinder of the
10th Defendant
dated 20.10.1977

(i) The Plaintiff has enforced seeks to enforce and is enforcing the said registered judgment against the 10th Defendant in that:—

10 (a) The Plaintiff by an exparte application dated 7th September 1977 applied for and obtained on 7th September 1977 a charging order nisi against the 10th Defendant's shares in San Imperial Corporation Limited. The 10th Defendant will refer to the order made on 7th September 1977 at the trial for its full terms true meaning and effect;

(b) The Plaintiff is by the claim herein applying for the charging order nisi to be made absolute;

(c) The charging order nisi is subsisting;

20 (ii) The Plaintiff has by the aforesaid application obtained a benefit, namely, the aforesaid order and has thereby enforced the said registered judgment against the 10th Defendant. In the premises the Plaintiff is estopped from asserting that the 10th Defendant has no locus standi or that it has not been injuriously affected by the said registered judgment. Further or in the alternative, the Plaintiff cannot approbate and reprobate by, on the one hand, enforcing the registered judgment against the 10th Defendant as aforesaid, and on the other hand, averring that the 10th Defendant is not a party against whom the said registered judgment may be enforced.

Dated the 20th day of October 1977.

30 (Sd.) Philip K.H. Wong & Company
PHILIP K.H. WONG & COMPANY
Solicitors for the 10th Defendant

FURTHER AND BETTER PARTICULARS
OF THE STATEMENT OF CLAIM

No. 35

UNDER PARAGRAPHS 7(A) (4), 7(B) (4) AND (8), OF “.....
ANY DEFECT IN THE VENDOR’S TITLE”:

Further and
Better Particulars
of the Statement
of Claim
dated 27.10.1977

1. The Vendor

Any person or persons or corporation or corporations from whom the Defendants or any of them purported to have bought any of the shares in San Imperial and in particular but not limited to the 15,000,000 shares in the name of Fermay and the 7,631,000 shares in the name of IPC.

2. Defect of Title

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(a) The Defendants at all material times had knowledge of the fact that the 1st Defendant was the beneficial owner of about 30,000,000 shares in San Imperial and in particular but not limited to the 15,000,000 shares in the name of Fermay and the 7,631,000 shares in the name of IPC.

(b) All persons or corporations including all the Defendants (other than the 1st Defendant) deriving titles from the 1st Defendant and all persons or corporations through whom the Defendants (other than the 1st Defendant) derived their titles from the 1st Defendant at all material times failed and have failed to register themselves as shareholders of San Imperial save that those corporations who have so registered did so as agents or nominees of the 1st Defendant.

20

(c) The transferors in respect of the aforesaid shares were persons or corporations deriving their titles thereto from the 1st Defendant and the share transfer forms in respect thereof were executed by or on behalf of the 1st Defendant.

Dated the 27th day of October, 1977.

WINSTON POON
Counsel for the Plaintiffs
Malaysia Borneo Finance
Corporation (M) Berhad

1976 No. 2459

Supreme Court
of Hong Kong
High Court

IN THE SUPREME COURT OF HONG KONG
HIGH COURT

No. 36

BETWEEN:

LEE ING CHEE

Plaintiff

and

Hearsay Notice
of the 4th, 5th,
6th & 7th
Defendants
(Statements from
Choo Kim San
to David Ng)
dated 20.10.1977

CHOO KIM SAN
ASIATIC NOMINEES, LTD.
TRIUMPHANT NOMINEES, LTD.
DAVID NG PAK SHING
MELVILLE EDWARD IVES
HO CHAPMAN
FERMAY COMPANY, LTD.
CHOW CHAW-I
HWANG SHANG PAI
IPC NOMINEES, LTD.

1st Defendant
2nd Defendant
3rd Defendant
4th Defendant
5th Defendant
6th Defendant
7th Defendant
8th Defendant
9th Defendant
10th Defendant

10

1977 No. 155

IN THE SUPREME COURT OF HONG KONG
MISCELLANEOUS PROCEEDINGS

IN THE MATTER of the Foreign
Judgments (Reciprocal Enforcement)
Ordinance, Chapter 319 of the Laws
of Hong Kong.

and

IN THE MATTER of a Judgment of
the High Court in Malaya at Kuala
Lumpur obtained in Civil Suit
No. 2445 of 1976 and dated the
28th day of January 1977.

20

BETWEEN:

LEE KON WAH

Plaintiff

and

CHOO KIM SAN
ASIATIC NOMINEES, LTD.
TRIUMPHANT NOMINEES, LTD.
DAVID NG PAK SHING
MELVILLE EDWARD IVES

1st Defendant
2nd Defendant
3rd Defendant
4th Defendant
5th Defendant

30

Supreme Court
of Hong Kong
High Court

No. 36

Hearsay Notice
of the 4th, 5th,
6th & 7th
Defendants
(Statements from
Choo Kim San
to David Ng)
dated 20.10.1977

HO CHAPMAN
FERMAY COMPANY, LTD.
CHOW CHAW-I
HWANG SHANG PAI
IPC NOMINEES, LTD.

6th Defendant
7th Defendant
8th Defendant
9th Defendant
10th Defendant

(Consolidated pursuant to the Order of Mr. Justice Zimmern
dated the 20th day of August, 1977.)

IN THE SUPREME COURT OF HONG KONG
MISCELLANEOUS PROCEEDINGS NO. 540 OF 1977

IN THE MATTER of the Foreign **10**
Judgments (Reciprocal Enforcement)
Ordinance, Chapter 319 of the Laws
of Hong Kong.

and

IN THE MATTER of a Judgment of
the High Court in Malaya at Kuala
Lumpur obtained in Civil Suit
No. 1631 of 1977 and dated the
11th day of August, 1977.

BETWEEN:

MALAYSIA BORNEO FINANCE
CORPORATION (M) BERHAD

20

Plaintiffs

and

CHOO KIM SAN
ASIATIC NOMINEES, LTD.
TRIUMPHANT NOMINEES, LTD.
DAVID NG PAK SHING
MELVILLE EDWARD IVES
HO CHAPMAN
FERMAY COMPANY, LTD.
CHOW CHAW-I
HWANG SHANG PAI
IPC NOMINEES, LTD.

1st Defendant
2nd Defendant
3rd Defendant
4th Defendant
5th Defendant
6th Defendant
7th Defendant
8th Defendant
9th Defendant
10th Defendant

30

(Tried at the same time before the same judge as High Court Action No. 2459 of
1976 and Miscellaneous Proceedings No. 155 of 1977 by the Order of Mr. Justice
Yang dated 23rd September, 1977.)

HEARSAY NOTICE OF THE 4TH, 5TH, 6TH & 7TH DEFENDANTS
(STATEMENTS FROM CHOO KIM SAN TO DAVID NG)

Supreme Court
of Hong Kong
High Court

No. 36

TAKE NOTICE that at the trial of these actions the 4th, 5th, 6th and 7th Defendants desire to give in evidence the following statements made by Choo Kim San:—

Hearsay Notice
of the 4th, 5th,
6th & 7th
Defendants
(Statements from
Choo Kim San
to David Ng)
dated 20.10.1977

10

(1) That Choo Kim San told David Ng that he would arrange for David Ng to meet the lady who had introduced him to Chow Chaw-I. Choo asked a lady who was with him and whom Choo referred to as his wife, to telephone a Madam Lau and to ask her to come to the coffee Shop if she could.

(2) Choo Kim San introduced Madam Lau to David Ng.

AND FURTHER TAKE NOTICE that each of the above statements was made by Choo Kim San to David Ng and that they were made in the following circumstances:—

Statements 1 and 2

That they were made:—

- (i) On 31st December 1976 at about 9 a.m. and 9:30 a.m. respectively;
- (ii) At the Coffee Shop, President Hotel Taipei;
- (iii) During a conversation between Choo Kim San and David Ng.

20

And Further Take Notice that the said Choo Kim San cannot be called as a witness at the trial because he is beyond the seas.

Dated this 20th day of October 1977.

(Sd.) Peter Mo & Co.
(Peter Mo & Co.)
Solicitors for the 4th, 5th, 6th & 7th Defendants.

HEARSAY NOTICE OF THE 4TH, 5TH, 6TH & 7TH DEFENDANTS
(STATEMENTS FROM CHOW CHAW-I TO DAVID NG)

No. 37

TAKE NOTICE that at the trial of this matter, the 4th, 5th, 6th and 7th Defendants desired to give in evidence the following statements:

Hearsay Notice
of the 4th, 5th,
6th & 7th
Defendants
(Statements from
Chow Chaw-I
to David Ng)
dated 20.10.1977

- A). That Chow Chaw-I had friends included Lee and Fong who also had purchased shares in San Imperial from Choo Kim San and wanted to sell them to David Ng.
- B). Chow told David Ng that his friends had given 514,200 shares to him to sell to David Ng and that David Ng should pay 20 cents per share (exclusive of stamp duty and brokerage) for them and to round it up to 515,000 shares. 10
- C). Chow told David Ng that his friends had given him 1,650,000 shares and wanted to sell them to David Ng at 30 cents per share.
- D). Chow told David Ng that he would let Ng know whether or not his friends would agree to sell at 20 cents per share (exclusive of stamp duty and brokerage) tomorrow.
- E). That these friends of Chow Chaw-I agreed to sell the said shares at just under 20 cents per share exclusive of stamp duty and brokerage.

AND FURTHER TAKE NOTICE that the Particulars relating to the said statements are as follows:— 20

STATEMENT A

That it was made:

- 1). By Chow Chaw-I.
- 2). To David Ng Pak Shing.
- 3). On or about the 23rd to 27th January 1977.
- 4). At David Ng's hotel (Imperial)
- 5). In the following circumstances, during a conversation between Chow Chaw-I and David Ng Pak Shing.

STATEMENT B

That it was made:

- 1). On or about 13th February 1977 at David Ng's hotel (Imperial). 30

2). During a conversation between Chow and David Ng.

Supreme Court
of Hong Kong
High Court

STATEMENT C

That it was made:

No. 37

1). On or about 27th February 1977 at David Ng's hotel (Imperial) during a conversation between Chow and Ng.

Hearsay Notice
of the 4th, 5th,
6th & 7th
Defendants
(Statements from
Chow Chaw-I
to David Ng)
dated 20.10.1977

STATEMENT D

That it was made:

1). On or about 1st March 1977 at the Kowloon Restaurant Taipei.

2). During a conversation between Chow and David Ng.

10

STATEMENT E

That it was made:

1). By Chow Chaw-I.

2). To David Ng Pak Shing.

3). On or about the 2nd March 1977.

4). At David Ng's hotel (Imperial Hotel) in Taipei.

5). In the following circumstances, during a conversation between Chow Chaw-I and David Ng Pak Shing.

AND FURTHER TAKE NOTICE that the said Chow Chaw-I cannot be called as a witness at the said trial because he is beyond the seas.

20

Dated the 20th day of October 1977.

(Sd.) Peter Mo & Co.
(Peter Mo & Co.)
Solicitors for the 4th, 5th, 6th and 7th Defendants.

HEARSAY NOTICE OF THE 4TH, 5TH, 6TH & 7TH DEFENDANTS
(STATEMENTS FROM CHOW CHAW-I TO DAVID NG)

No. 38

Hearsay Notice
of the 4th, 5th,
6th & 7th
Defendants
(Statements from
Chow Chaw-I
to David Ng)
dated 20.10.1977

TAKE NOTICE that at the trial of these actions the 4th, 5th, 6th and 7th Defendants desire to give in evidence the following statements made by Chow Chaw-I:—

(A) Chow told Ng that he should go to Taiwan for negotiations and agreed to show Ng the San Imperial share scripts;

(B) Chow showed David Ng the San Imperial share scripts and on several occasions Chow told David Ng that he was willing to sell the San Imperial shares if the price was over \$1 per share;

10

(C) Chow told David Ng that he was willing to sell the San Imperial shares at 80 cents per share;

(D) Chow told David Ng that he was willing to sell the San Imperial shares at 60 cents per share and that he was unable to come to Hong Kong;

(E) Chow told David Ng that the new share script for the San Imperial shares should be kept by Peter Mo & Co.;

(F) Chow told David Ng that he was willing to sign blank transfers of the Fermay shares which blank transfers were to be kept by Peter Mo & Co.;

(G) Chow told David Ng that of the deposit of \$200,000 he was agreeable to have \$102,000 deducted for stamp duty for the San Imperial share transfers and the fee payable on the increase of capital of Fermay in the sums of \$72,000 and \$36,000 respectively;

20

(H) Chow told David Ng that he would have the San Imperial share scrips and transfers delivered to the registrars of San Imperial Corporation;

(I) Chow told Ng that he had already sent the share scripts and transfers sent (sic) to the Registrars of San Imperial when David Ng asked Chow why the Registrars had not yet received the share scripts and transfers;

(J) Chow told David Ng that in view of the litigation in Hong Kong he was willing to allow the completion of the agreement of 23rd March 1977 to be postponed;

30

(K) Chow told David Ng that he would consider whether or not he would appoint him as managing director of Fermay;

(L) Chow told David Ng that he was willing to appoint David Ng as managing director of Fermay;

(M) Chow in response to David Ng's request said he would ask Hwang Tsa Ching the name of the European lawyer from Johnson Stokes & Master;

Supreme Court
of Hong Kong
High Court

(N) Chow told David Ng that he had asked Hwang Tsa Ching.

No. 38

AND FURTHER TAKE NOTICE that each of the above statements was made by Chow Chaw-I to David Ng and that they were made in the following circumstances:

Hearsay Notice
of the 4th, 5th,
6th & 7th
Defendants
(Statements from
Chow Chaw-I
to David Ng)
dated 20.10.1977

Statement A

That it was made:—

- 10 (1) On or about 7th January 1977 during an international telephone conversation between Chow (in Taipei) and David Ng (in Hong Kong).

Statement B

That it was made:—

- (1) Between 9th and 13th January 1977;
- (2) At Chow's office at room 205, 200 Nan King East Road, Section 3 Taipei, David Ng's hotel (Wah Shing Hotel Taipei) and/or in restaurants;
- (3) During discussions between Chow and David Ng.

Statement C

That it was made:—

- 20 (1) Between 27th February 1977 and 2nd March 1977;
- (2) At Chow's office, David Ng's hotel (Imperial Hotel, Taipei) and/or in restaurants;
- (3) During discussions between Chow and David Ng.

Statement D

- (1) On or about 5th March 1977;
- (2) By telephone;
- (3) During an international telephone conversation between Chow in Taipei and David Ng in Hong Kong.

Statements E, F, G and H

- (1) On 23rd March 1977;
- (2) Chow's Office;
- (3) During a conversation between Chow and Ng.

Statement I

That it was made:—

- (1) In an international telephone conversation between David Ng in Hong Kong and Chow in Taipei on or about 27th March 1977.

Statements J and K

- (1) Between 13th and 17th May 1977;
- (2) At Imperial Hotel Taipei;
- (3) During discussions between Chow and David Ng.

10

Statement L

That it was made:—

- (1) In an international telephone conversation between Chow in Taipei and David Ng in Hong Kong on or about 20th May 1977.

Statement M

That it was made:—

- (1) In an international telephone conversation between Chow in Taipei and David Ng in Hong Kong in or about the 20th July 1977.

20

Statement N

That it was made:—

- (1) In an international telephone conversation between Chow in Taipei and David Ng in Hong Kong about 2 days after the telephone conversation referred to in Statement M.

AND FURTHER TAKE NOTICE that the said Chow Chaw-I cannot be called as a witness at the trial because he is beyond the seas.

Supreme Court
of Hong Kong
High Court

Dated this 20th day of October 1977.

No. 38

(Sd.) Peter Mo & Co.
(Peter Mo & Co.)
Solicitors for the 4th, 5th, 6th and 7th Defendants.

Hearsay Notice
of the 4th, 5th,
6th & 7th
Defendants
(Statements from
Chow Chaw-I
to David Ng)
dated 20.10.1977

HEARSAY NOTICE OF THE 4TH, 5TH, 6TH & 7TH DEFENDANTS
(STATEMENTS FROM LEE & FONG TO DAVID NG)

No. 39

TAKE NOTICE that at the trial of these actions the 4th, 5th, 6th and 7th Defendants desire to give in evidence the following statements made by Mr. Lee and Mr. Fong:—

Hearsay Notice
of the 4th, 5th,
6th & 7th
Defendants
(Statements from
Lee & Fong
to David Ng)
dated 20.10.1977

Mr. Lee and Mr. Fong told David Ng that they had some San Imperial shares which they were interested in selling to David Ng and in response to David Ng's request that they should deal through Mr. Chow Chaw-I they said they would consider it.

The above statements were made by Mr. Lee and Mr. Fong to David Ng on or about 12th February 1977 during a dinner party at the Kowloon Restaurant, Taipei. 10

AND FURTHER TAKE NOTICE that the above-mentioned Mr. Lee and Mr. Fong cannot be called as witnesses because they are beyond the seas.

Dated the 20th day of October 1977.

(Sd.) Peter Mo & Co.

(Peter Mo & Co.)

Solicitors for the 4th, 5th, 6th and 7th Defendants.

TRANSCRIPT OF COURT REPORTERS' SHORTHAND NOTES

Date: 10th October, 1977.

Supreme Court
of Hong Kong
High Court

Coram: Yang, J.

Present: Mr. C. Ching, Q.C., with Mr. P. Fung (Messrs. Deacons), for Plaintiffs in Action No. 2459 of 1976 and Miscellaneous Proceedings No. 155 of 1977.

Plaintiff's
evidence

Mr. R. Yorke, Q.C., with Mr. W. Poon (Messrs. Johnson, Stokes & Master), for Plaintiff in Miscellaneous Proceedings No. 540 of 1977.

No. 40

Mr. J. Swaine, Q.C., with Mr. R. Tang (Messrs. Peter Mo & Co.), for 4th, 5th, 6th and 7th Defendants.

Lee Ing-chee –
examination

10

Mr. J. Swaine, Q.C., with Mr. R. Tang (Messrs. Philip K.H. Wong & Co.), for 10th Defendant.

MR. CHING: My Lord, I call my first witness LEE Ing-chee who is the plaintiff in 2459.

P.W.1 – LEE Ing-chee – Affirmed in Mandarin.

XN. BY MR. CHING

20 MR. CHING: Mr Lord, the witness does speak English, but he is most fluent in English. Therefore, he has elected to give his evidence in Mandarin.

COURT: Yes.

Q. Mr. LEE, would you keep your voice up please so that people at the back of the court can hear what you are saying in Mandarin before it is interpreted.

A. Yes.

Q. Your name is LEE Ing-chee and you are also known as LEE Hai-hock.

A. Yes.

Q. You are the plaintiff in High Court Action 2459 of 1976.

A. Yes.

Q. Are you 39 years old?

30 A. Yes.

Q. And do you live at No. 35, Jalan Khalsa in Kuala Lumpur?

A. Yes.

Q. And is it true that between 1972 and May of 1977 you were stationed in Hong Kong?

A. Yes.

Q. Before we get on to what happened during that period, I would like to clear one point first. It has been alleged that you are a nominal plaintiff on behalf of Malaysia Borneo Finance. Now, when you come to Hong Kong from Malay-

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Lee Ing-chee –
examination

sia for the purposes of consulting about this present litigation, who pays your airfares?

A. M.B.F.

Q. And who pays your reasonable living expenses while you are in Hong Kong?

A. Also M.B.F.

Q. Also M.B.F. Do you know a man called Dato Lay?

A. Yes.

Q. He is in control of M.B.F.

A. Yes.

Q. I just want you to answer this question 'yes' or 'no' first. Has he provided any banking facilities or made available any banking facilities for you? 10

A. Yes.

Q. What has he provided for you?

(Witness answers in Mandarin).

COURT: Give the name in English please.

A. Bank Buroh of Malaysia (in English).

Q. What has he done about the Bank Buroh for you?

A. He guaranteed \$15,000 for me.

Q. \$15,000. Is that Malaysian or Hong Kong dollars?

A. Malaysian currency. 20

Q. Malaysian dollars. When did he supply that guarantee approximately – when did he give that guarantee?

A. On about the 20th of September, 1977.

Q. Have you utilized that guarantee in any way?

A. Yes.

Q. What have you done?

A. I formed a partnership with a friend in my opening tin mines.

Q. Would you please keep your voice up, Mr. LEE. What's the name of that friend?

A. LEE Kon-wah. 30

Q. And you are now running that tin-mining business in partnership with him.

A. Yes.

Q. Apart from paying your airfares to and from Hong Kong and paying your reasonable living expenses in Hong Kong and apart from Dato Lay supplying banking facilities by giving you a guarantee of \$15,000 Malaysian, are you in any way being paid or subsidized either by M.B.F. or by Dato Lay?

A. No.

Q. Apart from being a partner with LEE Kon-wah in the tin mines, are you otherwise employed?

A. No. 40

Q. Have you tried to find an employment?

A. Yes.

Q. You were unsuccessful, were you?

A. Yes.

Q. Can you give this court some reason so far as you know why you should have been unsuccessful in finding employments?

- A. Because of this case, I had to come to Hong Kong very often. Supreme Court
 Q. Could you find an employer who would give you sufficient time to come to of Hong Kong
 Hong Kong as often as you had been coming? High Court
- A. No.
- Q. I think it is common ground, Mr. LEE, that you were previously employed Plaintiff's
 either by CHOO Kim-san or by one or other of the companies owned by or evidence
 controlled by him.
- A. Yes. No. 40
- Q. When did you first meet CHOO Kim-san?
- 10 A. At the end of December, 1969. Lee Ing-chee –
 Q. Where were you working then? examination
 A. Sim Lim Finance Company.
 Q. Where was that?
 A. Batu Pahat, Malaysia.
 Q. In what capacity were you working for Sim Lim?
 A. The manager of an office.

COURT: (To Interpreter) 'Branch Manager'?

INTERPRETER: 'Branch Manager'.

- Q. And Sim Lim was a finance company, was it?
 20 A. Yes.
 Q. Do you know or have you ever heard of a person called K.C. LEE?
 A. Yes.
 Q. At the end of 1969, what was he doing?
 A. He was the General Manager of M.B.F.
 Q. I see, and how did it come about that you began to work for CHOO Kim-san?
 A. Mr. K.C. LEE approached me and told me that Mr. CHOO Kim-san was going
 to establish many branch companies and that Mr. CHOO would like to employ
 some people who had been working in finance companies before.
 Q. By the way, where is K.C. LEE now?
 30 A. He has passed away.
 Q. When did he pass away, do you know?
 A. At the end of last year.
 Q. Now, I don't want you to say exactly what K.C. LEE told you, but is it the
 position that as a result of K.C. LEE's introduction you began to work for
 CHOO Kim-san?
 A. Yes.
 Q. By which company were you employed?
 A. M.B.F.
 Q. Where?
 40 A. A branch company in Batu Pahat.
 Q. When was that please? When did you first become employed by M.B.F. at
 Batu Pahat?
 A. I think it was on the 1st of December, 1969.
 Q. And what was your status or official position?
 A. Branch Manager.
 Q. And for how long did you continue to work as Branch Manager of M.B.F.

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Lee Ing-chee –
examination

at Batu Pahat?

A. For over a year.

Q. What happened then?

A. Then he transferred me to Kuala Lumpur.

Q. Who transferred you?

A. Mr. CHOO.

Q. CHOO Kim-san.

A. Yes.

Q. So, you went to K.L. – you went to Kuala Lumpur.

A. Yes.

Q. Were you at the head office or at a branch office of M.B.F.?

A. In a branch office.

Q. For how long did you work at the branch office of M.B.F. in Kuala Lumpur?

A. For almost a year.

Q. Were you interviewed by CHOO Kim-san before you were employed at Batu Pahat?

A. Yes.

Q. When was the next time you saw him after that interview?

A. At the end of January, 1972.

Q. What happened at that time?

A. He said that he wanted to transfer me to Hong Kong.

Q. Did he say this to you personally?

A. Yes.

Q. Where was that?

A. At the head office of M.B.F.

Q. What was the address please of the head office of M.B.F. in Kuala Lumpur?

A. No. 164, Tungku Abdul Rahman Street.

MR. CHING: It should be 'Jalan Tungku Abdul Rahman'.

INTERPRETER: Yes.

Q. Now, at the office of M.B.F., were any other – was it the address of any other company? 30

A. Yes.

Q. I don't want you to give an exhaustive list, but what sort of other companies had their offices at that address?

A. Some were land companies.

Q. And others?

A. Finance companies.

Q. Finance companies. Who owned or controlled those other companies which had their offices there?

MR. SWAINE: My Lord. I think the basis for any evidence this witness may give should be established as to how he knows that. 40

MR. CHING: I am not sure if the objection is a serious one. Presumably it is.

Q. Mr. LEE, You worked for M.B.F. from December '69 in Batu Pahat; eventual-

- ly, you were in Kuala Lumpur; and then eventually you saw CHOO Kim-san at the head office of M.B.F. Supreme Court of Hong Kong High Court
- A. Yes.
- Q. When did you cease working for CHOO Kim-san or any other company owned or controlled by him? Plaintiff's evidence
- A. On the 1st of April, 1977.
- Q. '77?
- A. Sorry. '76. No. 40
- 10 Q. And between December of 1969 and the 1st of April 1976, could you describe your relationship with CHOO Kim-san in very general terms? Lee Ing-chee – examination
- A. I had been often together with him since July '72.
- Q. Yes. Was your relationship with him simply that of an employer and employee or something more or were you very friendly or what was your relationship with him?
- A. We were also good friends. We had been together very often.
- Q. In your own mind, did you know very much about his companies?
- A. Yes.
- 20 Q. The companies that had their offices at 164 Jalan Tungku Abdul Rahman – were the companies owned or controlled by CHOO Kim-san or by somebody else?
- A. His.
- Q. His companies.
- A. Yes.
- Q. Could you describe the actual office premises for us please. What was it? Was it just one big room or a suite of rooms? What was it?
- A. It was a big room like this one.
- Q. Yes.
- A. Inside the office, a small part was partitioned. That small office was for Mr. CHOO himself.
- 30 Q. Was anybody else supposed to use that office?
- A. It seemed that no other person had ever used that office.
- Q. Now, you have told us that in '72 CHOO Kim-san asked you to come to Hong Kong.
- A. Yes.
- Q. Did you in fact come to Hong Kong?
- A. Yes.
- Q. When you came to Hong Kong, what was your official position?
- A. At the beginning, I was the Manager of San Timber Company.
- Q. To whom did that company belong at that time?
- 40 A. It belonged to Mr. CHOO.
- Q. When did you arrive in Hong Kong?
- A. On or about the 3rd of February, 1972.
- Q. I suppose if you were the Manager of San Timbers, San Timbers paid your salary.
- A. Yes.
- Q. Did they ever stop paying your salary?
- A. After they had been paying me for about a few months, they stopped.
- Q. When San Timbers stopped paying your salary, did you still hold the office of Manager of San Timbers?

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Lee Ing-chee –
examination

- A. Yes.
- Q. When did you resign from employment by CHOO Kim-san or any of his companies?
- A. On the 1st of April, 1976.
- Q. Up to that time, were you still the Manager of San Timbers?
- A. Yes.
- Q. Who paid your salary after San Timbers stopped paying your salary?
- A. M.A.F.
- Q. Which M.A.F. please?
- A. M.A.F. (H.K.) Finance Company. 10
- Q. M.A.F. Corporation, is that right?
- A. Yes.

COURT: I think you had better state the proper name, Mr. LEE. One is 'M.B.F. Corporation'; one is 'M.A.F. Corporation'.

- A. Malaysia America Finance Corporation.
- Q. Now, although you were the Manager of San Timbers, you were paid by M.A.F. Corporation. Did you confine yourself to your office duties?
- A. No.
- Q. Let's suppose that CHOO Kim-san wanted to buy a piece of property. Who would he ask personally – who would he ask to represent him? 20
- A. He asked me.
- Q. He asked you. Do you remember anything that CHOO Kim-san did in about July of 1972?
- A. He bought 51% of the shares of San Imperial.
- Q. Was it called San Imperial at that time?

(Witness speaks to Interpreter).

COURT: (To witness) It would be simpler, Mr. LEE, since you speak English to give us the English name of these companies.

- A. Imperial Hotel Holdings Ltd. (in English).
- Q. Imperial Hotel Holdings Ltd. He bought 51%. Were you in any way involved with that company? 30
- A. Later, he appointed me as the Secretary of that company.
- Q. Can you recall when was that?
- A. On or about the 20th of July.
- Q. Soon after he took over.
- A. Yes.
- Q. When did you cease to be Secretary of that company?
- A. 1st of April, 1976.
- Q. In other words, you held that post until you resigned. 40
- A. Yes.
- Q. At about the same time that you are appointed Secretary of San Imperial, did you receive any other appointments?
- A. Yes.
- Q. What was that?

- | | | |
|----|--|---------------------------------------|
| | A. General Manager and Secretary of M.A.F. Corporation. | Supreme Court of Hong Kong High Court |
| | Q. And by the time you had resigned in '76, did you still hold that post? | |
| | A. Yes. | |
| | Q. And how would you describe your relationship with CHOO Kim-san personally by the end of the year 1972? | Plaintiff's evidence |
| | A. Very close. | |
| | Q. Very close. Did he give you any other appointments? | |
| | A. Yes. | No. 40 |
| | Q. What sort of appointments please? | |
| 10 | A. I was put in charge of other companies too. | Lee Ing-chee – examination |
| | Q. Other companies where? | |
| | A. Hong Kong. | |
| | Q. Hong Kong. When you say 'put in charge', what do you mean? Were you made Managing Director, Secretary or what? | |
| | A. Mostly 'Director'. | |
| | Q. Mostly director of companies in Hong Kong. | |
| | A. Yes. | |
| | Q. In those companies, what part did CHOO Kim-san play? | |
| | A. Chairman and Managing Director. | |
| 20 | Q. Did he hold any shares? | |
| | A. Yes. | |
| | Q. In whose names would the shares be held? | |
| | A. His nominees. | |
| | Q. Were you ever a nominee for him? | |
| | A. Yes. | |
| | Q. Can you tell us so far as you can remember did you act as nominee for CHOO Kim-san only once or on a few occasions or many occasions? How often did you act as nominee? | |
| | A. Many. | |
| 30 | Q. Many occasions. | |
| | A. Yes, many occasions. | |
| | Q. Were you the only person to act as his nominee? | |
| | A. No. | |
| | Q. Could you give us some other names of persons who acted as his nominee please. | |

(Mr. Swaine objects to question. Submissions by counsel re admissibility of hearsay evidence. Court rules notice of hearsay required to be served).

- 40 MR. CHING: My Lord, just before I recall LEE Ing-chee, your Lordship will recall that I handed up a schedule which I call 'Schedule A' showing the structure of the MAF companies. My Lord, that particular schedule which I handed you had certain comments upon it. The comments were there because they might have been relevant but for your Lordship's ruling. Therefore what we have done is to zerox the thing again but with comments blanked out. Possibly it would be better, my Lord, if I handed you an extra copy to replace the original Schedule A with apologies for the rather scrappy look that it bears. With that, my Lord, may I recall LEE Ing Chee?

Plaintiff's
evidence

Q. Mr. Lee, before we broke off your evidence, you had answered some questions concerning the allegation that you are a nominal plaintiff on behalf of MBF.

A. Yes.

No. 40

Q. There is one matter, however, which I omitted to ask you and that is this: who is paying your legal expenses for this litigation?

A. MBF.

Lee Ing-chee –
examination

Q. "MBF". And you had also told us that although you were employed by San Timbers when you first came to Hong Kong, eventually MAF Corporation paid your salary. 10

A. Yes.

Q. Did MAF Corporation ever pay you any sort of bonus?

A. Yes.

Q. What sort of bonus did they pay you?

A. Once a year.

Q. How much once a year?

A. One month's salary.

Q. "One month's salary", extra as bonus paid you?

A. Yes. 20

Q. Did you receive any bonuses from anybody else?

COURT: From which?

INTERPRETER: "Salary and bonus".

MR. CHING: MAF Corporation.

Q. Sorry. Did you receive any bonus from anybody else?

A. Yes.

Q. From whom?

A. CHOO Kim San.

Q. What was the smallest bonus that he paid you in any one year?

A. At least five thousand dollars. 30

Q. "At least five thousand dollars". What was the largest, can you recall?

A. Fifty thousand dollars – fifty.

INTERPRETER: "Five-O".

COURT: You are talking about Hong Kong dollars?

A. Yes, sir.

COURT: Well, yes. All right. We will take it that you are referring to Hong Kong dollars all the time.

A. Yes.

MR. CHING: I am obliged, my Lord.

Supreme Court
of Hong Kong
High Court

Q. And before we broke off your evidence, Mr. Lee, you have told us that towards the end of 1972 your relationship with CHOO Kim-san had become very close.

Plaintiff's
evidence

A. Yes.

Q. And that he had appointed you as director in certain companies.

A. Yes.

No. 40

Q. You have told us that you were put in charge of his Hong Kong companies.

A. Yes.

Lee Ing-chee –
examination

10 Q. Were you put in charge of companies anywhere apart from Hong Kong?

A. Thai and Brunei.

Q. In Thailand and Brunei?

A. Yes.

Q. How would you describe your position in relation to CHOO Kim San from that time onwards?

A. Very close.

Q. "Very close". You have told us, for instance, that if he wanted to buy something, buy property for himself, you would do it for him?

A. Yes.

20 Q. When you say you were put in control of the Hong Kong, Thailand and Brunei companies, did you have general supervision over them?

A. Yes.

Q. If anyone wanted to approach CHOO Kim San, who would they go to first?

A. Mostly through me, sir.

Q. Through you. Did you have therefore general knowledge of companies owned or controlled by him?

A. Yes.

Q. I hand you now Schedule A.

MR. CHING: My Lord, this is the substituted Schedule A.

30 Q. Would you look at that, please, and tell us if you can whether or not that was the corporate setup of the MAF companies in Hong Kong.

A. Yes.

Q. Now, MAF Credit.

COURT: Better mark it as an exhibit.

MR. CHING: Please, my Lord.

COURT: Would you start with 1?

MR. CHING: I'd better start with 1 because Schedule B, for instance, now I think has become largely irrelevant. Perhaps numbers rather than alphabets.

COURT: Very well. Exhibit P1.

40 MR. CHING: I'm obliged, my Lord.

Q. Now, MAF Credit was previously Luen On. Have you any personal knowledge of how it came about that it became owned or controlled by CHOO Kim San?

A. Well, he bought the whole company from someone.

Q. You have personal knowledge of that?

A. Yes.

COURT: The whole company of Luen On?

A. He bought the company from someone.

COURT: Luen On Company?

A. Yes, sir, Luen On.

Q. Approximately when was that?

10

A. At the end of 1972.

Q. We know now that it's a public company. Can you recall approximately when it went public?

A. Shortly after he had bought it, I think it was at the end of the year 1972.

Q. Yes. All right. Now, towards the end of the year 1972, did you have any conversation with CHOO Kim San concerning his shareholdings?

A. Yes.

Q. What did he say to you?

A. At that time he told me to buy one or two nominee companies for him.

Q. Yes.

20

A. And then he would put these shares in that or those nominee companies.

Q. Yes. Did you in fact buy any nominee companies for him?

A. Yes.

Q. What were their names?

A. The first one was Asiatic Nominees, sir, and the second one was Triumphant Nominees.

Q. Now, if we may deal with Asiatic Nominees first. Did you have general supervision over that company?

A. Yes.

Q. Who appointed the directors of that company from the time that CHOO Kim San purchased it?

30

A. Later he authorised me to appoint some members of the staff to be the directors of that company.

MR. CHING: Now, my Lord, at this stage I should like to refer the witness to certain search cards. I have had a word some time ago with my learned friend, Mr. Swaine, as to whether or not he can agree to the particulars in the search card and I understand that a formal letter has been written, but perhaps the witness could look at that first and if my learned friend is unable to agree, he will tell me before I close my case and I can then produce the cards from the Registry. I refer, my Lord, to the exhibits -- to the affidavit of HO Chung-po in High Court Action No. 252. It's an affidavit affirmation.

40

MR. YORKE: My Lord, it's red bundle 1 -- that's starting at page 13.

MR. CHING: I am very much obliged to my learned friend. It's exhibited for the sake of your Lordship's reference to the affidavit of – affirmation of HO Chung-po in High Court 252, the affirmation dated 2nd May.

Supreme Court
of Hong Kong
High Court

MR. YORKE: My Lord, the cross-reference to that is in red bundle 2, page 1.

Plaintiff's
evidence

MR. CHING: I am very much obliged.

No. 40

MR. SWAINE: May I perhaps make one position clear and that is of course there is no objection to the witness looking at the documents such as search cards, but I think it has been agreed that the affidavits are not evidence, unless of course your Lordship specifically rules.

Lee Ing-chee –
examination

10 MR. CHING: Oh, yes. My Lord, I'm only referring to this particular batch of exhibits as a convenient way of getting at them, because I don't have them separately. But, as I say, my learned friend could tell me before I close my case whether these details are agreed, then I need not prove them. Now, could the witness be shown that, please? Has the witness got a copy? Page 13.

COURT: How many pages of that will you be referring to the exhibit? Is it all the way to page 22?

MR. CHING: Ten pages of it, my Lord.

COURT: I see – from page 13 to 22?

INTERPRETER: 13 to 22, sir.

20 COURT: We shall call this then Exhibit P2. All right.

Mr. CHING: Yes, please, my Lord.

Q. Now, Mr. Lee, I just want you to look at the first page of that – that is page 13. Who is Mr. Lee Kee Seng, the first name on the lefthand column?

COURT: You are looking at 14.

MR. CHING: I'm so sorry. Yes.

Q. Do you know anything about the names on the lefthand side of page 13?

A. Well, as we purchased the company from the company called Corporate Secretaries Limited, these people were members of the staff of that company, . . .

Q. I see.

30 A. . . and they were appointed as the directors.

Q. I see. Now look at page 14, please. This was August '73. Who is Mr. Lee Kee Seng?

A. My younger brother.

Q. Your younger brother. Did he work for CHOO Kim San or any of the companies owned or controlled by CHOO Kim San?

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Lee Ing-chee –
examination

- A. Yes.
Q. Who is Mr. Henry Young? Do you know the name?
A. He also worked for Mr. Choo.
Q. As what?
A. Public Trade – Public Trade Limited.

COURT: You don't know the English name?

- A. I can only remember the first word "Public" sir, but I can't remember the second word of the name, sir.
Q. Was he – That was a company by which he was employed, is that right?
A. Yes. 10
Q. As what?
A. And that company also belonged to Mr. Choo.
Q. I see. But what was his position?
A. Branch Manager.
Q. "Branch Manager". Would you skip the next page, please, and come, I think it is, to page 16? No, 17, sorry – page 17, please. No, I'm sorry. Look at page 15, please. There we see Lee Kee Seng and Henry Young again. Then there is Pang Wing Fan.
A. Well, he later also worked for Mr. Choo.
Q. As what? What position? 20
A. Clerk of Work.
Q. "Clerk of Works"?

INTERPRETER: "Works".

- Q. Of any construction company?
A. In MAF Credit.
Q. "In MAF Credit Ltd." Look at the next page, please. Sorry, ignore the next page, please, and go to page 17. Then we see Pang Wing Fan, Lee Kee Seng, then HO Chung Po. Who was HO Chung Po?
A. At that time he was the Assistant Manager of MAF Corporation.
Q. "Assistant Manager" . . . 30

INTERPRETER: ". . . of MAF Corporation."

- Q. ". . . of MAF Corporation." All right. Look at page 18, please. Then we get Pang Wing Fan, Ho Chung Po and someone called Khoo Siew Kim. Who is Khoo Siew Kim?
A. She is the wife of Mr. CHOO Kim San.
Q. "Wife of CHOO Kim San". Do you know if they were actually married?
A. Well, that I don't know. We all called her Mrs. Choo.
Q. I see. All right. Then page 19, please. There we get HO Chung Po again and Khoo Siew Kim again, and then Leung Lin Yau, Rebecca. Who was Rebecca Leung Lin Yau? 40
A. She also worked in MAF Corporation, sir.
Q. "MAF Corporation". What was her post?
A. Typist.

- Q. "Typist". Look at page 20, please. There we get HO Chung Po, Rebecca Leung, and then someone called TAM Chun Kwan. Do you know who Tam Chun Kwan is? Supreme Court of Hong Kong High Court
- A. Well, he is the brother-in-law of Mr. Ho Chung Po; he also worked in MAF Corporation, sir. Plaintiff's evidence
- Q. As what?
- A. Assistant Manager.
- Q. "Assistant Manager". Look at page 21, please. There we get HO Chung Po and then a person called Lee Woon Luen. Who is Lee Woon Luen? No. 40
- 10 A. He also worked for Mr. Choo. Lee Ing-chee – examination
- Q. Which particular company, if any?
- A. He is now with the Central Max Limited.
- Q. As what? Do you know?
- A. Factory Manager and the director.
- Q. Look at page 22, please. I think the only new name on page 22 is Lee Fai To. Have you heard that name before – Lee Fai To, the second name?
- A. He is also working in MAF Corporation as an assistant manager.
- Q. And, for instance, HO Chung Po, when did you first come across the name HO Chung Po? Just give us the date approximately.
- 20 A. He applied for the job and I interviewed him.
- Q. You interviewed him?
- A. Yes.
- Q. Approximately when was that?
- A. Well, I can't remember clearly. I think it was in '73 or '74.

COURT: I think you said you engaged him. Yes?

A. Yes, I later introduced him to Mr. Choo and Mr. Choo engaged him.

COURT: Yes, I'm just repeating what you said.

Q. What about Mr. Lee Fai To? When did you first come across that name?

30 A. Well, I did not know this name until the solicitors made enquiries into this case.

Q. I see. All right. Now would you look at page 23? That deals with the shareholdings of Asiatic Nominees. Sorry, it should be page 24, which would be the operative part. (I think that should possibly, my Lord, be a separate exhibit number?)

COURT: Which particular page are you looking at?

MR. CHING: Well, we start from page 23 onwards, which deals then with shares – 23 until 26.

Q. Now look at page 24.

INTERPRETER: Marked P3?

40 COURT: Yes.

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Lee Ing-chee –
examination

- Q. If you look at page 24, Mr. Lee, you will see there the name of your brother Lee Kee Seng, he's down as a shareholder; and if you look at page 26 you will see that he had one share.
- A. Yes.
- Q. Do you know if he ever paid for one share in Asiatic Nominees?
- A. No, he didn't.
- Q. He didn't pay. Do you know on whose behalf he held that one share?
- A. For Mr. Choo Kim San.
- Q. Yes, Mr. Choo Kim San. How do you know that?
- A. One day Mr. Choo told me to inform my younger brother to go to the office of Messrs. Peter Mo & Co. to sign a trust deed. 10
- Q. And the other shareholder seems to have been Pang Wing Fan. Do you know if he paid for his one share?
- A. He didn't.
- Q. Yes?

INTERPRETER: "He did not".

- Q. "He did not". How do you know that?
- A. Well, I put that one share under his name.
- Q. You put that share in his name. On whose behalf was he holding it? 20
- A. Mr. Choo Kim San.
- Q. How do you know that?
- A. Well, he signed the trust deed together with my younger brother at the same time.
- Q. Just a minute. Did you see him sign the trust deed?
- A. No.
- Q. How do you know there was a trust deed?
- A. Because Mr. Choo told me to inform them to go and sign it.
- Q. To go where?
- A. To go to Messrs. Peter Mo and Co.
- Q. Did Mr. Choo Kim San tell you who they should see at Peter Mo & Co? 30
- A. Yes.
- Q. Who was that?
- A. Mr. Ives.
- Q. Now, you mentioned another company called Triumphant Nominees Ltd. that you purchased for Mr. Choo Kim San.
- A. Yes.
- Q. Who appointed the directors of Triumphant after it was purchased by you?
- A. I did.
- Q. You appointed the directors? 40
- A. Yes.
- Q. And generally speaking, without giving us the details, who were the directors of Triumphant? What sort of persons were directors of Triumphant?
- A. They all worked in MAF Corporation.
- Q. What about the shareholders?
- A. Same.
- Q. "Same". I want to ask you now very quickly about some other companies. Now, have you ever heard of a company called San International Limited?

- | | | |
|----|--|---|
| | A. Yes. | Supreme Court
of Hong Kong
High Court |
| | Q. Do you know anything about that company? | |
| | A. That was also Mr. Choo's company. | |
| | Q. Do you know anything about its formation? | |
| | A. Well, he also intended to use that company as his – one of his nominee companies. | Plaintiff's
evidence |
| | Q. And the shareholders of San International Limited, do you know anything about them? | No. 40 |
| | A. Yes. | |
| 10 | Q. We will come back to that in a moment. Have you heard of a company called Bladon International Limited? | Lee Ing-chee –
examination |
| | A. Yes. | |

COURT: What company?

MR. CHING: Bladon International Limited – Bladon International Investments Limited.

- Q. That's a public company now, is it not?
- A. Yes.
- Q. Is it now known as Harilelas Properties and Investments Co. Ltd.?
- A. Yes.
- 20 Q. When was the name changed to Harilela's?
- A. When Mr. Choo sold his shares to the Harilelas.
- Q. Yes. About when was that, approximately?
- A. I think it was in '73 or '74 – I can't remember.
- Q. All right. Have you ever heard of a company called Cando Co. Ltd.?
- A. Yes.
- Q. When did you first hear of it?
- A. Well, I can't remember, sir. I forgot.
- Q. You can't remember. Did you have anything to do with – Well, did you have anything to do with Choo Kim San? Just yes or no.
- 30 A. Yes.
- Q. Was it owned or controlled by him?
- A. It was his company.
- Q. It was his. How do you know that?
- A. Well, he authorised me to appoint the directors of that company.
- Q. Do you know whether he set it up or whether he bought it?
- A. He bought it.
- Q. How do you know that?
- A. He told me so.
- Q. I see. Have you ever heard about – of a company called Flying Wild?
- 40 A. Yes.
- Q. Whose company was that?
- A. Also his company.
- Q. "His" being Choo Kim San's?
- A. Yes.
- Q. Of course you told us about San Timbers for whom you worked.
- A. Yes.

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Lee Ing-chee –
examination

- Q. Have you ever heard of a company called San Development Limited?
A. Yes.
Q. Whose company was that?
A. Mr. Choo Kim San's company.

MR. CHING: My Lord, I'm about to hand the witness another schedule – one for the witness and one for my Lord. Again, my Lord, we have asked if these details can be agreed and may it go in upon the basis that if the details cannot be agreed we will produce the companies' search cards. May that be marked as an exhibit, my Lord?

COURT: Yes.

10

CLERK: P4.

COURT: P4.

- Q. Now look at the first page of P4, Mr. Lee. I don't think there are any new names there. HO Chung Po – while you were working for Choo Kim San, when you employed HO Chung Po, as what did you employ him?
A. As the Assistant Manager.
Q. Of?
A. Of MAF Corporation.
Q. And the names on the first page of P4 – HO Chung Po, Lee Fai To, Lee Woon Luen and Tam Chun Kwan – so far as you know, are they all the same names we have heard before? 20
A. This one?
Q. Yes, those names are they all the same names – I'm sorry, it was left out – the last name should be TAM Chun Kwan.

MR. CHING: My Lord, "Tam" has been left out.

- Q. Are they the same people that we have heard of before?
A. Yes.
Q. Now, you have told us that you purchased Asiatic on the instructions of Choo Kim San as a nominee company for him. What did Asiatic actually do?
A. They controlled Mr. Choo's shares. 30
Q. You mean they held Mr. Choo's shares?
A. Yes.
Q. Did they ever hold shares for anybody except Choo Kim San?
A. No.
Q. "No". Would you look at the next page, please, of P4 – that is Triumphant. Now, what was the purpose of Triumphant?
A. The same.
Q. "The same". To hold shares for Choo Kim San?
A. Yes.
Q. Do you know if Triumphant ever held shares for anybody else? 40
A. They never.
Q. They never did?

INTERPRETER: "Never".

- Q. What sort of shares did Triumphant Nominees hold for Choo Kim San?
A. San Imperial Corporation.
Q. Any other shares?
A. Yes, and the shares of companies in Malaya and Singapore.
Q. Any other Hong Kong companies?
A. Well, at the beginning I think there was a small amount of shares of MAF Credit.
10 Q. Was this a company over which you had general control while you were still working for Choo Kim San?
A. Yes.
Q. Can you tell us this, then, please: did Triumphant Nominees keep any records?
A. What sort of record?
Q. Of shares that they held?
A. No.
Q. What about Asiatic – did they keep any records?
A. No.
Q. "No". Did either of these two companies – Asiatic and Triumphant – have any bank accounts?
20 A. Yes.
Q. Do you know at which banks?
A. I think it's the Wing Lung Bank.
Q. "Wing Lung Bank". Just one bank, so far as you recall?
A. Yes.
Q. All right. Would you look at the third page, please. Now we have again "SHAREHOLDERS" – "Choo Kim San, Lee Ing Chee" – is that you?
A. Yes.
Q. And then Khoo Siew Kim. Is that his wife?
A. Yes.
30 Q. And "DIRECTORS (as at 31st December '76)", first of all, it's Choo Kim San and then there is a Choo Wai Hung. Do you know anybody by that name?
A. His daughter.
Q. "His daughter". So, it's wrong – it is not Mr. Choo Wai Hung but it should be, is it Mrs. or Miss?
A. Miss.

Plaintiff's
evidence

No. 40

Lee Ing-chee –
examination

MR. CHING: May that be amended – "Miss Choo Wai Hung, daughter of Choo Kim San".

- Q. Then the fourth name Johannes Jorgensen. Have you ever heard of that name before?
40 A. Yes.
Q. Who is he?
A. He worked and he's still working as Manager of the Imperial Hotel.
Q. I think he is also the director of San Imperial, is that correct?
A. Yes, in a certain period – during a certain period.
Q. Would you look at the next page, please, which I think is the fourth page. Now, that is Bladon. I want you to look at the bottom of the page. Before

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Lee Ing-chee –
examination

the company was bought by the Harilela group – now the second name Lee Ing Chee, is that you? Were you a director?

- A. Yes.
- Q. The first name Mr. Ng Pak Shing, is that David Ng, the fourth defendant in the case?
- A. Yes.
- Q. Then Mr. Ives, the fifth defendant, is that right?
- A. Yes.
- Q. Who is No. 4 there, Mr. Wong Kai Lam?
- A. Senior partner – he is the senior partner of Cooper Brothers. 10
- Q. Cooper Brothers – librarian, accountants?
- A. Yes.
- Q. And No. 5 is, of course, our old friend Mr. CHOO Kim San. Look at the next page, please, page 5. That's CANDO. Look at the "SHAREHOLDERS". Do you know the person Tam Siu Por?
- A. Yes.
- Q. Who is he?
- A. Well, he's now working with the San International Insurance Company.
- Q. As what, do you know?
- A. I don't know. 20
- Q. Do you know the second name, CHU Chi Yuen?
- A. Yes.
- Q. Who is he?
- A. He worked as a clerk in the Money Exchange Section of MAF Corporation, but I don't know whether he is still working there or not.
- Q. And Cheong Pak Yeung, who is that? Do you know that name?
- A. Well, he worked as an assistant manager in MAF Corporation.
- Q. Now, look at the "DIRECTORS", please. We have dealt with Tam Siu Por. Have you heard of the name Madam Lee Kit Kee, Rita?
- A. Yes. 30
- Q. Who is she, or who was she?
- A. At that time she was the accounting officer of MAF Corporation.
- Q. Look at the next page, please – FLYING WILD. We have met those two names before – Rita Lee and Rebecca Leung, so I shan't bother you with that. Look at the seventh page, please – SAN TIMBERS. (I think we've met all those people before, my Lord. Could I amend again the fourth name for the record to Miss Choo Wai Hung?
- Q. So, I needn't detain you with that. And the same on the eighth page – the last name should be "Miss Choo Wai Hung". All right. Now, in relation to the companies shown in Exhibit 1, I hand you again a bundle. 40
- MR. CHING: My Lord, on the same basis – on the same basis that if my learned friend can agree on these particulars I need not prove them. May that be Exhibit 5, my Lord?
- Q. Look at the first page, please – MAF Credit. Look at the "DIRECTORS", there is HO Chung Po. Is that the same HO Chung Po about whom we have been speaking as far as you know?

- A. Yes. Supreme Court
of Hong Kong
High Court
- Q. And who is the second director, Woo Kwan Yeung?
- A. He was and he still is the General Manager and the Director of San International Insurance Company.
- Q. The third name Lee Fai To, I shan't bother you with it. The fourth name HO Shiu Hi, do you know that name? Plaintiff's
evidence
- A. Well, he still is the director of Santromax.
- Q. Does he hold any other position in Santromax? No. 40
- A. Yes, he's also the Sales Manager.
- 10 Q. Yes. Look at page 2 now. I think there are no new names there. Page 3, same thing. Page 4, same thing. Page 5, please. Now look at the SHAREHOLDERS in the middle of the page – "SHAREHOLDERS AS AT 15/12/76, Hong Kong Estates Limited". Whose company was that? Lee Ing-chee –
examination
- A. It was and still is a subsidiary company of the San Imperial Corporation.
- Q. And look at the DIRECTORS now, please, the third name. Have you heard of the name Rex Koh Kim Chuan before?
- A. Yes.
- Q. Who is he?
- A. He's an architect in Singapore and he is a very good friend of Mr. Choo.
- 20 Q. Choo Kim San?
- A. Yes.
- Q. And the fourth one, Henry Loke Kui Kuen?
- A. I think Mr. Choo Kim San invited him to be the Executive Director of the Imperial Hotel – of the San Imperial Corporation.
- Q. What about the sixth name Ooi Seng Poy?
- A. Very good friends, sir.
- 30 MR. CHING: My Lord, there may be one or two other names in the rest of these pages, but I think I've made the point without wasting the court's time taking him through the rest of it. It has been pointed out to me, my Lord, that if your Lordship would look at the front page of the bundle the fifth name is Po Tai. That's left out of the bundle because we haven't got details yet. I may insert it later – Po Tai – the fifth one on the Index.
- Q. All right. Now, having dealt with that, Mr. Lee, we know that the plaintiff in Action No. 540 is MBF. To your knowledge, did Choo Kim San hold any shares in MBF.
- A. Yes.
- Q. In whose name did he hold those shares?
- A. Partly in his own name and partly in his nominee's name.
- Q. Who was the nominee?
- 40 A. Tunku Abdullah.
- Q. And how do you know that he was the nominee for Choo Kim San?
- A. On one occasion Mr. Choo Kim San told me to go to Kuala Lumpur to bring along a trust deed to Mr. Tunku Abdullah for him to sign.
- Q. Did he sign it?
- A. Yes, he did.
- Q. And what did you do with the trust deed after Tunku Abdullah had signed it.
- A. I brought it back to Mr. Choo Kim San.

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Lee Ing-chee –
examination

Q. Now there is another company called Manhattan Properties and is it true that you are registered as one of the shareholders in Manhattan Properties?

A. Yes.

Q. Were those shares, in fact, yours, or that share? I don't know how many there were.

A. No.

Q. It's not yours?

A. No.

Q. Whose shares was it?

A. Mr. Choo Kim San's.

10

Q. Who was the other shareholder in Manhattan Properties?

A. Mr. CHOONG Chee Seng.

Q. And on whose behalf did he hold the shares?

A. For Mr. Choo Kim San.

Q. How do you know that?

A. Well, I also brought along a trust deed to him for him to sign.

COURT: To where? To Kuala Lumpur?

A. Yes, to Kuala Lumpur, sir.

COURT: For Mr. Choong to sign?

A. Yes, sir.

20

Q. If I can take you back, please, to something I missed on P4 about Cando Co. Ltd. Would you look at page 5 of P4? You see "DIRECTORS" and the second one is Rita Lee. Do you know anything about that directorship?

A. I appointed her as a director of this company.

Q. Do you know a person called Helen Lau – L-a-u?

A. Yes.

Q. Who was she?

A. At that time she was also with MAF and she was my secretary.

Q. She was your secretary. Did she have anything to do with Cando?

A. Yes, at one period she was the or one of the shareholders of the Cando Co.

30

Q. In her own right or was she holding it for somebody else?

A. For someone.

Q. "For someone else". For whom?

A. For Mr. Choo Kim San.

Q. "For Mr. Choo Kim San". How do you know that?

A. She also signed a trust deed.

Q. How do you know that?

A. Well, I brought along the deed for her to sign.

Q. You brought along the deed for her to sign?

A. Yes.

40

Q. Where did you get the deed?

COURT: Where did you get the deed from?

A. Mr. Choo Kim San told me to bring along Madam Helen Lau to Messrs. Peter

- Mo & Company to sign the deed.
- Q. And did you do so?
- A. Yes.
- Q. Was it before any particular person?
- A. Yes.
- Q. Who?
- A. Mr. Ives of Peter Mo & Company.
- Q. Now, I want to bring you now, please, to a company called the Bank of Trade – an American company? Do you know anything about that company?
- 10 A. A little bit.
- Q. How did you come to know about that company? What is the source of your knowledge?
- A. Mr. Choo Kim San told me so.
- Q. All right. Now, when did he first mention this company to you, approximately?
- A. In about '74 or '73.
- Q. Yes. And what did he tell you?
- A. He said that he had signed an agreement with someone for the purchase of that bank – the controlling shares of that bank.
- 20 Q. Yes. What else, if anything, did he tell you?
- A. And that he had already paid a part of the deposit.
- Q. Yes. Did he tell you anything else about the agreement to buy the controlling interest?
- A. Yes, it seemed that later he said that he didn't really want it, and he wanted his deposit money back.
- Q. Yes. Did he tell you whether the vendor had anything to say about that?
- A. He said that the vendor refused to return the deposit to him.
- Q. Yes.
- A. But instead the vendor would give shares to him.
- 30 COURT: What shares?
- A. Shares of that bank.
- Q. I see. Do you know if in fact he ever got those shares?
- A. I don't know, sir.
- Q. You don't know. Very well. We pass on now to something else. When did you first hear the name 'David NG Pak-shing'?
- A. In the middle of July, 1972.
- Q. Middle of July, '72. What happened at about that time?
- A. At that time, Mr. CHOO Kim-san bought the controlling interest of the San Imperial Corporation.
- 40 Q. Was it then called Imperial Hotel Holdings Ltd.?
- A. Yes.
- Q. And, at that time, you say you first heard the name 'David NG Pak-shing'. Can you tell us this: what was David NG's employment at that time so far as you know?
- A. I think he was the accountant.
- Q. For whom?
- A. For Harilela.

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Lee Ing-chee –
examination

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Lee Ing-chee –
examination

- Q. For Harilela. I can't recall whether I have asked you this before, but after Mr. CHOO bought the controlling interest in San Imperial did he have an office in Hong Kong – his own personal office in Hong Kong?
- A. Yes.
- Q. Where was that?
- A. One in the hotel and one on the upper floor of M.A.F. Corporation.
- Q. Let's take that step by step. The one in the hotel – did it have any room number?
- A. Yes.
- Q. What number was that? 10
- A. 204.
- Q. 204, Imperial Hotel.
- A. Yes.
- Q. And the one on the upper floor of M.A.F. Corporation – where was M.A.F. situated in Hong Kong?
- A. No. 59, Des Voeux Road, Central.
- Q. And he had his own private office in the M.A.F. Corporation office, is that right?
- A. Yes.
- Q. Very well. We will get back now to Mr. David NG. When you first saw him, 20 did you form any impression from his appearance as to whether or not he was a man of substance?
- A. Just a normal person.
- Q. Just a normal person. How would you describe his relationship with CHOO Kim-san?
- A. Got closer and closer.
- Q. Got closer and closer to CHOO Kim-san. Did you ever see David NG at Room 204 of the San Imperial Hotel?
- A. Yes.
- Q. I am not asking you how many times, but I would ask you was it often or was 30 it seldom.
- A. Very often, sir.
- Q. Very often. Would this usually be in the day-time or the night-time and what sort of hour would it be?
- A. Mostly in the evening, sir.
- Q. What do you mean by 'in the evening'?
- A. At about 7 to 8.
- Q. 7 to 8.
- A. At about 7 to 8.
- Q. And what would David NG be doing in the room when you saw him there, 40 speaking generally.
- A. Sometimes Mr. CHOO Kim-san asked him to help doing certain job for that company.
- Q. So, he was there for this purpose, not merely social purpose, is that right?
- A. That's right.
- Q. Can you recall one night late in 1972 when you were asked by CHOO Kim-san to go to Room 204?
- A. Yes.
- Q. When you got there, was there anybody else there?

- A. David NG was there. Supreme Court
of Hong Kong
High Court
- MR. CHING: May I have a moment, my Lord? I am not sure whether I have made this the subject of hearsay notice. May I just check? Plaintiff's
evidence
- (A pause).
- MR. CHING: No. No, apparently, I have not. I'll have to leave that for the moment and possibly come back to it later, my Lord, because even though no hearsay notice has been given it would of course be evidence against David NG himself and against CHOO Kim-san. Possibly, I could come back to that later. No. 40

Lee Ing-chee –
examination
- 10 Q. Mr. LEE, we know that Mr. CHOO Kim-san was arrested some time in the middle of 1976. Did you see him after he was arrested?
- A. Yes.
- Q. Where did you see him?
- A. At the coffee-house of the Hong Kong Hyatt Hotel.
- Q. At that time, were you still working for him or for any of his companies?
- A. No. At that time, I had already resigned.
- Q. You had already resigned. Can You say how long or give us the approximate date of this meeting at the Hyatt Hotel?
- A. On or about the 28th of June '76.
- Q. Did you have any conversation with him?
- 20 A. Yes.
- Q. Just generally speaking, what was that conversation about?
- A. He hoped that I could go back to work in his company and control the matters for him.
- Q. Was there any conversation about the loans that you had taken out in your own name from M.B.F.?
- A. Yes. The purpose of my going there was to discuss with him about that.
- Q. Did you tell him what you were going to do about that?
- A. Yes. I told him that I would engage a solicitor to sue him.
- Q. What was his reply?
- 30 A. At that time, he said: "I have no money and all the companies are not in my name. There is no use for you to sue me".
- Q. All right. I want to bring you now to the 11th of July of this year. Where were you on the 11th of July this year?
- A. I was in Taiwan.
- Q. Did you go to Taiwan with anybody?
- A. Yes, with a solicitor of Messrs. Johnson, Stokes & Master.
- Q. European or Chinese?
- A. European, sir.
- Q. His name please.
- 40 A. Christopher Wilson.
- Q. When did you arrive in Taiwan?
- A. We arrived at Taiwan on the evening of the 9th of July.
- Q. That was a Saturday.
- A. Yes.
- Q. What was the purpose of your going out to Taiwan on that occasion?

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Lee Ing-chee –
examination

- A. I hoped that I could see Mr. Chaw-I CHOW.
Q. CHOW Chaw-I, is that right – Chaw-I CHOW.
A. And HWANG Shang-pai.
Q. HWANG Shang-pai. You went out there to look for them.
A. Yes.
Q. Did you take anything with you – any documents with you?
A. Yes.
Q. All right. On the 11th of July, what happened?
A. On the morning of the 11th, we went to see a lawyer in Taiwan by the name
of Mr. T.C. HWANG. 10
Q. When you say 'we', is that Christopher and yourself?
A. Yes.
Q. And T.C. HWANG – his full name is HWANG Tsa-ching.
A. Yes.
Q. You went to see him in his office.
A. Yes.
Q. Did Mr. Wilson remain?
A. No. As soon as he saw Mr. HWANG, he left for the branch company of J.S.M.
in Taiwan.
Q. I see. Now, I don't want you to tell us about any conversation you may 20
have had with T.C. HWANG, but while you were in his office on the 11th of
July what if anything did T.C. HWANG do?
A. He arranged for a meeting for me and Mr. CHOW.
Q. Just a minute. How – by what means was this meeting arranged?
A. He rang up Mr. CHOW.
Q. He rang up Mr. CHOW.

MR. SWAINE: Sorry, but this is going to be hearsay of which there has been no
notice given. I may be anticipating the questions by my learned friend, but
it is important for obvious reasons. If Mr. HWANG is not going to be called,
we cannot have Mr. LEE saying that Mr. HWANG got hold of Mr. CHOW. 30

MR. CHING: If my learned friend would wait for the next question, he would see
how it is in fact possible without my calling Mr. HWANG.

Q. Mr. LEE, who spoke on the telephone from the office of T.C. HWANG?
A. Mr. HWANG spoke to Mr. CHOW.
Q. Who else spoke on the telephone?
A. I did.
Q. You spoke on the telephone to whom?
A. To Mr. CHOW.
Q. To Mr. CHOW. I don't want you to say what was said, but as a result of that
telephone conversation, what did you do? 40
A. We arranged a time for our meeting.
Q. Where were you to meet?
A. At the place where I was living – the V.I.P. House.
Q. Don't give us all the details, Mr. LEE. Just tell us this: at what time was
Mr. CHOW supposed to come and see you?
A. At six.

- | | | |
|----|---|---|
| | Q. At six, and where were you waiting at six o'clock? | Supreme Court
of Hong Kong
High Court |
| | A. In my room. | |
| | Q. In the V.I.P. House. | |
| | A. Yes. | |
| | Q. What happened then? | Plaintiff's
evidence |
| | A. When he arrived at the House . . . | |
| | Q. . . . At the V.I.P. House. | |
| | A. When he arrived at the V.I.P. House, he rang me up. | No. 40 |
| | Q. Your room. | |
| 10 | A. And then I went downstairs to meet him. | Lee Ing-chee –
examination |
| | Q. You met him. | |
| | A. Yes. | |
| | Q. You met him. | |
| | A. Yes. | |
| | Q. Where did you go with him? | |
| | A. After we had introduced each other, we went to the coffee-shop of the V.I.P. House. | |
| | Q. Yes. Were you with anybody when you went down to meet Mr. CHOW? | |
| | A. No. | |
| 20 | Q. Now, just answer this question 'yes' or 'no' please. Was Christopher Wilson with you when you went down to meet Mr. CHOW? | |
| | A. No. | |
| | Q. You went into the coffee-house with Mr. CHOW. Throughout the time that you were there with Mr. CHOW, did Mr. Wilson come in? | |
| | A. No. | |
| | Q. Up to the time when Mr. CHOW left you that day, had Mr. Wilson appeared at all? | |
| | A. No. | |
| | Q. How long did you spend with Mr. CHOW in the coffee-house? | |
| 30 | A. For over an hour. | |
| | Q. For over an hour. How did the conversation begin? I'm sorry. What language were you speaking? | |
| | A. In Mandarin. | |
| | Q. In Mandarin. Did you have any difficulty communicating with him or he with you? | |
| | A. No. | |
| | Q. How did the conversation begin? Just give us a few general details. | |
| | A. At first, we talked about our jobs – our professions, sir. | |
| | Q. Yes. Eventually, what was said? | |
| 40 | A. Eventually, I told him that my purpose of going there was to make enquiries into the 15 million shares of the San Imperial. | |
| | Q. Now, just think carefully please. You used the name in English or in Mandarin? | |
| | A. In Mandarin. | |
| | Q. What was the exact name you used in Mandarin? | |
| | A. 'The shares of San Dai Kok Hotel'. | |

INTERPRETER: 'San Imperial'.

MR. CHING: Thank you.

Supreme Court
of Hong Kong
High Court

Q. Very well. What then? You told him you had come to ask . . .

INTERPRETER: . . . To make enquiries.

Plaintiff's
evidence

Q. . . . about the 15 million San Imperial shares. What happened next?

A. Then I told him that according to my own understanding I knew that Mr. CHOW had already bought those 15 million shares.

No. 40

Q. Yes.

A. And those 15-million shares had been transferred to a Hong Kong company called the Fermay Company Ltd.

Lee Ing-chee –
examination

Q. Did you say the words 'Fermay Co. Ltd.' in English or in Mandarin?

A. As this company has no name in Chinese – therefore, I told him the English name: 'Fermay Company Ltd.' 10

Q. Did he reply to you?

A. Yes. He told me that he did not have the money to buy those shares.

Q. Did he say anything else?

A. He also said that one of his relatives in U.S.A. wanted to buy those shares but the shares would be in his name – in Mr. CHOW's name.

Q. Did he say anything else?

A. Later, I asked him something else.

Q. What did you ask him?

A. Later, I asked him I understood that those shares had already been sold by him to a company in Hong Kong – not a company, sorry – the shares had been sold to a certain person in Hong Kong. 20

Q. Yes. Did he say anything in reply?

A. Then I wrote him the name of Mr. David NG. I wrote as 'NG Pak-shing' in Chinese.

Q. On what did you write it?

A. There were some letter papers in the hotel. Therefore, I used the letter paper of the hotel.

Q. On the hotel notepaper.

A. Yes. I brought along with it myself. 30

Q. I think the best thing is you take your time now and tell us what happened after that. You wrote the name 'NG Pak-shing'. What happened after that?

A. In an affidavit in Hong Kong . . .

COURT: . . . Yes. Before you go on, are you telling us what was in the affidavit or are you telling us that you told Mr. CHOW what was in this affidavit?

A. I told Mr. CHOW that in an affidavit in Hong Kong, it says Madam LAU introduced Mr. David NG to Mr. CHOW.

Q. Yes.

A. The purpose was for Mr. NG to buy those 15 million shares from Mr. CHOW.

Q. Did he make any reply to this? 40

A. He said that he did not know Mr. David NG.

Q. Yes. Carry on please.

A. He also said that there had never been a Madam LAU who had introduced Mr. David NG to Mr. CHOW.

Q. Yes?

- A. Later, I told him that he had signed an agreement to sell those 15 million shares. Supreme Court of Hong Kong High Court
- Q. What did he say to that?
- A. He said he never had.
- Q. When he said that, what did you do? Plaintiff's evidence
- A. Then from Mr. David NG's affidavit I got out the agreement and showed the agreement to him.
- Q. What in fact did you have with you at that stage? Did you have the agreement? No. 40
- 10 A. The whole copy of Mr. David NG's affidavit. Lee Ing-chee – examination
- Q. I hand you this document first. Is that the copy of the affidavit you say you had with you?

MR. CHING: My Lord, that is page 27 of Red File 2.

Q. Is that a copy of it – sorry.

INTERPRETER: There's no date here.

MR. CHING: I know there's no date.

Q. Is that a copy of the affidavit?

A. I know that the affidavit of Mr. NG with him at that time was dated the 29th of June, sir.

- 20 COURT: (To Interpreter) Could you give him this? That's the one. My copy says the 29th of June.

MR. CHING: Yes. I am much obliged.

COURT: (To Interpreter) It's inside. It's the same copy. Take it from me that's the same copy.

Q. Now, Mr. LEE, there were seven exhibits to that affidavit. Did you have all the exhibits with you as well?

A. Yes. They were together with the copy of the affidavit, sir.

- 30 MR. CHING: My Lord, the exhibits are in Red File 1 and they begin at page 64 and end at page 89. My Lord, of course, I don't have the original of the copy that he showed Mr. CHOW, but could that copy that I handed to him be marked so as simply to show that it was a copy like that which he had with him?

CLERK: Marked P.6.

(A pause. Court checks exhibit numbers with Clerk).

MR. CHING: Could the affidavit; my Lord, be P.6?

COURT: Yes.

Q. You say that all the exhibits were attached to it. Would you look at this bundle please and see if those were the exhibits which were so attached?

A. Yes.

MR. CHING: May that be marked as well?

COURT: I see. What do you want in, Mr. CHING? The affidavit coupled with all the exhibits?

MR. CHING: They were stapled together at the time.

COURT: I see.

MR. CHING: According to his evidence, my Lord, . . .

10

(A pause).

MR. CHING: I think, my Lord, it should be one exhibit number – the affidavit plus the exhibits – P.6.

COURT: Yes.

Q. Very well. You had that with you, Mr. LEE. What did you do when Mr. CHOW said to you that he had not signed any agreement for the sale or purchase of the 15 million shares?

A. I showed him the agreement.

Q. Is that the agreement at page 78 of that bundle – beginning at page 78 of that bundle?

20

A. Yes.

Q. When you showed that to him, did you say anything to him?

A. I told him to read it slowly and also the signatures in the column, sir, and also the signatures at the end of the agreement.

Q. Did it appear to you that he was reading?

A. I only noticed that he looked at the signatures in the column and the signatures at the end of the agreement, but I don't know whether he read the contents of the agreement or not.

Q. Did he say anything?

A. Yes. Having read it, he said that it seemed that he had never signed it.

30

Q. It seemed that he had never signed it. Yes. Carry on.

A. He also said that he had never witnessed Mr. David NG sign his name here.

INTERPRETER: That's the signature here, sir, the last one (indicating).

Q. On the last page.

A. Yes. The last name in the agreement.

MR. CHING: That's the page at . . .

INTERPRETER: Page 80.

Supreme Court
of Hong Kong
High Court

Q. Yes. Carry on please.

A. He also said that his relative or relatives had signed documents for him.

Plaintiff's
evidence

INTERPRETER: I'm sorry. Correction, sir.

A. He said that his relatives had asked him, that is, Mr. CHOW, to sign on some documents.

No. 40

Q. Yes.

A. Therefore, he did not even know what he had signed.

Lee Ing-chee –
examination

Q. Carry on please.

10 A. Later I said to him that there was a company in Hong Kong called the Fermay Company Ltd. in which he was the major shareholder and the director.

Q. Which – who was the major shareholder?

A. Mr. CHOW and his wife.

Q. Yes.

COURT: (To Interpreter) Were the major shareholder and director.

INTERPRETER: Yes, sir.

20 A. They were the only shareholders of the Fermay Company Ltd., sir – the only shareholders of Fermay Company Ltd. – and directors. I showed him the return of allotment which proves that he and his wife had paid up \$9M. as the capital money of Fermay Company Ltd.

Q. Would you look at this please. Is that the same sort of thing that you showed him?

A. Yes.

INTERPRETER: Page 61, sir.

MR. CHING: My Lord, that's page 61 of Red File 1. This return of allotment to Fermay which was exhibited to Mr. HO Chapman's affidavit – may that be marked please?

CLERK: Exhibit P.7.

30 Q. Did you show him that?

A. Yes.

Q. When you showed him that, what happened then?

A. Then he said that he did not even know when this company was registered and that he never paid up any amount of money as the capital of that company.

Q. Yes. Carry on please.

A. Then I said to him that according to that agreement for the sale of the shares, he had received \$200,000 from Mr. David NG.

Q. Yes. Did he reply to that?

A. He said that he had never received any money.

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Lee Ing-chee –
examination

Q. Now, is that about where the conversation ended?

A. Yes.

Q. Now, I want you to go back I think to some of the other details. Did he ever say anything about the price of the shares?

A. Seems that he said that he did not know at what price the shares had been sold or purchased.

INTERPRETER: Sorry, sir. He said: "He said that he did not know at what price his relative or relatives had purchased those shares".

COURT: 'Relative' or 'Relatives'?

(Interpreter clarifies from witness).

10

A. Relative.

COURT: You said: "It seems that he did not know". You are not sure whether he said that or not.

A. He did say that, sir.

COURT: He did say that he did not know at what price the shares had been purchased by his relative. Is that what you are saying?

A. Right.

COURT: If you are certain, don't use the word 'seems', will you?

Q. Was there any conversation about the date of any sale and purchase?

A. He did not even know the date of the sale or purchase.

20

Q. Did he tell you that?

A. Yes.

Q. Did you ask him about my other details such as any details about his relative?

A. I asked him for the name of his relative, but he did not reply.

Q. He did not reply. Did you ask him about any other details such as through what – such as how a transaction of sale and purchase had been put through?

A. I asked him through which bank the shares were sold and purchased.

Q. Yes. Did he reply?

A. No, he did not reply.

Q. Did you say anything else to him?

30

A. I also asked him if it had gone through the Bank of Trade.

Q. Did he reply?

A. No, he did not.

Q. Now, you said that you wrote the name 'NG Pak-shing' in Chinese on a piece of paper – on a piece of hotel stationery. Did you write anything else at the time in the course of the conversation?

A. I recorded some thing or things I had asked him at that time, sir.

Q. I hand you now an original document. Would you look at that and say if that is in your handwriting.

MR. CHING: Perhaps your Lordship would like to have a photo copy.

Supreme Court
of Hong Kong
High Court

A. Yes.

MR. CHING: The difficulty is that, my Lord, there are certain corrections in a different hand in a different colour. That will be explained later.

Plaintiff's
evidence

A. It is in my handwriting, sir, except the words in red.

No. 40

Q. Except for the words in red.

A. Yes. They were written by Mr. Wilson because he said that I did something wrong in the grammar.

Lee Ing-chee –
examination

Q. Yes.

10 CLERK: Exhibit P.8.

MR. CHING: P.8. Thank you.

Q. Let's deal with this first, Mr. LEE. You see on the top of the first page there are three characters 'NG Pak-shing'. Is that in your hand?

A. Yes, with my own pen.

Q. With your own pen.

A. Yes, and the rest was written with the hotel's pen.

COURT: Yes. Let me have a look at it.

MR. SWAINE: May I see the original please.

(A pause).

20 Q. Those three characters 'NG Pak-shing' – were those the 3 characters that you wrote when you asked him if he knew of this person – when you said previously in your evidence that you wrote the name 'NG Pak-shing' in Chinese?

A. Yes.

Q. Very well. Now, so that there can be no doubt about it – when you introduced yourself to this person, did he say what his name was? CHOW what?

A. Yes, he did.

Q. What did he say?

INTERPRETER: The witness produced a photostat copy of the visiting card of Mr. CHOW. He said: "Mr. CHOW gave me one of his visiting cards."

30 MR. CHING: My Lord, I do recall something about this. I am not sure if it has been disclosed.

Q. Is this what he actually gave you or did you make a copy of it?

A. This is a photostat copy of his visiting card. I made a photostat copy. This one (indicating).

Q. I see. Where is the card – the visiting card?

A. I think it is in my house.

Supreme Court
of Hong Kong
High Court

Q. In K.L.?
A. In Kuala Lumpur.

Plaintiff's
evidence

MR. CHING: I'll have to consider what I have to do about it. My Lord, would that be a convenient time to break up?

No. 40

Appearances as before.

P.W.1 – LEE Ing-chee O.f.a.

Lee Ing-chee –
examination

XN. BY MR. CHING (Continues):

Q. Now Mr. Lee, you have told us about a visit to Taiwan where you arrived on the 9th of July?

A. Yes.

Q. When did you get back to Hongkong?

A. On the afternoon of the 12th.

Q. And did you go back to Taiwan again?

A. Yes.

Q. When was that?

A. On or about the 23rd July.

Q. Were you alone?

A. I went with a lawyer from Malaysia, Mr. Sivalingan.

Q. Is that Mr. Sivalingan sitting there with the dark glasses?

A. Yes.

Q. Now I just want you to answer these questions yes or no please, Mr. Lee. When you got there on that occasion did you try to contact CHOW Chaw-I again?

A. Yes.

Q. How many times approximately?

A. Three or four times.

Q. Would you just tell us by what method you tried to contact him?

A. By telephone.

Q. Please just answer this yes or no. Were you successful in contacting CHOW Chaw-I?

A. No.

MR. CHING: Thank you.

NO XXN. BY MR. YORKE.

Lee Ing-chee –
cross-examination

XXN. BY MR. SWAINE:

Q. Mr. Lee, tell me your qualifications, if any, professional or otherwise?

A. No.

Q. No qualifications?

A. No.

Q. Did you finish school?

A. Yes.

- Q. Did you finish secondary school? Supreme Court
A. Yes. of Hong Kong
Q. But did not go on to higher studies? High Court
A. No.
- Q. Are you of Malayan national? Plaintiff's
A. Yes. evidence
Q. Did you go to school in Malaya?
A. Yes. No. 40
Q. For your entire education, was it, in Malaya?
10 A. Yes.
- Q. Which of course is bilingual, isn't it – schools are bilingual, Chinese and Lee Ing-chee –
English? cross-examination
A. Yes.
Q. And was the medium of instruction in school English or Chinese, or both?
A. In the school where I studied it was Chinese.
Q. You were taught English in school?
A. Yes.
Q. You were, you say, before working for CHOO Kim-san a branch manager of
a finance office?
20 A. Yes.
- Q. And did you have any special training for this job or did you just sort of
pick it up as you went along?
A. I picked it up.
Q. Would you tell us your age, Mr. Lee?
A. 39.
Q. You said that you live in Kuala Lumpur at 35 Jalan Khalsa?
A. Yes.
Q. You came to Hongkong in 1972?
A. Yes.
- 30 Q. About the 3rd February 1972, according to your evidence?
A. Yes.
Q. Until then you were a resident of K.L., would that be right – a resident of
Malaysia?
A. Yes.
Q. When did you take up residence in K.L., that is your present residence?
A. June this year.
Q. And before that?
A. In Hong Kong.
- 40 Q. Then would I be right in saying that as from June this year you ceased to be
a resident of Hong Kong and you became a resident of K.L.?
A. No, I very often came to Hong Kong and lived here.

COURT: Did you cease to be a resident of Hong Kong in June this year?

A. Yes.

COURT: Did you then become a resident of K.L.?

A. Yes.

Supreme Court of Hong Kong High Court

COURT: Although you came to Hong Kong?

Plaintiff's evidence

No. 40

Lee Ing-chee – cross-examination

A. Very often, yes.

Q. And your coming to Hongkong while you were a resident of K.L. was presumably for the purpose of these and the related cases?

A. Yes.

Q. For no other purpose?

A. Mostly for these cases.

Q. What other reasons did you have?

A. I am still a director of a certain old company in Hong Kong.

Q. You mean the fragments of the old CHOO Kim-san empire? 10

A. No.

Q. Companies independent of CHOO Kim-san?

A. Independent.

Q. Since setting up residence in K.L. as from June have you got a home in Hong Kong?

A. Yes, I rented a flat.

Q. Where is this?

A. No. 13A, Nathan Road, Kam Wah Building. When I said 13A I meant 13th floor, flat A, Kam Wah Building, Nathan Road, No. 514 Nathan Road.

Q. And when did you rent this flat? 20

A. In 1976.

Q. Do you recall the month?

A. In about April or May. I can't remember clearly.

Q. Have you kept the flat ever since?

A. Yes.

Q. Even to this day?

A. I let my younger sister live in that flat now.

Q. Who pays the rent?

A. My brother-in-law, that is the husband of my younger sister.

Q. When did he start paying rent? 30

A. In about June or July this year.

Q. Coinciding with the time you left Hongkong to make home in K.L., is that right?

A. Yes.

Q. So it is really their flat, is it not?

A. It is still in my name.

Q. You don't have a lease of this flat, do you?

A. Yes.

Q. A written agreement for a lease?

A. Yes, signed in a solicitors' firm. 40

Q. Let me get the address right again. Did you say it was 514 Nathan Road?

A. Yes.

Q. Quite sure about that number?

A. Yes.

Q. What is the amount of the rent?

A. About \$900 odd, including the service charges. I have been living there for seven years.

Q. When you come to Hong Kong is that where you go to stay?

- A. At first I lived on the 10th floor and later I moved up to the 13th floor. Supreme Court of Hong Kong High Court
- COURT: What do you mean? You say you have been visiting Hongkong very often. Now you are saying, as I understand it, you live in a hotel, but in the beginning you were staying on the 10th floor, is that what you are saying? Plaintiff's evidence
- A. When I first came to Hongkong in 1972 I lived on the 10th floor. No. 40
- Q. Maybe you misunderstood my question. What I was asking was this: when you come to Hongkong now is that where you are staying, at the 13th floor flat in Kam Wah Building? Lee Ing-chee – cross-examination
- 10 A. I live in a hotel.
- Q. And have you lived at this flat since June of this year when you left Hongkong?
- A. Yes.
- Q. When was that?
- A. I forgot.
- Q. Was it in July, August, September, October?
- A. At about the end of June.
- Q. Were you living at this flat in July at all?
- A. No.
- 20 Q. Now you made an affidavit – you made many affidavits – you made an affidavit on the 15th July, 1977 in the present action and also in LEE Kon-wah's action. My Lord, this would be page 113 in the green file, green No. 3. My Lord, it is in both bundles, I have got both references, but it would be in green 3, page 113.
- COURT: Yes.
- Q. Do you recognise the affidavit?
- A. Yes.
- Q. Do you remember making an identical one in LEE Kon-wah's action on the same date?
- A. Yes.
- 30 Q. My Lord, you will see that in 110 of the same file. Just have a look at 110, confirm that that is your affidavit of the 15th July?
- A. Yes.
- Q. Do you see there you give your address as 13A Kam Wah Building?
- A. Yes.
- Q. One small point: the address there is given as 516, you say 514, is that a mistake?
- A. Actually Kam Wah Building occupies two numbers, 514 and 516.
- Q. It wouldn't be true to say, would it, that you were then living at Kam Wah Building on the 15th July?
- 40 A. I was still a tenant of that flat and I rented the flat.
- Q. It would not be right to say that you were still living there?
- MR. CHING: Would my learned friend please indicate where it says in the affidavits, or either of them, that he was still living there?

Supreme Court
of Hong Kong
High Court

MR. SWAINE: The question is was he still living there.

MR. CHING: The question was it is not right to say that he was still living there.

Plaintiff's
evidence

COURT: I understand the question now is: Were you still living there?

No. 40

MR. SWAINE: Yes.

A. No, I was not.

Q. In fact at the time that you were a resident of Kuala Lumpur?

A. Yes, a resident of K.L.

Q. Mr. Lee, this is going to be question as to legal procedure. If you don't know, say so. If you know, then for what it's worth, let's have your answer.

A. Yes.

Q. Are you aware that in court proceedings in Hongkong a plaintiff who is resident out of Hongkong is not in quite the same position as a plaintiff resident in Hongkong?

A. No.

Q. And do you know that in proper cases a plaintiff resident out of Hongkong can be made to put up securities or costs of his action?

A. I don't know.

Q. When you made the affidavit of the 15th were you trying to give a deliberate false impression that you were a resident of Hongkong?

MR. CHING: My Lord, I did tell my learned friend that I drafted and sent that affidavit. 20

MR. SWAINE: My Lord, that is not the point. I am asking the witness a question which he is perfectly capable of answering.

COURT: Carry on.

A. No.

Q. Mr. Lee, are you aware of an action by Fermay Company Limited against yourself?

A. I can't remember but I should.

Q. You should know?

A. I can't remember.

Q. There is such an action, will you take it from me?

A. Yes.

Q. Are you aware, Mr. Lee, that an order was obtained for substituted service of those proceedings against you?

A. I don't know.

Q. You don't know?

A. No.

Q. And does the action No. 420 of 1977 ring a bell?

A. Yes.

Q. So you are aware of an action against you by Fermay, are you? 40

A. Yes.

Q. You instructed solicitors in that action?

A. I did not know that until now.

Supreme Court
of Hong Kong
High Court

COURT: You did not know what until now?

A. That case, that Fermay Company sued me.

Plaintiff's
evidence

COURT: "I did not know Fermay sued me until this morning, until this minute"? No. 40

A. That's right.

Q. Are you saying that until I put the question to you, you were not aware of any action by Fermay against yourself, whatever the number?

Lee Ing-chee –
cross-examination

A. That's right.

10 Q. And you are quite sure of that now, are you?

A. Yes.

Q. Now you said that when you come to Hongkong for this case M.B.F. pays your air fares?

A. Yes.

Q. And they pay you reasonable living expenses?

A. Yes.

Q. And they are paying your present legal expenses?

A. Yes.

Q. What are reasonable living expenses, Mr. Lee, how much do they pay you?

20 A. I eat in the hotel and they would pay for the bills. I have my breakfast and meals in the hotel.

Q. They pay for your hotel accommodation?

A. Yes.

Q. And presumably all your other pocket expenses while in Hongkong?

COURT: By pocket expenses you don't mean pocket money?

MR. SWAINE: No, in addition to strictly living and eating there must be some other expenses, my Lord.

A. Yes, such as taxi fares.

30 Q. So would it be true to say you don't spend a cent of your money when you are in Hongkong for these and related proceedings?

A. I must pay for my personal expenses.

Q. What personal expenses?

A. Such as sometimes I go out to see my friend for a talk and we have tea, then I pay the tea money.

Q. Entertainment comes out of your own pocket?

A. Yes.

Q. Shopping would come out of your own pocket?

A. Yes.

40 Q. You had been out of employment prior to your starting this tin mine with LEE Kon-wah, is that correct.

A. I had my own business in Hongkong.

Q. These directorships, is that right?

Supreme Court of Hong Kong High Court

Plaintiff's evidence

No. 40

Lee Ing-chee – cross-examination

A. Yes.

Q. All right, we will come to these in a minute. How many times have you been to Hongkong on M.B.F. business? When I say M.B.F. business I mean this action and the related actions.

A. Many times. I can't remember how many times.

Q. Ten or more?

A. It is very difficult for me to count. Whenever I was required I must come.

Q. So more than ten?

A. About ten times.

Q. And when did you first come to Hongkong on M.B.F. business? 10

A. I can't remember.

Q. Let me refresh your memory on this, Mr. Lee. You made your first affidavit in Hongkong in what I will call the M.B.F. proceedings in December 1976.

A. At that time I was living in Hongkong.

Q. Yes, of course. So when you say about ten times you mean as from June this year?

A. Yes.

Q. Do you remember making an affidavit in this present action in December 1976, the particular date being 3rd December, 1976, when you applied for an ex parte attachment against CHOO Kim-san? 20

A. Yes.

Q. And was M.B.F. paying your legal expenses even then?

A. Yes.

Q. And in addition to the legal expenses was M.B.F. paying you anything else at that time?

A. Sometimes they wanted me to fly back to Kuala Lumpur and they paid for the tickets.

Q. When did M.B.F. start paying any part of your expenses – leaving aside the legal expenses – when did they start paying any part of your expenses?

A. In July or August 1976. 30

Q. That is, last year?

A. Yes.

Q. And it was just air fares or also living expenses?

A. That's right, just the air fares, and the legal expenses.

Q. Living expenses.

A. No, at that time I was living in my elder brother's place in Kuala Lumpur.

COURT: No living expenses?

A. No.

Q. At that time you were living at your elder brother's place in Kuala Lumpur?

A. Yes, and sometimes I only stayed there for one night or two nights and then I came back. 40

Q. So Hongkong was your base and you used to fly to K.L. during that early period, is that right?

A. Yes.

Q. And your living expenses in Hongkong from July 1976 did M.B.F. make any contribution?

A. No.

- Q. But you were required to fly out to K.L. on M.B.F. business, i.e. these proceedings, from time to time during 1976, is that correct? Supreme Court of Hong Kong High Court
- A. Not very often, very seldom.
- Q. How often is very seldom between July of last year and June of this year?
- A. About ten times – more times in this year, very few times last year. Plaintiff's evidence
- Q. That is more times in the first half of this year than in the last half of last year, is that right?
- A. Yes. No. 40
- 10 Q. And did M.B.F. pay any of your living expenses when you were in K.L. during this year?
- A. No. Lee Ing-chee – cross-examination
- Q. Now you said that you resigned from your posts with CHOO Kim-san as from 1st April, 1976?
- A. Yes.
- Q. Would it be fair to say that within some 3 or 4 months you have crossed over to Dato Loy's side?
- A. Yes.
- Q. Would it be a fair summary to say that there was a past struggle for control between Dato Loy and CHOO Kim-san for the empire?
- 20 MR. CHING: There are many empires, even in this case. Which empire?
- Q. The M.B.F. empire.
- A. That I don't know.
- Q. You did know, did you not, that CHOO Kim-san was boss of the M.B.F. empire up to your resignation?
- A. Yes, in Hongkong.
- Q. What about the M.B.F. empire in Malaysia, was he not boss of that empire as well at one time?
- A. He was.
- Q. And who is the present boss of the M.B.F. empire in Malaysia now?
- 30 A. Dato Loy.
- Q. When did he become boss, do you know?
- A. That I don't know.
- Q. About the time of your resignation?
- A. Before I resigned.
- Q. Do you know how long before?
- A. I did not know that until M.B.F. sued me for the money.
- Q. Just answer the question?
- A. About a month before I resigned.
- 40 Q. Were you aware of any past struggle between CHOO Kim-san and Dato Loy?
- A. No.
- Q. You were intimate to CHOO Kim-san as from 1972 and you say you were not aware of any past struggle between himself and Dato Loy?
- A. I didn't know.
- Q. In any event when you crossed over in July 1976 Dato Loy was firmly in control, is that right?
- A. Yes.
- Q. And that would be about a month after CHOO Kim-san's arrest in Hongkong

Supreme Court of Hong Kong High Court

Plaintiff's evidence

No. 40

Lee Ing-chee – examination

which was on the 25th June, 1976?

A. Yes.

Q. These directorships of yours which you still hold, Mr. Lee, how many companies are involved?

A. You mean Hongkong?

Q. You have got directorships elsewhere, have you?

A. No.

Q. Well, are we not then talking about directorships in Hongkong?

A. Only one.

Q. Which is this? 10

A. Cathay Malaysia Trading Limited.

Q. And are you also a shareholder?

A. Not now.

Q. You used to be a shareholder?

A. Yes.

Q. You are still a director?

A. Yes.

Q. How many shareholders are there now?

A. About four.

Q. When you were shareholder how many shareholders were there? 20

A. Six or seven.

COURT: Including you?

A. Including myself, and now I think there are five.

Q. What was the issued capital of Cathay when you were a shareholder?

A. \$600,000.

COURT: What is the period you are talking about now?

Q. When was Cathay started?

A. 1st April, 1976.

Q. How much did you put up?

A. \$150,000. At the beginning the capital money was only \$300,000. 30

COURT: You are talking about Hongkong dollars all the time, are you?

A. Yes.

Q. You took out \$150,000 in cash, did you?

A. Yes.

Q. And the other \$150,000 how many shareholders were there then?

A. Four or five.

Q. So you were the major shareholder?

A. Yes.

Q. When the capital was increased to \$600,000, did you take up more cash or did you stay at \$150,000? 40

A. Well, I stayed at the amount of \$150,000 and we had new shareholder/shareholders.

Q. When did you sell out your shareholding, Mr. LEE?

- A. In May or June this year. Supreme Court
of Hong Kong
High Court
- Q. How much did you get for it?
- A. About \$100,000.
- Q. So the company has been going at a loss, has it?
- A. Yes. Plaintiff's
evidence
- Q. Did it pay any dividends while you were a shareholder?
- A. No.
- Q. Never? No. 40
- A. Never.
- 10 Q. Did you get a director's fee? Lee Ing-chee –
cross-examination
- A. Yes.
- Q. How much was that?
- A. I think at that time it was about \$3,000 or \$4,000 a month.
- Q. From when to when?
- A. From the 1st of April 1976 to about the end of April 1977.
- Q. And since the end of April 1977, have you been receiving any director's fees?
- A. No.
- Q. Well, in the light of what you have said, as from June this year when you
came to Hong Kong many times, how many times did you come on the busi-
ness of Cathay as distinct from the business of M.B.F.?
- 20 A. Never.
- Q. Never?
- A. Never.
- Q. Just to make this point clear, Mr. LEE, every time you have come to Hong
Kong since setting up home in K.L. you have come on M.B.F. business –
is that right?
- A. Yes.
- Q. Never because of your directorship?
- A. Never.
- 30 Q. If you had said that formerly in your evidence, then that would have been
wrong?
- (Pause. No reply.)
- Q. If you had said it in your evidence earlier on, that would be wrong?
- A. Yes.
- Q. Very well. The \$100,000 that you got from your sale of the Cathay shares,
were you not in a position to finance your litigation against CHOO Kim-san?
- A. Well, I had to maintain a living for my family.
- Q. You took \$100,000 in cash out of Cathay, is that right, on the sale of your
shares?
- 40 MR. CHING: That really must be rephrased. How can you say "took out of
Cathay"?
- MR. SWAINE: Sorry, you got \$100,000 in cash on the sale of your shares in
Cathay?
- A. Well, I only received a part of the money.

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Lee Ing-chee –
cross-examination

- Q. How much did you receive?
A. I have received \$50,000.
Q. Do you hope to get the rest?
A. Yes.
Q. It is not going to be written off as a bad debt?
A. No.
Q. Not one cent of your own money has gone into this – into your action against CHOO Kim-san?
A. Right.
Q. You have to maintain your family, you say. You have got a wife and children? 10
A. Yes, 3 children.
Q. How do you now manage to provide for them, Mr. LEE, and for yourself?
A. Well, I had some savings.

COURT: “I had” or “I have”?

- A. I had.
Q. So when you resigned from the CHOO Kim-san empire, you had savings?
A. Yes.
Q. How much, Mr. LEE?
A. \$30,000 to \$40,000. I think \$40,000.
Q. Did you at that time own any properties or assets beyond the actual savings 20
and the Cathay shares?
A. No.
Q. So \$90,000 – When you resigned – I’m sorry. Your shares in Cathay and your
savings were all you had to show by way of material wealth when you resigned
from the CHOO Kim-san empire?
A. Yes.
Q. You have not been employed since your resignation in April last year – is that
right?
A. Well, I had my own business. I managed the business of Cathay Malaysia
Trading Limited. 30

COURT: Is that the same tin mine or not?

- A. No, it is an export and import company in Hong Kong, sir.
Q. That occupied your time, did it, from 1st of April 1976 when it started to
May or June 1977, when you sold your shares?
A. Yes.
Q. And was it a full-time engagement during that period?
A. Yes, full-time.
Q. And you were making a living salary, were you, \$3,000 to \$4,000 a month as
director’s fee?
A. Yes. 40
Q. During that period of time when you were engaged upon the business of
Cathay, did you look for other jobs?
A. No.
Q. When you were asked in evidence-in-chief whether you had tried to find em-
ployment and you said yes, but you were unsuccessful, what did you mean

- Mr. LEE? Supreme Court
of Hong Kong
High Court
- 10 A. When I went back to Kuala Lumpur, I looked for a job but I was unsuccessful,
sir.
- Q. I see. So that would be as from June this year?
- A. Yes. Plaintiff's
evidence
- Q. You were unsuccessful because you say you had to come to Hong Kong very
often because of this case?
- A. Yes. No. 40
- Q. Would that really be true, Mr. LEE?
- 10 A. Yes. Lee Ing-chee –
cross-examination
- Q. Or is it the fact that you don't have to look for another job because M.B.F.
is looking after you?
- A. No.
- Q. Why did you sell out your shares in Cathay and gave up your director's fee?
- A. It was because the standard of living in Hong Kong was higher.
- Q. You mean it was more costly to live in Hong Kong – is that what you are
saying?
- A. Yes.
- Q. So you went to K.L. where living is cheaper – is that right?
- 20 A. Yes.
- Q. Was it really because in K.L. you knew you would be looked after by M.B.F.?
- A. No.
- Q. You started a tin mine in K.L. – was it K.L. you started a tin mine?
- A. Ipoh.
- Q. Ipoh, I see. When was this?
- A. At the end of September this year.
- Q. So from June 1977 until the end of September you were without employment?
- A. Yes, right.
- Q. This tin mine is a partnership with LEE Kon-wah – is that right?
- 30 A. Yes.
- COURT: Is it a partnership or a company?
- A. Partnership.
- Q. The 2 of you are the only partners?
- A. Yes.
- Q. How well did you know LEE Kon-wah, Mr. LEE?
- A. I have known him for a few years.
- Q. He has always lived in K.L. – is that right?
- A. Yes.
- Q. Whereas you have lived in Hong Kong since 1972 and you have so lived until
the middle of this year?
- 40 A. Yes.
- Q. So how did you come to know LEE Kon-wah?
- A. He and I worked in the same organization in Kuala Lumpur.
- Q. When was this?
- A. In 1970.
- Q. And did this continue until you came to Hong Kong in February 1972?
- A. Yes.

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Lee Ing-chee –
cross-examination

- Q. So in K.L. how long had you known him?
A. For about a year.
Q. One year.
A. We very often talked to each other.
Q. He was also an employee of CHOO Kim-san empire, was he?
A. Yes.
Q. Would you say that in one year you became close friends or were you merely working acquaintances?
A. Work acquaintances.
Q. But there was no opportunity between February 1972 when you came to Hong Kong and June 1977 when you left Hong Kong to become friends with LEE Kon-wah. 10
A. Oh, yes, because I very often went back to Kuala Lumpur.
Q. You there renewed your acquaintance with LEE Kon-wah – is that right?
A. Yes.
Q. Would you say that you became friends or did you just remain business acquaintances?
A. At that time we began to be friends.

COURT: What time?

- A. In 1972, sir. 20
Q. You became friends in 1972?
A. Yes, it was closer, the relationship between us was closer.
Q. Would you describe it as a casual friendship renewed from time to time when you went to K.L.?
A. We were like brothers.
Q. You were like brothers. Were you closer to LEE Kon-wah than to CHOO Kim-san over the years?

MR. CHING: My Lord, at this stage I must object. We've had an hour and a half of this sort of cross-examination and still not know what my learned friend is trying to prove. May I ask him where is he trying to go. If he cannot say how these questions are relevant, then I must respectfully ask your Lordship to stop this type of cross-examination. 30

MR. YORKE: I support my learned friend's submission. The effect of your Lordship's ruling is that the only issue in these proceedings is whether or not the defendants have any beneficial interests with those of CHOO Kim-san in certain assets within the jurisdiction. For my part I fail to understand how any of this cross-examination goes to the type of assets within the jurisdiction.

MR. SWAINE: My Lord, the witness does speak and understand English. I am loath to interrupt by having him leave every time there is an objection, but it may be the better course to take than to have him remain in court while the objections are made and answered. 40

COURT: I see. You are going to give me a reply and it would be better for him to leave?

MR. SWAINE: Yes.

Supreme Court
of Hong Kong
High Court

COURT: Very well.

(Witness leaves courtroom)

Plaintiff's
evidence

MR. SWAINE: My Lord, the bias of witness in favour of a party is always a matter for cross-examination as to credit. Really, I take offence at my learned friends objecting in the course of a cross-examination which goes directly to this witness's partiality and therefore his credit.

No. 40

Lee Ing-chee –
cross-examination

COURT: Have you anything further to say, Mr. CHING?

10 MR. CHING: My Lord, with great respect, my learned friend is bound by the answers of credibility. He's been fishing around now in a shallow pond and he hasn't caught anything. I mean there are limits, my Lord, to which one can go insofar as credibility is concerned and in this case, let us suppose that Mr. LEE Ing-chee were completely disbelieved, which part of his evidence will my learned friend say should not be believed? I assume that part of the evidence concerning the conversation in Taiwan. With great respect, can we not get to the conversation in Taiwan rather than fish in shallow waters?

20 MR. YORKE: My Lord, slightly differently and further, my Lord, which is simply this – of course, we're paying for his stay; of course we're paying his airfare, hotel bills and everything else. Of course, therefore, it must be obvious that he owes a certain degree of loyalty to us. Also, of course, my Lord, we concede that if we succeed in this action, then an enormous financial burden will be lifted both off LEE Ing-chee and for that matter, off LEE Kon-wah. Both men we could make insolvent in Malaysia tomorrow if we chose and therefore they have an obvious interest in the outcome of the proceedings, apart from direct value of their own judgments. That requires no cross-examination at all because it is obvious from our own evidence and therefore my learned friend has got all the bias that he needs. If he is going further to establish dishonesty apart from bias, then he's either ought to go to the conversation or got to go to credit in which case he is stuck with the answers of the witness.

30 COURT: I'm not stopping you, Mr. Swaine. I think unless you succeed in getting what you want within a reasonable period of time, it is best not to go on pressing. It would be rather a wasted effort if you keep at it and not get much out of an answer.

MR. SWAINE: My Lord, I shall certainly bear your Lordship's direction in mind.

COURT: I think it is too late to have a mid-morning adjournment now. I propose to go on until say half-past 12 and then adjourn.

MR. SWAINE: If you so please, my Lord.

(Witness returns to courtroom.)

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Lee Ing-chee –
cross-examination

Q. The last question was, were you closer to LEE Kon-wah than you were to CHOO Kim-san?

A. About the same.

Q. About the same. Now, you obtained from M.B.F. a guarantee of M\$15,000 towards the running of this tin mine?

A. Yes.

Q. Guarantee given to yourself and LEE Kon-wah jointly?

A. \$15,000 each.

Q. Oh! Each?

A. Malaysian currency.

10

Q. Without it would you have been able to start this tin mine?

A. No.

Q. Why was M.B.F. being so generous with you and LEE Kon-wah?

A. No one else could help us, therefore we approached M.B.F.

Q. Why did you approach M.B.F. at all?

A. The others did not know us well, therefore they would not guarantee for us.

Q. M.B.F. were your judgment creditors, were they not?

A. Yes.

Q. And the judgment creditors of LEE Kon-wah?

A. Yes.

20

Q. Therefore they furnished guarantees in your favour and that of LEE Kon-wah?

A. Yes.

Q. Was it a case of your helping them with this case and M.B.F. helping you with the guarantee?

A. No.

Q. Are you saying that they did it out of the generosity of their heart?

A. Yes, that is because Dato LOY knew us better.

Q. Now, you say that from July 1972 you became good friends with CHOO Kim-san?

A. Yes, the relationship was closer.

30

Q. And it became even closer over the years?

A. Yes.

Q. To the point where you were like brothers?

A. No.

Q. You became very good friends, is that your evidence?

A. The relationship was very close.

COURT: Did you become very good friends or not?

A. It is very difficult for me to say, sir.

COURT: It is not difficult to say whether you are very good friends with somebody or not.

40

A. He was my boss.

COURT: But did you become good friends or not?

A. The relationship was very close.

	COURT: Did you become very good friends or not?	Supreme Court of Hong Kong High Court
	A. Yes.	
	COURT: Why couldn't you have said that 5 questions ago? I think it would be fair to say the relationship was also that of employee and colleague?	Plaintiff's evidence
	A. Yes.	No. 40
	Q. And you also got to know his wife?	
	A. Yes.	
	Q. You knew her as Mrs. CHOO?	Lee Ing-chee – cross-examination
	A. Yes.	
10	Q. You did not know whether she was his lawful wife – is that correct?	
	A. I did not know.	
	Q. She was Madam KHOO Siew-kin, is that correct?	
	A. Yes.	
	Q. In February 1976 you were still in charge of M.A.F. Corporation, were you not?	
	A. Yes.	
	Q. And are you aware of a writ issued by MAF Corporation against Madam KHOO?	
	A. Yes.	
20	Q. And what was that writ for, Mr. LEE?	
	A. We sued her because she owed the company money.	
	Q. Yes and was this on account of the purchase of a flat for Madam KHOO?	
	A. Yes.	
	Q. You recall the address of that flat?	
	A. No, I can't.	
	Q. Was it the flat at Hillwood Road, Mr. LEE?	
	A. No, it is on the upper level.	
	Q. Yes, I think it is Picadilly Mansion at Po Shan Road – is that right?	
	A. Yes.	
30	Q. And that was the flat in the name of Madam KHOO – is that right?	
	A. Yes.	
	Q. So M.A.F. Corporation was suing for loans made to Madam KHOO for the purpose of buying this flat?	
	A. Yes.	
	Q. And claiming an equitable mortgage on that flat?	
	A. Yes.	
	Q. And CHOO Kim-san in that action made an affidavit on the 21st of February 1976. Are you aware of such an affidavit?	
	A. No.	
40	Q. Would you look at the Defendants' bundle, Document 7, please. You can take it from me, Mr. LEE, this is a copy of the affidavit made by Mr. CHOO Kim-san in that action on the 21st of February 1976.	
	A. Yes.	
	Q. Would you look at paragraph 6 on the second page? You see that he claims that M.A.F. Corporation is entitled to an equitable mortgage on that premises?	
	A. Yes.	

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Lee Ing-chee –
cross-examination

- Q. You see in paragraph 7 he is asking for a preservation order on that flat?
A. Yes.
Q. Was this action against Madam KHOO brought on the instructions of CHOO Kim-san?
A. That I don't know, sir.
Q. Oh! On whose authority was the action brought?
A. I can't remember.
Q. Can't remember?
A. For most of the time in February 1976, I was in Thailand.
Q. You knew of this action, did you not? You were then in charge of M.A.F. Corporation? 10
A. That was a dispute between the husband and wife. Therefore I do not know.
Q. Did you know in the early part of 1976 there was such a dispute between husband and wife?
A. Yes.
Q. When did you first learn that that dispute had erupted into an action in court?
A. I don't know.
Q. When did you first know, Mr. LEE?
A. After the company sued her, he told me about it.
Q. When was this? When did he tell you? 20
A. I can't remember.
Q. Was it a matter of weeks or months afterwards?
A. About a week after.
Q. So in any event in the early part of 1976 you knew the dispute had erupted into a court action?
A. Yes.
Q. And did they patch up, Mr. LEE, or did they remain antagonistic?
A. It seems that they later patched up, sir.
Q. I see. Why do you say that?
A. I heard some member/members of the staff say so. 30
Q. You did not hear from Mr. CHOO Kim-san himself?
A. No, because I resigned on the 1st of April 1976.
Q. Well, were you aware after your resignation whether they were still living together or they were separated?
A. I don't know.
Q. That you don't know. Now, you made an affidavit on the 13th of May 1977 in LEE Kon-wah's action – my Lord, that will be page 53 in the green (3) bundle, page 44 in the other bundle. My Lord, it will be both in pink (3) and green (3), page 53.

COURT: It is not legible. What date is it? 40

MR. SWAINE: It is the 31st May, according to page 8 of the affidavit itself. That affidavit was affirmed and your Lordship's copy may have his signature.

COURT: Yes.

MR. SWAINE: May, 1977.

	COURT: Yes.	Supreme Court of Hong Kong High Court
	Q. Look at your signature at page 8 and look at the date.	
	A. Yes.	
	Q. You remember that affidavit?	Plaintiff's evidence
	A. Yes.	
	Q. You remember its object was to get substitute of service of LEE Kon-wah's judgment – ?	No. 40
	A. Yes.	
	Q. – by advertisement in Hong Kong?	
10	A. Yes.	Lee Ing-chee – cross-examination
	Q. You see in paragraph 20 what you said in support of that application: “At all material times when I spoke to the Defendant he was in Hong Kong. His wife Madam KHOO Siew-kim is still residing in Hong Kong with the Defendant’s daughter at 41 Hillwood Road, 11th floor, Kowloon. In view of the circumstances I say it is reasonable to presume that the Defendant is still in Hong Kong.” Do you see that?	
	A. Yes.	
	Q. In May 1977 did you know whether CHOO and his wife had patched up or was still antagonistic?	
20	A. No.	
	Q. You did not. Did you really think, Mr. LEE, having regard to the circumstances that because Madam KHOO was in Hong Kong, it was reasonable to presume that CHOO Kim-san was still in Hong Kong?	
	MR. CHING: With the greatest respect, my Lord, that paragraph does not simply rely –.	
	MR. SWAINE: Yes, I will come to the other bit later.	
	MR. CHING: But the question that was asked is “Did you really think that because KHOO was in Hong Kong it was reasonable to presume . . .?” It is a misleading question.	
30	MR. SWAINE: My Lord, there are 2 elements. He has had the passage read to him.	
	COURT: Yes.	
	MR. SWAINE: Unless my learned friend wants me to conduct cross-examination along the lines that he would prefer, then that objection is frivolous and, my Lord, cuts into cross-examination which is a matter that I take exception with.	
	MR. CHING: The objection is because the question as framed is misleading. If my learned friend wishes to take exception to my objection, he must be more precise in his question.	
40	COURT: Well, I haven’t read it yet. Is there another part that should be put to the witness?	

Supreme Court
of Hong Kong
High Court

MR. SWAINE: My Lord, it is all in paragraph 20.

MR. CHING: It is not all in paragraph 20.

Plaintiff's
evidence

COURT: Beg your pardon?

No. 40

MR. CHING: It's not all in paragraph 20. Paragraph 20 says, "In view of these circumstances I say it is reasonable . . ." Is my learned friend saying that that must mean paragraph 20 alone and nothing else in the whole of that affidavit? And if so, why does he say so? And if that is not what he is saying, then do not, please, mislead the witness.

Lee Ing-chee –
cross-examination

COURT: Without knowing what the contents of the affidavit are, is there anything else in this affidavit that you will be relying on in your cross-examination of this witness on this particular aspect of the case? 10

MR. SWAINE: Para. 20 sets out the circumstances and leads to a conclusion.

COURT: You say then that the circumstances referred to in paragraph 20 are the circumstances –.

MR. SWAINE: – set out in paragraph 20.

COURT: – set out in paragraph 20.

Q. Mr. LEE, you tell me, you made this affidavit –.

MR. CHING: My Lord, just one moment. I am objecting to the question. My learned friend cannot bull-doze his way through and get an answer to a misleading question. If he wants the witness to leave the courtroom, by all means tell him to do so, but I will be heard on my objection and I will not be bull-dozed by having the witness answer a misleading question which is clearly misleading. 20

COURT: (To witness) Will you go out?

(Witness leaves courtroom.)

MR. CHING: How it can be that a bottom-of-the-barrel question such as this can not only be asked, but be persisted in, I don't know. Your Lordship will recall that a few moments ago the witness confirmed that this affidavit was made for the purposes of getting substituted service and yet my learned friend says, despite the fact there are 20 paragraphs in this affidavit, my learned friend says that all the circumstances are in paragraph 20. If that be so, apparently the affidavit could have consisted of one paragraph. But paragraph 20 says, "At all material times when I spoke to the Defendant he was in Hong Kong." That refers back to his conversations which were mentioned earlier in the affidavit. Then it goes on to the last sentence, "In view of these circumstances . . .," "these circumstances" including, as my learned must obviously 30

know, the fact that he had set up companies in Hong Kong; the fact he was chairman and managing director of companies in Hong Kong; the fact that he had substantial assets in Hong Kong. It embraces the whole of the affidavit and if it did not, then paragraph 20 would have stood alone as a one-paragraph affidavit upon which to base the request for substituted service.

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

COURT: Your argument is this, Mr. CHING, that paragraph 20 really means this: that in view of the fact that his wife was in Hong Kong and in view of the fact that CHOO Kim-san had assets and companies in Hong Kong —.

No. 40

10 MR. CHING: My Lord, in view of the fact that his wife was still residing in Hong Kong, in view of the fact that his daughter was residing with the wife at Hillwood Road and in view of all of the circumstances referred to in the affidavit.

Lee Ing-chee --
cross-examination

COURT: — which were that he had companies —.

MR. CHING: — he had companies, he had assets —.

COURT: — in Hong Kong, therefore it is reasonable to presume —.

MR. CHING: Yes.

COURT: I see. What do you say to that, Mr. Swaine?

MR. SWAINE: My Lord, one element in the circumstances is the statement that Madam KHOO was still residing in Hong Kong.

MR. CHING: One element —.

20 COURT: Yes.

MR. SWAINE: My Lord, I am entitled to pursue each element to see whether it stands up to scrutiny.

COURT: Yes, but the way you put your question, Mr. Swaine, indicated that this was the only element that you are relying on or you are alleging that this was the only element which led the witness to come to the view that the Defendant CHOO Kim-san was in Hong Kong.

30 MR. SWAINE: My Lord, I regret that is the impression given because I had directed his attention to para. 20 which speaks of the circumstances, specifying in particular, his conversations with the Defendant and the fact that his wife and daughter were living in Kowloon. I will rephrase the question.

(Witness returns to courtroom.)

MR. SWAINE: My Lord, the only way that I can conduct this cross-examination without appearing to be unfair is for this witness to go through the affidavit and then let him say on what circumstances he was relying when he said it

Supreme Court
of Hong Kong
High Court

was reasonable to presume certain things. What lies in Mr. CHING's mind and what lies in my mind may be far removed from what lies in the witness's mind and that is what we are seeking to probe.

Plaintiff's
evidence

COURT: Very well.

No. 40

Lee Ing-chee –
cross-examination

Q. Mr. LEE, would you want to read this affidavit through or are you able to say, having made this affidavit at the end of May this year, what the circumstances were that you were relying on in paragraph 20 when you said it was reasonable to presume that CHOO Kim-san was still in Hong Kong? Are you able to answer?

A. Well, Mr. CHOO's wife and daughter were in Hong Kong. 10

Q. Yes.

A. Due to their relationship, sir, he must contact his wife and daughter.

Q. And were you relying on any other circumstances for presuming that CHOO Kim-san was still in Hong Kong?

A. No.

Q. No. What made you think she was living at 41 Hillwood Road?

A. His wife has come to my place to visit me on 2 occasions.

Q. Yes and did she tell you that she was living at Hillwood Road?

A. Yes.

Q. Was she not then living at – sorry –. 20

Q. So, you resigned on 1st April '76?

A. In February 1976 I was living at 30A, Kam Wah Building, 514-516 Nathan Road.

Q. I'm afraid that wasn't the question. You say you resigned from Choo Kim San's employment on 1st April '76.

A. Yes.

Q. Did you resign or were you sacked?

A. I resigned.

Q. All right. You have given evidence that Choo Kim San arranged for the execution of trust declarations by various people. 30

INTERPRETER: “. . . trust . . .

MR. SWAINE: Trust declarations.

A. Yes. Right.

Q. You signed in his favour?

A. Yes.

Q. So did Lee Kwong Wah?

A. Yes.

Q. So did Miss Helen Lau.

A. Yes.

Q. So did Mr. Choon Chee-seng? 40

A. Yes.

Q. So did Tunku Abdullah.

A. Yes.

- Q. Would you say that Choo Kim San was a very cautious sort of person? Supreme Court of Hong Kong High Court
- A. Very difficult for me to say, sir.
- Q. Do you know why he required you to make a declaration of trust in his favour?
- A. No. Plaintiff's evidence
- Q. You've got to be very close to him, did you say, over the years. Did you form no views as to his character as regards whether he was very cautious about people? No. 40
- A. No.
- 10 Q. You formed no view one way or the other; is that right? Lee Ing-chee – cross-examination
- A. That's right.
- Q. You formed no view at all as to why he wanted these declarations of trust from these various people that you mentioned in your evidence?
- A. Well, some people made their own request to Mr. Choo to sign the trust declarations.
- Q. Well, did you make such a request or was it his idea?
- A. Yes, I made.
- Q. You made a request?
- A. Yes.
- 20 Q. He told you on one or two occasions to go to Peter Mo & Co. to get the declarations made?
- A. I did not go to Messrs. Peter Mo & Co. to sign the trust declaration, sir, but he told me to inform the other people to go there to do that.
- Q. Very well. Would you look again at your Affidavit of the 31st May 1977?
- MR. SWAINE: My Lord, I want the exhibits which unfortunately are in a separate file. I refer to black 4 at page 31.
- INTERPRETER: Black 4.
- MR. SWAINE: My Lord, it's actually Exhibit 2 that I want which would then appear at page 32.
- 30 Q. Now, this is a copy letter exhibited to your Affidavit of the 31st May, 1977. You see, it's a letter from the solicitors, Ipoh, to the solicitors in Hong Kong.
- A. Yes.
- Q. It's dated the 2nd October 1976.
- A. Yes.
- Q. And that letter was written on behalf of San Development Company (Berhad).
- A. Yes.
- Q. The solicitors in Ipoh being Lim Kean Chye & Co. Do you see that?
- A. Yes.
- Q. And they are the same firm of solicitors acting for yourselves – for yourself; is that right?
- 40 A. Yes.
- Q. Writing to Woo, Kuan & Lee in Hong Kong.
- A. Yes.
- Q. Stating that they have been informed that that firm are the firm of solicitors in Hong Kong for Choo Kim San.

A. Yes.

Q. Do you know how they came to come by this information?

A. No, I don't know.

Q. "No".

MR. SWAINE: My Lord, this would be a convenient moment.

COURT: Yes.

P.W.1 – LEE Ing-chee (o.f.a.)

XXN BY MR. SWAINE (continues):

Q. Mr. Lee, was your conversation with Choo Kim San at the Hyatt after his arrest the last time that you ever spoke to him? 10

A. There was a telephone conversation between us but I can't remember who rang up who, sir.

COURT: This was not the last conversation; after that there was a telephone conversation?

A. That's right; sir.

Q. And approximately how long after the Hyatt meeting was there this conversation on the phone?

A. About a week.

Q. "About a week". Do you recall who telephoned whom?

A. No, I can't. 20

Q. But this meeting at the Hyatt, was that the last time you ever saw Choo Kim San?

A. Yes.

Q. And were you in Hong Kong in October 1976?

a. Yes.

Q. He jumped bail on the 28th October 1976. That's the date we get from your affidavit.

A. Yes.

Q. All right. Now, then, you said that you were put in charge not only of Choo Kim San's Hong Kong companies but also his companies in Thailand and Brunei. 30

A. Yes.

Q. Was the Thai company called Thai MAF Trust Corporation Limited?

A. Yes.

Q. What was your official position there?

A. General Manager.

Q. "General Manager". And did you also resign that position on the 1st April 1976?

A. Yes.

Q. Have you been back to Thailand since your resignation? 40

A. Yes, in 1976.

Q. Yes. In what month?

- A. I can't remember. Supreme Court
of Hong Kong
High Court
- Q. Well, was it towards the end of the year, or the middle of the year, or what?
- A. Both in the middle and near the end of the year.
- Q. And have you been there at all this year?
- A. No. Plaintiff's
evidence
- Q. There is, of course, a warrant for your arrest in Thailand, is there not?
- A. Yes.
- Q. That warrant is still in force as of this date? No. 40
- A. Yes.
- 10 Q. Now, you said in evidence that you appointed – sorry – you were asked who appointed the directors of Asiatic Nominees; your answer was later he, that is Chu Kim San authorised me to appoint some of his staff as directors. Lee Ing-chee –
cross-examination
- A. Yes.
- Q. And did you, in fact, do so?
- A. Yes.
- Q. You also said in relation to Triumphant that you appointed the directors.
- A. Yes.
- Q. But it's not the position, is it, that the directors – sorry – it's not the position that all the directors of all Choo Kim San's companies in Hong Kong were appointed by you?
- 20 A. No.
- Q. Would it be fair to say that you appointed the – if I may use the colloquialism – the small fry directors?
- A. Yes.
- Q. To take a case in point, the Lai Po Company, the Director Rex Koh Kim Chuan, was a very good friend of Choo Kim San's and an architect who you described is a very good friend of Choo Kim San and an architect in Singapore; he wasn't appointed by you, was he?
- A. No.
- 30 Q. And in the same company Henry Loke Kui Kuen – he wasn't appointed by you, was he?
- A. No.
- Q. Nor Dr. Ooi Seng Poy whom you described as a doctor and a very good friend of Choo Kim San – he was not appointed by yourself?
- A. No.
- Q. Now, Rebecca Leung Lin Yau – she was a typist, you say, at MAF Corporation and she became a director of Asiatic; is that right?
- A. Yes.
- Q. And was she appointed by you?
- 40 A. Yes.
- Q. She was a typist, I think, you said?
- A. We called her 'Assistant Secretary': she used to type everything in the company.
- Q. I want you to look at your Affidavit of the 15th July.
- MR. SWAINE: My Lord, that would be Red 3, page 113, 15th July in the present action. My Lord, I'm sorry, it's Green 3.

INTERPRETER: Green 3, sir.

Q. If you look at paragraph 35 at page 15. You will see that that says: "I have recently asked one Rebecca Leung who was a former director of Asiatic and assistant secretary of the Defendant whether or not she knows the said Dr. Tsang Tak Fai. She has informed me and I do verily believe that the said Dr. Tsang Tak Fai is a close friend of the Defendant" – that is Choo Kim San – "and was previously his personal physician." Now, that statement has been withdrawn or retracted by counsel, Mr. Ching, who has informed the court this was based on, if I remember rightly, misinformation.

MR. CHING: Misunderstanding.

Q. Misunderstanding.

10

A. Yes.

Q. Now, you made this Affidavit and you swore to its truth. What was the misunderstanding?

A. Well, according to the doctor's affidavit, this doctor is a woman, but in my Affidavit I referred to this doctor as a man.

Q. Yes. And how did you come to think that that doctor was a man?

INTERPRETER: Sorry.

A. This doctor is actually a man, and according to the list of the directors of the IPC Company, the name appearing there was exactly the same as the doctor's name here, Tsang Tak Fai.

20

Q. Yes?

A. And in that list it says that Tsang Tak Fai was a woman.

Q. That list could not have said that doctor was a woman, Mr. Lee.

A. Well, it doesn't say whether Tsang Tak Fai is a man or a woman, but Mr. Choo told me that this doctor, Tsang Tak Fai, referred to in my Affidavit is a man.

Q. I see. So, is the position this: that on a search of IPC you discovered that one of the directors was a Doctor Tsang Tak Fai?

A. Yes, exactly the same as this one, the one referred to in my Affidavit.

Q. And that search was made before you made this Affidavit?

A. Yes.

30

Q. And you saw the search before you made this Affidavit?

A. Yes.

Q. You say it was Mr. Choo Kim San who told you that his doctor was Dr. Tsang Tak Fai?

A. Yes.

Q. But, you see, in your Affidavit you say that you were informed by Rebecca Leung that Dr. Tsang Tak Fai was a close friend of the defendant and previously his personal physician.

A. Rebecca Leung told me that she had telephoned Dr. Tsang. It was because Mr. Choo Kim San asked Madam Rebecca Leung to telephone Dr. Tsang.

40

Q. Yes. Well, is or is not the statement true in your Affidavit that Rebecca Leung informed you that Dr. Tsang was a friend – a close friend of the defendant and previously his physician?

A. Yes.

Q. She did?

- A. Yes. Supreme Court
of Hong Kong
High Court
- Q. If she came to court and said she never did, what would you say?
- A. Well, that I don't know.
- Q. You don't know. Would you retract that statement from your Affidavit?
- A. Yes. Plaintiff's
evidence
- Q. You would?
- A. Yes.
- Q. In fact, did you not make this part of your Affidavit deliberately false. Mr. Lee, so that you might endeavour to show in the interlocutory proceedings that IPC was in some way linked with Choo Kim San and therefore his nominee? No. 40
Lee Ing-chee –
cross-examination
- 10 A. No.
- Q. Now, you said that after Choo Kim San bought the controlling interest at San Imperial, he had an office in the Imperial Hotel and one also at the premises of MAF Corporation in #59, Des Voeux Road.
- A. Yes.
- Q. In the Imperial Hotel this was Room 204.
- A. Yes.
- Q. You had not seen Choo Kim San since June 1976 and you last spoke to him about a week after.
- 20 A. Yes.
- Q. We know he jumped bail on the 28th October 1976.
- A. Yes.
- Q. Your writ in this action was issued, you can take it from me – on the 16th November 1976 after he jumped bail.
- A. Yes.
- Q. And you can take it from me that on the writ Choo Kim San was described as of the Imperial Hotel, Nathan Road, Hong Kong.
- A. Yes.
- 30 Q. Would that, in your view, be a correct description as of the 16th November, 1976?
- A. Yes.
- Q. Despite all that you have said, you maintain that would be correct?
- A. Well, the writ was prepared by the solicitor or the lawyer.
- Q. Yes?
- A. But I don't know.
- Q. Was that information supplied to you that he was of the Imperial Hotel?
- A. Yes, in June I engaged a solicitor to prepare the writ for me and I gave him or her the address.
- 40 Q. And those were still your instructions in November, 1976?
- A. Yes.

MR. YORKE: My Lord.

MR. SWAINE: Can I please just get on with my cross-examination?

MR. YORKE: No, counsel has no right whatsoever to insist on proceeding if someone has a valid objection to make. I propose to make the objection. No counsel has the right to insist upon going on right or wrong. My Lord, it may be that

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Lee Ing-chee –
cross-examination

my learned friend is cross-examining about the matter, which makes no difference whatsoever: well, he is in some way trying to assert that in issuing this writ it was in fact not issued in relation to Imperial Hotel but the address at 234, Nathan Road, that in some way something false was being stated. If counsel is to make that submission, then he must, in fairness to the witness, indicate what the truth should have been so that he can in fact say 'You said X when you should have said Y'. My Lord, if my learned friend would indicate what he would say in relation to somebody who jumped bail and may or may not be within the Colony, well, in my submission, all you can ever do on a writ is to give the last known address of the person against whom the writ is issued; that there then arises a quite separate question as to service of the writ, as to whether the person can be found at that address or is outside the jurisdiction. That is a very different matter as to whether it can be served within the jurisdiction or get service outside the jurisdiction. My Lord, that is a totally different question. My Lord, here is an implication which I fail to follow that somehow in giving the address, which it is not challenged was the address of the man until he escaped bail, he is somehow dishonest or misleading. The only way that it can be dishonest or misleading is by comparing it with something else which counsel says would have been correct to have said. The thing cannot be untrue unless that's contrasted with something else which is true. 10 20

MR. SWAINE: The witness, of course, has been in court during the objection. May I put this question whether he had any honest belief that that was the address at which Choo Kim San could be found in November, 1976?

COURT: Whether he had . . .

MR. SWAINE: . . . any reasonable belief that that was the address at which Choo Kim San could be found in November, 1976.

COURT: Whether this was his reasonable belief at what moment of time?

MR. SWAINE: In November, 1976.

COURT: Whether he had a reasonable belief in November 1976 that Mr. Choo Kim San could be found at that address in November 1976? 30

MR. SWAINE: Yes.

COURT: Very well.

A. Yes.

Q. All right. Now we come to your trip to Taiwan.

MR. YORKE: My Lord, with great respect, I must respectfully ask for a ruling on this. My learned friend must say, if he is suggesting that a better answer could have been given than the address which was given, which was his last known address, and on the unchallenged evidence he had an office which he used and

that which was at MAF Corporation in Hong Kong – if my learned friend is suggesting some other and better address should have been put on by contrast with which the address which was put on the writ was misleading and dishonest, he must put it. If he hasn't got a better one, the whole basis of his cross-examination fails. My Lord, in my submission, in my respectful submission it is an improper line of cross-examination unless my learned friend puts to the witness what he would say should have been, in which case he can then ask the witness 'Why didn't you put on the Presidential Hotel, Taipei?' . . .

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

10 COURT: As I see the line of cross-examination, so far it hasn't been put to Mr. Lee that he was being dishonest in saying in the writ that the address of CHOO Kim San was at the Imperial Hotel. Really, the effect of it all, up to this moment of time, nothing really very much has been elicited from this witness.

Lee Ing-chee –
cross-examination

MR. YORKE: But, my Lord, in that case it is inadmissible – it's either going to the credit or on the assumption that it is to the credit and therefore it would be inadmissible. My learned friend must state what the truth is. It's no use saying that this man skipped the jurisdiction on the 28th October but on the 16th November you should have said 'of the Presidential Hotel, Taiwan,' or 'the Grand Hotel, Bangkok,' wherever it happens to be. He must show what better answer could have been given, otherwise . . .

20 COURT: Well, as I say, really so far nothing very much has been elicited, as far as I can see, from this witness up to this moment of time and it looks as if Mr. Swaine is not pursuing this point. But you're going on to another subject . . .

MR. SWAINE: There'll be the matter of submissions, which is the proper time to deal with it possibly by my learned friend.

30 MR. CHING: My Lord, is there an imputation of dishonesty arising from this line of cross-examination? Will an imputation of dishonesty be made at any subsequent time as a result of this series of questions concerning the date and – sorry – concerning the address on the writ? If an imputation is to be made, it is only fair it should be put to this witness that he should be allowed to . . .

COURT: Well, as I have said, so far as this particular line of cross-examination is concerned – sorry – as far as the line of cross-examination on this particular aspect of the case is concerned, as I understand it, no allegation of dishonesty has been made.

MR. CHING: My Lord, that is what I understood – I think my learned friend Mr. Swaine said that a submission would be made at the proper time. My Lord, will my learned friend please say whether it'll include an imputation of dishonesty?

40 Q. I suggest to you, Mr. Lee, that you could not honestly have believed that Choo Kim San could be found at the Imperial Hotel in November 1976.

A. After he was arrested by the police and released, he all the time lived at that

Supreme Court of Hong Kong High Court hotel.

Q. Did you assume he was still living at that hotel after he jumped bail?

A. Yes.

Plaintiff's evidence Q. Well, I put it to you, Mr. Lee, that you are telling a lie.

A. No.

Q. Very well. Let's move on to the 11th July of this year. You left Hong Kong, you say, on the 9th July.

No. 40 A. Yes.

Q. Whose idea was it for you to go to Taiwan.

Lee Ing-chee – cross-examination A. My solicitor's idea. 10

Q. Now, are these Deacons or your solicitors in Malaysia?

A. In Malaysia.

Q. "In Malaysia". What's the idea of your going to Taiwan?

A. Well, to make enquiries to find out the truth.

Q. I see. Anybody in particular?

A. Yes.

Q. Yes? Who?

A. Chaw-I Chow and Hwang Shang Pai.

Q. And you had Mr. Christopher Wilson of Johnson, Stokes & Master go with you? 20

A. Yes.

Q. Do you know why he went there?

A. No, I don't know.

Q. You don't. He didn't tell you, you didn't ask him?

A. No. My solicitor told me to go with him.

Q. He didn't tell you why?

A. No.

Q. Is this your Malaysian solicitor?

A. Yes.

Q. Did you know that Mr. Wilson was acting in Hong Kong for MBF? 30

A. Yes.

Q. Did you think he was going for business or for pleasure, or did you inform them about it?

A. For business.

Q. Specifically was it MBF business?

A. Well, that I don't know.

Q. You say that on the 11th morning you went to see a lawyer in Taiwan, Mr. T.C. Wong.

A. Yes.

Q. And Mr. Wilson also went? 40

A. Yes.

Q. Do you know why he also went?

A. J.S.M. had a branch company right by the side of the solicitor's office in Taiwan.

COURT: By the side of Mr. Hwang's office?

A. Yes.

Q. Yes. And they have a resident solicitor in Taipei; is that right?

- A. Yes.
- Q. You went to see Mr. Hwang in connection with your action against Choo Kim San; is that right? Supreme Court of Hong Kong High Court
- A. Yes.
- Q. You don't know why Mr. Wilson went with you? Plaintiff's evidence
- A. No.
- Q. You say that while at the office of Mr. T.C. Hwang, you spoke on the telephone to Mr. Chow. No. 40
- A. Yes.
- 10 Q. And you arranged a meeting with him at your hotel for 6 o'clock. Lee Ing-chee – cross-examination
- A. Yes.
- Q. Did you explain that you were wanting to see Mr. Chow?

INTERPRETER: I beg your pardon?

- Q. Did you explain to Mr. Chow your wanting to see him was business or pleasure, or what?
- A. The solicitor in Taiwan with T.C. Hwang told him the purpose of my wanting to see him – to see Mr. Chow.
- Q. Yes. So, Mr. Chow knew it was business; is that right?
- A. Yes.
- 20 Q. Whose idea was it to meet at your hotel, the VIP House?
- A. Mine.
- Q. As it was business, why didn't you suggest meeting at Mr. Hwang's office, for instance?
- A. Because the time of meeting was arranged at 6.
- Q. Yes?
- A. And I thought that it would be more convenient to meet each other at the hotel.
- Q. Did it occur to you to suggest meeting at the office of J.S.M. in Taipei?
- A. No.
- 30 Q. Where was Mr. Wilson living in Taipei? Do you know?
- A. In the same hotel with me.
- Q. Did you see him before the 6 o'clock meeting?
- A. I telephoned him.
- Q. From T.C. Hwang's office?
- A. No, it was in the hotel.

COURT: From your room?

A. Yes.

COURT: To his room?

- A. Yes.
- 40 Q. What did you tell him?
- A. I asked him if he wanted to come with me to meet Mr. Chow.
- Q. Why did you think he would be interested?
- A. Well, I thought that it would be better for a third party to be present at the

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Lee Ing-chee –
cross-examination

time of meeting.

- Q. Did you know at this time when you made telephone call that – sorry – Did you know at this time when you made the phone call the business of Mr. Wilson in Taipei?
- A. At that time when I telephoned him from my room to his room?
- Q. Yes. At that time do you know why he was in Taipei?
- A. He never told me.
- Q. You still did not know?
- A. No.
- Q. But he was just a third party who you thought might be interested? Sorry. 10
You simply thought of him as a third party whom it would be desirable to be present?
- A. Yes.
- Q. Presumably he declined to be present?
- A. Well, he said that he was not required.
- Q. “He said that he was not required”. I see. Who was the Malaysian solicitor that you mentioned earlier as being the one who thought you should go to Taiwan?
- A. My solicitor, Mr. Sivalingam.
- Q. Now, the trip to Taipei was presumably paid by M.B.F., was it – your airfare. 20
- A. Yes.
- Q. Now, you knew Mr. Wilson was acting for M.B.F.
- A. Yes.
- Q. Did you think of asking any other third party to be present after Mr. Wilson declined?
- A. There was no other person available.
- Q. You did not think of asking Mr. T.C. HWANG.
- A. At the time when I saw Mr. HWANG, Mr. HWANG made it clear to me that he would not want to see Mr. CHOW with me.
- Q. Now, you say that your meeting with Mr. CHOW took over an hour. 30
- A. Yes, over an hour.
- Q. Yes, and you were speaking in Mandarin.
- A. Yes.
- Q. First, you said ‘we talked about our jobs’ – ‘we talked about our jobs’.
- A. Yes.
- Q. What did he say his job was?
- A. He said that he was in charge of a printing factory in the southern part of Taiwan.
- Q. What did you tell him your job was?
- A. At that time, I told him that I was unemployed recently. 40
- Q. Did you tell him that you had been CHOO Kim-san’s lieutenant at one time.
- A. Yes.
- Q. You did. Was that at the beginning of your discussion or later on?
- A. At the beginning.
- Q. Did he know the name ‘CHOO Kim-san’?
- A. I don’t know. I may have mentioned Mr. CHOO’s name to him.
- Q. And he said nothing in response.
- A. Yes.
- Q. At the time of your meeting with him on the 11th of July 1977, was it in

your contemplation that Mr. CHOW would be a defendant in this action of yours? Supreme Court of Hong Kong High Court

A. Yes.

Q. It was, and for the record on the 15th of July 1977 in this action you got an order ex-parte affecting Mr. CHOW as well as other defendants.

Plaintiff's evidence

A. Yes.

Q. Did you tell Mr. CHOW on the 11th of July that you were intending to sue him?

No. 40

A. No.

10 Q. How old would you say Mr. CHOW was? I mean, looking at him, Mr. LEE.

Lee Ing-chee – cross-examination

A. Around 30. I think he was younger than I was.

Q. Around 30, and would you say he was short or medium or tall?

A. He is quite tall. I think he is about my height. He is a little bit shorter than I am.

Q. What is your height?

A. 5'9".

Q. You are 5'9". What do you think his height would be?

A. Say, about 5'7" or 5'8".

20 Q. If Mr. CHOW is described as being about 5'5", would you say that's too far wrong, according to your estimate?

A. It's very very difficult for me to tell because at the time when I saw him I did not take a measurement of his height.

Q. Would you say that he was of slim build or heavy or thin? What was your impression?

A. As thin as you are (indicating).

INTERPRETER: He's pointing at me, sir.

COURT: Very thin, you mean?

A. Not very thin, sir.

30 Q. His style of dress – would you say he was in conservative clothes or modern clothes? What was your impression?

A. Rather conservative, sir.

Q. Rather conservative. Was he wearing a tie on that occasion?

A. No. He was wearing a white shirt and a pair of black colour trousers – European style trousers.

Q. Do you recall that he had a necktie on?

COURT: No tie.

INTERPRETER: No tie.

A. Just a white shirt and black colour trousers.

40 Q. And he was not wearing a jacket.

A. No.

Q. It follows that he was not wearing a waistcoat.

A. What waistcoat, sir?

Q. Was he wearing a waistcoat?

Supreme Court
of Hong Kong
High Court

A. He was just wearing a white shirt and a pair of black colour European style trousers.

COURT: So, no waistcoat.

Plaintiff's
evidence

A. No, nothing.

No. 40

COURT: Not in July in Taipei.

Lee Ing-chee –
cross-examination

Q. Did you notice the sort of shoes he was wearing? Were these modern or conservative?

A. No. I did not notice.

Q. Did you not notice that he was wearing high-heeled shoes, for instance?

A. No.

Q. If he is described as being a flamboyant dresser wearing extravagant style clothes and shoes, would you agree or disagree with that?

A. That I don't know.

Q. You find yourself unable to agree if he was described in evidence as being a flamboyant dresser.

A. It is very difficult to explain, sir.

COURT: White shirt and black trousers is hardly flamboyant to me.

A. Who knows. Perhaps at the time when he returned home sir, he may change floral-patterned shirt or something like that. Who knows.

Q. When you saw him, he was not dressed flamboyantly.

A. No.

Q. Did he wear glasses or not?

A. Yes.

Q. Did you form any impression as to whether his glasses were rimless or something like this (indicating)?

A. I did not notice, sir.

Q. Did you notice the style of his hair – whether it was long or short?

A. More or less like mine, sir.

Q. Mr. CHOW was described as having long hair well below the collar of his shirt. Would you agree or disagree with that?

A. It is very difficult for me to say so, sir, because at the time when I saw him I did not see very clearly.

Q. You saw him at the coffee-house, is that right, of the V.I.P. House.

A. Yes.

Q. Not at a dark, ill-lit bar.

A. It was a bit dark there.

Q. Coffee-houses are normally well-lit. Was this, you say, not a well-lit one? This particular coffee house was not particularly well-lit, is that what you are saying?

A. No, not as well lit as the court-room here, sir.

Q. Bright enough to write by.

A. Yes.

Q. Then, bright enough to see by.

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- | | | |
|----|---|---------------------------------------|
| | A. Yes. | Supreme Court of Hong Kong High Court |
| | Q. Did you notice whether he smoked during the meeting which lasted over an hour? | |
| | A. Yes. | |
| | Q. A lot or a little, did you notice? | Plaintiff's evidence |
| | A. I did not count. | |
| | Q. How soon after your initial chit-chat with him did you get down to business, i.e., asking about the 15 million shares? | No. 40 |
| | A. Yes. | |
| 10 | Q. After about how long? | |
| | A. I did not notice, sir. I think it was about 20 minutes or 15 to 20 minutes. | Lee Ing-chee – cross-examination |
| | Q. You said to him that according to your understanding, he had bought 15 million shares in San Imperial. | |
| | A. Yes. | |
| | Q. And you gave him the name of 'San Imperial' in Mandarin. | |
| | A. Yes. | |
| | Q. He told you that he did not have the money to buy those shares. | |
| | A. Yes. | |
| 20 | Q. Meaning which shares? You said 'those shares' in your evidence. I want to know what you meant when you said 'those shares'. | |
| | A. Those 15 million shares in San Imperial. | |
| | Q. He also said to you that one of his relatives in the U.S.A. wanted to buy those shares but those shares would be in CHOW's name. | |
| | A. Yes. | |
| | Q. Again, by 'those shares', did you mean the San Imperial shares? | |
| | A. Yes. | |
| | Q. And was Mr. CHOW talking about the San Imperial shares when he said 'those shares'? | |
| | A. Yes. | |
| 30 | Q. Now, I would like you to look at the hearsay notice served on your behalf. | |

MR. SWAINE: Page 47 of the hearsay bundle, my Lord.

Is there a bundle for the witness please?

(Witness given bundle).

- | | |
|----|---|
| | Q. Now, that document, Mr. LEE contains what you say Mr. CHOW said to you on the occasion of your interview with him. |
| | A. Yes, when he replied to me, sir. |
| 40 | Q. In paragraph 2, Mr. CHOW is said to have told you that 'he knew nothing of any transaction by which 15 million shares in San Imperial or any of them had been purchased. All that he knew was that a relative in the U.S.A. had told him that he (the relative) had bought or agreed to buy some shares and wished to use CHOW's name. Do you see that?' |
| | A. Yes. |
| | Q. Would you now say that instead of 'some shares', this ought to have been 'those shares'? |
| | A. Colloquially, we used to say 'those shares' – 'those shares'. |

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Lee Ing-chee –
cross-examination

Q. But have you any doubt in your mind that Mr. CHOW was speaking of the San Imperial shares?

A. Yes.

Q. Very well. Would you look at your affidavit of the 15th of July.

MR. SWAINE: It is Green 3, beginning at page 112. I'm sorry. What I really want is 113. Green 3, 113. Paragraph 23, page 10 of the affidavit.

Q. Would you read that? Are you able to read that?

A. Yes.

Q. You see where it says that all that he knew was that a relative in the United States of America had told him that that relative had bought or agreed to buy some shares and wanted to use his (CHOW's) name wherefore CHOW told me he did not know when the sale had taken or would take place and did not know what the price per share was. CHOW claimed never to have heard of the name 'San Imperial'. Do you see that?

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(Interpreter interprets to witness).

Q. Is that last sentence true or false: "CHOW claimed never to have heard of the name 'San Imperial'."

A. I don't know whether it is true or not. This is the reply he gave me, sir.

COURT: Is that statement true – that's the point.

INTERPRETER: The last sentence.

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MR. SWAINE: He says "CHOW claimed never to have heard of the name 'San Imperial'."

COURT: Yes.

Q. That's true – that he did so claim.

A. Yes, he did.

Q. And yet he was talking about the San Imperial shares as being 'those shares', was he not?

A. Yes.

Q. You are still saying that he claimed never to have heard of the name 'San Imperial'.

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A. Yes, he said that to me, sir.

Q. Very well. I suggest to you, Mr. LEE, that you fabricated the story about your discussions with Mr. CHOW.

A. No, it is impossible, sir.

Q. Were you surprised that he would open his heart to you, a total stranger?

A. That was because Mr. T.C. HWANG introduced him, that is, Mr. CHOW, to me, and Mr. HWANG is or was his teacher.

Q. You have produced this document, Mr. LEE, consisting of two pages and 10 items.

CLERK: P.8.

Supreme Court
of Hong Kong
High Court

Q. You said that the red portions were inserted by Mr. Wilson, is that right?

A. Yes, he corrected it for me, sir.

Q. What about this last sentence in blue?

A. It is my handwriting, sir.

Q. That heavy blue addition to paragraph 10 – that’s your handwriting, is it?

A. Yes.

Plaintiff’s
evidence

No. 40

MR. SWAINE: I think it might be convenient if the witness had the original.

Lee Ing-chee –
cross-examination

Your Lordship has a copy.

10 COURT: Yes, I have.

Q. Now, the characters at the very top of ‘NG Pak-shing’ – were those written by yourself?

A. Yes.

Q. And was this written at the time you say when you were seeking to identify Mr. NG Pak-shing to Mr. CHOW?

A. Yes.

Q. On this same piece of paper.

A. Yes.

Q. So, you had it with you from the very start of your interview.

20 A. I brought along many papers and documents with me, sir. There were about 10.

COURT: Brought along ‘many documents’ or ‘many sheets of paper’?

INTERPRETER: Many sheets of paper and documents.

A. Sheets of paper and documents.

Q. And you started off putting the characters ‘NG Pak-shing’ on this sheet of paper.

A. When I asked him about the third item here, I referred a Mr. NG’s name to him as ‘David NG Pak-shing’. At the same time, I wrote a name – NG Pak-shing’s name in Chinese for Mr. CHOW.

30 Q. Did you take down these notes as your interview with Mr. CHOW progressed?

A. Yes.

Q. Was it in the form of you asked him a question and he gave an answer and you wrote it out?

A. Yes.

Q. So, you started off with the question: “How did you buy the shares? and when? What price per share?”

A. No. Before this question, sir, I asked him other things or other questions.

Q. Yes, but those you did not record.

40 A. I don’t remember whether I have recorded those. I had many sheets of papers, sir.

Q. Well, did you make notes on other sheets which you have not produced?

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Lee Ing-chee –
cross-examination

- A. I don't know where they are now. I could only find these two sheets.
Q. You mean you may have written on additional sheets but these are the only ones you have been able to find.
A. I can't remember.
Q. Was it over two sheets or more than two sheets?
A. I can't remember.
Q. These numbers that you put in the left margin – were these put as you went along or put in later?
A. Well, I put the numbers on to the sheets of paper later, sir. You mean the numbers here '1, 2, 3, 4, . . . ?'
Q. Yes.

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COURT: Before you go any further, what do you mean by 'I do not even know that the 15 million shares are the controlling of the company'? The last sentence. What do you mean by that sentence?

- A. I asked a question. In answer, he told me that he did not know whether or not the 15 million shares were or formed the controlling interest of the company, sir.
Q. Why did you ask that question, Mr. LEE? Why did you ask that particular question?
A. During the conversation, sir.
Q. Why? Why did you mention that?
A. Later, I asked him if he knew that the 15 million shares were the controlling interest of the company.

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(Interpreter interprets to witness again).

- A. I can't remember.
Q. You can't remember. Do you remember that there's no mention in the evidence you gave in-chief of this particular part of the interview?
A. I can't remember.
Q. You can't remember what you said in-chief.
A. That's right.
Q. Was it important that the 15 million shares controlled the company?
A. Yes.
Q. Important enough that you put it in the notes of interview.
A. Yes.
Q. You cannot remember whether you said it in-chief.
A. I can't remember.
Q. The words at the top of the page 'Interview with Mr. Chaw-I CHOW' – is that written later or at the start of the interview?
A. At the beginning, sir, I put it there.
Q. And did you write them all at one time – all of those two lines?
A. Yes.
Q. How could you write in advance at 6 o'clock that the interview was from 6 to 8 o'clock?
A. The words 'to 8.00 p.m.' were added later, sir.
Q. I see. The words '6.00 p.m.' were written at the time that you wrote out the

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- heading.
- A. Yes.
- Q. You added the words 'to 8.00 p.m.' after the interview.
- A. Yes.
- Q. It wouldn't be correct to say then that you wrote the whole of the two lines at the start of the interview.
- A. That's correct.
- Q. How long after the interview did you write in the words 'to 8.00 p.m.'?
- A. After I had accompanied him to the door and when I had returned I added these words.
- 10 Q. Just at the coffee-house.
- A. No, it was at the reception desk.
- Q. I see. You stopped deliberately at the reception desk to write in the words 'to 8.00 p.m.' is that what you are saying?
- A. Because I had to get the keys from the reception desk first and then go upstairs.
- Q. Were you using your own pen while you were taking these notes?
- A. No.
- Q. What pen?
- 20 A. A ball-point pen.
- Q. A hotel pen.
- A. Yes.
- Q. Which you still had with you when you went to the reception desk.
- A. Yes.
- Q. So, you took out your pen while you were at the reception desk and wrote in those words.
- A. Yes.
- Q. You couldn't wait to get back to your room.
- A. No, it was just convenient that I asked her at the reception counter what time it was and she said it was 8 and then I added the time '8.00 p.m.'
- 30 Q. This line that appears under those first two – under that heading – did you put that line through at the start of the interview or at the reception desk later?
- A. I can't remember.
- Q. Did you write in these numbers in the margin when you were back in your room or at the reception desk or where?
- A. I can't remember.
- Q. Was it on the same day?
- A. I can't remember.
- 40 Q. It might have been days afterwards, mightn't it?
- A. I can't remember when I put the figures down, sir.
- Q. You say that you recorded the notes as the interview progressed step by step.
- A. Yes.
- Q. The first question recorded on the sheet is: "How did you buy the shares? and when? What price per share?"

(Interpreter interprets to witness).

Q. Just look at it first.

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Lee Ing-chee –
cross-examination

- A. According to this paper here, this is the first one.
- Q. You say that because the number '1.' appears against that question.
- A. Yes.
- Q. That number was added afterwards. You don't know even whether it's afterwards.
- A. That's right.
- Q. That's right. There's no mention of 'San Imperial shares' in this question, just 'these shares'.
- A. Yes.
- Q. You don't get mention of 'San Imperial' until the foot of the page against number '4.' – " I have no knowledge of the affairs of . . . San Imperial . . .". 10
- A. I did mention the name to him at the beginning of the meeting.
- Q. Yes. Why didn't you put it down in the notes – in the early part of the notes?
- A. At the beginning, I only mentioned to him or talked to him. I did not put it in writing.
- Q. Were these notes important from your point of view?
- A. Yes.
- Q. The purpose of taking these notes was to have a record of What Mr. CHOW said, is that right.
- A. Yes. 20
- Q. Why didn't you put down: "Paragraph 1. How did you buy the San Imperial shares and when and what price per share – San Imperial shares?"
- A. At the time when I was talking with him, I have already mentioned the name of 'San Di Kuo' or 'San Imperial' to him.
- Q. Mr. LEE, you had a lot of sheets of paper with you, is that right – 'V.I.P.' notepaper. Ten sheets, I think you said.
- A. Yes.
- Q. You weren't trying to save paper, were you?
- A. No, no.
- Q. The heading 'Interview with Mr. Chaw-I CHOW on 11/7/77 at VIP House Restaurant – 6.00 p.m. to 8.00 p.m.' – that's very squashed, isn't it, right up at the top. 30
- A. No.
- Q. You don't think it's squashed.
- A. No.
- Q. Did you perhaps write this in after these notes were recorded.
- A. No.

MR. SWAINE: My Lord, would this be a convenient time?

Appearances as before.

MR. CHING: My Lord, in an effort to save time my learned friend and I have a discussion and he asked me whether I intend to produce the photostat of the visiting card which the witness has brought out. My Lord, I have told my learned friend I would like to produce that. The original, according to what the witness said, is in K.L. and I don't think my learned friend is objective to the production of the photo copy. I would however say this, apparently what happened is that at the hotel he asked for the carbon copy, the hotel cut the 40

remainder of the margin off, so what has come back is the photostat merely of the card and nothing else on the piece of paper. I say this now, my Lord, in case my learned friend wishes to cross-examine on this.

Supreme Court
of Hong Kong
High Court

COURT: Very well, the card is now produced as exhibit P.9.

Plaintiff's
evidence

MR. CHING: I also have the translation, my Lord. Perhaps the translation would be P.9A. It has not yet been certified, my Lord, whether your Lordship would look at the Chinese yourself or we will undertake to certify it.

No. 40

COURT: Right.

Lee Ing-chee –
cross-examination

P.W.1 – LEE Ing-chee (o.f.a.)

10 XXN. BY MR. SWAINE (Continues):

Q. Mr. Lee, just to remind you, at the end of the day I have suggested to you that the heading upon these notes, P.8, was squashed and that you had written this in after you had written the first page.

A. Yes.

Q. And you have denied that?

A. Yes.

Q. Now at what stage did you write in the characters “NG Pak-shing” at the top of P.8?

A. It was at about the time when I asked him if he knew NG Pak-shing.

20 Q. Would that have been at the beginning of your conversation, your business conversation that is, not the exchange of social pleasantries.

A. When I had gone to half of the questions I asked him.

Q. And was it soon after this that you said to Mr. Chow that according to David Ng he had been introduced to Mr. Chow by Madam Lau?

A. Yes.

Q. And on your evidence he said “no”?

A. Yes.

Q. Was that important to your mind?

A. About what?

30 Q. Was that answer important to your mind that there had never been an introduction by Madam Lau?

A. That I don't know.

Q. You don't know?

A. No.

Q. You realise of course that there is no mention in your notes of any denial by Mr. Chow of an introduction through Madam Lau?

A. No.

40 Q. Now according to your evidence in chief you have said the following things in sequence, that is in your evidence, that Mr. Chow did not know David Ng, there had never been an introduction through Madam Lau; then you said later, “I told him he had signed an agreement to sell these 15 million shares.”

A. Yes.

Q. And on your evidence you say that David Ng was mentioned about half way

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Lee Ing-chee –
cross-examination

during the conversation?

A. Half way of the questions.

Q. Yes, when you say the questions you mean the business side of your discussion?

A. At the time when I was asking him about Mr. David Ng's affidavit I asked him that.

Q. And would that be about mid-way during your interview with him?

A. That I don't know because I don't know what the stage was when I asked him about that.

Q. You did not start off your questioning about the business side of your interview with David Ng's name? 10

A. Yes.

Q. And in your evidence when you said "later I told him he had signed an agreement to sell these 15 million shares", I want to know whether you said the word "later" advisably, that is, after you had mentioned David Ng and after you had mentioned Madam Lau?

A. Yes.

Q. In fact your mentioning of the agreement to sell the 15 million shares did that come fairly early or fairly late in your questions?

A. I can't remember. 20

Q. You see, you look at your notes, the item No. 2 reads, "I was asked to sign the sale agreement and I don't even read the contents of the agreement." Do you see that?

A. That's right, he said that he did not understand the meaning of the agreement or the contents.

Q. And this is the agreement to sell the 15 million shares?

A. Yes.

Q. According to your note that was the second item in the questions and answers?

A. Yes, according to my notes.

Q. And that means that the sale agreement must have been mentioned early in the interview? 30

A. No.

Q. How come then it's item 2 from 10 items?

A. At the time when I made these notes I did not put down the number of the questions 1, 2, 3, 4.

Q. Yes, you have told us that. You say you did not even remember when you put down these numbers. Is it your evidence that you wrote these notes as you went along, everytime there was a specific point raised and answered then you made a note before you went on to the next point?

A. No. 40

Q. I want there to be no doubt about this. You say that you did not write these notes point by point as each point arose and before the next point was gone into, is that what you are saying?

A. Yes.

Q. That's the exact opposite of what you said yesterday?

A. No.

Q. You say that is not what you said yesterday?

A. I meant the same thing yesterday.

Q. Well then how were these notes prepared, you wrote them all out at the end

- of the interview?
- A. At the time of the conversation if I thought that some point was important I recorded that down and if I thought that it was not important I did not record it.
- Q. Did you record point by point as the interview went along, if there was an important point you recorded it before going to the next point or did you wait until the number of points were made and then you record the points you thought were important?
- A. I waited until a number of questions were asked.
- 10 Q. And when you made a note of the points was it in the order that they arose during the discussion or in some haphazard order?
- A. Not in the order as appearing in my notes.
- Q. Let me put it this way, Mr. Lee, I was questioning you on item 2 and you said you put the number in later?
- A. Yes.
- Q. But the item itself – never mind the number – the item itself was it written in after the item which appears above and before the item which appears below or did you simply choose the middle of the page and write in an item willy-nilly?
- 20 A. The purpose of my making these notes was for myself to memorise what I had talked with Mr. Chow. Therefore, say, after I asked him two or three questions I made some notes.
- Q. And you made them consecutively down the page?
- A. No.
- Q. Does that mean to say you might have written something in at the middle of the page and later wrote something in at the top?
- A. You mean according to the order appearing as in my notes?
- Q. Yes, exactly, Mr. Lee.
- A. Yes.
- 30 Q. So in point of fact then, Mr. Lee, the item now numbered 3 may have been discussed before the item now numbered 2, is that right?
- A. Yes.
- Q. Would you look at the item you now have numbered 3 – let me ask you this first: is it the case that you discussed a number of points, then you stopped and you made a note of the points you thought were important?
- A. Yes.
- Q. Now in writing down the points would you write down only the one point or more than one point, or was it your practice to stop after you had written one point and then go on to further discussions. Let me explain this further so that you know exactly what I mean. For instance, the whole of that paragraph you now got as 1, now did you write the whole of that down and then stop and ask some more questions and from that point on you wrote in the paragraph numbered 2 or did you ask a whole lot of questions and then write out 1 and 2 together?
- 40 A. It seems that both points 1 and 2 were recorded at the same time.
- Q. And point 3, do you recall whether that occurred after there were more questions and answers or was it written out at the same time as you wrote out 1 and 2?
- A. That I can't remember.

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Lee Ing-chee –
cross-examination

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Lee Ing-chee –
cross-examination

- Q. 3 and 4, now do you remember whether you wrote 3 first and then stopped to discuss and then wrote 4 or did you discuss first and wrote 3 and 4 consecutively?
- A. That I can't remember.
- Q. Well, look at 3 now. That deals with the sale of the shares which was with David Ng all arranged by a relative in the U.S.A. "I was informed that I am the shareholder of Fermay Co. Ltd. and I never remit any money to Hongkong and it was all done by my relative in the U.S.A." Now that deals with the sale of the shares of Fermay, is that right?
- A. Yes. 10
- Q. Now item 4 deals with the affairs of San Imperial?
- A. Yes.
- Q. Do you agree that that is a break from the sort of links you were dealing with in item 3? Item 3 was dealing with your relatives and with Fermay and the sale with David Ng.
- A. Yes.
- Q. Now does that help you to say whether you wrote 3 and 4 consecutively, one after the other without further questions or whether there was a break, does that help you?
- A. I can't remember whether those two items were recorded at the same time or not. 20
- Q. Now you started off item 3 with three questions: "How did you buy the shares? And when? What price per share?" Do you see that?
- A. Yes.
- Q. Then in item 2 there are no more questions, just a narrative quoting Mr. Chow?
- A. Right.
- Q. And the same goes with 3 and 4?
- A. Yes.
- Q. And over the page, 5, there was a specific question: "What is the name of your relative?" No answer. 30
- A. Yes.
- Q. And then 6 again you have a specific question: "Through which bank the transaction takes place?" "I do not know."
- A. Yes.
- Q. Is there any particular reasons for going to recording questions and answers in 5 and 6?
- A. No.
- Q. Now in item 6 you specifically asked "Through which bank the transaction took place?" Was that important to you?
- A. Mr. Choo had some shares in a certain bank in the U.S.A. That's why I asked him that. 40
- Q. Was this important to you?
- A. Yes.
- Q. It was important?
- A. Yes.
- Q. Important because of this particular bank in which you say Mr. Choo had an interest?
- A. Yes.
- Q. That being the Bank of Trade as you have said?

- A. Yes. Supreme Court
of Hong Kong
High Court
- Q. Did you mention the Bank of Trade to Mr. Chow?
- A. Yes.
- Q. And he gave you no reply, is that right?
- A. Right, he did not answer. Plaintiff's
evidence
- Q. Why did you not make a note of the Bank of Trade and the fact that he gave you no answer?
- A. The reason is that I could remember the name of that bank. No. 40
- 10 Q. Therefore it was not necessary to put it in your questions and answers, is that right?
- A. Yes. Lee Ing-chee –
cross-examination
- Q. Do you remember the name San Imperial Corporation?
- A. Yes.
- Q. Are you ever likely to forget it?
- A. No.
- Q. But you took pains to write down the name San Imperial in the body of your notes?
- A. I did.
- 20 Q. I suggest to you, Mr. Lee, that this whole evidence as to your taking notes during your interview with Mr. Chow is fabricated and a lie.
- A. That is all true.
- Q. Why didn't you make the notes of interview in Chinese?
- A. It was faster for me to make the notes and besides, I could understand the meaning of these items.
- Q. Your discussion with Mr. Chow was throughout in Mandarin, is that right?
- A. Yes.
- Q. And you write the Chinese characters?
- A. Yes.
- 30 Q. In fact you were taught in Malaysia in Chinese, according to your evidence yesterday?
- A. Yes.
- Q. You would write Chinese with greater facility, would you not, than English?
- A. I am not very good in writing Chinese but I do speak Chinese.
- Q. You finished the secondary school in Malaysia on your evidence, Mr. Lee, studying Chinese which was the medium of instruction, but you also learned English?
- A. There was only one book in Chinese and the other books were in Malaysian.
- 40 COURT: What are you saying? You went through secondary school in a Chinese school and you went through one book in Chinese while all the rest were in Malay, is that what you are saying?
- A. Yes.
- COURT: It is not a Malay school, a Chinese school, you call it?
- A. Malay was the national language in Malaysia.
- Q. What is better, Mr. Lee, in your view, your written English or your written Chinese?

Supreme Court
of Hong Kong
High Court

A. It is difficult for me to say so.

COURT: You have already said you write English faster than Chinese?

Plaintiff's
evidence

A. Yes.

Q. What about your written Malay, how does that compare with your written English and your written Chinese?

No. 40

A. About the same as written English.

Q. You have no other languages, just these?

A. No.

Lee Ing-chee –
cross-examination

Q. Now Mr. Chow of course observed you were taking these notes as the interview went on, is that right?

10

A. Yes.

Q. Did you know whether he spoke or wrote English at the time of the interview?

A. Yes.

Q. Did you speak in English also?

A. Mr. Chow told me at the beginning of our conversation that Mr. T.C. Wang had taught him laws.

Q. I see, Mr. Chow had studied law, had he?

A. Yes.

Q. These notes you say were entirely for your own benefit, is that right?

A. Yes.

20

Q. Did you show them to Mr. Chow?

A. Yes.

Q. As you went along or at the end of the interview?

A. At the end of the interview because I asked him to sign his name there.

Q. And he refused, is that right?

A. Right.

Q. Then you were not writing these notes just for your own benefit; you were writing them with a view also to get him, Mr. Chow, to sign the statement, is that right?

A. Yes.

30

Q. You said earlier on that Mr. Chow when he arrived at the V.I.P. House telephoned up to you and you went down to meet him?

A. Yes.

Q. And you went to the coffee house of the V.I.P. – you went to the coffee shop of the V.I.P. House?

A. Yes.

Q. Specifically what you said was “After we had introduced each other we went to the coffee shop of the V.I.P. House”?

A. Yes.

Q. Where was he waiting for you?

40

A. In front of the reception counter.

Q. And had you already then determined that you would go to the coffee shop or was it in your mind perhaps to go to some place else?

A. I just intended to go to the coffee shop of the V.I.P. House because I did not know Taipei very well.

Q. I don't know the V.I.P. House, but is it a big, small or medium size hotel?

A. Small.

- Q. And the coffee shop, that would be on the ground floor, would it? Supreme Court
A. Yes. of Hong Kong
Q. And when you finished the interview did you go then straight up to your High Court
room or did you go out of the hotel?
A. I went back to my own room. Plaintiff's
Q. Did you have any plan to go out that evening after your interview? evidence
A. No.
Q. And did you go with your keys into the coffee shop or did you check them No. 40
in after you had met Mr. Chow?
10 A. I gave the key back to the reception counter. Lee Ing-chee –
Q. I see. Now, to go back a little further, you went to see Mr. T.C. WONG you cross-examination
say, with Mr. Wilson?
A. Yes.
Q. Do you know who arranged the meeting with Mr. WONG?
A. J.S.M.
Q. Did Mr. Wilson tell you that?
A. My solicitor told me that.
Q. Mr. Sivalingham?
A. Yes.
20 Q. When did he tell you? Before you went to Taiwan on the 9th of July?
A. Day before we went to Taiwan.
Q. Did he tell you that Mr. Wilson would be going with you?
A. Yes.
Q. You knew you were going to see Mr. WONG on M.B.F. business?
A. For these cases.
Q. For these cases. Now, you say that Mr. CHOW gave you one of his visiting
cards?
A. Yes.
Q. When was that?
30 A. When we introduced each other.
Q. And you have kept that card all the way through, have you?
A. Yes.
Q. When did you have this photostat made?
A. I don't remember.
Q. Where did you have it made?
A. I can't remember whether it was in Kuala Lumpur or in Hong Kong.
Q. Can't remember whether it was in Kuala Lumpur or in Hong Kong? But not
made in Taiwan, not made in Taipei there?
A. I don't know.
40 Q. Don't know?
A. I don't remember.
Q. You don't remember. You have no idea whatever where you made the photo
copy?
A. No idea.
Q. No idea of when you made it?
A. No.
Q. I have got 2 cards I want to show you Mr. LEE. My Lord, may these be
marked for identification? They will be produced.

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Lee Ing-chee –
cross-examination

CLERK: Provisional D1 and D2.

Q. Will you look at the back and compare that with the photostat that you have produced? Has the witness got P9? I think the witness better look at the original photostat please. It has been exhibited. Mr. LEE, that is the photostat you have produced in court. Recognize that?

A. Yes.

Q. Will you compare the 2 and are they the same? The printed bits, of course, not the bits that have been written in subsequently.

A. The same.

Q. All right. I want you to look at another, this card. My Lord, it is for identification only at this stage, PD2. Will you agree that this also purports to be the card of CHOW Chaw-I? Is that right? 10

A. Yes.

COURT: What native dialect do you speak, Mr. LEE?

A. Fukien, sir.

COURT: How would you pronounce the name in Chinese in your dialect?

A. CHOW See-kin.

COURT: How would you pronounce it in Mandarin?

A. I can't pronounce the second character in Mandarin, sir.

Q. Did you answer the question whether this also bears the characters CHOW Chaw-I, on the card? It is the second of the cards, PD2. 20

A. Yes.

Q. But they are not the same, are they, because in PD2 there is a home telephone number listed which is not printed on your P9?

A. Yes, but the telephone numbers on PD1 are exactly the same as those on mine.

Q. Yes, yes, that is not – you have answered my question. They are identical as regards the printing. On PD2 there is a difference is there not? There is a home telephone number listed on PD2 which does not appear on PD1 and does not appear on your P9?

A. Correct. 30

Q. A further difference is that on PD2 there is one office number listed whereas on PD1 and your P9 there are three – is that correct?

A. Yes, right.

Q. And would you agree that on PD2 against the office number there appear the characters for "Central Exchange?"

A. Yes.

Q. Yes. Which doesn't appear on PD1 or on P9?

A. That's right.

Q. Now, evidence will be given, Mr. LEE, that PD1 is an old card of –.

MR. YORKE: My Lord, my learned friend is trying to put something –. 40

MR. SWAINE: May the witness leave the court?

Supreme Court
of Hong Kong
High Court

(Witness leaves courtroom.)

MR. YORKE: My Lord, my objection is this – what my learned friend is about to put to the witness is inadmissible for this reason: your Lordship knows that Mr. CHOW is not in court because he is beyond the seas. Whether one of his cards or another is older or younger than the other is evidence which can only be given by him. He is not in court. There is no hearsay notice in respect of anything else which has come directly from any other witness.

Plaintiff's
evidence

No. 40

Lee Ing-chee –
cross-examination

MR. SWAINE: My Lord, I will rephrase the question.

10 (Witness returns to courtroom.)

Q. Mr. LEE, Mr. David NG will give evidence that the card PD1 was given to him by Mr. CHOW at the time of his first visit to Taiwan on the 31st of December 1976. Just wait for the question, Mr. LEE. He will further say that he got PD2 on his second visit to Taiwan, between the 9th and the 13th of January 1977. Now, I am going to put to you that the photo copy card which you have produced, P9, was not handed to you by Mr. CHOW as you say on the 11th of July 1977.

A. That is so, sir.

COURT: What?

20 A. He gave it to me, sir.

Q. I am going to suggest you picked it up somewhere else.

A. From where?

COURT: You are here to answer questions, Mr. LEE.

Q. Going back to P8, you have said that you yourself wrote in the last sentence – against the last sentence in the last paragraph – is that right?

A. Yes.

Q. When was that written in?

A. It was put in later.

Q. I know it was later. When?

30 A. I can't remember.

Q. Can I see it please? Was it the same evening or the day after or weeks after?

A. I think it was on the same night.

Q. And by then you had changed your pen, had you?

A. Yes.

Q. When did you see Mr. Wilson again after your interview?

A. On the same night. I had meal together with him.

Q. Yes. About what time was that?

A. At about 9.

40 Q. You finished your interview with Mr. CHOW at 8 and you went straight up to your room – is that right?

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Lee Ing-chee –
cross-examination

- A. Yes.
Q. And you dined with Mr. Wilson after about one hour?
A. No. As soon as I returned to my own room I telephoned him.
Q. Yes. What time did you meet him?
A. Then he suggested to me to dine with him at about 9.
Q. Yes. And did you then dine with him at 9?
A. Yes.
Q. Did you see him between 8 and 9?
A. It seemed that I did talk to him on the phone.
Q. Did you see him?

10

COURT: Well, if you can't remember, say so. Don't guess.

- A. I can't remember, sir.
Q. When did you show him the notes, P8?
A. The next morning.
Q. Oh! The next morning?
A. Yes.
Q. Did you consider these notes were important to your case and the case of M.B.F.?
A. Yes.
Q. Why didn't you show these notes to Mr. Wilson at the first opportunity? 20
A. Well, I thought that it was not that urgent, sir.
Q. Mr. LEE, you were there in Taipei on M.B.F. expenses for one purpose and one purpose only – is that right – this litigation?
A. Yes.
Q. Very well. I suggest to you that you fabricated these notes.
A. No, it is impossible.
Q. Mr. LEE, why didn't you bring the original of this card to Hong Kong? Why is it in K.L.?
A. Well, I thought that it was not important. Therefore when I returned home I just placed it there. 30
Q. In that case why did you make a photostat?
A. For no purpose at all. I just made a photostat copy of that visiting card.
Q. No purpose at all?
A. That's right.
Q. Do you know if there is any particular reason why you should come back to Hong Kong on the 12th? Has there any urgency about coming back to Hong Kong?
A. Yes.
Q. Yes. What was the urgency?
A. It was because I had to come back to Hong Kong to reply to Mr. David NG's affidavit. 40
Q. Do you remember if it was in the morning of the 12th that you showed the notes to Mr. Wilson or was it the afternoon or what time of day?
A. Morning.
Q. Did it occur to you that you had better get an independent third party to see Mr. CHOW – Sorry, to get a third party to see Mr. CHOW before leaving Taiwan?

- | | | |
|-------|---|---|
| A. | Well, I thought that it was not necessary. | Supreme Court
of Hong Kong
High Court |
| Q. | You thought it was not necessary. But you did think it was necessary to have a third party before you saw Mr. CHOW – is that right? | |
| A. | Yes. | |
| Q. | What changed the position from one day to the next, Mr. LEE? | Plaintiff's
evidence |
| A. | Nothing changed. | |
| Q. | Nothing changed. On the 11th it was desirable to have a third party, on the 12th it wasn't? | No. 40 |
| A. | Because I myself had already seen him on the 11th. | |
| 10 Q. | Very well. I will go on to something else. Look, can we have the Defendant's bundle which is, I think, pink. Is that right? Simply the defendant's bundle then. This one, without the jacket. | Lee Ing-chee –
cross-examination |

COURT: Maybe it is the Defendant's common bundle.

MR. SWAINE: Document 3 please. (To witness) Now, you will see this is a copy of a letter addressed by yourself on San Imperial letter paper of the 1st of April 1975 to Taipan Bldg. Management Ltd.?

A. Yes.

Q. And do you identify your signature on this copy?

A. Yes.

20 COURT: Is this an exhibit?

MR. SWAINE: The bundle is there although I gather that none of these documents is admitted.

COURT: No, are you going to have this produced as an exhibit?

MR. SWAINE: Yes, I think it will be convenient. My Lord, it may be that we shall be able to save a great deal of time –.

30 MR. YORKE: My Lord, what I am suggesting to my learned friends is that to save pulling documents out of bundles and making them exhibits – by the end of the trial there will be tons of them – for my part I am prepared to admit all the documents as documents. But that relies on the full agreement that they're all witnessed and therefore of the genuineness of the contents. That would make it unnecessary to make an exhibit of any document already in the bundle.

COURT: Is that agreeable to you, Mr. CHING?

MR. CHING: That is agreeable to me. I hope it is reciprocal.

MR. SWAINE: It is more than reciprocal. I have been admitting all sorts of things at your request.

Q. And is it to your knowledge Mr. LEE that Taipan Bldg. Management Ltd. is

Supreme Court
of Hong Kong
High Court

a company owned and run by Mr. David NG?

A. He told me so.

Q. Yes. And this company acts as estate agents and property brokers. Is that to your knowledge?

Plaintiff's
evidence

A. No.

Q. No meaning you don't know or you disagree?

A. I don't know.

No. 40

Q. You don't know. But you are here writing to Taipan in respect of a letting of the Jade Imperial Hotel?

A. Yes.

Lee Ing-chee –
cross-examination

Q. That is to let out the Jade Imperial Hotel which was owned by a subsidiary of San Imperial? Is that right?

A. Yes.

Q. And this was a letter to Taipan asking if they would find a tenant for San Imperial on the terms set out in your letter?

A. Yes.

Q. Will you look at the reply of Taipan on page 5? That confirms the terms of the proposed letting, does it not?

A. Yes.

Q. Did that lease materialize?

A. Actually Mr. David NG had already talked and agreed with Mr. CHOO Kim-san.

Q. That was not the question. Did the lease materialize? You were writing on behalf of San Imperial?

A. Yes.

Q. Look at Document D6, Defendants' 6, on the following page —.

COURT: Exhibit D6 or are you talking about Document No. 6 in that bundle?

MR. SWAINE: Document No. 6 in that bundle. (To witness) Now, that is a letter from Taipan addressed to yourself?

A. Yes.

Q. On the 12th of February 1976. Do you remember it?

A. Yes.

Q. And this was Taipan acting on behalf of unnamed clients offering a loan of \$6 million to Hong Kong Estate Ltd., one of the subsidiaries of San Imperial?

A. Yes.

Q. And did that loan materialize? Yes or no? Do you know?

A. I don't know.

Q. Now I will pass on to something else. You were giving evidence about Asiatic Nominees Ltd. Do you remember?

A. Yes.

Q. Would you agree that Asiatic Nominees Ltd. held shares on behalf of M.A.F. Credit Ltd. at a time when M.A.F. Credit Ltd. had already gone public?

A. Yes.

Q. And in fact would you confirm an item here in the balance sheet of M.A.F. Corporation Ltd., a subsidiary of M.A.F. Credit Ltd., authenticated by yourself as a director of M.A.F. Corporation? Just take a look at this first. Do you so

identify that document Mr. LEE, as being the annual report? If you look at the front page, 1973, of M.A.F. Credit Ltd.?

Supreme Court
of Hong Kong
High Court

A. Yes.

MR. SWAINE: Can that be marked as exhibit?

Plaintiff's
evidence

CLERK: Exhibit D3.

No. 40

MR. SWAINE: The original report, my Lord, goes in as D3. Your Lordship has a copy.

Lee Ing-chee –
cross-examination

COURT: Yes.

10 Q. Now, the particular item that I want you to identify is that which has an asterisk against it showing stock of quoted shares at cost \$4,300,000 – do you see that?

A. Yes.

Q. These were shares beneficially owned by M.A.F. Corporation, subsidiary of M.A.F. Credit which was a public company – is that right? Would you remember now what those quoted shares were, Mr. LEE?

A. I don't remember what the shares were. M.A.F. Corporation Ltd. later became a subsidiary company of M.A.F. Credit Ltd.

Q. We are looking at the 1973 report. We are talking about 1973. Now, is the answer "yes" to my question?

20 A. Will you please repeat your question, sir?

Q. Mr. LEE, this is an annual report of M.A.F. Credit for 1973. We have been looking at the consolidated balance sheet. This is the subsidiary company's balance sheet but the report itself –

A. Here it says "M.A.F. Corporation" instead of "M.A.F. Credit."

Q. M.A.F. Credit Ltd., Mr. LEE.

A. Yes.

Q. All right. What you have got is the balance sheet of M.A.F. Corporation which is a subsidiary of M.A.F. Credit. Now, is that right?

A. Yes.

30 Q. That is a balance sheet as at 31st December 1973?

A. Yes.

Q. And among the current assets in that balance sheet is stock of quoted shares at cost \$4,300,000?

A. Yes.

Q. So the question is, were those shares beneficially owned by M.A.F. Corporation?

A. According to the statement here, yes.

Q. A statement which you authenticated as a director, Mr. LEE.

A. This was 4 years ago. I can't remember clearly.

40 Q. All right. Would you sign something that was false then, Mr. LEE?

A. No.

Q. The statement of this report is true?

A. Yes.

Q. Now, I had asked whether you remembered what those quoted shares com-

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Lee Ing-chee –
cross-examination

prised. Do you remember? My question was, what did those quoted shares comprise?

A. I can't remember.

Q. You can't remember. If I told you they comprised 3 million shares of M.A.F. Credit and 650,000 shares of San Imperial, would you agree or disagree or say you simply don't remember?

A. I can't remember sir.

Q. You can't remember. If I were to tell you that the 3 million M.A.F. Credit shares were in December 1975 exchanged for 1,500,000 San Imperial shares, would you agree or disagree or simply "not remember"?

A. 1.5 million shares?

Q. A 2 for 1 swap – 2 M.A.F. Credit shares for 1 San Imperial share.

A. I can't remember clearly, sir.

Q. Now, I have here the 1975 annual report of M.A.F. Credit Ltd. You were still then in charge, were you, in 1975?

A. Yes.

MR. SWAINE: Could this be marked please?

CLERK: D4.

Q. You see at page 16 in the note to the accounts, page 16, the quoted investments in 1974 includes 3 million shares in the company, that is, M.A.F. Credit, held by a subsidiary, that is, M.A.F. Corporation, which have now been exchanged through private arrangement during the year for 1,500,000 shares in San Imperial Corporation Ltd.?

COURT: The company is M.A.F. Credit, is it?

MR. SWAINE: Yes, my Lord, it is the report for M.A.F. Credit. (To witness) Does that jog your memory now? Do you recall if this was so?

A. Yes.

Q. And these shares in San Imperial beneficially owned by M.A.F. Corporation were held in the name of Asiatic Nominees Ltd. You agree or disagree or say you don't know or can't remember.

A. I don't know.

Q. What you do remember, however, is that Asiatic Nominees did hold shares on behalf of M.A.F. Credit Ltd. after it had gone public? The details you say you don't remember?

A. Yes.

MR. SWAINE: My Lord, I think I have come to the end of my cross-examination, unless I have left out something. Could I ask your Lordship's indulgence for a few minutes to check?

COURT: Do you want a short adjournment?

MR. SWAINE: If it pleases the court.

COURT: We will adjourn for 10 minutes then.

Supreme Court
of Hong Kong
High Court

MR. SWAINE: I am obliged, my Lord. I have no further questions.

MR. CHING: My Lord, I understand Mr. Yorke wishes to ask one or two questions in re-examination. Perhaps he could precede me?

Plaintiff's
evidence

COURT: Yes.

No. 40

MR. YORKE: Much obliged.

Lee Ing-chee –
re-examination

REXN BY MR. YORKE:

10 Q. Would you look at the document D4? I think in fact that's the last document you were asked to look at. You see the note to which your attention was drawn on the last page?

A. Yes.

Q. Can you tell my Lord who, if you know, arranged for MAF Corporation to hold those three million shares in the company?

A. I know.

Q. You know. Who was it?

A. Mr. Choo Kim-san.

Q. Can you tell his Lordship what the terms of that arrangement were?

20 A. I know that Mr. Choo Kim-san owed MAF Corporation some money, therefore he gave those three million shares to MAF Corporation to set up (off?) a part of his debt to MAF Corporation.

Q. And then the note says there was a private arrangement for the exchange of shares. Who made that arrangement on behalf of each of the two companies?

A. Well, by that time I have already resigned. I don't know.

REXN BY MR. CHING:

Q. Mr. Lee, is it to your knowledge that the warrant for your arrest in Thailand relates to an allegation that you have misappropriated over half a million baht from Thai MAF?

A. Actually I did not get any money.

30 Q. Do you know what that warrant alleges?

A. Yes.

Q. Are you in fact guilty of that offence?

A. No.

MR. CHING: That's all the questions I wish to ask, my Lord.

COURT: Thank you.

MR. CHING: My Lord, the witness of course is away from his family for some time from Kuala Lumpur. May he be released on his undertaking to return whenever he is called upon to do so?

COURT: Mr. Swaine, are you agreeable to that course?

MR. SWAINE: My Lord, I may have a request to make to the Court: because of the answer he has just given in re-examination, it would be in the court's discretion to ask if the court thinks it ought to be asked.

COURT: Yes?

MR. SWAINE: I would like to look at some of these papers. It may be unnecessary –.

COURT: Yes.

MR. SWAINE: May he please be back after the lunch adjournment and thereafter I have no objection to his leaving on the undertaking mentioned.

10

COURT: I see. Very well, then, we will adjourn to 2.30 this afternoon.

MR. CHING: My Lord, I understand from my learned friend he does not wish to put further questions to Mr. LEE Ing Chee. May he therefore be released on the undertaking that he return, if necessary?

COURT: Yes.

MR. CHING: Before I go on, there are two matters I should like to clear up. My Lord, we've had the translation of the visiting cards certified, and there are just one or two minor alterations; and if your Lordship would substitute that for the one that I handed up previously? That would be 9A, my Lord.

INTERPRETER: P9A.

20

COURT: Yes.

MR. CHING: I am much obliged. Before I go on, your Lordship possibly may have had this question in your Lordship's mind yourself: that throughout the cross-examination of LEE Ing Chee concerning his conversation with CHOW Chaw-I, it has never been suggested directly to the witness either that LEE Ing Chee did not hold the conversation or that he did not hold the conversation with CHOW Chaw-I, and I would rather like to have it clearly from my learned friend whether he is saying that LEE Ing Chee spoke to nobody, or whether LEE Ing Chee spoke to somebody who is not CHOW Chaw-I; or whether he is saying LEE Ing Chee spoke to CHOW Chaw-I who did not tell him those things. And so, my Lord, the actual situation relied upon by my learned friend has never been put to the witness.

30

COURT: Yes, Mr. Swaine?

MR. SWAINE: My Lord, I shall be addressing you as to the evidence you have heard about this meeting and will be submitting and putting this, but my

learned friends prefer me to do it at this stage: (a) that there was never held such a meeting; (b) if there was such a meeting, it was not in the terms as to which LEE Ing Chee has given evidence; . . .

Supreme Court
of Hong Kong
High Court

COURT: (a) that there was never such a meeting; (b) if there was such a meeting, it is not admitted?

Plaintiff's
evidence

MR. SWAINE: Which is denied, my Lord.

No. 40

COURT: It is denied. Yes?

Lee Ing-chee –
re-examination

MR. SWAINE: It was not in the terms given by the witness.

COURT: Yes?

10 MR. SWAINE: And (c) as it has been specifically put, these notes were fabricated.

MR. CHING: That last version was clearly put.

COURT: Yes?

MR. CHING: I wonder if I could trouble my learned friend just a little further. If – this is the (b) point – if there was a meeting, which is denied, it was not on the terms as related by LEE Ing Chee. I assume my learned friend is therefore saying that if there was a meeting, something different was said and I should like to know what it is that it's alleged was said.

COURT: Are you in a position to indicate that?

MR. SWAINE: I'm in a position to indicate it.

20 MR. CHING: Good.

MR. YORKE: Partly as a result of that but partly because of what happened this morning, I desire to take up a moment of the Court's time merely to get on record now the times in which certain things were done, because that would affect certain evidence in respect of which I don't propose to call the witness from Taiwan, if your Lordship would allow me to do that. It arises out of the production of the visiting cards, or business cards, this morning. Your Lordship will remember that I objected to the question my learned friend had put which was in the form that evidence would be called that one of these cards was older than the other. My learned friend then put it differently and the way in which he put it was this: that David Ng gave evidence that what your Lordship now has of PD1 – would your Lordship be good enough to look at that, because the point on this is very apparent there?

30

COURT: Yes?

MR. YORKE: That PD1 was given to him by Mr. Chow at a meeting on the 31st

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Lee Ing-chee –
re-examination

December, 1976. At a subsequent meeting David Ng is going to say he was given PD2. The inference which your Lordship is obviously going to be asked to draw is that PD2 – that's the later version marked 2 – would supersede the earlier one. My Lord, this is, odd enough, more important than it appears.

Now, my Lord, there is on the English version a difference between the two. My Lord, it's not quite possible – the inference will be there to say that the English version of PD2 and PD1 can be directly compared with the Chinese versions; but, my Lord, the one which Mr. LEE Ing Chee produced in evidence – he produced a Chinese side and the Chinese side, PD1, I'm told by my learned junior who can read Chinese, corresponds to P9, so that the back of the card, at any rate, corresponds with what LEE Ing Chee produced. It doesn't absolutely follow, of course, that the front, which was in English, was the same, my Lord; I forget that it'd be irresistible, the Chinese corresponded with the front view as well.

10

My Lord, that means that – if what Mr. David Ng is going to say is true – he was using (marked 1) PD1 which, among other things, contained a telex number: the telex number is Telex 24008 and then what is called the 'answer back' Skyprene – that's the answer back.

Subsequently, what is said to be marked 2 is he then had a card with the word 'telex' on it: but no telex number, no answer back. My Lord, again, the initial inference to that is that Mr. Chow has given up his telex: he used to have a telex number back in December; by January, for business reasons perhaps, he no longer had a telex and that would be the inference, if the evidence which is to be called from Mr. David Ng is true.

20

Now, my Lord, the moment those cards came in, I invited Mr. Simon Ip, part of my instructing solicitors, to go to the office just across the road and telex to 24008 Skyprene in Taipei and see what happened. My Lord, this is why I'm doing it now, simply to get on the Court's record straight away how fast this was done. And he went there and telexed through to Skyprene – through to that number – to the 'answer back', Skyprene – and he got an answer. And the important thing, my Lord, is the answer came back with the word 'Skyprene' in it. I don't know how much your Lordship knows about – to take judicial note – about telexes. I will call evidence upon this, if necessary, but what is called 'the answer back', which is Skyprene there and Johnson Stokes' marking is 'Jisen' (?) here is something which is not typed in; it is locked mechanically into the machine by a key which you touch and it produces your number, and you can't have anybody else's number, and this protects communication worldwide. Of course, a mechanical forger can alter it. It needs time to do it, of course, to put it at that. So, that means if Skyprene comes back on an answer, then it means somebody in Taiwan pressed the key coded 'Skyprene' and it came through. So, my Lord, we got an answer back from 24008 Skyprene.

30

40

So, my Lord, that shows that in October 1977, although not absolute proof, 24008 Skyprene was the telex and the answer back of Skyprene. So,

again, if Mr. David Ng's evidence is to be correct, this means Mr. Chow had a telex, abandoned it and then got one back again with the same number and answer back, probability maybe somewhat lower. But, my Lord, we went a little further than that. We've asked some more questions. But your Lordship will also see that – again, if Mr. David Ng's evidence which he is to give is going to be correct, my Lord – that they had in December 1976 three telephone numbers. Your Lordship will see it at the bottom (7 of PD1) 7118143 and then 2731, I suppose 1120 and 1027, whereas in the newer card they only had one number, 7118143. The inference – again, my Lord, if what Mr. David Ng is going to say is correct – is between December and January they gave up two telephone numbers (again, in itself, nothing reprehensible as people do give up telephone numbers – business contracts, so they do it.) So, my Lord, we then sent a second telex to Skyprene and we told them what we thought was a white lie but it turned out to be the truth: we said, "7118143 is a common number which seems to be engaged all the time. Please do you have any other numbers?" And we got a telex back saying, 'That number had been cancelled but, yes, they have got two new numbers, which are 7311027 and 7311120.' So, my Lord, not only had Mr. Chow, if his evidence is correct, three telephone numbers in December, dropped two of them in January but he then got them back again later in the year and they're still being used by Skyprene.

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Lee Ing-chee –
re-examination

Now, my Lord, the first of those telexes – your Lordship may again know that telexes have the time and the zone time keyed into them – the first telephone (telex ?) was on 27th, which is today, at 11.36 (?) Pacific time standard, and the second one 27th at 12.00 Pacific time standard, and your Lordship may notice the scurry for that, of course, when Mr. Ip came back with the telex to be at that time.

My Lord, all I'm doing at the moment is to remind your Lordship of it: that this all happened after those cards had been produced, the first moment we had a chance to compare telexes and telephone numbers. My Lord, I merely now say and refresh your Lordship's memory about the time in which this was done.

Now, then, I'm proposing to serve on my learned friend a notice to admit the facts contained in those telexes, and if he won't admit them I shall invite your Lordship to draw certain inferences from that and then it will have a certain hearsay notice in relation to the Skyprene operator evidence from Taiwan who is beyond the scenes, my Lord, whom I would not propose to bring here, but it's a possibility that – this is why time is so important – we could have suborned there to give erroneous evidence about a document he merely saw, which was produced in court, is so low that the credibility of a routing officer about telephone numbers must be very, very high, indeed. My Lord, 'I'm merely saying that I wouldn't bother to call him, but it is important to see that there was no chance here for any fabrication to have taken place in relation to his evidence. Notices will be served, I hope, tonight or tomorrow morning.

COURT: Thank you.

MR. CHING: My Lord, I call my next witness, Christopher Raymond WILSON.

P.W.2 – Christopher Raymond WILSON (Sworn in English)

XN BY MR. CHING:

Q. Your name is Christopher Raymond Wilson?

A. Yes, sir.

Q. And you are employed as an assistant solicitor by Messrs. Johnson, Stokes & Master in Hong Kong?

A. Yes.

Q. Were you in this Colony on the 11th July this year?

10

A. No.

Q. Where were you, please?

A. I was in Taiwan.

Q. "In Taiwan".

COURT: What is this? In Taipei?

A. Taipei.

Q. "In Taipei". When did you arrive? On what date did you arrive in Taipei on that occasion?

A. I arrived on the 9th July.

Q. And when did you leave?

20

A. I left on the 12th July.

Q. Coming back to Hong Kong?

A. Yes.

Q. Throughout that time, that is to say 9th to the 12th July this year, was there any other European solicitor of Messrs. Johnson, Stokes & Master in Taipei?

A. No.

Q. While you were in Taipei, did you ever meet or see a person called CHOW Chaw-I?

A. No, I did not.

Q. Specifically, did you ever meet a person called CHOW Chaw-I while you were in the company of Mr. T.C. Hwang?

30

A. No, I did not.

Q. So far as you know – I'm sorry, I withdraw that. Now would you have a look, please, at Exhibit P8? Look at the second page, please. You have some handwriting in red.

A. Yes.

Q. In whose hand is that?

A. That is my handwriting.

Q. That is your hand. You have often seen that document before?

A. Yes, I have.

40

Q. Where were you when you put the red handwriting on the second page – Hong Kong or Taipei?

A. In Taipei.

Q. "In Taipei". Can you recall which day it was?
A. It would be on the – if I can just refer to my telex?

Supreme Court
of Hong Kong
High Court

MR. CHING: May he refer to it, my Lord?

Plaintiff's
evidence

A. This handwriting –.
Q. Before we get to that, after seeing that Exhibit, P8, did you do anything?

A. Yes, I corrected some of the English on the exhibit, I incorporated it in a telex. No. 40

Q. Which telex? To whom?

A. To Mr. Simon Ip.

10 Q. In Hong Kong?

A. In Hong Kong.

Christopher R.
Wilson –
examination

MR. CHING: May he refer to the telex to refresh his memory?

COURT: Yes.

MR. CHING: Thank you.

A. The telex was sent on the 12th July.

Q. Is that the day you think you saw it?

A. That is the day when I saw it.

Q. That's the day you saw it.

COURT: Mr. Swaine, do you want to look at it?

20 MR. SWAINE: Yes, I think so, my Lord. My learned friend perhaps can tell me . . .

MR. CHING: I don't know.

MR. SWAINE: You don't know.

MR. CHING: Of course, the whole file has been handed to my learned friend, I shan't look at it. My Lord, I have no wish to embarrass Mr. Wilson because I point out while he is in the witness-box in the Affidavit the European solicitor is described as being a stout, bespectacled European solicitor.

COURT: You are not obliged to incriminate yourself. (Laughter!)

MR. CHING: My Lord, I think that's all I wish to ask Mr. Wilson. Perhaps just one last question.

30 Q. Where – Which hotel were you living at?

A. We were staying at the VIP Hotel.

Q. "VIP Hotel". Thank you.

XN BY MR. YORKE:

Q. Mr. Wilson, I want to ask you about quite separate matters – two separate matters.

MR. SWAINE: The telex has been folded over. I think the bottom half will be privileged. I have not looked at it . . .

COURT: Yes?

Q. Mr. Wilson, I want to ask you questions purely about the share register of San Imperial Corporation. You have inspected the register in the past and sworn affidavits as a result of your inspection in the interlocutory proceedings.

A. Correct.

Q. Did you go at 4.15 last Tuesday, 18th October, to the Imperial Hotel and again you, in fact, went with me, did you not? 10

A. Indeed.

Q. In order to inspect further the ledger sheets of various shareholders in the San Imperial Corporation?

A. That's correct.

Q. Had you made any prior request to anybody about sheets which should be made available?

A. Yes, I had made a request to Mr. Ives asking for certain ledger cards to be available and I also asked that the register of members for the period going back to August 1976 should also be made available for inspection. 20

Q. Did you ask for the names of any shareholders in particular or did you ask for the cards of any shareholders in particular?

A. Yes, I asked for the cards for Asiatic Nominees Ltd., Triumphant Nominees Ltd., IPC Nominees Ltd., City Nominees Ltd., MAF Corporation (Hong Kong) Ltd., and MAF Nominees Ltd.

Q. Are there any other MAF companies that you can remember you asked for?

A. Oh, MAF Credits, sir. That's the best of my recollection.

Q. When you arrived at the hotel, you went to Mr. David Ng's office. His secretary was there, was she not?

A. She was. 30

Q. And she had certain files available, computer print-outs of shareholders.

A. That's correct.

Q. For the moment I only want to ask you about one name only and that is MAF Credit Ltd.

MR. YORKE: That, your Lordship, is in red 2, page 53, in which he said that the 3.1 million shares owned by MAF Corporation were held in the name of MAF Credits Limited. Has your Lordship got that? It's red 2, page 53, where it appears.

Q. Were there any cards available for MAF Credits Limited?

A. There were no cards available for MAF Credits Limited. 40

Q. Did you ask anyone to find the cards for MAF Credit Ltd.?

A. Yes, I asked David Ng's secretary to find the card for MAF Credit, Ltd.

Q. Anyone else?

A. I believe I also – Yes, I spoke on the telephone to Mr. HO Chung-po and

	asked him if he knew where the card for MAF Credit Ltd. was.	Supreme Court of Hong Kong High Court
	Q. With what result?	
	A. He said . . .	
	MR. SWAINE: No, this is going to be hearsay.	Plaintiff's evidence
	MR. YORKE: Yes, it will be hearsay and I haven't served notice. If my learned friend wishes to object, he is entitled to do so.	No. 40
10	MR. SWAINE: I have already made known to my learned friend and shown him the notes which I intend to incorporate in a letter which I drafted this morning, that the shares were in fact held under the name of Asiatic Nominees, not MAF Credits Limited. That's up to my learned friend and I have already told him so. It may be he may not wish to continue this line of questioning.	Christopher R. Wilson – examination
	MR. YORKE: My Lord, the difficulty is I've still not been able to trace the shares that my learned friend would say were in the name of Asiatic, but what I'm trying to do is to have these shares passed round. My learned friend says I can't do it. But if my learned friend is maintaining his objection, then of course he is entitled to do so.	
	MR. SWAINE: Yes, I do.	
	MR. YORKE: Very well.	
20	Q. You can't tell us what Mr. HO Chung Po said. Did anybody else come into the room to assist you while you were there?	
	A. Yes, another Chinese male came into the room. I don't know his name.	
	Q. Did you yourself inspect the registers?	
	A. I did inspect the registers.	
	Q. Were you able to find any reference to MAF Credits?	
	A. No.	
	Q. Did you then look at the computer print-outs of shareholders?	
	A. Yes.	
	Q. How many computer print-outs were there? I'm talking about bundles, not pages.	
30	A. I see.	
	Q. How many bundles?	
	A. There were about – Well, there were very many bundles. I can't say exactly how many.	
	Q. But how many names, either MAF or Malaysian American Finance or any combination, were you able to find of companies with that type of name, who were ever shareholders of San Imperial Corporation?	
	MR. SWAINE: I think we are going to get evidence as to documents; that, of course, is secondary evidence.	
	MR. CHING: My Lord, I do have a subpoena duces tecum . . .	

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Christopher R.
Wilson –
examination

MR. SWAINE: But that was documents to be produced. We can't have secondary evidence.

MR. CHING: If my learned friend really wants it first, we'll have to adjourn while I ask him to come.

MR. YORKE: My Lord, I do find it astonishing. My learned friend sees fit to take an objection of this kind. Of course, we can bring it. We can bring these documents here, my Lord, and I promise they would easily take up the Clerk's space and your Lordship's Bench; and we'd bring those documents here in order to prove – if we go through all of them, there are many thousands – a name does not appear amongst them. My Lord, if that is the standard of case the defendants are putting forward in a sort of objection they are putting forward, your Lordship may think they have a lot to hide, they are playing for time for some reasons. My Lord, I have asked for it from London, and your Lordship will shortly be receiving, the transcript of the judgment of the Court of Appeal in the case of 'Edward Bates' against 'Bank & Commercial Holdings' where Lord Justice Lawton said that when a party takes frivolous and unimportant objections and bad points, it reflects upon those points which, standing alone, might appear to be good.

10

My Lord, I shall invite your Lordship from that authority to bear in mind that when this sort of objection is made, this indicates the defence, as the defendants have it, which standing alone might have appeared to be sound, is tainted by the conduct of the case. Now, if my learned friend is really saying he wants this court to have all these documents brought in in order to show there are no other companies registered, my Lord, then I'd ask for an adjournment to do it; I'd ask for costs to be paid by his instructing solicitors personally for wasting everybody's time.

20

COURT: Mr. Swaine?

MR. SWAINE: My Lord, I have umpteen notices to admit served upon me, including notices this morning. We've had a great deal of argument in court as to what is admissible and what isn't. I think I have been leaning over backwards in order to accommodate my learned friends. If the object of this question is to elicit a negative, my Lord, then I would not persist with the objection.

30

COURT: Very well, then.

MR. YORKE: Much obliged.

Q. Apart from the MAF Nominees Limited, is there any company of which there is a register, either on a blue card or computer printouts, or any combination of MAF or Malaysian American Finance as a shareholder – registered as a shareholder of San Imperial Corporation?

A. From my search I couldn't find it.

Q. And none of the persons assisting you were able to find one either?

40

A. No.

- Q. Now, can you tell his Lordship back to what date the computer printouts went?
 A. The share register?
 Q. Yes, the computer —.
 A. I think it went back to December '75.
 Q. "December '75". So, between December '75 and the date of your inspection, MAF Nominees were the only MAF company whom you found as a shareholder?
 A. That's correct.
- 10 Q. Now, the second matter arises in relation to Saturday, the 22nd October. Were you in the lift in Prince's Building?
 A. Yes, I was in the lift.
 Q. What time was that?
 A. This would be sometime around mid-day.
 Q. Was anyone in the lift with you?
 A. Yes, Mr. Ives.
 Q. Did you speak to him?
 A. Yes, I did.
 Q. What did you say?
- 20 A. I asked Mr. Ives if Mr. Ng had been able to find out the identity of the person or company in whose name the 3.2 million shares were held prior to being transferred to MAF Nominees.
 Q. Yes. What did he say?
 A. Mr. Ives said that Mr. Ng was prepared to ask to inspect all the blue ledger cards to try and find out.
 Q. Well, you had already been on the previous Tuesday to do that.
 A. Yes.
 Q. What did you say to Mr. Ives?
- 30 A. I told Mr. Ives that there were many thousands of blue ledger cards and it would take us a great deal of time to go through them and I asked him if David Ng could possibly remember or find out in whose name the shares were held.
 Q. What did Mr. Ives reply?
 A. Mr. Ives told me that David Ng did not know.
 Q. I wish to ask you one more thing. Did you dictate an attendance note upon that conversation?
 A. Yes, I did.
 Q. How soon after?
 A. That afternoon.
- 40 Q. Is it important?
 A. It is.

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Christopher R.
Wilson — cross
examination

COURT: Mr. Swaine?

XXN BY MR. SWAINE:

- Q. Mr. Wilson, you have been personally conducting the case for MBF?
 A. I have been assisting Mr. Ip.
 Q. "Assisting Mr. Ip". Could we have the green bundle 3, please? I think if we

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Christopher R.
Wilson – cross
examination

look at the Index first, you see that item 9 in the Index is an affidavit of yourself in High Court Action 252 of 1977.

A. Yes.

Q. 25th April, 1977. That of course if you look at page 30 is an action by MBF against CHOO Kim San.

A. Yes.

Q. And item (10) – sorry – item (12) is a further affidavit of yours in the same action on the 19th May 1977.

A. Page 43.

Q. These two affidavits were made, of course, before your trip to Taipei in July? 10

A. Yes.

Q. Just to complete the picture, perhaps, if you would look at the second page you made affidavits in the present action items 26, 27, 29, 30, 31 and 32.

A. Yes.

Q. So, you have been very much in the thick of the action.

A. Yes.

Q. What was the purpose of your going to Taipei on the 9th?

A. My purpose was to represent MBF and to report back to Simon Ip the results of Mr. LEE Ing Chee's investigations.

Q. Yes, that investigation being that – went into certain matters affecting Mr. CHOW Chaw-I; is that right? 20

A. That's right.

Q. That was the specific reason that you went to Taipei.

A. Yes.

Q. You flew, of course, with Mr. David Ng?

A. I flew with Mr. LEE Ing Chee.

Q. And you lodged in the same hotel with him?

A. Yes.

Q. And no doubt you had spoken to him before the 9th July?

A. Yes. 30

Q. Did you tell him that you were going on MBF business with him?

A. I don't remember if I specifically told him.

Q. But there's no mystery about your going on this MBF business and nothing else.

A. That's right.

Q. Now, on the 11th July morning, according to Mr. LEE Ing Chee, you went with him to Mr. T.C. Hwang, a lawyer in Taipei; would that be right?

A. Yes.

Q. His evidence was that as soon as you saw Wong, you left; would that be right?

A. I don't think that is correct – I mean I think we went to the office of T.C. Hwang to discuss the present status of the investigation. 40

Q. Yes. And do you recall how long you were there?

A. I'm afraid I can't recall how long I was actually with T.C. Hwang.

Q. But you left before Mr. LEE Ing Chee did.

A. I left before he did.

Q. Were you present when – I'm sorry – Did Mr. T.C. Hwang make any telephone calls while you were present?

A. Not to my recollection.

Q. Not to your recollection. But the object of this visit on the 11th was for

- Mr. Hwang to try to arrange a contact with Mr. Chow; would that be right? Supreme Court of Hong Kong High Court
- A. Mr. Hwang was able to contact Mr. Chow.
- Q. I am not asking whether he was or was not able to – I’m asking as to your knowledge, Mr. Wilson. Was that the object of the visit on the 11th?
- A. Yes. Plaintiff’s evidence
- Q. But you left before that object was achieved? Is that right?
- A. Yes.
- Q. Was it important, from your point of view, to stay at least until that object had been achieved? No. 40
- 10 A. I had to make a telephone call to my own office to see if Mr. Ip was there to take instructions from him. Christopler R. Wilson – cross examination
- Q. Yes. That is not an answer to my question. Was it important, from your point of view?
- A. I think it was important.
- Q. Why did you stay?
- A. Because I wanted to make my – this telephone call to my own office to verify that we should in fact make a direct approach to Mr. Chow.
- Q. And what was the answer from Hong Kong?
- A. The answer was that we should.
- 20 Q. And did you then communicate with Mr. Hwang?
- A. I can’t recollect if I spoke to Mr. Hwang specifically afterwards or Mr. Lee, but I had told one of them that it’s all right to go ahead.
- Q. Was this before or after, to your knowledge, that Mr. Hwang made contact?
- A. Well, I have no knowledge of whether Mr. Hwang had made contact directly. I had been told by Mr. Lee that they had made contact.
- Q. So that it might well be the case that Mr. Hwang had made contact even before you had got instructions from Hong Kong; would that be right?
- A. Well, he had contacted Mr. Chow before.
- Q. Before he got a reply from Mr. Ip?
- 30 A. It could well be true.
- Q. “It could well be true.” So that your getting the approval was in a sense ex post facto?
- A. Yes.
- Q. Were you back at the VIP House that evening at about 6 o’clock?
- A. I believe I had said so. I returned to the hotel at about that time.
- Q. And did you get a telephone call from Mr. LEE Ing Chee?
- A. Yes, I did.
- Q. Saying that he was going to see Mr. Chow that evening, is that right?
- 40 A. He said that Mr. Chow was in the hotel and would I – do I want to go and meet him – meet Mr. Chow with Mr. Lee.
- Q. What did you say?
- A. I said, no, I didn’t intend to go to the meeting.
- Q. You did not intend to go to the meeting. Why not?
- A. Because I felt that Mr. Chow would be more forthcoming to Mr. Lee without the presence of a lawyer there.
- Q. Did you remain in the VIP House?
- A. No, I don’t think I did.
- Q. From your point of view, this meeting was going to be an important one, was it?

Supreme Court
of Hong Kong
High Court

Plaintiff's
evidence

No. 40

Christopher R.
Wilson – cross
examination

- A. It was important. Yes.
- Q. Did Mr. LEE Ing Chee communicate again with you that evening?
- A. I believe he did. Can't recollect for sure, but I believe he did.
- Q. Do you recall whether you had dinner with him that evening?
- A. No, I did not. I don't think so.
- Q. When did you first learn from Mr. Lee that he'd prepared notes of the interview – P8?
- A. I think I first learned the next morning. It could have been that evening.
- Q. Mr. Lee said he had dinner with you the evening of the 11th. Do you rule that out or –
- A. I don't rule it out. It could be true. I can't quite remember.
- Q. You saw P3 the morning of the 11th?
- A. What? The notes?
- Q. Morning of the 12th?
- A. Yes, I know I saw them on the morning of the 12th.
- Q. It must have appeared important to you?
- A. Yes.
- Q. To the extent that you telexed verbatim the contents of this document to Mr. Ip.
- A. Yes. 10
- Q. Did it occur to you that it might be a good idea your seeing Mr. Chow in company with Mr. LEE Ing Chee?
- A. I think I asked Mr. LEE Ing Chee if he would make a statement, but I don't – can't quite remember if there was any response from Mr. LEE Ing Chee.
- Q. No, that's not the question. Did it occur to you that it would be a good idea for you to see Mr. Chow in company with Mr. Lee?
- A. I think it did occur to me. I believe it would have – I can't remember specifically.
- Q. Did you ask for a meeting with Mr. CHOW after you had seen these notes?
- A. I don't think I did. 20
- Q. According to these notes, Mr. CHOW was very important indeed, was he not?
- A. It appeared so, yes.
- Q. There would have been no fears in your mind then that he would not be forthcoming in the presence of a lawyer.
- A. Well, I think I must have got the impression from LEE Ing-chee that he would not talk in front of anyone else.
- Q. According to Mr. LEE.
- A. According to Mr. LEE.
- Q. He would talk only to Mr. LEE.
- A. Well, I got the impression from Mr. LEE that it would be a waste of time for me to have a further meeting with him. 30
- Q. So, you did not preserve. You left it at that.
- A. I did not preserve.
- Q. Mr. LEE Ing-chee himself was also in the thick of battle by the 11th of July '77, was he not?
- A. Sorry?
- Q. Mr. LEE Ing-chee was himself in the thick of battle by the 11th of July 1977.
- A. What do you mean by 'thick of battle'?
- Q. Making affidavits and . . . 40

- A. . . . Well, could I refer to the index? Supreme Court
of Hong Kong
High Court
- Q. Would you look at the index please. You see, the very first affidavit in the index was that of LEE Ing-chee – 13th September 1976.
- A. Oh, yes.
- Q. Item 8 – an affidavit of the 19th of April; Item 10 – an affidavit of the 7th of May; and Item 14 – an affidavit of the 31st of May. Plaintiff's
evidence
- A. Yes, I agree.
- Q. Very much in the thick of battle. No. 40
- A. Yes.
- 10 Q. Was he in your judgment the best person to send along to speak to Mr. CHOW? Christopher R.
Wilson – cross-
examination
- A. I would have thought so, yes.
- Q. You would have thought so.
- A. Yes.
- Q. Despite the fact that there had been cross affidavits contradicting Mr. LEE's affidavits – there had been cross affidavits contradicting Mr. LEE's affidavits.
- A. Yes.
- Q. He was in your judgment a suitable person to send along to interview Mr. CHOW.
- A. At that time, he was the best possible person. I mean two of us had already
20 got visas on that Saturday morning to go to . . .

COURT: . . . 'Only two of us . . . ' . . . ?

- A. . . . Only two of us were able to get visas to go to Taiwan that quickly myself and Mr. LEE.
- Q. You have of course a resident solicitor in Taipei, have you not?
- A. Yes.
- Q. And he's a Chinese.
- A. Yes.
- Q. Any effort made by him to get hold of Mr. CHOW before your visit?
- 30 A. I don't really know. I only returned to the office on the 7th of July from my leave. I was not aware of all the developments that had occurred since I went on leave.
- Q. Your bumping into Mr. Ives at the Prince's Building lift on the 22nd of October – you asked if David NG could remember or find out various things. Going back to your evidence . . .
- A. . . . It wasn't 'various things'. It was specifically one thing. It was the name or the identity of the person or company in whose name the 3.2M. shares were held prior to them being transferred to M.A.F. Nominees.
- Q. And was Mr. Ives' reply that Mr. David NG was not the registrar and did not know?
- 40 A. I believe Mr. Ives' reply was that I could go and inspect all the blue letter cards at the Imperial Hotel.
- Q. Yes?
- A. And if I wanted to Mr. NG was willing to make all the blue cards available for my inspection.
- Q. Mr. Ives said that to you.
- A. Yes.
- Q. You said that Mr. Ives said that David NG did not himself know.

Supreme Court
of Hong Kong
High Court

- A. Yes.
Q. In that context, did he say to you that David NG was not the registrar?
A. I can't remember.
Q. Thank you.

Plaintiff's
evidence

MR. SWAINE: No further questions, my Lord.

No. 40

RE-XN. BY MR. CHING

Christopher R.
Wilson –
Re-examination

- Q. Mr. Wilson, do you know the names of the persons who were trying to get visas to go to Taipei?
A. Sorry?
Q. Do you know the names of the other persons who were trying to get visas to go to Taipei? 10
A. Yes.
Q. Would you tell us who they were please.
A. The other persons were Mr. IP . . .
Q. . . . Simon IP . . .
A. . . . Mr. IP, Mr. K.K. CHONG, Mr. Sivalingam . . .
Q. . . . Anyone else?
A. . . . and Mr. Peter YEUNG.
Q. Peter YEUNG of Deacons. Anybody else that you can recall?
A. I can't recall. 20

COURT: Who's Mr. K.K. CHONG?

A. Mr. K.K. CHONG . . .

MR. CHING: . . . K.K. CHONG, my Lord, is the Malaysian solicitor for M.B.F.

- Q. Mr. Wilson, before you went over to Taipei, did you know whether or not Mr. T.C. HWANG had already found or contacted CHOW Chaw-I?
A. Yes, I did know.
Q. You did know. He had in fact already contacted him.
A. Yes.
Q. Thank you.

COURT: Thank you, Mr. Wilson. 30

MR. CHING: May he be released?

COURT: Mr. Swaine?

MR. SWAINE: No objection.

COURT: Yes.

(Mr. CHING and Mr. Yorke close their cases subject to certain matters to be resolved. Mr. Swaine asks for an adjournment until tomorrow morning for his case

to start.)

Appearances as before.

MR. SWAINE: My Lord, I am grateful to you for the indulgence of time.

(Mr. Swaine explains to Court one point in his opening).

MR. SWAINE: My Lord, I call Mr. Melville Edward Ives.

D.W.1 – Melville Edward IVES – Sworn in English.

Supreme Court
of Hong Kong
High Court

Defendant's
evidence

No. 40

Melville E.
Ives-examination

XN. BY MR. SWAINE

10 Q. Mr. Ives, you live at B17 Estroil Court in Garden Road, Hong Kong, and you are a solicitor and you carry on practice in partnership under the name of Peter Mo & Company at the Bank of Canton Building, 4th floor, Des Voeux Road, Central, Hong Kong.

A. Yes.

Q. And you are in these proceedings the 5th defendant.

A. Yes.

Q. You know of course both Mr. David NG (the 4th defendant) and Mr. HO Chapman (the 6th defendant).

A. Yes. I have known Mr. HO Chapman for over 20 years and Mr. David NG for about 15 years.

COURT: Sorry?

20 Q. Mr. Ives, you will be competing with the noise outside.

A. I'm sorry.

Q. Like myself, you will finish the day with a bad throat.

A. I am prepared to do so.

A. I have known Mr. HO Chapman for over 20 years and David NG I think for somewhere between 10 to 15 years.

Q. Now, Mr. HO Chapman will tell us himself about his association with the old Imperial Hotel. Would you tell the court please – you were appointed to the Board of the Imperial Hotel Holdings Ltd. at one stage.

30 A. Yes. The Imperial Hotel Holdings Ltd. – the principal shareholder was Mr. Hari N. Harilela. I think it was in 1971 he decided to go public with the company and he invited me to join the Board which I did.

Q. Now, I don't think it is in controversy, but when the Imperial Hotel Holdings Ltd. went public the Chairman was Sir S.N. CHAU and Mr. Harilela was Vice Chairman. What about Mr. Chapman HO?

A. Chapman HO was Managing Director.

Q. And was David NG with the group?

A. Yes. He was not on the Board but he was Accounts Supervisor and always attended Board meetings.

Q. Now, I don't think it is in dispute that in 1972 Mr. Harilela sold his entire

Supreme Court
of Hong Kong
High Court

Defendant's
evidence

No. 40

Melville E.
Ives-examination

holding in the company to a group representing the committee of the Far East Stock Exchange.

A. Correct.

Q. What about the Board of Directors?

A. When the agreement was entered into – I think that was about April or May 1972 – the entire existing Board resigned at this stage and a new Board was appointed by the Stock Exchange group. I'm sorry. Not the entire Board, most of the Board. I believe it still had Sir Sik-nin CHAU there.

Q. But you had resigned.

A. Yes.

Q. Right. It is not in dispute that the Far East Stock Exchange group then sold their interest to Mr. CHOO Kim-san (the 1st defendant) who has been absent of course from these proceedings.

A. That's correct.

Q. Were you approached by CHOO Kim-san after he had bought the controlling shares in the old Imperial Hotel Holdings Ltd.?

A. Yes. He asked me if I would serve on the Board of Directors.

Q. Was he then a new comer to Hong Kong?

A. Yes. As far as – no one in Hong Kong seemed to know him at all.

Q. And did you join the Board?

A. I did.

Q. How long did you serve?

A. I think it was for about 6 months.

Q. Why did you leave?

A. Well, principally, because there was nothing to do. I felt I was serving no useful purpose. So, I resigned from the Board.

Q. You resigned.

A. Yes.

Q. In your capacity as a solicitor, have you received instructions from CHOO Kim-san or his company or companies for professional services?

A. Yes.

Q. To your knowledge, did he use your services exclusively?

A. No. He used many solicitors. He used Gunston & CHOW. He used WOO, KWAN, LEE & LO. A couple of others he used.

Q. Did you or your firm at any time act against CHOO Kim-san or his companies?

A. Yes.

Q. Now, in addition to serving on the Board of San Imperial – I ought to have for the record said – to have put on record that after CHOO Kim-san bought over the controlling interest in the Imperial Hotel Holdings Ltd. he changed the name of the company to 'San Imperials Ltd.'

A. Correct.

Q. It is 'San Imperial Corporation Ltd.'

A. Yes. 'San Imperial Corporation Ltd.'

Q. Were you on any other Boards of companies in which he had an interest?

A. Yes, two companies. One was known as 'Luen On Investment Co. Ltd.'

COURT: 'Investment' or 'Investments'?

A. I can't recall. It was known as 'Luen On'. I can't recall. That is now known as

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'M.A.F. Credit Ltd.'

Supreme Court
of Hong Kong
High Court

- A. The other one was 'Bladon International' I think 'Investments Ltd.'
- Q. Now, was the change of name from 'Luen On' to 'M.A.F. Credit' because Luen On had gone public?
- A. No. It retained its name possibly for 6 months after going public and that's one of the reasons why I retired from the Board – because he wanted to associate that company with the money-lending company of M.A.F. Which M.A.F. it was I am not sure, but it was the deposit-taking/money-lending company.
- 10 Q. How long were you there on the Board of Luen On?
- A. About four months.
- Q. And Bladon – did you join upon its going public?
- A. I did, yes.
- Q. For how long did you remain?
- A. Also about 4 months. I think I retired at the same time as I retired from Luen On. It would be less than 4 months. Perhaps only about 2 or 3 months.
- Q. Just to complete the story, Bladon is now known as 'Harilela's Properties & Investments Ltd.'
- A. Correct, yes. Once again, I was on the Board.
- 20 Q. At whose invitation?
- A. At the invitation of Mr. Harilela.
- Q. When did Bladon become 'Harilela's Properties & Investments Ltd.'?
- A. I think that would be some time 1974 or 1975. I can't say the exact year, but it's 74/75.
- Q. Your being on the Boards of Luen On and Bladon, what year would that be?
- A. That would be – Luen On, I think, was the end of 1972 – about November '72 I think, and Bladon would be February '73 or March '73 maybe – February.
- 30 Q. Now, James Coe was not of course a defendant but whose nominee company (I.P.C. Nominees Ltd.) is the 10th defendant. Were you acquainted with him?
- A. I became acquainted with him through a committee that we both served on. I became acquainted with him last year.
- Q. And was there a particular occasion after such a meeting when there was business discussion?
- A. Yes, there was a meeting. I think it was on the 8th of November and . . .
- Q. . . . Last year?
- A. 8th of November, 1976. After the meeting, he approached me and mentioned that he understood I used to be a Director of San Imperial Corporation Ltd. I confirmed this. He then asked me if I knew there was any chance of him being able to acquire the controlling interest in that company. I said I did not know. I would make enquiries.
- 40 Q. And did you mention this discussion to anyone else – to someone else?
- A. About a week later I mentioned it to Mr. HO Chapman and he informed me that James Coe had also approached him. We both came to the conclusion that there was very little hope of achieving anything and we took no further steps at that time.
- Q. Right. Now, was there further approach from James Coe?
- A. Yes. About two weeks or so after I had spoken to Chapman HO, James Coe

Defendant's
evidence

No. 40

Melville E.
Ives-examination

Supreme Court
of Hong Kong
High Court

Defendant's
evidence

No. 40

Melville E.
Ives-examination

telephoned me and asked if I had been able to make any progress. I told him 'not yet'.

Q. Yes?

A. I then telephoned Chapman HO and told him of the phone call. Chapman HO suggested that we should look into the matter to see if we could do anything. The result was that we agreed to have lunch together and it was also agreed that we should invite Mr. David NG to the lunch.

Q. Now, perhaps pausing there, Mr. Ives, I should have elicited this earlier, but when James Coe first spoke to you why did you mention it to HO Chapman?

A. I spoke to HO Chapman for several reasons. First of all, he was an old good friend of mine with whom I have had several business transactions. 10

Q. As solicitor/client or . . .

A. . . . No, no, as joint venture.

Q. Joint venture.

A. Secondly, he used to be Managing Director of the hotel. Thirdly, he was semi-retired and had plenty of time to look around asking questions what have you.

Q. All right. Now, why was it agreed between yourself and HO Chapman that David NG be brought in?

A. We brought in David NG because he was very active as Mr. HO Chapman was not too active himself – he's not so young. 20

COURT: He was not too active – physically active?

A. Well, he is . . .

COURT: Or active in business or what do you mean?

A. I mean physically.

COURT: Yes.

A. David NG would be a very useful – I suppose you can call it 'leg man' to take a lot of the burden of the work. He was also a stockbroker and so would have the inside information of the rumours of the Stock Exchange that might be useful. 30

Q. Right. Did the three of you meet?

A. Yes.

Q. Would this be in December?

A. Yes. We met in December over luncheon and we discussed the matter generally. Before the lunch, David NG had made some searches and found that the largest single shareholding was in the name of Asiatic Nominees Ltd. We knew that to be a nominee company of CHOO Kim san and thought that those were probably still his shares.

Q. Yes, and was this a recent holding or an old one?

A. It's a fairly old holding. 40

Q. Now, were there particular problems that had to be considered at this stage?

A. Yes. With that information as a starting point we started to explore the problems and they were basically three problems – three major problems: the first

- one was where was CHOO Kim-san; the second one was could we properly deal with CHOO Kim-san; and the third one was what was the company, that is, San Imperial Corporation Ltd., worth anyway because we did not know if he had milked the company before jumping bail. Supreme Court of Hong Kong High Court
- Q. So, the problem as to dealing with CHOO Kim-san arose from his being a fugitive from justice. Defendant's evidence
- A. That's correct.
- Q. Now, as regards finding CHOO Kim-san, was there any discussion about how it might be done? No. 40
- 10 A. Yes. First of all, there were several rumours as to where CHOO Kim-san might be. The official opinion that was of the Commercial Crime Office was that he was in Taiwan. Certain Chinese newspapers put him in Bangkok and there were also rumours that he was in Indonesia. Melville E. Ives-examination
- Q. Now, was there any decision taken as to how he might be located?
- A. Yes. It was agreed between us that David NG should try to locate him. This was about mid-December. David NG said he had promised to take his wife and family to Bangkok for the Easter Holiday.
- Q. Easter?
- 20 A. Sorry. For the Christmas Holiday. While in Bangkok, he would try to locate CHOO Kim-san. If this failed, then he would immediately go to Taiwan and try to locate him there.
- Q. Now then the problem as to dealing with CHOO Kim-san – how was that to be resolved?
- A. It was agreed that I should take an opinion from counsel in London.
- Q. Now, when did you next hear from David NG?
- A. Well he came back to Hong Kong from Bangkok with a negative report. Then he went on to Taiwan and he phoned me after his return to Hong Kong on the – I think Monday was . . .
- 30 Q. . . . Was it a Monday?
- A. It was a Monday. It was the first Monday of January.
- Q. That would make it the 3rd of January.
- A. The 3rd of January.
- Q. It was a Monday.
- A. A Monday, yes.
- Q. And what did he say?
- A. He said to me: "I have located CHOO Kim-san. I think we are in business."
- Q. What did you do?
- A. I then dictated a telex to our agents in London setting out the basic facts and asking them to contact counsel to obtain an opinion on those facts.
- 40 Q. Was that on the same day or . . .
- A. . . . That was on the Monday.
- Q. Your dictation.
- A. Yes.
- Q. Now, would you look at document 123 in the bundle. I believe you have got the original, Mr. Ives.
- A. Yes.

CLERK: Page 123 in Yellow 2.

Supreme Court
of Hong Kong
High Court

Defendant's
evidence

No. 40

Melville E.
Ives-examination

Q. Can you tell from the telex, Mr. Ives, when the telex was actually sent?
A. That's a little bit awkward. The telex was dictated on Monday the 3rd of January and my secretary tried to transmit it on the afternoon of the 3rd of January. She was unable to get a circuit. My Lord, it is rather like the push-button telephone. She presses the keys of the numbers and the code etc. that she wants and you get 'N.C.' coming up on the machine saying 'no circuit'. She was unable to send it on the 3rd. She tried all day on the 4th and was not able to transmit until 16.44 on the 4th – 16.44 hours. As a result she had started off the telex with the date of '3/1/77'.

Q. That's the 4th line, is it?

A. Yes, and three lines from the bottom to avoid confusion she put the date of transmission '4/1/77'.

Q. That explains the two sets of dates.

A. Yes.

Q. Now, . . .

A. . . . I think the reason she could not get a circuit was probably because it was switched off.

Q. Yes. I think that would be hearsay.

(A pause).

MR. SWAINE: My learned friend informs me it is 'N.P.' for 'no power' which I think would probably tie in with what we are trying to say. It's probably unplugged. 20

Q. All right. Now, the telex was dictated on the 3rd. Did you have a meeting with David NG after that?

A. Yes. We had a luncheon meeting on the 4th.

Q. 'We' being . . .

A. . . . That was Chapman HO, David NG and myself. David NG then reported to us exactly what had happened in Taiwan.

Q. Now we are going to hear this from David NG of course, but as part of the surrounding circumstances and in order that the state of your mind be known to the court so far as is relevant, what did he say? 30

A. David NG said that he had made contact with CHOO Kim-san, that he had asked him about the shares and that CHOO Kim-san had said that he had already sold the shares to a Mr. & Mrs. CHOW. David NG then said that he had made . . .

Q. . . . More slowly, Mr. Ives, please.

A. David NG said that he had then been able to make contact with Mr. & Mrs. CHOW and they had indicated to him that they had purchased the shares and that they would be willing to sell them if the terms were right.

Q. Now, as a result of this report, was there any problem that the three of you then went on to consider? 40

A. Well, there were several problems. The basic one was I did not know whether the shares which the CHOWs allegedly had were genuine shares or not. It could be or could have been that CHOO Kim-san before departing from Hong Kong turned out several million shares of San Imperial which would be entirely bogus shares. We had to be sure we were dealing with the genuine article. The second

problem was the transfer of the shares. It would be no good buying a substantial number of shares and then on presentation for transfer being told that the signature of the transferor was different from that of the records at the registry. Related to those two basic problems was the problem of how we could set up the deal with the CHOWs.

Supreme Court
of Hong Kong
High Court

Defendant's
evidence

Q. Pausing there – at that stage, had you any idea who the CHOWs were beyond what David NG had reported?

A. No idea at all, no.

No. 40

Q. Yes.

10 A. The problem I was about to mention was that when we handed over our money, that is, if we could effect a deal, we wanted to know that we were getting the real thing. So, this was a problem of the mechanics of completion.

Melville E.
Ives-examination

Q. Now, were these problems discussed at that luncheon on the 4th of January?

A. Yes. We discussed the problems at that meeting and many subsequent meetings.

Q. Was any decision taken at that meeting?

A. Yes. One proposal was that if the CHOWs could present the shares to a bank in Taiwan as security for a loan, then that bank would present the transfers to the registrars thereby proving the shares and we would be able to complete the transaction on the requisite instructions being given by paying the appropriate purchase price to the Hong Kong branch of the bank and taking delivery. Along those lines we did approach two banks but they indicated it would not be possible.

20

Q. That would have been later of course.

A. That was later, yes.

Q. That was later.

A. Yes.

Q. Now, at the 4th of January meeting, was any consideration given to other sources for the acquisition of San Imperial shares?

A. Yes. The shares in question totalled 15M. The capital of San Imperial Corporation Ltd. was 48M.

30

Q. 48.2, I think.

A. 48.2, yes, thank you. So, it was considered that it would be necessary to get or desirable to get a 51% holding and we agreed that we should immediately start purchasing shares on the local market.

Q. Was that in fact done, Mr. Ives, to your knowledge?

A. Yes, we did start. We started immediately in purchasing the shares.

Q. That I will come to later in the narrative. Now, for the sake of convenience, we have been referring to Ho Chapman, David NG and yourself as a syndicate.

A. Yes.

40

Q. Did you in fact form a joint venture?

A. There was no formal document. We just agreed to get together and to go not 50/50 but $\frac{1}{3} / \frac{1}{3} / \frac{1}{3}$.

Q. Yes.

A. There was something else at that meeting.

Q. Yes. What was it?

A. At that January 4th meeting, the question of financing the deal was considered. In this respect, there were many matters which had to be considered. For example, first of all, we did not want to lay out a large sum of money to

Supreme Court
of Hong Kong
High Court

Defendant's
evidence

No. 40

Melville E.
Ives-examination

purchase a substantial number of shares and then find that no one wanted them. This did not apply to buying on the local market because the market was very thin and the price at that time was 22/23 cents maybe. So we agreed between ourselves that in any acquisition it should always be done on a 'fail safe' basis such as by taking auctions or arranging the transactions on a back to back basis.

- Q. 'Back to back' meaning your purchaser pays and you pay the vendor.
- A. In effect, yes, so that our capital involvement and risk would be kept to the bare minimum.
- Q. Perhaps just pausing there, Mr. Ives – in relation to buying in the local market you said the problem did not arise because the market was thin and the price was some 22/23 cents. Would you explain that please. 10
- A. Yes. First of all, at the price of 22/23 cents, we felt that if we went ahead and purchased and then the basic transaction fell through, we could always re-sell the shares purchased even at a modest profit and so we were not taking a serious risk. As to the thinness of the market, I mean that the number of shares we could purchase that way would not be too great – we did not know – but we thought it would not be too great at that stage.
- Q. Now, these were matters discussed at the 4th of January luncheon meeting and were they further discussed at subsequent meetings? 20
- A. Yes, yes.
- Q. Now, your telex to London – we know there was a reply giving the gist of counsel's opinion which was that it would not be unlawful to deal with . . .
- A. Yes.
- Q. . . . – with the fugitive from justice in the circumstances set out in the telex.
- A. Yes.

MR. SWAINE: Just to give your Lordship the reference – it's 124.

- Q. Was that matter carried further – the matter of counsel's opinion?
- A. Not after the reply.
- Q. Why was that? 30
- A. Because as a result of David Ng's contact with Chow it became apparent that we were not dealing with CHOO Kim-san.
- Q. Going back a little now, Mr. Ives, you said one of the earlier problems that the three of you considered was the possibility of CHOO Kim-san milking the company?
- A. Yes.
- Q. Was that taken up; was the problem further considered?
- A. Yes, we had to try to evaluate the company. There had been no balance sheet, I think it was, for 18 months and there was no knowing what CHOO Kim-san might have done with the company. We made investigations into its properties 40 (the company's properties and those of its subsidiaries), looking for mortgages, debentures, etc. Also David Ng had some old valuations of some of the properties which he had been given when he had been instructed to try to sell or let some of the properties by I.C. Lee.
- Q. That is LEE Ing-chee?
- A. LEE Ing-chee.
- Q. This is David Ng wearing the cap of taipan?

- A. Yes. Supreme Court
of Hong Kong
High Court
- Q. It is Taipan Buildings Management Limited. Yes?
- A. The result was we were able to make a guess at the net asset value of the company, but we did not know if there were any debts or liabilities or other matters which might affect out estimated asset value. Defendant's
evidence
- Q. And bearing these unknown factors what was your guess at the asset value?
- A. We put the asset value at between \$1.60 and \$1.70 a share.
- Q. Now you said a little earlier that the formula for proving the authenticity of the shares allegedly held by the Chows – one formula was to present these to a bank in Taiwan as security and so forth but that, you have told us, did not materialise. Was some other formula then hit upon? No. 40

Melville E.
Ives-examination
- 10 A. We considered forming a company in Hongkong transmitting the shares to that company in Hongkong in exchange for the share capital so that the Chows could thereby prove their shares and have them held by the Hongkong company which would be very convenient for effecting completion of the transaction.
- Q. Was that formula eventually implemented?
- A. It was, yes.
- Q. In the shape of Fermay Company Limited, the 7th defendant?
- 20 A. Correct.
- Q. Was there further contact with the Chows during that period after the 4th January?
- A. Yes, David Ng went backwards and forwards to Taiwan on numerous occasions. I think it was five visits before the deal was eventually got through.
- Q. We shall get the details from David Ng and his travel documents. Now did he report on progress?
- A. Yes, he was negotiating with the Chows over the price of the shares and the proving of the shares. On one occasion he came back and said that he had seen some of the shares. At that time I did not appreciate why only some.
- 30 In my mind there were probably 15 certificates for 1 million each, but it transpires there were over 200 share certificates. I didn't know that at that time.
- Q. When did you find out?
- A. I only knew that when the share transfer passed through my hands for stamping on the 28th March – for stamping of the bought and sold note.
- Q. David Ng was reporting that he had been negotiating the price with the Chows. Was any price sort of fixed upon by the three of you – by the syndicate, if I may use the shorthand expression?
- A. We were hoping to fix the price within the range of 40¢ to 60¢ per share.
- 40 Q. And was there a final break through with the Chows as regards the price?
- A. Yes, eventually they agreed the price at 60¢ per share.
- Q. And approximately when would that have been?
- A. That was round about 20th March – about mid March.
- Q. What about the mechanics, i.e. the formula in the shape of Fermay?
- A. It was arranged that David Ng should go to Taiwan as soon as possible. I had a shelf company which had been incorporated, I think it was on the 7th March, and so I used this particular company. I drafted the various minutes which would be necessary and I also drafted a form of agreement for sale and purchase.

Supreme Court
of Hong Kong
High Court

Defendant's
evidence

No. 40

Melville E.
Ives-examination

Q. And what did you do with the drafts?

A. I gave the drafts to David Ng to take to Taipei.

Q. Do you recall what the drafts were?

A. Yes, first of all, there was the agreement for sale and purchase. Now relating to the company itself there was the notice of appointment of directors – nomination of directors, rather.

COURT: Sorry, you say the draft minute was –

A. No, first of all, apart from the draft agreement there was the draft notice of nomination of directors.

Q. Would you look at document 10, the other one. Is that the nomination of directors? 10

A. Yes, that is the nominations.

Q. Was this given to David Ng or retained?

A. This was not given to David Ng – just a moment . . . I can't say now.

Q. This would have been sort of internal house keeping?

A. Yes, correct.

Q. What other drafts?

COURT: You were earlier talking about the particulars given to David Ng. Now was the draft agreement given to David Ng?

A. The draft agreement was given to him. 20

Q. I think if you could just refresh your mind by looking at the various minutes and documents. Having done that would you tell the court please which draft you do remember giving to David Ng? The draft agreement you did.

A. I did the draft resolutions, or minutes, rather, of the Board for the increase, that is document 13 – perhaps I refer to the document: It was agreed the company should purchase from the shareholders 15 million shares of San Imperial Corporation Limited at the price of 60¢. It was resolved that the capital of the company be increased to 9 million dollars and it was resolved that the new shares of the company be allocated to existing shareholders.

Q. That was a draft that you do remember handing to David Ng? 30

A. Yes.

Q. Was it this particular piece of paper?

A. I don't think so, no.

Q. But you gave him a draft?

A. I gave him a draft. I cannot say definitely it was this particular piece of paper, but I don't think so.

Q. Is it your sort of typewriter? Perhaps that is not a fair question.

A. The "15 million" and "9 million" is my typewriter.

Q. That would have been added separately?

A. Yes. 40

Q. And there are the signatures of Chow and Wang at the margin?

A. Yes.

Q. Against the two figures?

A. Yes.

Q. All right, David Ng can tell us about this.

- A. No, this could not have been mine because I didn't know when the meeting was going to be. So this is definitely not mine. This is not the draft, I think. Supreme Court of Hong Kong High Court
- Q. Now then document 11 is a resolution resolving that the authorised capital of Fermay be increased to \$9 million. That was your draft?
- A. Yes. Defendant's evidence
- Q. Was it given to David Ng?
- A. That was not given to David Ng.
- Q. And the minute to the same effect at 12, was that document given to David Ng? No. 40
- 10 A. No. Melville E. Ives-examination
- Q. Documents 10, 11 and 12 would be matters of internal house keeping?
- A. Correct, yes.
- Q. Would you look at document 14. Do you recall who prepared this?
- A. I prepared this minute after David Ng returned from Taipei. That would be on his visit of the 22nd March.
- Q. So on his return you prepared this minute?
- A. Yes.
- Q. And what did you do with it?
- A. I gave it to David Ng. He went to Taipei again, I think it was on the 1st April, and he took it with him.
- 20 Q. And on his return?
- A. He gave it to me.
- Q. Signed?
- A. Yes.
- Q. I think it is a matter of internal house keeping again, Mr. Ives. You prepared the return of allotments being document 15?
- A. That's correct.
- Q. Also what is called formats which is the return of directors?
- A. Correct.
- 30 Q. At 199 – my Lord, that would be yellow 2 – that is the usual form of documentation one requires to register with the Company Registry?
- A. Yes.
- Q. Did you hear from David Ng while he was in Taiwan on the 22nd March visit?
- A. Yes, on the 23rd March he telephoned me to say that everything was agreed with the Chows, but he had left behind in Hongkong the agreement for sale and purchase which I had drafted for him and he asked me to dictate the agreement over the telephone.
- Q. And did you do that?
- A. I did, yes.
- 40 Q. Now for the sake of identification would you look at 16 which is the agreement dated 23rd March which bears the signatures of Chow, Hwang and David Ng?
- A. Yes.
- Q. You have got the original?
- A. Yes.
- Q. How did that come to be in your possession?
- A. David Ng brought this agreement back from Taiwan. The inserted parts in a darker type had not been put in the agreement, but all the signatures which appear on the document were already there.

COURT: How many inserted parts were there?

A. Maybe if I show you this one, my Lord, you will see it is in an entirely different typewriting for the names and certain figures.

MR. SWAINE: My Lord, I think the original had better go in as an exhibit in this case as it differs in form from the copy which has been exhibited.

COURT: Would it be simpler to have photostat copies made from the original and we take away the 15 and 10?

MR. SWAINE: Yes, certainly.

MR. CHING: It has already been exhibited by David Ng.

MR. SWAINE: I think, your Lordship, probably it is right, it would be convenient to have this in the defendant's bundle. We will arrange to have it photostat, my Lord. 10

MR. CHING: I suggest, my Lord, putting it in as 16A.

Q. Now the bits in the darker type, I suppose, were added, I think you said —?

A. In my office.

Q. Later or —?

A. Later.

Q. Added later?

A. Yes.

Q. And they were therefore in blank? 20

A. When it came back, yes.

Q. When it came back. But did it come back already with the signatures against the blanks in the margin?

A. Yes, the signatures were already there.

COURT: In the margin?

A. In the margin and also at the end of the agreement.

Q. When you dictated your draft to David Ng over the telephone, he being in Taipei, you being in Hongkong, did you dictate with the blanks, so to speak?

A. I can't really remember, but I think I dictated the full sums, the 15 millions and the 9 millions, etc. I think I dictated the figures. 30

Q. Whose idea it was to type those in blank?

A. May I explain the problem which gave rise to that? As I have said, my Lord, my own impression was that there were just a few share certificates — perhaps 15 at 1 million each. But it transpires that there were over 200 certificates in the hands of the Chows. As a consequence there was no way of knowing or anticipating how many of those certificates would be found to be good by the registrars and it was agreed between David Ng and the Chows that the figures be left blank until the result of registration of the shares was known and then the appropriate figures should be inserted and one copy of the agreement

- would then be returned to the Chows.
- Q. Was that in your mind before David Ng went to Taipei on the 22nd March?
- A. No.
- Q. When was it in your mind that there ought to be these blanks?
- A. It was not really in my mind at all. I expected the document to come back from Taiwan with the figures already in the document.
- Q. I see, so this was something which occurred in Taipei between David Ng and the Chows?
- A. Yes.
- 10 Q. When were the figures and the amounts inserted?
- A. After the new share certificates had been issued by the registrars in the name of Fermay Co. Ltd. I made Xeros copies of the blank – of the uncompleted form.
- Q. Of agreement?
- A. Yes. I wrote in the details as shown on 16 and then had the figures typed in in accordance with the details which I had written in in hand – in long hand on the 16th.
- Q. That was after the new certificates were issued and the old ones had thereby been validated?
- 20 A. Correct.
- Q. Did you hear from the registrars of San Imperial?
- A. Yes, the registrars of San Imperial got in touch with me.
- Q. Who approached you?
- A. At first I received a telephone call. I can't now recall who it was that spoke to me.
- Q. This would be the registrars of San Imperial?
- A. Yes.
- Q. And as a result of that call what did you do?
- A. Two things: I gave the address of Fermay Co. Ltd. and I also drew two sets of bought and sold notes.
- 30 Q. Why two sets?
- A. There were two transfers.
- Q. And therefore two bought and sold notes – two sets of bought and sold notes?
- A. Yes.
- Q. And are these the documents comprised within the 17 bundle. Perhaps just look at 17 itself.
- A. No, it's one set which dealt with two transfers. There were two transfers, but only one set. I am sorry.
- 40 Q. That is one bought note and one sold note?
- A. Yes.
- Q. But two transfer forms?
- A. Yes.

COURT: You drew one set of bought and sold notes?

A. Yes.

COURT: But two transfer forms?

Supreme Court
of Hong Kong
High Court

Defendant's
evidence

No. 40

Melville E.
Ives-examination

A. There were two transfer forms which were delivered to me by the Registrar of the Company of San Imperial Corporation.

Q. You got a telephone call from someone in the Registrar office?

A. Yes.

Q. Consequent thereto you got the two transfer forms?

A. Correct.

Q. And the copies of these transfer forms are the ones we see in the 17 bundle?

A. Yes.

COURT: You have got the two transfer forms and then you –

MR. SWAINE: – prepared the bought and sold note.

10

COURT: As shown in document what?

MR. SWAINE: The second page of the 17 bundle, my Lord.

COURT: And the transfer forms are 1 and 3?

MR. SWAINE: Yes, the transfer forms are 1 and 3. The bought notes are duplicated. There is one at the second page and one at the fourth page.

COURT: They are the same, aren't they?

A. They are identical. It is the same note. It is a further copy of the same note.

Q. Why was the bought and sold note necessary?

A. A company cannot transfer a share unless it is satisfied that the stamp duty has been paid, and although the two forms of transfer were each stamped with a \$5 stamp which was dated – I can't see now – but it was September, I think, I can't quite see – 27th September, 1976 – it was necessary that the transfer also be endorsed by the collector of stamps for Revenue with a note to the effect that the ad valorem duty had been paid. That is the chop at the top left hand corner of the transfer.

20

Q. And is each chop for \$36,000?

A. The total was \$36,000, yes, that was the bought note, and \$36,000 for the sold note.

COURT: It was chopped on the bought and sold notes?

A. Yes, and also on the transfer, my Lord, the top left hand corner.

30

Q. What was the amount of stamp duty then paid on this transfer?

A. The total amount was \$72,000.

Q. \$36,000 for the bought, \$36,000 for the sold?

A. Yes.

Q. Who paid the stamp duty?

A. The syndicate paid the stamp duty.

Q. What did you do with the stamped bought and sold notes and the transfers?

A. I made a Xerox copy of the transfers and sent the transfers back to the Registrars and I kept the bought and sold notes.

- Q. And the new certificates would you identify these are in the supplemental bundle 30 and 31? This would be yellow 3. Supreme Court of Hong Kong High Court
- A. Yes, there are two certificates Nos. 79545 and 79546 for 5 million and 10 million shares respectively.
- Q. After you had inserted the figures and numbers in the blank spaces of the agreement – I am sorry. How many signed copies of the agreement were there that David Ng brought back from Taiwan? Defendant's evidence
- A. He brought back two signed copies. No. 40
- Q. Did you make the insertions in both?
- 10 A. In both, yes. Melville E. Ives-examination
- Q. You have kept one original, what about the other?
- A. I gave that to David Ng to take back to Taipei.
- Q. Now the evidence that we have been looking at goes to the 15 million shares?
- A. Yes.
- Q. Which enforce a short of 51% holding?
- A. Yes.
- Q. You have said that the syndicate had agreed as early as the 4th January to buy in the local market. In addition to buying in the local market did the syndicate look at other sources for acquiring San Imperial shares?
- 20 A. Yes.
- Q. What other sources are these?
- A. We realised that we would never be able to pick up enough shares on the open market and we discovered that a fair number of shares was held by M.A.F. Nominees Limited, that is several million shares. We approached the M.A.F. group with a view to try and purchase these shares.
- Q. Who was making the actual approach?
- A. That was done, I think, by David Ng.
- Q. Did anything tangible result from that approach?
- 30 A. Yes, eventually we entered into an option agreement with M.A.F. Nominees – actually it was with M.A.F. Corporation Hongkong Limited.
- Q. Now just pausing there, Mr. Ives, you said a search was made. Who made the search?
- A. David Ng did the search of the share registers of San Imperial Corporation.
- Q. And he then reported the result of that search?
- A. Yes.
- Q. Do you yourself know whether in fact it was M.A.F. Nominees who was registered or M.A.F. Corporation who was registered because the agreement was with M.A.F. Corporation?
- A. I think it was in the name of the Nominees, but I am not sure.
- 40 Q. I think David Ng can tell us. But the agreement in any event was with M.A.F. Corporation?
- A. Yes.
- Q. And you have identified that, have you not, as document 18?
- A. Yes, the agreement of the 30th March, 1977.
- Q. M.A.F. Corporation Hongkong Limited is part of the corporate structure of M.A.F. Credit Limited that being a public company?
- A. Correct.
- Q. We have produced two of the annual reports of M.A.F. Credit Limited, have we not, during my cross-examination of LEE Ing-chee?

Supreme Court
of Hong Kong
High Court

A. I believe we did.
Q. Now the option is for David Ng and HO Chapman to buy up to 6 million shares of San Imperial at the price of \$1.50 per share?

Defendant's
evidence

A. Correct.

Q. The option fee was \$50,000?

A. Yes.

No. 40

Q. That fee was duly paid by a cheque drawn on Bentley, \$450,000? – And my Lord, it is document 130. You have got the original, have you – document 130?

Melville E.
Ives-examination

A. Yes.

10

A. Yes, it is the third cheque on the page, 31st March.

Q. \$50,000?

A. \$50,000, yes.

COURT: Mr. Ives said the third cheque on the page?

MR. SWAINE: He has compiled it in a set of 4 but it should be simply page 130 on your Lordship's bundle.

(To witness) It might be a convenient time to deal with one point, Mr. Ives. There were these various disbursements being made – this was David NG with Bentley.

A. Yes.

20

Q. How was this all to come out in the wash? You have said that the joint venture was 1/3, 1/3, 1/3.

A. Yes.

Q. How were these disbursements eventually to be dealt with?

A. Yes. We would contribute advances, in fact, as required to meet these disbursements and it was intended that at the end of the day all the sums advanced would be repaid and then the balance would be distributed.

COURT: It would be repaid out of what?

A. Would be repaid out of the profits that the syndicate made and then the balance would be distributed 1/3, 1/3, 1/3.

30

Q. Now, I'd like you to look at document 25. It is a letter of the 1st April 1977 from M.A.F. Corporation to Peter MO & Co., addressed to your attention.

A. Yes.

Q. Referring to the option and requiring acknowledgement of the following shares. Then 3 certificate numbers each for 1 million, 3 million shares?

A. Yes.

Q. And did you ever receive those shares?

A. I received those shares, yes.

COURT: Is the handwriting of any significance?

A. That is my handwriting, my Lord.

40

- Q. Would you explain the note to the court, please.
- A. Yes. I put that on afterwards to indicate that these shares were to be transferred into City Nominees Ltd. for the account of David NG, HO Chapman and myself and the transfer was completed and the shares lodged for registration accordingly.
- Q. Perhaps just a word about City Nominees – that would be a nominee company operated by whom?
- A. Peter MO & Co.
- Q. Peter MO & Co. And this was a convenient vehicle for putting these shares into –?
- A. Yes.
- Q. – pending?
- A. Pending the completion of the deal with the ultimate purchaser.
- Q. Ultimate purchaser. Now, perhaps just to get the matter in context, we have had evidence as to contacts made by James KO (sic) (COE) with yourself in November and December 1976?
- A. Yes.
- Q. Did you have contact again with him?
- A. Once or twice he telephoned me.
- 20 COURT: After which date?
- A. That would be, say, about January, February 1977.
- COURT: In about January or February?
- A. Yes, in about January or February 1977, to inquire if any progress was being made and I gave him a non-committal reply.
- Q. In fact, beside the buying in of San Imperial shares, was anything done about reselling them?
- A. Yes, we were trying to make contact with various parties who might be interested in purchasing and we carried out certain negotiations with several of those parties.
- 30 Q. All right. I shall come to these later. But you weren't limiting yourself with James COE at this stage?
- A. No.
- Q. I'd like you next to look please at document 30, which is Peter MO & Co. to M.A.F. Corporation. That mentions that of the 6 million shares in the option agreement, they have 3,226 only.
- A. Yes.
- Q. And that letter gives notice that David NG and HO Chapman wish to exercise the option in respect of those shares?
- A. That is my letter of the 22nd April, yes.
- 40 Q. Does it not say 30?
- A. Mine is 28. Anyway there is a letter, my letter of the 22nd April to M.A.F. Corporation.
- Q. And their reply?
- A. Yes.
- Q. Of the 25th April which is the court bundle 32?

Supreme Court
of Hong Kong
High Court

Defendant's
evidence

No. 40

Melville E.
Ives-examination

Supreme Court
of Hong Kong
High Court

A. Yes.
Q. Confirming that only 3,226 shares were available and agreeing that payment might be made within 3 months from the 22nd of April?

Defendant's
evidence

A. Yes.
Q. Now, the actual mechanics of payment, Mr. Ives, is a complicated one?

No. 40

A. Yes.
Q. And involves a subsidiary of San Imperial – a then subsidiary of San Imperial, The Oceania Finance and Land Corporation Ltd.?

Melville E.
Ives-examination

A. Yes.
Q. Now, when you were looking into the assets of San Imperial and the subsidiaries, did you look into Oceania as well? 10

A. Yes, and we found that Oceania had then recently – that was at the beginning of 1977 – entered into an agreement with the M.A.F. group which was not advantageous to Oceania.

Q. Do you identify the agreement that you referred to as being the copy at 9?

A. Yes.

Q. It is the second page of document 9?

A. Yes.

Q. The agreement of the 18th January 1977 between M.A.F. Investment Ltd. and Oceania Finance and Land Corporation Ltd.? 20

A. Correct.

COURT: Mr. Swaine, is it convenient now to adjourn or do you want to carry on?

MR. SWAINE: I am entirely in your Lordship's hands. It would take some time to develop this.

D.W. (1) Melville Ives – On former oath

XN. BY MR. SWAINE – Continues

Q. Mr. Ives, we have come to the Oceania transaction but there are 3 things which I ought to have dealt with under the Fermay evidence which I hadn't. I have to go back. My Lord, I am sorry that it is a little untidy. Now, you have explained about the blank spaces in the agreement of the 23rd March, that is, document 16? 30

A. Yes.

Q. I have not asked you the related question concerning document 13. Now, you remember saying that document 13 – for the record is, of course, the minutes of the 23rd March sent by CHOW and HWANG – you remember saying that you had drafted the minute but you didn't think that this was the actual document?

A. Yes.

Q. And in fact later you said you are sure it wasn't?

A. Mmhm. 40

Q. Now, here again there appears in dark type the number 15 million and the amount \$9 million?

A. Yes.

Q. And there are the signatures of CHOW and HWANG in the margin. Now, you

- have said that David NG brought back this document?
- 10 A. Yes.
- Q. From Taipei with the agreement and at the time were these spaces left blank?
- A. They were blank, yes.
- Q. They were blank. And who arranged for the insertion of the figure and the amount?
- A. As soon as I knew that the full 15 million shares had been accepted by the registrars, I inserted the 15 million and the \$9 million in clause 2.
- Q. Now, the next point, could you look at our supplementary bundle, document 32? Yellow 3, it's got 142 at the bottom of the page and 32 at the top. You have got the originals?
- A. Yes.
- Q. And these are instruments of transfer?
- A. Yes, correct.
- Q. There are actually 4 pages of this. Are these duplicates?
- A. Yes, duplicates; originals and copies, xerox.
- Q. There is an original and a xerox?
- A. Yes.
- Q. There are 2 originals. Now, these bear the signature on the one instrument of CHOW and on the other instrument of HWANG?
- A. Yes.
- Q. And how did you come to be in possession of these documents?
- A. Those were brought back from Taipei by David NG on a subsequent visit.
- Q. Do you recall which visit this was, Mr. Ives, whether contemporaneous with the agreement or after the agreement?
- A. I think it was the visit of the 1st of April, but I'm not sure.
- Q. All right. We will get the actual date from David NG. And these would be instruments of transfer in respect of what, because it is a standard form, isn't it?
- 30 A. Yes.
- Q. The intention was?
- A. It was intended for the Fermay shares.
- Q. For the Fermay shares. Now, the third point, would you look at document 34 in the supplementary bundle. It is yellow 3 at 34. It would to have 144 at the foot of the page. Now, that is an undated letter addressed to Fermay and bearing the signatures of CHOW and HWANG?
- A. Yes.
- Q. How do you come to have that letter?
- A. This was about May of this year – David NG gave it to me.
- 40 Q. In terms it is a letter of resignation from the board of directors?
- A. Yes.
- Q. All right. Now, we return now to the Oceania matter. You were looking at document 9 and you said that – in yellow 1, my Lord, second page – you had said that the syndicate thought this agreement was not advantageous for Oceania?
- A. Yes.
- Q. And did the syndicate do anything about it?
- A. Yes. Both Chapman HO and David NG carried out certain negotiations with the M.A.F. group and the San Imperial Group to see if this agreement could

Supreme Court
of Hong Kong
High Court

Defendant's
evidence

No. 40

Melville E.
Ives-examination

Supreme Court
of Hong Kong
High Court

Defendant's
evidence

No. 40

Melville E
Ives-examination

be cancelled.

Q. And in the event, was it cancelled?

A. It was, yes.

Q. The cancellation agreement, for easy reference, being the top page of document 9?

A. Correct.

Q. Now, I want you to look at this time document 48 in the same bundle. These are minutes of the San Imperial directors on the 3rd of May 1977, resolving that the agreement in question be cancelled and that M.A.F. Investment Ltd. – sorry, and stating that M.A.F. Investment Ltd. was prepared to refund \$6 million? 10

A. Yes.

Q. Item 3, agreeing that your firm be instructed to prepare the cancellation agreement?

A. Yes.

Q. And that was duly done by your firm?

A. Correct.

Q. Now, the \$6 million refund, was that the whole of the money or was there a balance retained by M.A.F. Investment?

A. M.A.F. in effect took a penalty of half a million dollars. 20

COURT: From Oceania?

A. From Oceania, yes.

Q. Now, would you look please at 46, which is the letter of the 2nd of May 1977 from M.A.F. Corporation to David NG and HO Chapman and by this they authorize David NG and HO Chapman to pay \$4,800,000 to Oceania out of the \$4,839,000 payable on the 3,226,000 San Imperial shares under the option agreement?

A. Yes.

Q. From the syndicate's point of view, why was it done this way?

A. We believed that M.A.F. might be in a very poor way financially and we wanted to avoid a situation whereby we paid the \$4.839 million to M.A.F. for the purchase of the shares and then M.A.F. would find itself unable to pay the \$6 million to Oceania. For example, creditors may intervene before the payments could be completed. 30

Q. And to round off, would you look at 81. Now, by their letter of the 14th June, M.A.F. Corporation sent to your firm on behalf of M.A.F. Investment Ltd. 3 cheques?

A. Yes.

Q. One for 4.8 million and the rest to make up the balance of the \$6 million less the one dollar? 40

A. Yes.

Q. For the cancellation agreement?

A. Yes.

Q. And in 82, your letter of the 15th June to Oceania, you forwarded those 3 cheques?

A. Correct.

Q. In fact, the cheque in question is that at 109, the second page, number TL

- 104-460, 4.8 million, that is a Bentley cheque?
- A. Correct, yes.
- Q. Now, did you leave Hong Kong soon after – sorry, when I say “soon after” – did you leave Hong Kong at about this time, first quarter?
- A. Yes, on the 1st April, 1977.
- Q. In fact, we are sort of moving back and forth – we can’t complete one particular piece of evidence, without this zig-zagging?
- A. Yes.
- Q. On the 1st April you left for London and did you receive a telephone call?
- 10 A. Yes, I received a telephone call from Chapman HO. It was a Saturday morning. I think it would be the 15th of April.
- Q. More likely the 16th?
- A. Yes, 16th.
- Q. All right. And what did Chapman HO say to you?
- A. He said there had been an advertisement in the press claiming or making a claim against the San Imperial shares and could I come back immediately.
- Q. And did you do that?
- A. I arrived in Hong Kong on the 20th of April.
- Q. And is the notice that of the 13th of April which is at 26?
- 20 A. Yes.

Supreme Court
of Hong Kong
High Court

Defendant’s
evidence

No. 40

Melville E.
Ives-examination

COURT: You came back when?

A. On the 20th, my Lord.

COURT: The advertisement appear on document what?

MR. SWAINE: 26, my Lord – 13th of April.

That is LEE Ing-chee giving notice of his interim attachment in an unnamed action which is clearly 2459?

- A. Yes.
- Q. Against certain shares owned by CHOO Kim-san?
- A. Correct
- 30 Q. Including 16½ million shares in San Imperial?
- A. Yes.
- Q. Now, then, as to your state of mind, Mr. Ives – we are not seeking an expert opinion – purely as to your state of mind, did you think this would prejudice the deal for the resale of the shares that you had been acquiring?
- A. At first I was rather worried about this, but later on I made a search for court file and I formed the opinion that just about everything that could be done wrong was done wrong in respect of this particular action and I thought that as a result, the alleged attachment was probably voidable, if not void.
- Q. Well, now, 15 million shares had by then already been registered in the name of Fermay?
- 40 A. Yes.
- Q. Was that a factor in your mind?
- A. It was a factor to this extent, that this notice was not given until after the registration of those shares in the name of Fermay.

Supreme Court
of Hong Kong
High Court

Defendant's
evidence

No. 40

Melville E.
Ives-examination

Q. Until this notice which you say upon return to Hong Kong which Chapman HO gave you the gist of over the telephone —.

A. Yes.

Q. — had you any idea that there were claims against CHOO Kim-san by creditors?

A. None at all.

Q. Now, pausing there, something else I ought to have cleared up as soon as we resumed this afternoon but overlooked, being the option shares, that is, the 3,226,000 shares purchased from M.A.F. Corporation — now, these were at 1.50 per share?

A. Yes.

Q. Why was the syndicate prepared to pay that price?

A. We tried to negotiate for a lower price —.

10

MR. YORKE: The witness says "we" when the syndicate is 3 people. It would be helpful if he said who was doing the negotiating with whom.

A. Perhaps I could put it this way —.

Q. Yes, perhaps leaving aside the negotiation, Mr. Ives, did the syndicate want to pay less than 1.50?

A. Yes.

Q. It ultimately agreed to pay 1.50?

A. Yes.

Q. From the syndicate's point of view, why was that?

A. Because we were anxious to make up a controlling interest and even if we had to buy a substantial lot of shares at 1.50 it was still very much worth our while because as a package of the controlling interest it would enhance the value of the other shares that we held.

Q. Now, then, you have said that the syndicate was not limiting the resale prospects to James COE?

A. Correct.

Q. And there were discussions with other interested parties?

A. Yes.

Q. In that connection, were you approached by any solicitor?

A. Yes and I would say it was early March, I received a phone call. In March of this year I received a phone call from Mr. Tisdall.

Q. Brian Tisdall?

A. Yes.

Q. Of which firm?

A. Of Johnson, Stokes & Master.

Q. And was this for himself or for a client?

A. He was calling on behalf of a client. He did not tell me who the client was but I suspect —.

Q. Well, I think we will leave it at that, Mr. Ives. Did anything come of this approach?

A. Nothing came of the approach, no.

Q. Well, eventually on whom did the syndicate settle as being the best?

A. It settled for James COE.

Q. Why was he best from the syndicate's point of view?

A. Largely because the back-to-back type of deal that we wanted to put through

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was acceptable to him whereas most of the other persons who were interested wanted us to get the shares into our own name first and this would have involved a considerable outlay. Supreme Court of Hong Kong High Court

- Q. Now, the syndicate's outlay up to this point of time – there was the \$200,000 under the Fermay agreement? Defendant's evidence
- A. Yes.
- Q. Of which \$108,000 went to disbursements? No. 40
- A. Yes.
- Q. \$72,000 being the stamp duty on the bought and sold notes? Melville E. Ives-examination
- 10 A. Yes.
- Q. And what was the other disbursement?
- A. The capital increase fee which I think was \$36,000.
- Q. And the balance \$92,000 – what was your information as to that \$92,000?
- A. That had been paid to the CHOWs.
- Q. Then there was the \$50,000 option fee paid to M.A.F. Corporation?
- A. Yes.
- Q. Now, you mentioned that the syndicate had been buying in the Hong Kong markets immediately after the 4th of January –
- A. – yes –.
- 20 Q. – luncheon. How many shares were bought in the Hong Kong market?
- A. I think that was about 2¼ million.
- Q. Who was doing the actual buying for the syndicate?
- A. David NG, through his company.
- Q. And would he be in a better position to give figures?
- A. Yes.
- Q. And amounts?
- A. Yes.
- Q. It was about 2¼ million and how much money did that involve, roughly?
- A. Oh, dear! Well, the prices varied I think from the average price was 54 cents for the whole lot. I think that was about the average.
- 30 Q. I did get out my calculator after I had given the gross amount to the court – it is about \$1¼ million?
- A. Yes, yes, about that.
- Q. Again that would be Mr. David NG's particular province?
- A. Yes.

COURT: What is the average now, 55 or 54?

MR. SWAINE: I make it at 54, my Lord.

COURT: Are you accepting that?

- A. I calculated it yesterday on the calculator and I made it at 54 too, sir.
- 40 Q. Whose money was that Mr. Ives?
- A. That was money belonging to the syndicate.
- Q. I think that pretty well covers the syndicate's –.

MR. YORKE: One can't say properly that the money belonged to the syndicate. This syndicate wasn't meant to have money of its own. There must be a

more precise answer than that.

MR. SWAINE: Yes, all right. What was your own outlay, Mr. Ives?

Defendant's
evidence

A. \$90,000.

Q. \$90,000. You had explained that the oral agreement was that at the end of the day, these disbursements would be refunded out of the profits, the net pot, to be split 3 ways?

No. 40

A. Correct.

Melville E.
Ives-examination

Q. Now, we have been speaking of the Fermay package, the M.A.F. option package, the shares bought in Hong Kong package – was there any other package?

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A. Yes, there is one package of shares, 2 million odd, that David NG had purchased in Taiwan.

Q. And how do you know this?

A. On return from – On his return from Taiwan, I think it was probably February, one of the February visits, he mentioned that he could purchase 2 million odd shares but it would be a cash purchase and if the shares were no good or unacceptable to the registrars, they might well be a complete loss. Chapman HO and I agreed that this was not in line with the understanding of the syndicate in as much as it was a cash commitment. It was agreed that if David NG purchased those shares, he would do so for his own account, on the basis that any loss would be his and any profit would be his, but nonetheless they would form part of the overall package.

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Q. That is, if and when they were validated?

A. Yes.

Q. Now, I come back to James COE and we know that he was represented by Mr. Philip WONG of Philip WONG & Co.?

A. Yes.

Q. In the conveyancing side of the sale?

A. Yes.

Q. The actual negotiations between James COE and the syndicate – who of the syndicate did the negotiating?

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A. Mostly, Chapman HO.

Q. And did those negotiations result in an agreement?

A. Yes.

Q. Would you look at document 40 of the bundle. Is that the agreement?

A. That is the agreement, yes.

Q. It is dated the 30th April, 1977?

A. Yes.

Q. It is accompanied by a number of other documents all bearing the same date. Do you identify the fourth, which has been referred to as the supplemental agreement of the 30th April?

40

A. Yes.

Q. This relates to financing?

A. Correct.

Q. Was this your province or the province of other members of the syndicate?

A. What?

Q. Financing arrangements.

- A. The financing arrangements – not my province. I know of them at this stage –
- Q. But the conveyancing embody the financing arrangements –
- A. Done by him.
- Q. Of course with Philip WONG –
- A. Yes.
- Q. – approving, redrafting and that sort of thing –
- A. Yes.
- Q. – for James COE.
- A. Yes.
- 10 Q. Then would you look at 37 – that is James COE’s guarantee to David NG. It may be that this is a question for David NG, but do you know why that guarantee was given?
- A. Yes, because the intending purchaser was Rocky Enterprises Co. Ltd. which I believe had a capital then of – anyway, only 2 shares had been issued, so we wanted some backing to that agreement so James KO (sic) (COE) agreed to guarantee performance.
- Q. Then the reverse side of the coin, there is at 39 a guarantee signed by HO Chapman in favour of Rocky Enterprises?
- A. Yes.
- 20 Q. Are you able to say why this was done or would you rather leave it for –?
- A. It is principally because James COE when asked to sign the first guarantee said, “Well, I only know Chapman HO. I wanted a guarantee by Chapman HO for the performance by David NG.” So Chapman HO agreed to give the guarantee.
- Q. And had you yourself discussed the arrangement with James COE before the agreement of the 30th April?
- A. I had discussed it with his solicitor on numerous occasions. He phoned me a couple of times. I said “I mustn’t discuss it with you” but I discussed it with the solicitor.
- 30 Q. At that time did James COE know that you were a member of the syndicate?
- A. Yes, yes. Or at least I think he knew. I say “yes.” I assume he knew but I can’t say definitely.
- Q. Yes. Had you yourself told him that or simply assumed that he had been told?
- A. I assumed that he knew. I can’t say definitely whether he knew, but I think he knew.
- Q. We know that Chapman HO had the most to do with James COE?
- A. Yes.
- Q. Can we have the original document 41, Mr. Ives, it is the supplemental agreement. We have got at 43 the document which has now been crossed out but bears the date of 30th April 1977 sent by James COE, addressed to HO Chapman and Associates Ltd. and promises that a finder’s fee of \$3 million?
- 40 A. Yes.
- Q. Do you know why that was?
- A. Yes. We had been negotiating with other parties for a price which was equivalent to approximately 1.70 per share. James COE said he couldn’t go beyond 1.50. It was then mentioned to him that there would be a finder’s fee and he said he did not mind paying a finder’s fee in addition to the 1.50 and ultimately a finder’s fee of \$3 million was agreed which took the price to approximately 1.70 per share.

Supreme Court
of Hong Kong
High Court

Defendant’s
evidence

No. 40

Melville E.
Ives-examination

Supreme Court
of Hong Kong
High Court

Defendant's
evidence

No. 40

Melville E.
Ives-examination

Q. This may be a question better put to James Coe, but the result was that the price was about 1.70 a share.

A. Yes.

Q. Did it really matter whether it was expressed at 1.70 or expressed at 1.50, plus finder's fee?

A. I think Mr. Coe had reasons of his own for keeping the price at 1.50.

Q. All right. From the syndicate's point of view, did it matter whether it was broken up in this way, or came up as a single –

A. We didn't matter which way it was, as long as the total figure came up to more or less the same. 10

Q. Now we will come to the reason why that document bears these crossing-out lines. At the time this was the agreement signed by James Coe?

A. Yes.

Q. Then at 38 there is an agreement or memorandum of agreement signed by David Ng and James Coe of the 30th April 1977, wherein James Coe promises to pay a one per cent commission to David Ng in the event of David Ng being able to raise a loan for James Coe against the security of 23 million Siu King Cheung shares.

A. Yes.

Q. That goes to the financing? 20

A. Part – part of the financing.

Q. "Part of the financing".

COURT: Where does it say 'one per cent'?

MR. SWAINE: My Lord, "WHEREBY IT IS AGREED that Mr. Ng in consideration of a 1% commission" – Does your Lordship have the document at 38?

COURT: Oh! Yes.

Q. In this regard, was David Ng acting on his own or for the syndicate?

A. He was acting on behalf of the syndicate and his intention was to re-finance the loan – in other words, James Coe wanted a loan of 17 million 250 dollars – 30

Q. – 250 thousand dollars.

A. – and he asked whether we could raise that money for him.

COURT: Sorry, who asked?

A. James Coe asked if we could raise that money for him to enable him to complete the purchase.

Q. We will get further and better particulars from David Ng.

A. Yes.

Q. But the one per cent commission, would that have been for the syndicate's account or for David Ng's?

A. It would have been for the syndicate's account, but probably most of it would have gone to the ultimate financier, because the ultimate financier would have required a commission, anyway. 40

Q. I see.

- A. So, most of it would probably have been eaten up that way.
- Q. And would you look at 42? Now, that's an undertaking addressed to Rocky signed by David Ng dated 30th April 1977 "that upon completion we shall cause all directors of San Imperial . . . to resign and nominate nominees of the purchaser including James Coe to be new directors . . ." Now, why was that necessary?
- A. That was necessary because James Coe insisted that none of the old directors remained on the Board of San Imperial after completion of the deal.
- 10 Q. Then could you look at your letter 44 to Philip K.H. Wong & Co. dated the 2nd May? That's a letter enclosing your formal receipt for one million five hundred thousand dollars.
- A. Correct.
- Q. The receipt itself being at 47.
- A. Yes.
- Q. And the cheque itself has been identified, is it, in – Do you have the original, Mr. Ives?
- A. I am not sure if I have. Has that been discovered? I don't think so.
- 20 Q. The cheques which James Coe had issued are at 106(i) and 106(ii). These have already been referred to. Perhaps you could tell us simply this at this time: the money was received, was it not?
- A. That money was definitely received.
- Q. The one million five . . .
- A. It was a Union Bank of Hong Kong Ltd. cheque. At the bottom of the receipt the details are given.
- Q. Yes. It looks like the Shanghai Commercial Bank. Look at the bottom of 47.
- A. Sorry, that was the Shanghai Commercial Bank.
- Q. Yes, you were looking at the wrong receipt.
- A. I was looking at the other receipt. Yes.
- 30 Q. Yes. And the originating cheques of James Coe are 106(i) and 106(ii). Now, then, in the agreement itself, there are two clauses I want to look at. That's document 40: 7(c)(iii) at page 2. These are the various conditions of the agreement?
- A. Yes.
- Q. And one of the conditions is that "San Imperial shall remain the registered owner of or otherwise beneficially entitled to the following properties:— . . . (iii) \$6 million cash representing 140 and 141 Connaught Road Central."
- A. Yes.
- Q. This would refer to the six million refundable – well, tell us what –
- A. This relates to the cancellation of the agreement between Oceania . . .

40 COURT: Which one is it? C(i)?

A. (c)(iii).

MR. SWAINE: 7(c)(iii), my Lord.

COURT: Sorry, I didn't get that.

A. This relates to the cancellation of the agreement between Oceania and MAF.

Supreme Court
of Hong Kong
High Court

Defendant's
evidence

No. 40

Melville E.
Ives-examination

We had to guarantee that the San Imperial Corporation Limited would receive that six million dollars. You will see, my Lord, it starts off "It is of the essence and are conditions of this agreement . . ."

Q. And this was as much James Coe's wish as it was the syndicate's?

A. Oh, yes.

Q. To get out of this disadvantageous contract.

A. Yes, yes, he was adamant about it.

Q. In point of comparison we got an earlier draft of the same agreement. Well, we got a draft of the 30th April agreement at 24, and the equivalent clause there is 7(d)(iii).

A. Yes, that one merely refers to the Connaught Road Central property. No mention of six million dollars.

Q. But what we do have at subparagraph (e) of the draft is the syndicate's undertaking to cause San Imperial to sell and dispose of its interests in 140-142 Connaught Road Central for cash at 6 million dollars.

A. Yes.

Q. That reflects the syndicate's view and that of James Coe?

A. Yes.

Q. The other point of comparison between the draft and the final agreement is that in the final agreement there is a new 19 – that's document 40, page 6 of the agreement – and that refers to Action 252 of '77.

A. Yes.

Q. Why was that put in in the final form of the agreement?

A. Yes, James Coe wanted that clause in for his own protection. It was his clause.

Q. "His clause"?

A. Hmmhm.

Q. Now, the 30th April agreement is for the sale of 23 million shares, which is short of the 51 per cent.

A. Yes.

Q. Why is that?

A. We believed at that time that we stood very little chance of getting the full 51%. James Coe raised no objection to the lesser amount as he would still have effective control and it would save him a little money.

Q. I want you now to look at document 29. Now, that's a letter of the 22nd April 1977 signed by you as a director of City Nominees Ltd.

A. Yes.

Q. Addressed to Dr. Ooi Weng Poy, Acting Chairman of San Imperial – a small point: it's Ooi Seng Poy? Isn't he?

A. Ooi, I think, Seng Poy. Yes. I think so.

Q. We got this name actually on the minutes. It points out that City Nominees is a member of San Imperial as holder of some 1,200,000 shares. Then it requests that David Ng be appointed to the Board. Why was that?

A. There were two basic reasons: the principal one was that if he was appointed to the Board, he would know what was happening within the company. Dr. Ooi is a medical practitioner and knows nothing about company administration or hotel operation; and also at this time we were still very much afraid that there were 'unknowns' which might seriously detract from the net asset value of the company.

Q. You say 'unknowns', Mr. Ives. Would you explain a little? Just broadly.

- A. Yes. Supreme Court
of Hong Kong
High Court
- Q. Just go back to the milking factory.
- A. Goes back to the milking, etc. etc.
- Q. Yes. All right. The reply from San Imperial is the letter at 49, 4th May, agreeing that David Ng be appointed as a director but asking to defer the appointment until the AGM on 30th May. Defendant's
evidence
- A. Yes.
- Q. And was he so appointed? No. 40
- A. He was. Yes.
- 10 Q. After the signing of the 30th April agreement, was there further discussion between James Coe and the syndicate? Melville E.
Ives-examination
- A. Yes. And James Coe became rather worried as to what was happening with the various actions.
- Q. Did he speak to you or to one of other members of the syndicate?
- A. I think he spoke to David Ng. He also had some discussions with Mr. Philip Wong.
- Q. All right. As a result of the discussions, what occurred?
- A. It was agreed to modify the agreement – the terms of the agreement, and the agreement of the 12th May was entered into.
- 20 Q. Just for the sake of continuity, in the meanwhile there was Philip Wong's letter to yourself at 52 of the 6th May, 1977.
- A. Yes.
- Q. Now, that thanks you for your letter of the 5th May enclosing copy resolution passed by the directors of San Imperial. We do have a copy of a resolution at 48 – that relates to the Oceania cancellation.
- A. Yes.
- Q. Was that the resolution you sent?
- A. I think so. Yes.
- 30 Q. Then it speaks in the second paragraph of David Ng using his best endeavours to obtain for Mr. Coe full facilities to investigate the net asset value, cash flow and so forth. And then it asks for confirmation from the Registrar of the registration of the shares in the name of Fermay.
- A. Yes.
- Q. Pursuant to that last request did you get from the Registrars a letter of the 11th May – document 53?
- A. Yes.
- Q. Then we come to the 12th May agreement. That's at 54 – the gist of which is that the sale to Rocky is split into two packages.
- A. Yes.
- 40 Q. The one being an option to purchase the shares of Fermay.
- A. Yes.
- Q. And the other the outright sale of between 7 to 8 million San Imperial shares held by the syndicate.
- A. Yes.
- Q. Well, you had asked Mr. James Coe what the advantages were from his point of view. But from the syndicate's point of view, were there advantages doing it this way?
- A. It's relieved the pressure brought on to the transaction by the injunctions.
- Q. And in that connection, there is provision in Clause 13 for the option to be

Supreme Court
of Hong Kong
High Court

exercisable so soon as the injunctions and the attachment and/or any other restrictions are lifted and discharged.

A. Yes.

Q. And in terms of cash, were there advantages?

Defendant's
evidence

A. Well, in the overall price, no. There was a definite cash advantage for James Coe.

No. 40

COURT: No advantage for the syndicate, you mean?

Melville E.
Ives-examination

A. The overall – The overall price remained the same.

COURT: There were no advantages?

A. No cash advantage. No.

10

COURT: Yes?

Q. James Coe will tell us about the cash advantage himself.

A. Yes.

Q. Now, the associated documents on the 12th May. Would you look at 55? That's James Coe's guarantee in favour of David Ng of performance by Rocky of the new agreement.

A. Yes.

Q. Reason being?

A. Same as before.

Q. "Same as before"?

20

A. Hmhhh.

Q. And at 56 Chapman Ho's guarantee in favour of Rocky of performance by David Ng. The reason?

A. Same as before.

Q. "Same as before." Now, the document referred to as the supplemental agreement, that is the loan arrangement on the Siu King Cheung shares, was that still in force or replaced or held over?

A. That was held over. It was not abrogated by us, I think. It was held by us.

COURT: That would be document what?

A. 41.

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MR. SWAINE: Document 41. That was the supplemental agreement.

Q. That was not abrogated?

A. Yes.

Q. The commission agreement – that's the one per cent commission agreement (document 38) – what about that?

A. That also held over.

Q. "Also held over". What about the finder's fee agreement which appears at 43?

A. That was also held over.

Q. Now, 9th June, we have a host of documentation. What were these in respect

- of?
- A. The completion of the first part of the transaction, that is the transaction between David Ng and I.P.C. Nominees, which is –
- Q. In respect of eight million shares?
- A. Yes.
- Q. Why I.P.C. at this time, Mr. Ives, do you know?
- A. Yes. James Coe was afraid that the publicity attaching to these actions might reflect through to his Siu King Cheung company.
- Q. Yes?
- 10 A. He was a director and shareholder, I believe, of Rocky Nominees Ltd.
- Q. Rocky Enterprises.
- A. Rocky Enterprises, Ltd., and he was afraid of people putting two and two together and coming up with the answer that he was buying for Siu King Cheung.
- Q. Now, Mr. James Coe will give us first-hand evidence.
- A. Yes.
- Q. But that is your understanding?
- A. Yes.
- Q. And from the syndicate's point of view, did it really matter?
- 20 A. It didn't matter. No.
- Q. Now would you look at 71? This is an agreement of the 9th June between James Coe and David Ng wherein it is stated that David Ng has lent to James Coe the sum of 16.2 million.
- A. Yes.
- Q. And James Coe has transferred to David Ng 23 million shares in the capital of Siu King Cheung.
- A. Correct.
- Q. As a security for payment.
- A. Yes.
- 30 Q. Was this part of the completion package?
- A. Correct. This was, in effect, pursuant to, I think, 41 = the supplemental agreement of the 30th.
- Q. Was it in replacement of –
- A. Well, the 30th of April agreement merely stated that he would use his best endeavours to raise a loan. This is an actual loan agreement.
- Q. And were the 23 million Siu King Cheung shares actually received from James Coe?
- A. They were. Yes.
- 40 Q. Would you identify at document 77 the receipt of Peter Mo & Co. of the 23 million shares from Philip K.H. Wong & Co.?
- A. Yes.
- Q. Could you identify at 72 James Coe's receipt given to David Ng for the sum of 16.2 million?
- A. Yes.
- Q. And would you identify at 73 David Ng's receipt given to Rocky for the sum of 13.2 million?
- A. Yes.
- Q. And at 80 the receipt of Ho Chapman & Associates Ltd. given to James Coe for the sum of 3 million dollars, the balance of finder's fee?

Supreme Court
of Hong Kong
High Court

Defendant's
evidence

No. 40

Melville E.
Ives-examination

Supreme Court of Hong Kong High Court

Defendant's evidence

No. 40

Melville E. Ives-examination

A. Yes.

Q. And incidental to David Ng's receipt for the 13.2, could you identify at 79 his confirmation that the 13.2 is deemed to be payment by Rocky of the option fee?

A. Yes? 79, please?

Q. That's 79.

A. Yes, the four million dollars option fees.

Q. So, these are the cost receipts of the syndicate for 16.2 million – totalling 16.2 million?

A. Yes. 10

Q. As against James Coe's receipt for 16.2 million.

A. Yes.

Q. But did cash change hands at that time?

A. Cash did not, sir.

Q. "Cash did not". The syndicate had got the 23 million Siu King Cheung's shares from James Coe?

A. Yes, as security for the loan.

Q. One of the documents that we ought to be looking at is the revised finder's fee undertaking at 74. Do you identify this –

A. Yes. 20

Q. – as being one of the documents?

A. Yes.

Q. Executed upon the completion of the 9th June?

A. Yes.

Q. And is this in replacement of the 30th April finder's fee agreement?

A. This replaces the 30th April agreement.

Q. Now, the loan agreement – you may go back to 71 – was stamped on the 20th June, –

A. Yes.

Q. – 1977 in the sum of \$32,400,000. 30

A. Yes, 32,400.

Q. 32,400.

COURT: What number?

MR. SWAINE: My Lord, on the 20th June.

Q. Why at 32,400?

A. That is the amount assessed by the Assessor – the Collector's stamp duty.

Q. Is this the mortgage rate or the –

A. That's 2 – Yes, that is the 2 per cent. Is it 2 per cent?

Q. Yes, 2 per cent of 16.2.

A. Yes. 40

Q. That is the mortgage rate?

A. Mortgage rate is less than that.

Q. That is a matter that perhaps we can leave over the time being.

A. Yes.

Q. What did the syndicate intend to do with this loan agreement?

A. It was intended that the loan be refinanced by the bank.

- Q. Backed by? Supreme Court of Hong Kong High Court
- A. Backed by the shares – the Siu King Cheung shares.
- Q. Would this, in your experience as a solicitor, have been common or uncommon for a bank to do?
- A. If the security's sufficient, the bank would certainly do it; especially nowadays the banks have far too much money on hand, most of them are very anxious to make loans. Defendant's evidence
- Q. Were the 23 million Siu King Cheung shares good security for 16.2? No. 40
- 10 A. They should be. They were a controlling interest in the company. The shares themselves individually were being quoted at approximately one dollar on the market, so controlling interest would have given ample security. Melville E. Ives-examination
- Q. Stock market has been by and large well behind –.
- A. Yes.
- Q. – the true value of the shares.
- A. Yes. Yes. And the controlling interest would be worth very much more than the price of an individual share on the market.

COURT: Did you say about a dollar on the market?

- A. They were approximately one dollar. Yes.
- Q. Did the syndicate try to get refinancing?
- 20 A. Yes. Certain arrangements had been made but fell through at the last minute – at the last moment.
- Q. Who made the arrangements?
- A. David Ng and Chapman Ho.
- Q. Well, they will tell us the actual leg work involved.
- A. Yes.
- Q. But in the event the refinancing endeavours fell through.
- A. Yes.
- Q. As regards publicity, was anything happening about the actions in which we are now involved and the related actions?
- 30 A. Yes. It seems that – It seemed that almost every day there were injunctions being advertised in various newspapers in Hong Kong and the size of the advertisement was perhaps much larger than the usual legal notices – court notices appearing in the Press.
- Q. I think the best thing is we'll get copies of these for the Court's ready perusal. There was one certainly occupying almost a whole page of the Morning Post.
- A. Yes. That was a twin one – there were two – one side by side.
- Q. There is a great deal of adverse publicity outside?
- A. Yes. On top of that, there was publicity on the English channels of Radio Hong Kong, both at 11 o'clock at night and in the 7.30 a.m. News usually stating that further steps were being taken in these actions; and most of these news broadcasts also mentioned names of the parties involved.
- 40

MR. SWAINE: Would this be a convenient time?

Appearances as before.

D.W.1 – Melville Edward IVES – On former oath.

XN. BY MR. SWAINE (Continuation)

Defendant's
evidence

No. 40

Melville E.
Ives-examination

Q. Mr. Ives, one matter that I omitted to deal with yesterday in regard to the completion on the 9th of June was the additional \$15M. received by the syndicate through Philip K.H. Wong & Co. Would you look at document 76 in yellow 1.

A. Yes, the receipt.

Q. Yes. That was your receipt – your firm's receipt to Philip K.H. Wong & Co. dated the 9th of June for the sum of \$1,500,000.

A. Yes.

Q. And was that money actually received? 10

A. Received by us or by . . .

Q. . . . By yourselves – by the firm.

A. Yes.

Q. Peter Mo & Co.

A. Correct, yes.

MR. SWAINE: My Lord, for the court's reference, the cheque has already been referred to in my opening. It is James Coe's cheque to Philip K.H. Wong & Co. at 106(iii). I don't think your Lordship needs to look at it. The receipt in favour of James Coe by Philip K.H. Wong & Co. is document 69.

Q. One further matter that I have to go back to Mr. Ives, is that you said that you had been approached by Mr. Tisdall of Johnson, Stokes & Master. 20

A. Yes.

Q. Were there other approaches to your own knowledge, that is, people speaking to you or you were present during discussions?

A. Yes. There were discussions in my presence with Mr. T.T. SHU – spelt 'S-H-U'.

Q. And his professional occupation?

A. Apart from a racehorse owner, not quite sure. I think he is a man of independent means.

Q. Purely through my own common interests – he owns two race horses. Not that it means very much, but I think he is a banker. 30

A. He has got connections with banking.

Q. He is a man, you say, of . . .

A. . . . of independent means.

Q. He is a Shanghai gentleman who goes about with a Mandarin gown.

A. Correct.

COURT: What's the meaning of that?

MR. SWAINE: It doesn't mean anything, my Lord.

Q. We are now talking about the same person.

A. Yes.

Q. Were there any other prospective buyers of which you have personal knowledge? 40

A. Yes. There was an approach from Sun Hung Kai.

Q. That's a public company.

- A. Yes. That was made to me on the 1st of April, the day that I was leaving Hong Kong, and I put them on to Mr. Chapman HO. Supreme Court of Hong Kong High Court
- Q. So, you got personal knowledge of, say, three prospective purchasers who made enquiries.
- A. Yes. Defendant's evidence
- Q. All right.
- (A pause). No. 40
- 10 Q. One further matters which I would like to deal with is the minutes dated the 20th of May '77 – document 62. Now, these are Fermay minutes bearing the signature of CHOW on Skyprene notepaper. Melville E. Ives-examination
- A. Yes.
- Q. Would you explain how this came to be.
- A. Yes. There had been discussions within the syndicate of the problems arising from these proceedings. David NG conveyed these problems to the CHOWs and with the suggestion that Fermay should be represented legally in these proceedings. Apparently the CHOWs agreed to this and David NG was appointed Managing Director of the Company, that is, Fermay Company, so that he could properly represent the company in these proceedings. I was asked to draft the appropriate minutes . . .
- 20 Q. . . . By whom?
- A. By David NG – for his appointment and he produced to me a sheet of Skyprene International Corporation notepaper . . .
- Q. . . . That would be David NG . . .
- A. . . . Yes, for his purpose.
- Q. And then did you cause the minutes to be prepared?
- A. Sorry?
- Q. Did you cause the meeting minutes to be prepared?
- A. Yes. I caused the minutes to be prepared. I believe this is my office typewriter. Ultimately David NG returned the minutes to me signed by Chaw-I CHOW.
- 30 I then caused the appropriate Form X to be filed at the Companies Registry.
- Q. Could I borrow your original file to look at some other documents, Mr. Ives?
- (A pause).
- Q. Now, some evidence you gave yesterday I would like to develop further this morning. You will remember that David NG had come back from Taiwan on the 1st.
- A. Yes.
- Q. Telephoned to you subsequently.
- A. Yes.
- Q. The three of you had lunch on the 4th.
- 40 A. Yes.
- Q. He reported his discussions with CHOW.
- A. Yes.
- Q. Prior to that, you had dictated a telex to London . . .
- A. Yes.
- Q. . . . for an opinion . . .

Supreme Court
of Hong Kong
High Court

Defendant's
evidence

No. 40

Melville E.
Ives-examination

- A. Yes.
- Q. . . . as to whether one could lawfully deal with a fugitive.
- A. Yes.
- Q. The point I want to develop is as to your own state of mind on this and subsequent occasions. Did you form any view as to whether CHOW was acting for himself or on some other's behalf?
- A. First of all, I was not very happy with the idea of dealing with CHOO Kim-san. When David NG informed me that he had been introduced to the CHOWs and that the CHOWs had purchased the shares from CHOO Kim-san, I was both relieved and sceptical. I say 'sceptical', my Lord, because I was wondering whether the CHOWs might be another LEE Ing-chee. As time passed and — when I refer to time, I mean between the 4th of January and the 23rd of March — I became more and more satisfied in my mind that the CHOWs were entirely independent of CHOO Kim-san. I mentioned yesterday the problems which confronted or worried the syndicate and all these problems had to be resolved by the syndicate themselves whereas if . . .
- Q. . . . The problems — pausing there, Mr. Ives — being as to the authenticity of the shares which the CHOWs said that they had.
- A. Yes, that's one of the problems. If CHOO Kim-san had been behind the deal, I am sure that the works would have been oiled to facilitate or to resolve these problems, such as, I think, he would have put the shares into the name of a Hong Kong party other than Asiatic. None of these things were done. Also the negotiations were protracted and I formed the opinion as at the 23rd of March that this was a genuine deal with genuine people. When I use the word 'genuine', I mean 'not a sham', 'not nominees'. Subsequent to the 23rd of March, events have happened which have more than confirmed in my own mind that the CHOWs were in no way acting for CHOO Kim-san. CHOO Kim-san must have known that there were huge claims outstanding against him in Malaysia. LEE Ing-chee had already told him that LEE was about to sue him.
- Q. Mr. Ives, how did you derive this knowledge?
- A. This is from the affidavit of LEE Ing-chee.
- Q. Yes. That's after the events.
- A. Yes, after the events, yes.
- Q. I think if you are now going to re-cap the events after the events, perhaps we had better leave that for the more appropriate part of the case.
- A. Yes.
- Q. But up to the 23rd of March 1977, the scepticism which you had initially shown as regards the CHOWs was dispelled in your own mind.
- A. Yes, yes.
- (A pause).
- Q. One matter that I would like to deal with, Mr. Ives — the number of shares that we have been talking about does not actually add up to the 8M. which was transferred to IPC on the 9th of June. The 8M. package comprised of 3226 (3,226,000 ?) under the option agreement with M.A.F. Corporation, David NG had bought on his own account 2,165,000 shares in Taiwan and the syndicate had bought in Hong Kong a total of 2,279,600 shares. That gives

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7,670,600, leaving a deficit of 329,400.

Supreme Court
of Hong Kong
High Court

A. Yes.

Q. Now, that figure is already accounted for in one of Mr. David NG's affidavits. That's not evidence.

A. Yes.

Defendant's
evidence

Q. For the record – and David NG will tell the court in greater detail – how was the 329,400 made up?

No. 40

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A. By this time, the shares had been suspended on the market. David NG made searches of the registers and approached persons who had various significant holdings, I think, I should say, and made private purchases from those people. That was to the extent of 329,400.

Melville E.
Ives-examination

Q. At the price of . . . ?

A. . . . I believe it was \$1.

Q. In fact, for ease of reference, Mr. Ives, we have got here a rough account relating to the syndicate's purchases – David NG would be the best person to actually prove the figures – but it might be convenient if I would show you the document . . .

20

MR. SWAINE: . . . and perhaps have it marked for identification, my Lord. It helps to summarize a large part of the figures we have been looking at. It maybe we have not run off enough copies.

COURT: Mr. Ives, can you remember off hand when it was when these shares were suspended?

A. I think it was before the supplemental – I am not sure offhand.

MR. SWAINE: I have the figure – I have the date, I'm sorry. My Lord, this was in relation to James Coe going to see the Acting Commissioner for Securities. I opened on that context. I am reminded it was the 5th of May.

COURT: Has this date been mentioned? Not in evidence.

MR. SWAINE: No, no, but in my opening.

COURT: You did mention that.

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MR. SWAINE: I don't think that Mr. Ives remembers the date.

A. No.

MR. SWAINE: Mr. James Coe would certainly have those dates in mind.

COURT: He would tell us.

MR. SWAINE: Yes, and possibly Mr. David NG who was also involved.

COURT: Yes.

Supreme Court
of Hong Kong
High Court

Defendant's
evidence

No. 40

Melville E.
Ives-examination

MR. SWAINE: The 4th of May, my Lord.

COURT: Yes.

(A pause).

MR. SWAINE: My Lord, could this be marked provisionally?

Q. Now, we start off with the sale of the 8M. shares to James Coe via IPC at 1.50. That gives the sale price of \$12M. Less the M.A.F. account that of course is the public holding company – but the actual purchase was from M.A.F. Corporation which was the subsidiary.

A. Yes. The registered holder of the shares was M.A.F. Nominees, I understand, and was held by the nominee company for M.A.F. Corporation I believe. 10

Q. The agreement itself was with M.A.F. Corporation . . .

A. Yes.

Q. . . . which, as we know, is a subsidiary of M.A.F. Corporation . . .

A. Correct.

Q. . . . which was of course a public company.

A. Yes.

Q. Now, that gives, at 1.50 a share, \$4,839,000. Then on David NG's account on the shares he bought at Taiwan – 2165 (2,165,000 ?) at 20¢ per share . . .

MR. SWAINE: . . . My Lord, an obvious typing error – '20¢', and it gives – I'm sorry. 20

A. It's correct.

Q. I'm sorry. The syndicate, in other words, was removing from the pot the element which was David NG's private account.

A. Correct.

MR. SWAINE: My Lord, I stand corrected.

Q. This being the syndicate's account as distinct from David NG's account.

A. Correct.

Q. Then the Hong Kong purchases in respect of the 2,279,600 shares, 1,247,064.40 and the 329,400 shares at a dollar each – that gives the total of 1,576,464.40 leaving therefore 2,337,035.60 on the trading account. 30

A. Yes.

Q. Less 'Stamp Duty/Brokerage' – now, that's the Fermay stamp duty/brokerage.

A. Yes. 108,000.

Q. The 'Retainer's Fee' being – who's the retainer?

A. That's the fee payable to City Nominees Ltd. for processing the shares.

Q. And the 'Travelling Expenses'?

A. That was David NG's travelling expenses to Taiwan.

Q. So that on the trading account in respect of the 8M. shares, the pot available for division by the syndicate was 2,159,035.60.

A. Correct. 40

Q. Now, beyond that we have not taken into account in that document – and this is the subject matter for a balance sheet as distinct from a trading account.

A. Correct.

Q. . . . which Mr. David NG might be in a better position to put forward. The

\$4M. option fee is not in the trading account.

Supreme Court
of Hong Kong
High Court

A. That is so.

Q. Nor the 3M. finder's fee.

A. That's correct.

Q. Now, as regards the proceeds of the trading account, the option fee and the finder's fee – what's happened to that money, Mr. Ives?

Defendant's
evidence

A. Part of it has been distributed between the members of the syndicate; part of it is being held for tax purposes; and part of it is being held to meet legal costs and expenses in these proceedings etc. I'm sorry. Are we talking about the 2M. or . . .

No. 40

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Q. . . . No, we are talking about the proceeds . . .

Melville E.
Ives-examination

A. . . . And part of it has been invested in the acquisition of a property.

COURT: I'm afraid I am rather lost. What are we talking about now?

MR. SWAINE: My Lord, we are talking about the net profit on the trading account which stands at just over 2.1M. . . .

COURT: Yes.

MR. SWAINE: . . . plus the 3M. finder's fee and plus the 4M. option fee – and both of them have been dealt with in the manner . . .

COURT: Oh, I see.

20 MR. SWAINE: . . . outlined by Mr. Ives.

Q. There has been a partial distribution, certain sums have been held for reserve, provision made for tax and money has also been invested.

A. Yes.

Q. And the investment was in what form?

A. A property was auctioned and the money was utilized to purchase this property.

Q. When was this?

A. Oh, I think this was about three weeks ago or a month – three weeks to a month. The company was called Restormel Ltd. – R-e-s-t-o-r-m-e-l.

30 Q. Being a company of whom?

A. Well, the syndicate – Chapman HO and David NG and myself, we acquired this company to purchase that property.

Q. What was the investment? How much was the investment?

A. It's 2½M. – approximately 2½M.

Q. Now, Mr. Ives, the syndicate has come out with a very handsome profit at the end of the day.

A. Yes.

Q. That does not need detailed analysis.

A. Right.

40 Q. For whose benefit – for whom do you hold those property?

A. For ourselves.

Q. Were you making this money for CHOO Kim-san?

Supreme Court
of Hong Kong
High Court

- A. Definitely not.
- Q. Definitely not.

Defendant's
evidence

COURT: The profit is about 9M., is that right?

- A. It would be – the present profit at this stage would be about 9M.

No. 40

COURT: I am talking about the 4M. plus the 3M. . . .

Melville E.
Ives-examination

- A. Yes.

COURT: . . . plus the 2M.

- A. What might be called Stage 1 profit.

COURT: I see.

- Q. The – sorry, I'm not terribly good at accounts, but does that take into account the outlay by the syndicate buying the shares? 10

- A. The outlay . . .

- Q. . . . Yes – that's gone into the trading account.

- A. Yes.

- Q. I think my Lord means by the 9,000 (9M. ?) the 2M. on the trading account, the 4M. option and the 3M. finder – with the outlay, reserve and so forth which would have to be taken into account in drawing up the balance sheet.

- A. Yes.

- Q. Were you acting as nominee for CHOO Kim-san in the lapse of the last six months acquiring the shares and looking for purchasers and re-selling them? 20

- A. No.

- Q. Sorry. When I say 'the last six months', I mean the first six months of this year – from January to June.

- A. Yes, yes.

- Q. It's about six months, isn't it?

- A. Yes. No.

(A pause).

- A. For the benefit of the shorthand writer, my Lord, I said 'yes' at the time agreeing with counsel. I did not mean to say 'yes, I acted as nominee'.

- Q. To your knowledge, were the members of your syndicate (that is, HO Chapman and David NG) acting for themselves or for CHOO Kim-san? 30

- A. To the best of my knowledge, they were acting for themselves.

- Q. Perhaps what I ought also to elicit, Mr. Ives, is your own drawings. What did that comprise out of these profits?

- A. It's about \$1½M.

- Q. We will get the figures from HO Chapman and David NG as regards their own drawings. Another matter which would be within your knowledge is the provision made for legal fees.

- A. Yes.

Q. How much has been held in reserve for that purpose?

A. About \$2M.

Q. Is that provision for any particular stage of the proceedings or . . .

A. . . . No, it was just felt prudent that a substantial sum should be put on one side.

Supreme Court
of Hong Kong
High Court

Defendant's
evidence

MR. SWAINE: I have no further questions, my Lord.

No. 40

MR. CHING: My Lord, I ought to have been agreeing that I would not be cross-examining until we have the further discovery. We have been asking for it for many days now.

Melville E. Ives –
cross-examination

- 10 MR. SWAINE: My Lord, there has been a lot of work since the adjournment which has been gone into for the preparation of the supplemental lists. I think, they have been typed, my Lord, but I would have to take instructions. I think if your Lordship would take the mid-morning adjournment now, it would be convenient to see how close we are to finalizing the discovery.

D.W.1 – Melville Edward Ives (o.f.o.)

XXN. BY MR. CHING:

Q. Mr. Ives, you are a solicitor and you have been described as senior partner in your firm?

A. A senior partner.

- 20 Q. Partner of a firm consisting of four partners?

A. Six partners.

Q. And you are No. 2?

A. On the list, yes.

Q. How many years have you been a solicitor?

A. 27 years.

Q. Not including your years of articles?

A. Not including.

Q. So you have been in the law, as it were, for something like 32 years?

A. 30 years.

- 30 Q. Would you say that you are a very experienced solicitor?

A. Reasonably experienced.

Q. After 30 years only reasonably experienced?

A. Even after so many years I find one is always learning new things.

Q. Learning or otherwise, Mr. Ives, are you a very experienced solicitor?

A. I would still say reasonably experienced.

Q. Experienced in contentious work?

A. Not so much in contentious work.

Q. Experienced in non-contentious work?

A. Yes.

- 40 Q. Conveyancing?

A. Conveyancing, yes.

Q. Contracts?

A. Contracts, yes.

Supreme Court of Hong Kong High Court

Defendant's evidence

No. 40

Melville E. Ives – cross-examination

Q. You have some experience of pleadings and litigations?
A. Some experience, yes.

Q. You know then the importance of accurate language?
A. Of course.

Q. Have you any experience in Company Law?
A. Yes.

Q. Experienced in matters of power struggle within limited companies?
A. Occasionally.

Q. Experienced in the questions of sales and purchases of shares?
A. In various aspects, yes. 10

Q. Would you say that you carry out your duties as a solicitor and an officer of the Supreme Court conscientiously?
A. I try to, yes.

Q. You do carry out your duties conscientiously?
A. I try to.

Q. Carefully?
A. I am as careful as I can be, yes, but we all can make mistakes at times.

Q. You act responsibly?
A. Responsibly, yes.

Q. You would not do anything dishonest? 20
A. I would never do anything dishonest.

Q. Or immoral?
A. No.

Q. Or even dubious?
A. Dubious in what sense?

Q. Anything that could possibly be regarded as immoral or dishonest?
A. In that context, no.

Q. In what context would you do anything dubious?
A. Well, you could make a dubious joke or dubious comment.

Q. You would not, for instance, mislead any court? 30
A. I would not, no.

Q. You would not mislead the court by suppression or anything?
A. No.

Q. Or, indeed, otherwise?
A. Correct.

Q. As a responsible solicitor who tries to act conscientiously and carefully would you open a file on each new matter that you dealt with?
A. As I said in my evidence in chief, it is not necessary always to open a new file for every matter.

Q. Generally speaking, however, if a new matter arose you would open a new file? 40
A. I think that is too broad a comment, for example, if it is a question of a notarial act, a new file is not opened, and I suppose I got half a dozen notarial acts a week, so you can say there are half a dozen matters on which I do not open a new file.

Q. Let's take a concrete incident, Mr. Ives. When you began or when your syndicate began to go after these particular shares did you open a new file?
A. I did, yes.

Q. And as a responsible solicitor trying to act conscientiously and carefully did

- you keep carbon copies of all documents that you may have drawn up?
- 10 A. I am not quite sure what you mean by that. Do you mean drafts or –
- Q. Any documents, would you keep carbon copies or original copies as the case may be?
- A. Not necessarily so, no.
- Q. Why not?
- A. Because sometimes it is not necessary. Sometimes a client may not want copies to be retained.
- Q. Sometimes a client may not want copies to be retained.
- 10 A. Are you asking generally or in respect of this specific case, because if it is generally the question is much too wide to answer.
- Q. Well, in this case you were your own client, were you not?
- A. That is so.
- Q. Would you have kept carbon copies of documents you have drafted?
- A. If I drafted a document I would usually keep a draft until it is superseded in some way or another. If it becomes a useless draft then I usually destroy it.
- Q. But if it is an important matter you would keep a carbon copy, is that right?
- A. Of the draft or of the document?
- 20 Q. Even of your draft?
- A. Not necessarily so because otherwise one can get a file with far more old drafts in than useful documents and it becomes hopelessly confusing, and I would like to get rid of any unwanted stuff as soon as possible.
- Q. Is it your position then that you would make a carbon in the first instance, but if it became irrelevant you would destroy it?
- A. Usually yes.
- Q. Did you do so in this case?
- A. Did I do so with what?
- Q. With any carbon copies in this case or have you kept carbon copies of all of your documents?
- 30 A. Can you ask me any particular document?
- Q. No, just tell us generally whether you followed your general practice in this particular case?
- A. Again I am not quite sure what you want from me because first of all, perhaps I could explain, usually when drafting a document I would dictate it onto a dictating machine, I would then get a rough draft. It might be done on an I.B.M. memory machine or may be done just on an ordinary typewriter. I would sometimes make amendments on that draft and then make a Xerox copy of that and tell the secretary to type it.
- 40 Q. When you sent off a draft to somebody else would you keep a carbon copy?
- A. Well, that is different. If I sent off a draft to somebody else I usually kept a carbon copy.
- Q. Would you ever destroy that carbon copy?
- A. After the document has been executed I very often destroy the carbon copies.
- Q. Did you do so in this case; did you destroy any carbons in this case?
- A. Sorry, you keep saying carbon copies, they are more likely to be Xerox copies than carbon copies.
- Q. Either Xerox or carbons did you destroy them in this case?
- A. I honestly cannot recollect. There may be some documents which I considered

Supreme Court
of Hong Kong
High Court

Defendant's
evidence

No. 40

Melville E. Ives –
cross-examination

Supreme Court
of Hong Kong
High Court

Defendant's
evidence

No. 40

Melville E. Ives –
cross-examination

to be of no further use in the file.

- Q. You drafted an agreement for David Ng to take up to Taiwan?
- A. Yes.
- Q. Did you keep a copy of that agreement?
- A. I may have a copy of that. I have a pile about that high of documents.
- Q. Do you say you have your file with you now?
- A. Yes, in the office I have got a file of this high.
- Q. You don't have a complete file with you?
- A. Not here.
- Q. You may have kept a copy of the actual document that you handed to David Ng to take up to Taipei? 10
- A. I probably did, yes.
- Q. You cannot recall destroying any such document?
- A. I cannot recall destroying that particular one.
- Q. What about the draft minutes that you handed to David Ng to take up to Taipei, did you keep copies of those?
- A. Those minutes were very simple form.
- Q. Never mind about that. It is either "yes" or "no", Mr. Ives. Did you keep a copy?
- A. I think with matters such as that which are of such simple form I probably did not keep any copies. 20
- Q. You must have had a copy, must you not, of the agreement because you dictated it, according to you over the telephone?
- A. Yes, I have a copy of that agreement, yes, but I don't know if I destroyed it after the original had been executed or not.
- Q. Why should you destroy it? Surely even as a matter of record to show what had happened if the need should ever arise a copy of your original draft might assume considerable importance, might it not?
- A. It is the biggest problem in an office nowadays to control the amount of paper that accumulates and one has to be fairly ruthless, and what appears to be useless documents in effect as a draft, once a document has been executed usually is of – serves no further purpose, we quite often destroy it. 30
- Q. Would it be possible for somebody to bring your entire file over now?
- A. Yes.
- Q. Would you have any objection of it being brought over now if it can be brought over?
- A. It can be brought over.
- Q. Perhaps your article clerk telephone your secretary and have it brought over now?
- A. Yes. 40
- Q. Please correct me if I am wrong, but it seems to me during your evidence in chief that you seem to be taking some sort of an exception to the number and size of advertisements of proceedings in these and related cases, is that right?
- A. Yes.
- Q. Why do you take an exception?
- A. Because I personally felt that those advertisements were being put in the papers to prejudice persons to create an erroneous sense of prejudice.
- Q. Who did you think the object of the prejudice might be?

- A. Persons such as myself, members of the syndicate. Supreme Court
of Hong Kong
High Court
- Q. As a solicitor you would recognise, would you not, the importance of giving adequate notice of proceedings?
- A. I noticed in one of the court trials that the judge in those proceedings made a comment on the fact that it was advertised without his permission. Defendant's
evidence
- Q. Would you answer my question. Would you recognise, as a solicitor, the importance of adequate notice?
- A. In what circumstances? No. 40
- 10 Q. The issue of an injunction, the issue of any order, service of the statement of claim. Melville E. Ives –
cross-examination
- A. Notice to the person named in the injunction, yes, to the person enjoined.
- Q. What you were taking exception to is not so much the advertisements but the fact that your name was mentioned, is that right?
- A. When the latter advertisements were put in those were the advertisements with the ten defendants, it seemed to be – to me, I may be biased – but it seemed to be an exceptional and unnecessary amount of advertising.
- Q. In what way unnecessary amount?
- A. By then it was firmly established, I think, that CHOO Kim-san was in Taiwan. It was established that Mr. and Mrs. Chow were in Taiwan. The address of Asiatic Nominees and Triumphant Nominees in Hongkong was known. Yet it was still thought fit to ask for the notices to be advertised in the Hongkong Press.
- 20 Q. Is it to your knowledge, Mr. Ives, that your friend, Mr. David Ng swore an affidavit saying that it was probable that CHOO Kim-san would return to the Colony?
- A. I have not seen the affidavit, but I believe he swore the affidavit which is based on your client's affidavit.
- Q. Is it to your knowledge that your friend and co-defendant David Ng swore an affidavit saying that it was probable that CHOO Kim-san would return to Hongkong?
- 30 A. I have not seen the affidavit.
- Q. Is it to your knowledge?
- A. I know that he swore certain affidavits, I don't know how many, whether it was one or more, in *Imperial Hotel v. Manhattan*, I think it was.
- Q. Is it to your knowledge?
- A. I have not seen the affidavit.
- Q. You have not seen the affidavit, but is it to your knowledge that he swore an affidavit saying that it was probable that CHOO Kim-san would return to this Colony? Now it is either yes or no.
- 40 A. It is not to my knowledge.
- Q. Is it to your knowledge that your friend and co-defendant David Ng swore an affidavit saying that CHOO Kim-san's whereabouts were unknown?
- A. That is not to my knowledge.
- Q. Do you accept it from me that such an affidavit does exist?
- A. I believe there is an affidavit, but I don't –
- Q. Your friend and co-defendant David Ng said on the 29th June this year that the defendant's whereabouts were unknown, it was probable that he would return to Hongkong and yet you take exception to our advertising notice of proceedings in Hong Kong?

Supreme Court
of Hong Kong
High Court

Defendant's
evidence

No. 40

Melville E. Ives –
cross-examination

- A. Yes.
- Q. How do you explain that?
- A. That is my personal exception.
- Q. Why do you take exception, is it because you were being put in jeopardy of losing any massive profits?
- A. No, as I have said, maybe I am biased because my name was there and I'd rather took exception to what I thought was unnecessary advertising.
- Q. Why do you say it was unnecessary? It is your friend and co-defendant David Ng said, first; that the whereabouts of CHOO Kim-san are unknown and, secondly, that it is probable that he would return to Hongkong. Why do you say advertising in Hong Kong was unnecessary? 10
- A. I personally felt it was. I may be wrong.
- Q. Tell us why you thought it was unnecessary?
- A. I thought I have explained just now because I believed everybody at that time believed that CHOO Kim-san was in Taiwan.
- Q. Including David Ng? You believed that David Ng thought in June, to be specific, 29th June, you believed that David Ng thought CHOO Kim-san was in Taiwan?
- A. I can't say what he thought on the 29th June. David Ng knew that he was in Hongkong at the end of – 20
- Q. Just answer my question please. Do you say that David Ng believed because you say everybody believed, do you say David Ng believed on the 29th June of this year that CHOO Kim-san was in Taiwan?
- A. I think – and I can only say what I think, I can't say what he believed – but I think that David Ng believed he was in Taiwan.
- Q. You therefore think that on the 29th June David Ng swore a false affidavit?
- A. I don't know. I have not seen the affidavit.
- Q. I'll show it to you. Blue file please, page 49, paragraph 16, last sentence, you see where it says: "The defendant's whereabouts are unknown"? 30
- A. Yes.
- Q. There now you have seen the affidavit, haven't you?
- A. Yes.
- Q. Would you say that David Ng's affidavit was a false affidavit?
- A. I wouldn't go so far as to say this is a false affidavit.
- Q. You wouldn't go so far as to say it is a false affidavit. According to you everybody believed that he was in Taiwan and here is David Ng saying "the defendant's whereabouts are unknown."
- A. I suppose one can be in Hongkong but one's whereabouts in Hong Kong can still be unknown.
- Q. I see. So what you say that means is well, "he is somewhere in Taiwan but we don't know if he is in the President Coffee House at this moment", is that right? 40
- A. No, I did not say that at all, no.
- Q. What are you saying then, please?
- A. I have been asked to comment on somebody else's affidavit.
- Q. No, I am asking you, Mr. Ives, whether you say in view of your statement that everybody believed that CHOO Kim-san was in Taiwan, whether you say that the last sentence of paragraph 16 of David Ng's affidavit – and for the record, it is in Action No. 16/74 – whether you say that sentence is true or untrue?

- A. I cannot say it is true or untrue.
- Q. But you have made the statement that everybody, everybody, everybody, everybody believed that he was in Taiwan. Are you saying now everybody except David Ng?
- A. I am not saying that.
- Q. Then is that statement true or untrue: "The defendant's whereabouts are unknown"?
- A. I think I could only – I cannot see I am able to answer. I would like to if I can. He knew the defendant's whereabouts at the end of December, yes. He definitely knew the whereabouts then.
- 10 Q. Just a minute, we advertised in June and July, you take exception to that because everybody believed he was in Taiwan. Does everybody include David Ng?
- A. By June or July he could have left Taiwan, maybe, I don't know.
- Q. Does everybody include David Ng?
- A. I don't know.
- Q. Well, you made the statement, Mr. Ives. What do you mean you don't know?
- A. All right, not everybody then.
- Q. Everybody except David Ng, is that right?
- 20 A. And presumably your client as well.
- Q. You admit the possibility my client did not know his whereabouts. So then why do you say the advertisements in Hongkong were unnecessary?
- A. As I have said right at the beginning, that may be I was biased in that respect because that was my own personal feeling that they were unnecessary.
- Q. I want to know why that was your opinion.
- A. Because I felt personally that the plaintiffs were using the processes of the court to achieve their ends in the manner which was rather improper.
- Q. And you disapproved of that, did you?
- A. Yes.
- 30 Q. Look at paragraph 17 of that same affidavit of David Ng: "If the defendant is still in Hong Kong it is probable that he will try to leave Hong Kong to avoid prosecution." Do you agree with me that David Ng there presupposes the possibility that CHOO Kim-san was in Hongkong on the 29th June this year?
- A. I think I have seen this paragraph before.
- Q. Never mind whether you have seen it before, Mr. Ives, do you agree with me that David Ng presupposes in that sentence that CHOO Kim-san could have been in Hongkong on the 29th June of this year?
- A. He does, yes.
- 40 Q. The next sentence says: "If he has left Hong Kong it is highly probably" – that is a mistake for 'probable' – "that he will return to Hong Kong in the foreseeable future." Again he presupposes the possibility of CHOO Kim-san being in Hongkong, does he not?
- A. Yes.
- Q. And he presupposes the possibility of CHOO Kim-san returning to Hong Kong, does he not?
- A. This paragraph seems to indicate that.
- Q. Do you still say it was unnecessary to advertise in Hongkong?
- A. I still hold the opinion that it was unnecessary to the extent that it was unnecessary to the extent that it was advertised.

Supreme Court
of Hong Kong
High Court

Defendant's
evidence

No. 40

Melville E. Ives –
cross-examination

Supreme Court
of Hong Kong
High Court

Defendant's
evidence

No. 40

Melville E. Ives –
cross-examination

- Q. What do you mean by extent – size, regularity, what?
A. Size and regularity.
Q. Size, do you say that the advertisements were put in large type, type larger than is usual?
A. No, the type is not larger than usual.
Q. Regularity, do you agree with me that every time an order was obtained against CHOO Kim-san it had to be advertised?
A. Most of the orders, yes. 10
Q. Any order against CHOO Kim-san or affecting CHOO Kim-san had to be advertised, did it not?
A. I think there are presently some orders, etc., which had not been advertised, some directions anyway.
Q. Those orders, Mr. Ives, as you know very well, were not advertised because of the pressure of time bringing on these proceedings, but apart from those do you not agree that every order affecting CHOO Kim-san had to be advertised?
A. If there is no question of pressure of time, I suppose yes.
Q. So what are you complaining about? The advertisements were in the proper type, every order affecting CHOO Kim-san had to be advertised; it is right and proper to give him notice; he may have been in Hongkong, according to David Ng. Why do you say the advertisements were unnecessary? 20
A. I do not say they were unnecessary.
Q. You no longer say they were unnecessary, is that right?
A. I feel personally –
Q. No, no, no, please. Do you now resile from your previous evidence that they were unnecessary?
A. You mean all of them or some of them?
Q. As you like.
A. I feel that some of them were unnecessary. 30
Q. Which one?
A. I have not got all the advertisements at the moment, but I do remember before Mr. Justice Zimmern the question was raised as to whether it was necessary to continue this, giving these notices in the Press and I believe Mr. Zimmern said it was – I can't recall his words – he said, yes, he can understand, but as there has been so much of it already, well, might as well continue, it's near the end or something like that.
Q. In the present case, in Miscellaneous Proceeding 159, before my Lord ruled that you had no locum standi to apply to set aside the registration of a foreign judgment you yourself complained that there was insufficient notice to CHOO Kim-san, did you not? 40
A. You mean the action in –
Q. 159.
A. The originating action in Malaya?
Q. Yes, you said there was insufficient notice.
A. Yes, it was advertised in the Straits Standards.
Q. So you complained there was insufficient notice?
A. We did not complain, we stated that probably there was insufficient notice.
Q. That was one of the grounds on which you sought to set aside the registration

In the Privy Council

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.....	<i>1st Appellant</i>	(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.....	<i>2nd Appellant</i>	
HO CHAPMAN.....	<i>3rd Appellant</i>	
FERMAY COMPANY, LTD.....	<i>4th Appellant</i>	

and

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

RECORD OF PROCEEDINGS

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